

JPRC



THIRD ANNUAL REPORT

2009

JUSTICES OF THE PEACE
REVIEW COUNCIL

ONTARIO



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**JUSTICES OF THE PEACE
REVIEW COUNCIL**

ONTARIO

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The Honourable Annemarie E. Bonkalo

CHIEF JUSTICE
ONTARIO COURT OF JUSTICE

Chair, Justices of the Peace Review Council



JUSTICES OF THE PEACE REVIEW COUNCIL

May 2, 2011

The Honourable Chris Bentley
Attorney General for the Province of Ontario
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Minister:

It is my pleasure to submit the Third Annual Report of the Justices of the Peace Review Council concerning its operations throughout 2009, in accordance with subsection 9(7) of the *Justices of the Peace Act*.

The period of time covered by this Annual Report is from January 1, 2009 to December 31, 2009.

Respectfully submitted,

A handwritten signature in black ink, reading 'Annemarie E. Bonkalo'.

Annemarie E. Bonkalo
Chief Justice
Ontario Court of Justice

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INTRODUCTION

The period of time covered by this Annual Report is from January 1, 2009 to December 31, 2009. This report is the third Annual Report on the work of the Justices of the Peace Review Council.

Justices of the peace play an important role in the administration of justice in Ontario. They are appointed by the Province of Ontario and have their duties assigned by a Regional Senior Justice or a Regional Senior Justice of the Peace. They routinely conduct trials under the *Provincial Offences Act* and preside over bail hearings. They also perform a number of other judicial functions, such as issuing search warrants. Justices of the peace do difficult, important work in the justice system. A justice of the peace may be the only judicial officer that a citizen will encounter in his or her lifetime.

The Justices of the Peace Review Council is an independent body established by the Province of Ontario under the *Justices of the Peace Act* with a mandate to receive and investigate complaints against justices of the peace and to fulfill other functions as described in this report. The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. Those are matters to be pursued through the courts through other legal remedies.

The Review Council was in existence prior to 2009. However, effective January 1, 2007, the *Access to Justice Act, 2006* amended the *Justices of the Peace Act* to make changes to the composition, procedures and mandate of the Council. The current legislation provides for the Council to make an Annual Report to the Attorney General on its affairs, including case summaries about complaints. The report may not include information that identifies a justice of the peace, a complainant or a witness unless a public inquiry or public hearing has occurred.

This Third Annual Report of the Review Council provides information on its membership, its functions and the work of the Council during 2009. The Annual Report also includes information on the procedures used to address complaints. Information is also included on applications for approval to engage in extra-remunerative activities, although names of applicants are confidential.

The Review Council had jurisdiction over approximately 392 provincially-appointed justices of the peace, full-time and part-time and *per diem*, during the period of time covered by this Annual Report. During 2009, the Council received 48 new complaints about justices of the peace, and carried over 39 from previous years. Information about the 51 complaint files that were completed and closed in 2009 is included in this Report.

We invite you to find out more about the Council by reading this Annual Report, and by visiting its website at www.ontariocourts.on.ca/jprc/en/. On the website, you will find the Council's current policies and procedures; updates about any public hearings that are in progress or that have been completed after this Report was prepared; the Principles of Judicial Office; the Education Plan; and links to the governing legislation.

1. COMPOSITION AND TERMS OF APPOINTMENT

The Justices of the Peace Review Council is an independent body established under the *Justices of the Peace Act*. The Review Council has a number of functions which are described in this section, including the review and investigation of complaints about the conduct of justices of the peace.

The Review Council includes judges, justices of the peace, a lawyer and four community representatives:

- ♦ the Chief Justice of the Ontario Court of Justice, or another judge of the Ontario Court of Justice designated by the Chief Justice;
- ♦ the Associate Chief Justice Co-ordinator of Justices of the Peace;
- ♦ three justices of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- ♦ two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice;
- ♦ one regional senior justice of the peace appointed by the Chief Justice of the Ontario Court of Justice;
- ♦ a lawyer appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Upper Canada; and,
- ♦ four persons appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.

In the appointment of community members, the importance is recognized of reflecting, in the composition of the Review Council as a whole, Ontario's linguistic duality and the diversity of its population and ensuring overall gender balance.

When the Council was established in its current form in 2007, to provide for staggered terms among the members of the Council, initially the lawyer and one community person were appointed for a six-year term, one community person for a two-year term and the remaining two community members for four-year terms. After those members complete their terms, lawyer and community members who are appointed to the Council will hold office for four-year terms and will be eligible for reappointment. Judicial members on the Council are appointed by the Chief Justice of the Ontario Court of Justice.

2. MEMBERS

The membership of the Review Council in the year covered by this report (January 1, 2009 to December 31, 2009) was as follows:

Judicial Members:

CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE

The Honourable Annemarie E. Bonkalo (Toronto)

ASSOCIATE CHIEF JUSTICE CO-ORDINATOR OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

The Honourable John A. Payne (Durham/Toronto)

THREE JUSTICES OF THE PEACE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

His Worship Dan M. MacDonald (Brantford)

Senior Justice of the Peace Cornelia Mews (Newmarket/Toronto)

Her Worship Lorraine A. Watson (Kingston)

TWO JUDGES OF THE ONTARIO COURT OF JUSTICE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

The Honourable Justice Ralph E. W. Carr (Timmins)

The Honourable Justice Deborah K. Livingstone (London)

REGIONAL SENIOR JUSTICE OF THE PEACE APPOINTED BY THE CHIEF JUSTICE OF THE ONTARIO COURT OF JUSTICE:

Regional Senior Justice of the Peace Kathleen M. Bryant (Sault Ste. Marie)

Lawyer Member:

Ms. S. Margot Blight (Toronto)
Borden Ladner Gervais LLP

Community Members:

Professor Emir Crowne (Windsor)
Faculty of Law, University of Windsor

Ms. Cherie A. Daniel (Toronto)
Lawyer

Dr. Michael S. Phillips (Gormley)
Consultant, Mental Health and Justice

Mr. Steven G. Silver (Gananoque)
Chief Administrative Officer, United Counties of Leeds & Grenville
(re-appointed effective May 2, 2009 for a four-year term)

Members – Temporary:

Subsection 8(10) of the *Justices of the Peace Act* permits the Chief Justice of the Ontario Court of Justice to appoint a judge or a justice of the peace to be a temporary member of the Justices of the Peace Review Council of a complaints committee or hearing panel where it is necessary in order to meet the requirements of the *Act*. During the period covered by this report, the following members were temporary members:

The Honourable Justice Guy F. DeMarco (Windsor)

His Worship Maurice Hudson (Brampton)

Her Worship Louise E. Rozon (Cornwall)

3. ADMINISTRATIVE INFORMATION

Separate office space adjacent to the Office of the Chief Justice in downtown Toronto is utilized by both the Ontario Judicial Council and the Justices of the Peace Review Council. The proximity of the Councils' office to the Office of the Chief Justice permits both Councils to make use of clerical and administrative staff, as needed, and computer systems and support backup without the need of acquiring a large support staff.



Councils' offices are used primarily for meetings of both Councils and their members. Each Council has a phone and fax number and its own stationery. They share a toll-free number for the use of members of the public across the province of Ontario and a toll-free number for persons using TTY/teletypewriter machines.

During the period covered by this report, the staff of the Ontario Judicial Council and the Justices of the Peace Review Council consisted of a registrar, two assistant registrars and a secretary:

Ms. Marilyn E. King, LL.B. – *Registrar*

Mr. Thomas A. Glassford – *Assistant Registrar*

Ms. Ana M. Brigido – *Assistant Registrar*

Ms. Jacqueline Okumu – *Acting Secretary (until February 26, 2009)*

Ms. May Wan-Reis – *Acting Secretary (from March 2, 2009 until July 26, 2009)*

Ms. Janice Cheong – *Secretary (effective July 27, 2009)*

4. FUNCTIONS OF THE REVIEW COUNCIL

The *Justices of the Peace Act* provides that the functions of the Review Council are:

- ♦ to consider applications under section 5.2 for the accommodation of needs;
- ♦ to establish complaints committees from amongst its members to receive and investigate complaints against justices of the peace, and decide upon dispositions under section 11(15);
- ♦ to hold hearings under section 11.1 when hearings are ordered by complaints committees pursuant to section 11(15);
- ♦ to review and approve standards of conduct;
- ♦ to deal with continuing education plans; and,
- ♦ to decide whether a justice of the peace who applies for approval to engage in other remunerative work may do so.

The Review Council does not have the power to interfere with or change a decision made by a justice of the peace. If a person believes that a justice of the peace made an error in assessing evidence or in making a decision on any of the issues, the proper way to proceed is through other legal remedies before the courts, such as an appeal.



During the period covered by this Report, the Council implemented its first electronic case management system. The system improved the Council's ability to track progress on its work on complaint files.

The Council also continued to refine and develop its procedures. In keeping with the privacy requirements of the *Justices of the Peace Act*, the Council approved of an amendment pursuant to section 8(18) of the *Act*, that all information pertaining to Council meetings and investigations remain confidential unless a complaints committee or hearings panel orders otherwise.

The Council also approved an amendment to its procedures to adopt a consistent approach to whether there should be an interim recommendation under section 11(11) of the *Act* of non-assignment of work or re-assignment of work in response to a complaint. The amendment provides that for each complaint, complaints committees must consider whether to make an interim recommendation. Criteria to guide their decisions are set out in the Council's complaints procedures which are posted on the website under the link "Policies and Procedures" at: www.ontariocourts.on.ca/jprc/en/policy/procedure.htm.

An amendment was also approved to improve the procedures to address requests for accommodation under section 5.2 of the *Act*. The amendment provides for the Council to be guided generally by Human Rights jurisprudence relating to the definition of "disability", the content of the duty to accommodate and the procedures developed in the jurisprudence for the purposes of determining whether to make an order to accommodate.

An amendment to its procedures was also approved to provide justices of the peace with the same option to waive notice of complaints as is available for judges. The amendment adopted provides for justices of the peace to have the option to waive notice of complaints that are dismissed in cases where a response was not sought from the justice of the peace during the complaints process. In all cases except where there has been such a waiver, justices of the peace are notified of complaints that have been made against them.

A copy of the current procedures for the complaints process is posted on the Review Council's website under the link "Policies and Procedures" at: www.ontariocourts.on.ca/jprc/en/policy/procedure.htm.

5. EDUCATION PLAN

The Associate Chief Justice Co-ordinator of Justices of the Peace of the Ontario Court of Justice is required, by section 14 of the *Justices of the Peace Act*, to establish, implement and make public a plan for the continuing judicial education of justices of the peace. The education plan must be approved by the Justices of the Peace Review Council. In 2007, a continuing



education plan was developed by the Associate Chief Justice Co-ordinator of Justices of the Peace in conjunction with the Advisory Committee on Education. The Committee includes the Associate Chief Justice Co-ordinator of Justices of the Peace as Chair (*ex officio*) and justices of the peace nominated by the Associate Chief Justice Co-ordinator of Justices of the Peace and by the Association of Justices of the Peace of Ontario. The continuing education plan was revised and approved by the Justices of the Peace Review Council on November 28, 2008. A copy of the continuing education plan can be found on the Council's website under the link "Education Plan" at www.ontariocourts.on.ca/jprc/en/.

6. STANDARDS OF CONDUCT

The Associate Chief Justice Co-ordinator of Justices of the Peace may, under section 13(1) of the *Justices of the Peace Act* establish standards of conduct for justices of the peace and a plan for bringing the standards into effect and must implement the standards and plan when they have been reviewed and approved by the Review Council.

The *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* were approved by the Justices of the Peace Review Council on December 7, 2007. The *Principles of Judicial Office* set out standards of excellence and integrity to which justices of the peace subscribe. These principles are not exhaustive. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives. They are designed to be advisory in nature and are not directly related to any specific disciplinary process.

A copy of the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* is included as Appendix C in this Annual Report and can be found on the Council's website at: www.ontariocourts.on.ca/jprc/en/.

7. OTHER REMUNERATIVE WORK

Under section 19 of the *Justices of the Peace Act*, all justices of the peace are required to seek the written approval of the Review Council before accepting or engaging in any extra-remunerative work. In 1997, the former Justices of the Peace Review Council approved a policy regarding extra-remunerative work in which justices of the peace may engage. On November 23, 2007, the newly constituted Review Council approved the policy regarding other remunerative work. On September 9, 2009, the Council amended the procedure for addressing applications to



ensure that the process fulfilled the requirements of natural justice and fairness.

The most recent version of the *Policy on Extra-Remunerative Work* that sets out the policy and procedure for applications is posted on the Review Council's website under the link "*Policies and Procedures*" at: www.ontariocourts.on.ca/jprc/en/policy/remunerative.htm.

On June 2, 2009, the Council issued a notice to all justices of the peace to inform them of the requirement to seek approval from the Council for any extra-remunerative work in which they were involved or in which they wished to become involved. Recognizing that circumstances may have changed over time, all justices of the peace were informed that they must re-apply to Council even if they had received approval from the former Council prior to 2007. The deadline for applications was set for June 30, 2009. The Council provided for approvals from the former Council to remain effective until December 31, 2009 (later extended until March 31, 2010) in order that justices of the peace would have adequate time to make a further application to be considered by the existing Council.

Applications received from justices of the peace to engage in other remunerative work are considered in accordance with the Council's policy. The policy applies to all justices of the peace, full-time and part-time and *per diem*. The policy sets out criteria that are used in assessing applications including:

- ◆ whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought;
- ◆ whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and his or her ability to properly perform the judicial duties assigned; and,
- ◆ whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

During 2009, the Review Council completed its consideration of one application that was carried over from 2008. In addition, in 2009, the Review Council received 22 new applications for approval to engage in extra-remunerative work. During the year, the Council approved 14 of those 23 applications contingent upon conditions. One applicant withdrew her application. Eight of the applications received in 2009 were carried into 2010 for the Council to receive further information and consider them further.

Information on the applications that were approved or withdrawn can be found at Appendix B in this Annual Report.

8. COMMUNICATIONS

The website of the Justices of the Peace Review Council includes information on the Council, including the most current version of the policies and procedures, as well as information about hearings that are underway or that have been completed. Copies of “Judicial Inquiry Proceedings” held under the former legislation and “Reasons for Decision” from any public hearings are posted on the website when released. Each Annual Report of the Council is also available on the website after it has been tabled in the legislature by the Attorney General.

The address of the JPRC website is: www.ontariocourts.on.ca/jprc/en.

A brochure to inform the public about the process to make complaints about judges and justices of the peace is available in hard copy at courthouses or by contacting the Council’s office, and electronically on the website. The brochure, “*Do You Have a Complaint?*” provides information on what a justice of the peace does, on how to tell whether the presiding judicial officer is a judge or a justice of the peace, and on how to make a complaint about conduct.

9. COMPLAINTS PROCEDURE

Any person may make a complaint to the Review Council about the conduct of a justice of the peace. Complaints must be made in writing and signed by the complainant. The governing legislation and the principles of natural justice do not provide for the Review Council to act on anonymous complaints or to initiate inquiries into the conduct of a judicial officer. Rather, an investigation conducted by the Review Council must be in response to specific allegations submitted by a complainant. Most of the complaints received by the Justices of the Peace Review Council are received from members of the public.

Does the Council have the legal authority to consider the complaint?

The Review Council has a legislative mandate to review complaints about the **conduct** of justices of the peace. The Council has no authority to review **decisions** of justices of the peace to determine whether there were any errors in how the issues were determined or how conclusions were drawn. If a party involved in a court case thinks that a justice of the peace reached the wrong decision in the case, he or she has legal remedies through the courts. Only a court can change the original decision of a justice of the peace.

All correspondence is reviewed to determine whether or not a complaint is within the jurisdiction of the Review Council. In those cases where the complaint may be within the jurisdiction of the Review Council, a complaint file is opened and a letter of acknowledgement is sent to the



complainant, usually within a week of his or her letter being received by the Review Council.

If the complainant expresses dissatisfaction with a decision that has been made, the letter of acknowledgement advises the complainant that the Review Council has no power to change a decision made by a justice of the peace. In such cases, the complainant is advised that he or she may wish to consult legal counsel to determine what, if any, remedies may be available through the courts.

If an individual is complaining about his/her lawyer or a Crown Attorney, or another office, the complainant is generally referred to the appropriate agency or authorities.

9.1 COMPLAINTS ADDRESSED UNDER FORMER LEGISLATION

Prior to January 1, 2007, a different process was used to address complaints. As a result of the *Access to Justice Act, 2006*, amendments of the *Justices of the Peace Act* came into effect on January 1, 2007 that established the current framework for addressing complaints against justices of the peace.

The legislation provided for transition from the former *Justices of the Peace Act* to the new *Act*. Under section 11.1(22), for a small number of existing complaints that were made before January 1, 2007 and that were considered by the former Review Council before that date, certain procedures under the former legislation continued to apply. Information is provided below on the procedures of the Review Council for complaints addressed under the former legislation.

For outstanding complaints addressed under the provisions of the former legislation, the new Review Council took steps to replicate, as much as possible, the procedure of the former legislation.

Investigation and Review of Complaints

Under the former *Justices of the Peace Act*, four of the six members on the Review Council constituted a quorum and were sufficient for the exercise of all of the jurisdiction and powers of the Review Council. For complaints governed by the former legislative sections, investigation was carried out and each case was considered by four members of the newly established Review Council.

If the complaint dealt with conduct in court, usually, a transcript of a court hearing was ordered and when deemed necessary, a copy of the audiotope may have also been ordered.



The Council reviewed the investigative materials. Pursuant to section 11(1), the Review Council determined whether or not further investigation was needed prior to making a decision. In some cases, the Council may have decided to retain external counsel to conduct further investigation such as interviewing witnesses. The justice of the peace may also have been asked by the Council for a response to the concerns raised by the complaint. If a response was requested from the justice of the peace, a copy of the complaint, the transcript (if any) and all of the relevant materials on file were provided to the justice of the peace, together with the letter from the Review Council requesting the response.

Dismissals or Referrals

Cases were dismissed if the complainant's allegations were determined to be unfounded or outside of the mandate of the Review Council, or the behavior did not amount to misconduct. If a complaint was a disagreement with a decision, that would be a matter that would need to be considered by an appeal court and outside of the jurisdiction of the Review Council. In some cases, where the Council determined it was warranted, the complaint may have been referred to the Associate Chief Justice Co-ordinator of Justices of the Peace or to the Regional Senior Justice to speak to the justice of the peace.

The complainant was notified of the Review Council's disposition. The justice of the peace also received notice of the Review Council's disposition.

Section 11 Investigative Hearing

Section 11.1(22) of the current *Justices of the Peace Act* provides that section 11 and section 12 of the former *Act* continue to apply for complaints made before January 1, 2007. Under section 11, the members of the Review Council had the authority to decide to conduct an investigative hearing as part of the investigation process. In those cases where the complaint was made before January 1, 2007 and where the Review Council ordered a section 11 investigative hearing, the Registrar engaged external legal counsel to prepare a "Notice of Hearing" which outlined the particulars of the complaint to be addressed by Council. The Notice was personally served on the justice of the peace. The external counsel presented the evidence to the Review Council, including calling and questioning witnesses. As the section 11 hearing was part of the investigation process, the same four members of the Review Council who investigated the case conducted the hearing.

A section 11 investigative hearing was held in private and was recorded. The justice of the peace was entitled to appear in person and to be represented by counsel, and to question the



witnesses. The Review Council had all the powers of a commission under Part II of the *Public Inquiries Act*.

At the conclusion of the hearing, the members of the Review Council determined whether or not to recommend to the Attorney General that a public inquiry should be held pursuant to section 12 of the former *Justices of the Peace Act*. If a public inquiry was recommended, a report was sent to the Attorney General recommending a public inquiry. The report may have also included a recommendation that the justice of the peace be compensated for all or part of his or her legal costs in connection with the investigation.

A copy of their report to the Attorney General was given to the justice of the peace. The person who made the complaint was informed of the disposition of the complaint, but was not given a copy of Council's report. The Attorney General had the authority to make all or part of the report public, if he or she was of the opinion that it was in the public interest to do so, but this has not been done.

Section 12 Public Inquiry

Section 12 of the former *Act* provides that the Lieutenant Governor in Council could appoint a judge of the Ontario Court of Justice to conduct a public inquiry into the question of whether there has been misconduct by a justice of the peace, on the recommendation of the Review Council, following the conclusion of its investigation under section 11 of the former *Justices of the Peace Act*.

The *Public Inquiries Act* applied to “section 12 inquiries”.

Following the completion of the public inquiry, the judge who conducted the inquiry prepared a report to the Lieutenant Governor in Council. Section 12 of the former *Justices of the Peace Act* states that the report of the inquiry held under section 12 (the “public inquiry”) may recommend that the Lieutenant Governor in Council remove the justice of the peace from office in accordance with section 8 of the *Justices of the Peace Act* or it may recommend that the Justices of the Peace Review Council implement a disposition under subsection 12(3.3) of the *Act*. Alternatively, the judge who conducted the public inquiry could also determine that there was no misconduct by the justice of the peace and decide to “dismiss” the complaint at the conclusion of the inquiry.

The report of the public inquiry could also recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the inquiry. The amount of compensation recommended had to be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.



Removal from Office

For complaints filed under the former legislation, a justice of the peace could only be removed from office by the Lieutenant Governor in Council and only if removal was recommended by the judge conducting the section 12 public inquiry. The judge must have concluded that the justice of the peace has become incapacitated or disabled from the due execution of his or her office by reason of infirmity, conduct that is incompatible with the execution of the duties of his or her office, or having failed to perform the duties of his or her office as assigned.

The order of removal had to be laid before the Legislative Assembly, if it was in session or, if not, within fifteen days after the commencement of the next session.

Disposition by Review Council

If, at the end of the section 12 public inquiry, the judge conducting the inquiry recommended that the Review Council implement a disposition under subsection 12(3.3) of the former *Justices of the Peace Act*, it was necessary for members of the Review Council to reconvene and determine what disposition they think is appropriate in the circumstances.

In order to make this determination, the Review Council would conduct a meeting, which would be public, and would provide the justice of the peace with an opportunity to make submissions as to the appropriate disposition under subsection (3.3).

Under subsection (3.3) of section 12, the Review Council could:

- a) warn the justice of the peace;
- b) reprimand the justice of the peace;
- c) order the justice of the peace to apologize to the complainant or to any other person;
- d) order the justice of the peace to take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- e) suspend the justice of the peace with pay, for any period; or
- f) suspend the justice of the peace without pay, but with benefits, for a period of up to 30 days.

When the Review Council dealt with a complaint regarding a justice of the peace, the person who made the complaint and the justice of the peace were informed of the disposition of the complaint.



During 2009, one Judicial Inquiry Report was tabled in the legislature after a public inquiry under section 12 in relation to five complaints about the conduct of His Worship John Farnum. The complaints were dismissed. The Report is available on the Council's website at www.ontariocourts.on.ca/jprc/en/reports/2010/index.htm.

A public inquiry under section 12 was conducted in 2009 in relation to one complaint about the conduct of His Worship Vernon A. Chang Alloy. The complaint was dismissed.

The Judicial Inquiry Report was tabled in the legislature in 2010 and is available on the Council's website at www.ontariocourts.on.ca/jprc/en/reports/2010/index.htm.

At the time when this Report was being written, there was one proceeding still underway that commenced under the former legislation and procedures. In 2008, following a section 12 public inquiry against former justice of the peace Benjamin Sinai, the Commissioner recommended that he be removed from office. The Judicial Inquiry Report was publicly released in 2009 and is available on the Council's website at: www.ontariocourts.on.ca/jprc/en/reports/2008/index.htm.

An order-in-council revoked his appointment as a justice of the peace. He subsequently filed an application in the Divisional Court for judicial review of the decision of the Commissioner who conducted the public inquiry. In a decision, dated November 17, 2010, the Divisional Court dismissed the application.

9.2 CURRENT COMPLAINTS PROCESS

The *Justices of the Peace Act* and the procedures that have been established by the Review Council provide the current framework for addressing complaints against justices of the peace. If a complaint is ordered to a public hearing, provisions of the *Statutory Powers Procedure Act* also apply. The complaints procedure is outlined below. The current procedures are posted on the Council's website at: www.ontariocourts.on.ca/jprc/en/policy/.

Preliminary Investigation and Review

As soon as possible after receiving a complaint about the conduct of a justice of the peace, the office of the Review Council will acknowledge receipt of the complaint and establish a complaints committee of the Review Council to investigate the complaint. Members of the Review Council serve on complaints committees on a rotating basis. Each complaints committee is composed of: a provincially appointed judge who acts as chair; a justice of the peace; and, either a community member or a lawyer member. Complaints are not generally assigned to members from the same region where the justice of the peace who is the subject



of the complaint presides. This avoids any risk of or perception of bias or conflict of interest between a member of Council and the justice of the peace.

Except for hearings ordered under section 11(15)(c) to consider complaints against specific justices of the peace, meetings and proceedings of the Review Council are not held in public. Section 11(8) of the *Justices of the Peace Act* requires that investigations by the Review Council must be conducted in private. The legislative framework recognizes the need to safeguard judicial independence while simultaneously ensuring judicial accountability and public confidence in the administration of justice.

If the complaint arose from a court proceeding, usually a transcript of the court hearing is ordered to be reviewed by the members of the complaints committee. An audiotape, if available, may also be ordered and reviewed. In some cases, the committee may find that it is necessary to conduct further investigation in the form of having witnesses interviewed. An external lawyer may be retained, pursuant to section 8(15) of the *Act*, on behalf of the Review Council to interview witnesses and provide a report to the investigating complaints committee.

The complaints committee will determine whether or not a response to the complaint is required from the justice of the peace in question. If a response is requested from the justice of the peace, the letter sent from the Review Council requesting a response will enclose a copy of the complaint, the transcript (if any) and all of the relevant materials considered by the committee. The justice of the peace may seek independent legal advice to provide assistance in responding to Council.

Section 11(15) of the *Justices of the Peace Act* gives the complaints committee the authority to dismiss a complaint after reviewing the complaint where, in the opinion of the committee, it is frivolous or an abuse of process; it falls outside the Review Council's jurisdiction (because it is a complaint about the exercise of judicial discretion); it does not include an allegation of judicial misconduct; the allegation is unproven; or, the misconduct does not rise to the level of misconduct that requires further action on the part of the Review Council.

Interim Recommendations

The investigating complaints committee will consider whether the allegation(s) warrants making an interim recommendation pending the final disposition of a complaint. Under section 11(11) of the *Act*, an interim recommendation for non-assignment of work or re-assignment to work at another court location may be made to the Regional Senior Justice appointed for the region to which the justice of the peace is assigned. The Regional Senior Justice may decide not to assign work to the justice of the peace until the final disposition



(but he or she will continue to be paid); or, with the consent of the justice of the peace, may re-assign him or her to another location until the disposition of the complaint. It is within the discretion of the Regional Senior Justice as to whether he or she decides to act upon the recommendation from a complaints committee.

The Review Council has approved the following criteria in the procedures to guide complaints committees as to when an interim recommendation should be made:

- ◆ where the complaint arises out of a working relationship between the complainant and the justice of the peace and the complainant and the justice of the peace both work at the same court location;
- ◆ where allowing the justice of the peace to continue to preside would likely bring the administration of justice into disrepute;
- ◆ where the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies;
- ◆ where it is evident to the complaints committee that a justice of the peace is suffering from a mental or physical impairment that cannot be remedied or reasonably accommodated.

Where a complaints committee proposes to recommend temporarily not assigning work or re-assigning a justice of the peace to work at a different court location, it may give the justice of the peace an opportunity to be heard on that issue in writing before making its decision. Particulars of the factors upon which the complaints committee's recommendations are based are provided to the Regional Senior Judge to assist the Regional Senior Judge in making his or her decision, and to the justice of the peace to provide him or her with notice of the complaint and the complaints committee's recommendation.

Of the complaint files that were completed by the Council during 2009, complaints committees made recommendations that two justices of the peace not be assigned work pending the completion of the complaints process and a final disposition of the complaints. The Regional Senior Justices agreed with the recommendations in both instances. In one of those cases, the Regional Senior Justice was already not assigning work to the justice of the peace who was the subject of complaints, and she affirmed that decision after receiving the recommendation of the complaints committee.

Dispositions of the Complaints Committee

When the investigation is completed, pursuant to section 11(15) of the *Act*, the complaints committee will do one of the following:

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- a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
 - b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;
 - c) order that a formal hearing into the complaint be held by a hearing panel; or,
 - d) refer the complaint to the Chief Justice of the Ontario Court of Justice.

The complaints committee reports to the Review Council on its decision and, except where it orders a formal hearing, does not identify the complainant or the justice of the peace who is the subject of the complaint in its report.

Notification of Disposition

After the complaints process is completed, the Review Council communicates its decision to the person who made the complaint and, in most cases, to the justice of the peace. A justice of the peace may waive notice of the complaint if it is being dismissed and no response was requested by the Council. In accordance with the Procedures of the Review Council, if the Review Council decides to dismiss the complaint, it will provide brief reasons.

Public Hearing Under section 11.1

When the complaints committee orders a public hearing, under section 11.1(1) of the *Act*, the Chief Justice of the Ontario Court of Justice, who is also the Chair of the Review Council, establishes a three-member hearing panel from among the members of the Council, composed of: a provincially appointed judge who chairs the panel; a justice of the peace; and, a member who is a judge, a lawyer or a member of the public. Complaints committee members who participated in the investigation of the complaint do not participate in its review by a hearing panel.

The legislation provides for judicial members to be appointed as temporary members of the Council to ensure that the three hearing panel members have not been involved in earlier stages of reviewing the complaint. The Chief Justice of the Ontario Court of Justice may appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member of a hearing panel where necessary to form each quorum to meet the requirements of the *Act*.

By the end of the investigation and hearing process, all decisions regarding complaints made



to the Justices of the Peace Council will have been considered and reviewed by a total of six members of Council – three members of the complaints committee and three members of the hearing panel.

The Review Council engages legal counsel for the purposes of preparing and presenting the case against the justice of the peace. The legal counsel engaged by the Review Council operates independently of the Review Council. The duty of legal counsel engaged to act as presenting council under this Part is not to seek a particular order against a justice of the peace, but to see that the complaint against the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result.

The justice of the peace has the right to be represented by counsel, or to act on his or her own behalf in any hearing under this procedure.

The *Statutory Powers Procedure Act*, with some exceptions, applies to hearings into complaints. The panel, on application at any time by presenting counsel or by the justice of the peace, may require any person, including a party, by summons, to give evidence on oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things specified by the panel which are relevant to the subject matter of the hearing and admissible at the hearing.

Public Hearing Unless Ordered Private

A section 11.1 hearing into a complaint is public unless the Review Council determines, in accordance with criteria established under the *Statutory Powers Procedure Act*, that matters involving public security may be disclosed; or, intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure of such matters, in the interests of any person affected or in the public interest, outweighs the desirability of following the principle that the hearing be open to the public.

In certain circumstances where a complaint involves allegations of sexual misconduct or sexual harassment, the Council also has the power to prohibit publication of information that would disclose the identity of a complainant or a witness who testifies to having been the victim of the conduct. If a complaint involves allegations of sexual misconduct or sexual harassment, the hearing panel will, at the request of the complainant or of a witness who testifies to having been the victim of such conduct by the justice of the peace, prohibit the publication of information that might identify the complainant or the witness, as the case may be.

Dispositions after section. 11.1 Hearing

After hearing the evidence, under section 11.1(10) of the *Justices of the Peace Act*, the hearing panel of the Council may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may decide upon any one of the following sanctions singly or in combination:

- ◆ warn the justice of the peace;
- ◆ reprimand the justice of the peace;
- ◆ order the justice of the peace to apologize to the complainant or to any other person;
- ◆ order the justice of the peace to take specified measures such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- ◆ suspend the justice of the peace with pay, for any period; or,
- ◆ suspend the justice of the peace without pay, but with benefits, for a period up to thirty days.

Removal from Office

Following the hearing, the Review Council may make a recommendation to the Attorney General that the justice of the peace be removed from office. This sanction stands alone and cannot be combined with any other sanction. A justice of the peace may be removed from office only if a hearing panel of the Review Council, after a hearing under section 11.1, recommends to the Attorney General under section 11.2 that the justice of the peace be removed on the ground of:

- ◆ he or she has become incapacitated or disabled from the execution of his or her office by reason of inability to perform the essential duties of the office because of a disability and, in the circumstances, accommodation of his or her needs would not remedy the inability, or could not be made because it would impose undue hardship to meet those needs;
- ◆ conduct that is incompatible with the execution of the office; or
- ◆ failure to perform the duties of his or her office.

Only the Lieutenant Governor in Council may act upon the recommendation and remove the justice of the peace from office.

Recommendation of Compensation for Legal Costs

When the Justices of the Peace Review Council has dealt with a complaint, section 11(16) of the *Justices of the Peace Act* makes provision for a justice of the peace to request that a complaints committee recommend to the Attorney General that he or she should be compensated for all or part of the costs of legal services incurred in connection with the investigation. Such a request would generally be submitted to the Council after the complaints process has been completed, along with a copy of the statement of account of legal services to support the request. Similarly, section 11.1(17) allows a hearing panel to recommend compensation for all or part of the cost of legal services incurred in connection with a hearing.

Pursuant to the *Act*, the Council's order for compensation must be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

Legislation

The current legislative provisions of the *Justices of the Peace Act* concerning the Justices of the Peace Review Council are available on the government's e-laws website at www.e-laws.gov.on.ca. The website contains a database of Ontario's current and historical statutes and regulations.

10. SUMMARY OF COMPLAINTS CLOSED IN 2009

The Justices of the Peace Review Council carried forward 39 complaints to 2009 from previous years. Of those, one file was an ongoing investigation under the former legislation. Six complaints had previously been reported to the Attorney General with recommendations that a public inquiry should proceed pursuant to section 12 of the former legislation.

During 2009, 48 new complaint files were opened with the Review Council. Including cases carried into 2009 from previous years, the total number of files open during 2009 was 87. Of the 87 open files in 2009, 51 files were completed and closed before December 31, 2009, including 15 that were opened in 2009.

Thirty-six complaints were still ongoing at the end of 2009 and were carried over into 2010. Of the 36 files carried over into 2010, 33 were from 2009, 2 were from 2008, and 1 complaint had been previously reported to the Attorney General under section 11(7) of the former *Justices of the Peace Act* with a recommendation that a public inquiry be held under section 12 of the *Act* to inquire into the question of whether there had been misconduct.



The public inquiry in relation to Justice of the Peace Vernon A. Chang Alloy has since been completed and the Judicial Inquiry Report is posted on the Council's website at www.ontariocourts.on.ca/jprc/en/reports/2010/alloy.htm.

The Commissioner found, based on the standard of evidence required, “clear and convincing, based on cogent evidence accepted by the tribunal” that the evidence did not meet that standard.

10.1 OVERVIEW OF COMPLAINTS ADDRESSED UNDER FORMER LEGISLATION

Of the 51 complaints closed in 2009, six were filed and addressed under the former legislation. In one case, File 17-007/06, the Review Council ordered a private or *in camera* investigatory hearing under section 11. After careful consideration, the hearing panel advised that, in their view, the facts did not support a finding that the justice of the peace conducted himself in a manner that was incompatible with the execution of the duties of his office. As a result, the panel determined that an inquiry under section 12 was not warranted and dismissed the complaint. A case summary is included in Appendix A of this report.

A Judicial Inquiry Report was tabled in the legislature in relation to the public inquiry conducted under section 12 of the former *Justices of the Peace Act* that addressed five complaints regarding conduct of His Worship John Farnum. The Commissioner found that there was no misconduct in relation to the allegations. A copy of the Judicial Inquiry Report is available on the Council's website at: www.ontariocourts.on.ca/jprc/en/reports/2010/index.htm.

10.2 OVERVIEW OF COMPLAINTS ADDRESSED UNDER CURRENT LEGISLATION

Of the 51 complaint files that were closed in 2009, 45 were addressed under the new legislation. As indicated earlier, section 11(15) authorizes a complaints committee to:

- ♦ dismiss the complaint if it was frivolous, an abuse of process or outside the jurisdiction of the complaints committee;
- ♦ invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;

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- ♦ order that a formal hearing into the complaint be held by a hearing panel; or,
 - ♦ refer the complaint to the Chief Justice of the Ontario Court of Justice.

Five of the 45 complaints were dismissed by the Review Council under section 11(15)(a) on the basis that they were found to be outside the jurisdiction of the Council. These files typically involved a complainant who expressed dissatisfaction with the result of a trial or with a justice of the peace's decision, but who made no allegation of misconduct. While the decisions made by the justice of the peace in these cases could be the subject of other legal remedies, such as an appeal, the absence of any alleged misconduct meant that the complaints were outside of the jurisdiction of the Review Council.

Complaints about conduct included allegations of judicial misconduct such as improper behaviour (rudeness, belligerence, etc.), lack of impartiality, conflict of interest or some other form of bias.

Twenty complaint files were dismissed by the Review Council under section 11(15)(a) after they were investigated by a complaints committee and determined to be unsubstantiated or unfounded or the behavior did not amount to the level of misconduct.

In 10 cases, the Review Council provided advice to justice of the peaces under section 11(15)(b) of the *Act*. In six cases, the justice of the peace was sent a letter of advice concerning issues raised in the complaints, and in four cases the justices of the peace attended before the complaints committee to receive advice in person concerning the issues raised in the complaints.

Two complaints were referred to the Chief Justice of the Ontario Court of Justice pursuant to section 11(15)(d) during 2009. A complaints committee will refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the committee is of the opinion that the conduct complained of does not warrant another disposition and that there is some merit to the complaint. The committee also has the opinion that a referral to the Chief Justice is a suitable means of informing the judge that his or her course of conduct was not appropriate in the circumstances that led to the complaint. The committee may recommend imposing conditions on their referral to the Chief Justice where the committee agrees that there is some course of action or remedial training of which the justice of the peace could take advantage and the justice of the peace agrees.

Following each meeting with the justice of the peace, the Chief Justice provided a written report to the committee. After reviewing the Chief Justice's report in each case, the committee was satisfied that the matter had been appropriately addressed and the file was closed.

A public hearing will be ordered pursuant to section 11(15)(c) where the complaints committee is of the opinion that there has been an allegation of judicial misconduct which the



majority of the members of the committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct. When a hearing is ongoing, updates on the status of the case are posted on the Review Council's website. At the end of a hearing, the decision can be found on the website under the link "Public Hearings Decisions" at www.ontariocourts.on.ca/jprc/en/hearings/.

One public hearing under section 11.1 of the *Act* in relation to three complaints against former justice of the peace Jorge Barroilhet was completed in 2009. The hearing panel, consisting of a judge, a justice of the peace and a lawyer, concluded that the impartiality, integrity and independence of the judiciary and the confidence of individual members of the public appearing before this justice of the peace was irreparably undermined by his misconduct. The panel concluded that such misconduct rendered His Worship Barroilhet incapable of performing the duties of his office. They found that the public's confidence in his ability to perform the duties of office, and in the administration of justice generally, would be irreparably undermined if the panel's response to such behaviour were any disposition other than a recommendation for removal. The panel recommended pursuant to section 11.1((10)(g) to the Attorney General that His Worship Jorge Barroilhet be removed from office in accordance with section 11.2 of the *Act*. He was subsequently removed from office by order of the Lieutenant Governor in Council pursuant to section 11.2 of the *Act*. Former justice of the peace Barroilhet later filed an application for judicial review. His application for judicial review of the recommendation and decision to remove him from office was pending before the courts at the time when this Annual Report was written.

The Reasons for Decision and the Decision on Disposition from the public hearing are included in Appendix D of this Annual Report.

A public hearing was ordered under section 11(15)(c) of the *Act* and completed under section 11.1 in relation to five complaints about the conduct of His Worship Paul A. Welsh. With respect to one complaint, the hearing panel found no basis for a finding of judicial misconduct and dismissed it. In relation to a complaint about the manner in which His Worship conducted a court proceeding, the panel found that while he may have intervened excessively in this one instance, in all of the circumstances, his conduct did not amount to judicial misconduct. In relation to a third complaint, the panel concluded that His Worship Welsh's conduct would not have given rise to a reasonable suspicion by a reasonable, fair minded and informed person that he had not been impartial. In relation to two complaints about how His Worship handled a provincial offences ticket of a judge, His Worship admitted judicial misconduct. In relation to those two complaints, in accordance with 11.1(10) (d) of the *Act*, the panel ordered that Justice of Peace Welsh undergo specific judicial education or training, as a condition of continuing to sit as a justice of the peace, such education to be prescribed by the Associate Chief Justice Co-ordinator for Justices of the Peace, in the areas of judicial independence and impartiality.

The Decision on Disposition is included in Appendix E of this Annual Report. In that case, the panel considered a request by His Worship Welsh for compensation of the legal costs incurred in the hearing, and the panel made a recommendation under section 11.1(17) to the Attorney General that His Worship be compensated for part of the cost of legal services incurred in connection with the hearing.

Of the 51 complaint files that were completed and closed under the current legislation, 24 arose from events during provincial offences proceedings, 12 arose from matters in Intake Court, seven arose from proceedings under the *Criminal Code* (one from bail court, one from set-date court, two from pre-enquêtes and three from peace bond applications) and eight related to conduct outside of court.

In four of the cases closed in 2009, a recommendation was made to the Attorney General that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the investigation or hearing of the complaints.

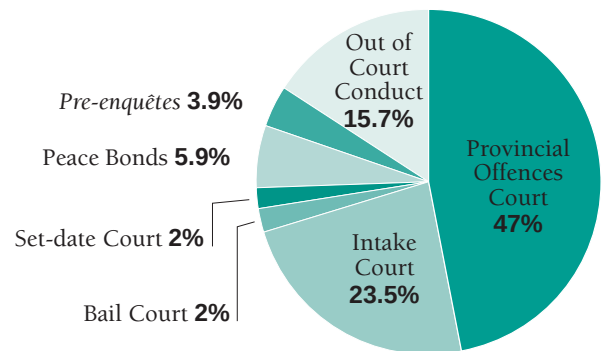
Case summaries for each complaint follow in Appendix A of this Report.

SUMMARY OF COMPLAINTS CLOSED IN 2009

DISPOSITION OF COMPLAINTS	
Cases carried into 2009	39
Complaint files opened	48
Total files open during the year	87
Total files closed during the year	51
DISPOSITIONS UNDER FORMER LEGISLATION	
Dismissed after section 11 private or in camera investigative hearing	1
Dismissed after section 12 public inquiry (in relation to one justice of the peace)	5
DISPOSITIONS UNDER CURRENT LEGISLATION	
Dismissed as out of jurisdiction	5
Dismissed as not substantiated or did not amount to level of misconduct	20
Letters of advice or in-person meeting to receive advice	10
Referrals to the Chief Justice of the Ontario Court of Justice	2
Public Hearing held under s. 11.1 (in relation to two justices of the peace):	
• one hearing resulted in a recommendation for removal from office	3
• one hearing resulted in an order for a program of education	5
Cases continued into 2010	36

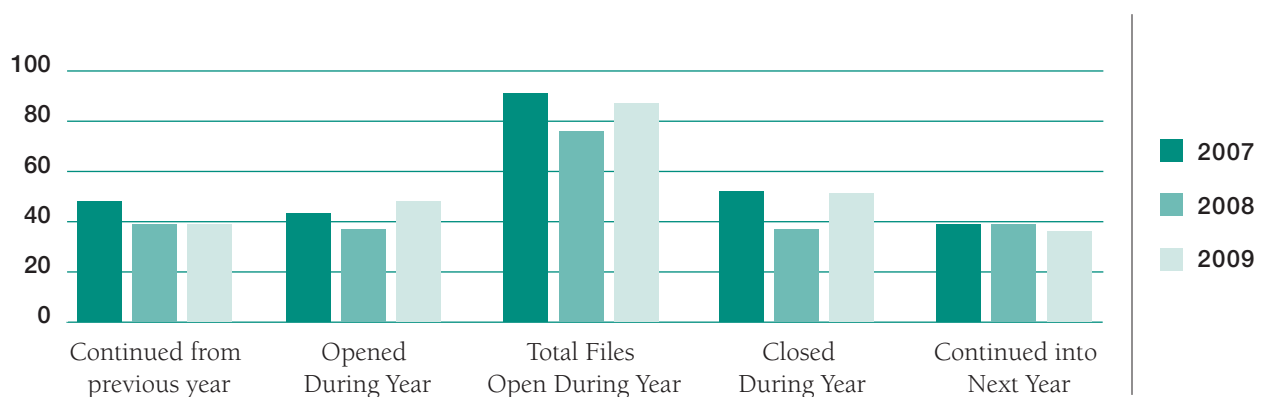
TYPES OF CASES CLOSED IN 2009

TYPES OF CASES	# OF COMPLAINTS
Provincial Offences Court	24
Intake Court	12
Bail Court	1
Set-date Court	1
Pre-enquêtes	2
Peace bond applications	3
Out of court conduct	8
TOTAL	51



ANNUAL CASELOADS

	2007	2008	2009
Continued from previous year	48	39	39
Opened During Year	43	37	48
Total Files Open During Year	91	76	87
Closed During Year	52	37	51
Continued into Next Year	39	39	36



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Complaint files are given a two-digit prefix indicating the complaint year, followed by a sequential file number and by two digits indicating the calendar year in which the file was opened (i.e., file no. 20-001/09 was the first file opened in the 20th complaint year and was opened in calendar year 2009).

Except where a public hearing was ordered, details of each complaint for which the complaints process was completed, with identifying information removed as required by the legislation, are provided below. Decisions on public hearings are provided in other appendices in this Annual Report.

CASE NO. 17-007/06

The complainant, a justice of the peace, expressed the concern that another justice of the peace had “inappropriate practices with accused youths”.

The Justices of the Peace Review Council retained the services of an external lawyer to conduct interviews of witnesses. Council considered the complaint and interviews of the complainant, of court staff and of justices of the peace with respect to specific incidents raised in the complaint. Interviews were also conducted of prosecuting and defence counsel. In addition to reviewing transcripts of the interviews, Council also reviewed transcripts and audiotapes of two proceedings about which questions regarding His Worship’s conduct and comments had been raised.

Following their examination of the results of the investigation, Council also ordered and conducted an in-camera (private) investigative hearing pursuant to section 11 of the *Justices of the Peace Act*, as it read prior to January 1, 2007 amendments. The hearing panel’s function was to determine whether, on the facts accepted by the panel, there existed a reasonable possibility that a judge presiding at a Section 12 Public Inquiry could conclude that the conduct complained of met the threshold for a finding of judicial misconduct; namely, that the impugned conduct was so seriously contrary to the impartiality, integrity and independence of the judiciary that it undermined the public’s confidence in the ability of the judicial officer to perform the duties of office or in the administration of justice generally.

In considering the allegations contained in the complaint, the panel had to be satisfied that the facts were proven beyond the balance of probabilities threshold but not to the higher criminal standard of proof beyond a reasonable doubt.

At the hearing, in addition to evidence from the complainant, the hearing panel heard from eight additional witnesses including the subject justice of the peace. They accepted and considered

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14 exhibits in two days of evidence and submissions. The panel noted that the subject justice of the peace candidly acknowledged and accepted that the following actions on his part contributed to the negative perceptions of his behaviour raised in the complaint: his tendency to stand close to individuals with whom he was speaking, i.e. “close talking”; his comments to the accused in a bail hearing about his physical appearance and intelligence; and, offering a lunch invitation to accused youth as an incentive for good behaviour. After hearing the evidence of all of the witnesses, the hearing panel accepted His Worship’s candid acknowledgement and contrition, agreed with his assessment and appreciated his regret.

After careful consideration, the hearing panel advised that, in their view, the facts did not support a finding that the justice of the peace conducted himself in a manner that was incompatible with the execution of the duties of his office. As a result, the panel determined that an inquiry under section 12 was not warranted and dismissed the complaint.

CASE NO. 18-022/07

The complainant appeared as agent on behalf of his 20 year old son on a provincial offences charge. This matter was scheduled in court before a French justice of the peace. The prosecutor asked whether the complainant had a written authorization to represent his son, to which the complainant responded that he had permission from his son but did not know that he required permission in writing. At the request of the prosecutor, the presiding justice of the peace did not allow the complainant to act as agent for his son and proceeded immediately with the case. The complainant was not permitted to give evidence and was only permitted to observe. A conviction was registered against his son.

The complainant alleged that he was not permitted to protect his son’s rights and that the justice of the peace was not sensitive to a member of his own French heritage and culture in a predominantly English court system. He also alleged that His Worship’s decision to proceed with the case was made hastily, without allowing the complainant an opportunity to get written authorization from his son, who was fifteen minutes away from the court house. Further, it was alleged that His Worship delivered his decision in English (without translation) in a French court, breaching the French language rights of the accused. The complainant expressed his concern that in an apparent desire to shut down the voice of a French Canadian family”, the judicial system “steamrolled” his son’s case without allowing the complainant to present evidence.

The complaints committee reviewed the complainant’s letter and requested and reviewed the transcript of the complainant’s appearance before His Worship. Following their review, the complaints committee was of the view that the record of the proceedings did not support the

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allegation of a breach of French language rights of the accused. Given the overall conduct of the justice of the peace, the committee also requested and reviewed a response to the allegations from him. The committee noted that the written response by His Worship appeared to demonstrate a lack of understanding of the other concerns regarding his conduct. A second letter was sent on behalf of the Review Council inviting a further response. No further response was received.

In the view of the committee, His Worship's conduct in the overall handling of the matter was less than ideal. Firstly, with respect to His Worship's refusal to allow the father to represent his son, the committee observed that it appeared that His Worship was not familiar with the requirements of the law that do not hold a family member to the same standard and burden of proof as a paralegal, agent or lawyer where written authorization from the defendant is necessary.

The second concern of the committee was with His Worship's acceptance, or perceived acceptance, of the prosecutor taking control of the proceeding and convincing His Worship to "proceed immediately" with the trial in the absence of the accused, without allowing the participation of the accused's father who was before the court.

The third concern of the committee was with respect to the allegation that His Worship acted hastily in proceeding with the *ex parte* (in the absence of the accused) trial without allowing his father to present evidence on his behalf. The committee was of the opinion that, rather than acquiescing to the prosecutor, in such circumstances a justice of the peace should explore other options, such as a brief adjournment, as suggested by the complainant in his letter, in order to deal with the matter while preserving the rights of the accused to defend himself against the charge before the court.

The committee invited the justice of the peace, pursuant to section 11(15)(b) of the *Justices of the Peace Act*, to attend in person before the committee to receive its advice. The advice session provided an opportunity for His Worship to reconsider his conduct in his dealings with the complainant and reflect upon his conduct with a view to improving his ability to conduct similar situations in the future differently.

The committee reported that His Worship acknowledged that given that the legislation governing paralegals and agents had recently changed around the time of the proceeding, there was uncertainty in his mind as to the ability and requirements when family members act as an agent for the accused before the court. His Worship confirmed he had taken steps to correct his knowledge of the law. With respect to his responsibility to manage the proceedings, His Worship acknowledged the ultimate responsibility of controlling the court is that of the justice of the peace. Having provided its advice, the committee was satisfied that the justice of the peace understood the complainant's concerns and the advice of the committee. His Worship undertook to exercise patience and, if faced with uncertainty about the law in the

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future, to seek the necessary clarification before proceeding.

Having provided its advice, the complaints committee closed the complaint file in this matter.

CASE NO. 19-011/08

The complainants, who were husband and wife, alleged that the justice of the peace presiding over the wife's trial was monstrous, abusive and unprofessional in threatening the husband with contempt of court. The husband indicated that he had merely put up his hand to ask for permission to leave the courtroom when allegedly the presiding justice of the peace stated that his actions were in contempt of court and instructed a security guard to make sure the husband remained in the courtroom during a brief break in the proceedings. On return from the break, it was alleged that His Worship cited authority for finding him in contempt of court which could result in the imposing of fines and/or a jail sentence. A second component of this complaint was the allegation that His Worship allowed the accused, the wife, to represent herself contrary to a court order by another justice of the peace after not allowing the accused's daughter to act as her agent.

The members of the complaints committee reviewed the complainants' letters and requested and reviewed the transcript and the audiotape of the court appearance. The committee was sufficiently concerned by the tone in which His Worship spoke and by the nature of the exchanges between His Worship and the complainants to ask for His Worship to respond to the complaint.

In his response, His Worship stated that he was aware "that there had been problems" in the past with the husband and that there was a court order barring the husband from acting as agent for his wife. The order further stated that the wife was to attend with a competent agent or lawyer, for which His Worship found that the daughter did not meet the qualifications. His Worship described the husband's behaviour in the court that day which was viewed by the Court as disrespectful, sarcastic and disruptive which continued even after His Worship advised him that he had no standing before the Court.

While the committee viewed the exchanges between His Worship and the complainants as not amounting to misconduct and concluded that it did not warrant a referral to the Chief Justice or to a hearing, it was of the view that the manner and tone in which His Worship conducted himself needed to be brought to his attention through attending in-person before the complaints committee to receive its advice.

It appeared to the committee from His Worship's conduct on the record that he allowed information of previous issues with the complainants, and in particular the husband, to affect how he handled this appearance. The committee was of the opinion that His Worship was arbitrary in ordering

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that the husband be detained in the court during the break, and in humiliating and threatening him with a possible finding of contempt of court. In regards to the allegation that His Worship allowed the wife to represent herself, contrary to a previous court order, the committee viewed that as a matter of judicial discretion and of interpretation of that order.

The committee's advice encouraged His Worship to reconsider his conduct in his dealings with the complainants and to reflect upon his conduct with a view to improving his ability to conduct similar situations in the future more effectively and with the appropriate decorum.

Having provided its advice, the complaints committee closed the file in this matter.

CASE NO. 19-012/08

The complainant was charged with proceeding through an intersection on a red light. He alleged that while he waited for his matter to be called, he observed that the justice of the peace "was getting uneasy and irritated with people who could not speak English and needed an interpreter". He noted that all of the trials that he witnessed before his had ended in a guilty verdict. The complainant alleged that one accused who could not speak English aggravated the justice of the peace, and the matter was held down until all other cases were dealt with.

When his matter was called for trial, the complainant alleged that the justice of the peace repeated five times that "it was late in the day and he should consider coming back another day." The statement made the complainant feel uneasy and intimidated. Despite this, the complainant, who lived about three hours away and wanted to avoid the expense of another trip, proceeded with his trial. He was nervous, and alleged that when he made a mistake in his response to a question from His Worship, he was not permitted to explain and a conviction was registered against him. The complainant indicated that the justice of the peace did not appear to be in a very happy mood and gave the impression that he just wanted the day to end. He felt that his court experience and the outcome were "not justice", and he was the victim of an irritated justice of the peace.

The complaints committee reviewed the letter of complaint and requested and reviewed the transcript of the complainant's trial, as well as the audio recording for the entire court tier. After a thorough review, the complaints committee was of the view that the record did not support the allegations made by the complainant.

The committee did note that a number of appearances before the court required language interpreters. During these matters however, the committee was of the opinion that His Worship displayed patience in ensuring the accused individuals understood what was happening in

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the court and the effect, in many of the cases, of those individuals pleading guilty. On one occasion, the committee noted that a difficult accused failed to listen to His Worship's cautions and instructions to "wait for the interpretation" before speaking and as a result the matter was stood down to the end of the list. This action, given the circumstances and interruptive nature of the accused, was viewed as an appropriate display of judicial control over the proceedings.

At no time during the review of the earlier matters did the committee view His Worship's conduct as being aggravated, irritated and inappropriate.

During the review of the complainant's trial, the committee viewed no evidence in the record to support the allegations that His Worship "did not appear to be in a very happy mood" or that he gave the impression that "he just wanted to end the day". The committee noted that His Worship did indicate at the outset of the complainant's matter that "normally at this time, sir, the Court would just say that the Court has run out of time and mark the information accordingly", further indicating that the matter would be adjourned and that he would need to re-attend for his trial. The record reflected that His Worship took into account the distance the complainant lived from the court and provided him with a choice as to whether to proceed with the trial that day.

After choosing to have the trial, the committee noted that His Worship took the time to explain court procedures and to carefully hear the evidence and conduct a full and proper hearing. With respect to the allegation that the complainant was not permitted to correct an error he had made in his sworn evidence, the record reflected that the complainant wished to make the correction during submissions after he was excused from the witness stand and could not be subject to cross-examination.

After viewing no evidence to support the allegations made, the complaints committee dismissed the complaint and closed the complaint file in this matter.

CASE NO. 19-013/08

The complainant was an investigator with a government investigation and enforcement branch. He forwarded his complaint to his supervisor to bring forward to the Review Council. The complaint arose from an incident witnessed by the complainant in the Provincial Offences Court.

The complainant described that he was in attendance at the court to have informations and summonses sworn before a justice of the peace. He indicated that the subject justice of the peace signed the informations but did not endorse the summonses because it was a matter to be heard in a different court location and His Worship indicated that he needed to confirm the return date with

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A court staff at that location. The complainant alleged that while waiting for His Worship to clear the date with the other court, he heard His Worship on the intercom system which broadcasted throughout the courthouse, “Would the beautiful officer (?) and lovely officer (?) please attend in court”. The complainant indicated that this announcement related to two female police court officers who were in a nearby interview room. He alleged that as the officers passed him, he heard one of the officers commenting, “He just does this to embarrass us”. The complainant further alleged that he noticed that the second officer was visibly blushing. He further indicated that this announcement was heard by a least one member of the public, whom he believed was the only male defendant on the docket for a neighbouring courtroom.

The complainant stated that he viewed His Worship’s actions and comments as “sexist, offensive and wholly inappropriate”, and indicated that the remarks contravened the provincial Workplace Discrimination and Harassment Policy. The complainant’s supervisor, in his letter to the Council, stated, “The [Ministry] views these allegations of discrimination and harassment seriously”.

The members of the complaint committee reviewed the letters from the complainant and his supervisor, and requested and reviewed the transcript and audio recording of the court appearances of the complainant and of both female officers before His Worship. The committee also requested a copy of the docket for the other courtroom in an attempt to identify the male who, according to complainant, heard the alleged intercom announcement and witnessed the officers attending His Worship’s courtroom. The committee was unable to identify that individual.

After reviewing the transcript and audiotape, the committee was sufficiently concerned by the nature of the allegations and by His Worship’s conduct and comments to these officers on the record that the committee requested a response to the complaint. In his response, His Worship denied the allegations concerning the verbal remarks, indicating that the allegations were a fabrication made in anger by the complainant because of His Worship’s decision.

The committee observed that there was a lack of detail in His Worship’s response to the allegations, as well as an apparent lack of understanding of the concerns of the complainant. The committee was of the opinion that the response did not answer and address the specific events and allegations made.

The complaints committee shared the serious concerns expressed by the complainant and his supervisor with respect to the alleged remarks by His Worship. Although the committee decided not to request responses from the female officers as to whether or not His Worship summonsed them on the public intercom in the manner alleged, in the course of its investigation, the committee had concerns in relation to His Worship’s interactions with these officers as evidenced on the record.

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The committee was of the view that His Worship inappropriately personalized his comments towards these female officers, and that the level of professionalism he displayed was less than that expected of a judicial officer who is expected to maintain and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of judicial office. Of particular concern, the committee noted His Worship did refer to one of the female officers as “lovely” in speaking with a male judicial colleague in her presence and while on the record. It appeared to the committee that His Worship did not maintain his professionalism and that he failed to refrain from making personalized, gratuitous and unnecessary comments.

While the committee found that His Worship’s conduct on the record did not warrant a referral to the Chief Justice or to a hearing, it was of the view that the manner in which His Worship conducted himself, and the resulting perceptions left with the complainant and perhaps others, needed to be brought to his attention through attending before the committee in person to receive its advice pursuant to section 11(15)(b) of the *Justices of the Peace Act*.

It was the committee’s advice that His Worship reconsider his conduct in his interactions with the two female officers that day, and perhaps with others on similar occasions, with a view to conducting himself with an appropriate level of professionalism, restraint, impartiality, formality and respect.

The committee reminded His Worship of the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that has been approved by the Justices of the Peace Review Council:

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

In addition, the committee emphasized the value of conducting oneself in accordance with provincial Workplace Harassment and Discrimination policies, as such policies are vital in maintaining professional and respectful work environments. The committee noted that this area of conduct is addressed at educational seminars conducted by the Office of the Chief Justice, where presentations and videos have been and will continue to be offered. This committee also referred His Worship to the Ontario Human Rights Commission’s publication entitled *Policy on Sexual Harassment and Inappropriate Gender-Related Comments and Conduct*.

Having provided its advice, the complaints committee closed the complaint file in this matter.

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CASE NO. 19-014/08

The complainant attended traffic court before the subject justice of the peace. The complainant alleged that His Worship was very unprofessional and “there was an open presence of prejudices against Afro-Canadian in his demeanour”. The complainant indicated in his letter of complaint that His Worship denied his application for disclosure and his motion to have the charge dismissed on the grounds of unreasonable delay. In doing so, the complainant indicated that His Worship commenced the trial for which the complainant received no disclosure. In addition, the complainant alleged that His Worship was “very hostile and aggressive in his responses” and that the manner in which he was treated by His Worship, the prosecutor and the police officer was discriminatory.

The complaints committee reviewed the complainant’s letter and requested and reviewed the transcript and audiotape of the proceeding in question. The complaints committee was of the view that the allegations against the presiding justice of the peace were not supported by the transcript of record. The complaints committee viewed no evidence of prejudicial or discriminatory conduct, nor any “hostile” or “aggressive” behaviour on the part of His Worship, as alleged. In the committee’s opinion, the audio recording reflected His Worship’s demeanour as professional, calm and polite in his dealing with the complainant.

The complaints committee noted that His Worship dealt with the issue of disclosure, finding that the complainant did not exercise due diligence in requesting the disclosure in time for the trial. To accommodate, His Worship stood the matter down and allowed the complainant to view the officer’s notes before proceeding with the trial. In terms of the complainant’s motion, His Worship noted on the record that the motion was not properly before the court. If errors were made in law, and the complaints committee made no such finding, the appropriate remedy for the complainant would have been to appeal His Worship’s decision.

The complaints committee viewed no basis to the complainant’s allegations and dismissed the complaint for the above reasons.

CASE NO. 19-015/08

The complainant was charged with following too closely contrary to the *Highway Traffic Act* and elected to contest the charge at trial. The complainant alleged that the presiding justice of the peace was extremely rude towards the Crown Attorney and other attorneys present that day and invited the Council to review the audio recording of his trial. In addition, the complainant indicated that His Worship made an error in judgment in convicting him for which he wished to file an appeal.

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In acknowledging receipt of the complaint, the complainant was advised that the Council's jurisdiction was limited to reviewing the conduct of the justice of the peace and did not extend to reviewing His Worship's decision. The complainant was advised to consult with legal counsel to determine what appeal remedies may be available to him.

In reviewing His Worship's conduct, the complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the proceeding in question. The committee viewed no evidence that His Worship was "extremely rude" towards individuals in court, as alleged. The complaints committee noted that His Worship did interrupt the proceedings on occasion to clarify testimony and at times when it appeared he was having difficulty hearing the evidence being given. In summary, the complaints committee was of the view that the allegations against the presiding justice of the peace were not supported by the record.

For the reasons noted above the complaint committee dismissed the complaint and closed the file.

CASE NO. 19-016/08

The complainant was charged with "failure to surrender insurance", "failure to wear/ adjust seatbelt" and for "speeding" and indicated in his letter of complaint that he had wished to dispute these charges in court and had made the necessary arrangements. However, according to the complainant, he never received a notice of trial but rather received notification that convictions were registered against him. After receiving this notification, the complainant appeared before a justice of the peace to have these matters re-opened and re-scheduled for trial. The complainant alleged that His Worship gave him a pre-determined verdict of "no re-opening" and "application denied". He indicated that His Worship's decision was "coupled with rudeness, a seemingly intentional desire to confuse me and my issues, and displayed lack of a fairness in regards to my request for a re-opening of these 3 charges". When asked about appealing his decision, His Worship was allegedly "cold, automatic and 'bookish'", responding, "You can consult legal council(sp)". An additional concern expressed by the complainant was that His Worship saw that he was wearing a kippah (Jewish religious head garment) and offered to have him affirm his information, without offering him to swear on the bible to the information.

The members of the complaints committee reviewed the complainant's letter and requested and reviewed the transcript and the audiotape of the Intake Court appearance. Due to the poor quality of the audio recording, the committee was unable to assess His Worship's manner and tone of voice. The complaints committee asked His Worship to respond to the complaint.

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In his response, His Worship expressed the view that the transcript did not support the allegations made against him. His Worship denied that he was rude or unfair to the complainant in assessing his request for a re-opening of the charges. His Worship acknowledged that he did not offer the option of swearing the information based on his extensive experience as a justice of the peace and awareness that “an individual wearing a kippah generally does not swear but affirms”. His Worship noted from the transcript that the complainant did not object to affirming.

After careful review of the complainant’s letter, the transcript and His Worship’s response, the committee dismissed the complaint. The committee noted that although it would have been more appropriate to ask the complainant if he wished to swear on the bible or affirm, His Worship’s assumption that the complainant would prefer to affirm based on the observation of the kippah was not indicative of judicial misconduct. With respect to the demeanour of His Worship, the committee did not find that His Worship was rude or rendered a “pre-determined verdict” in denying the application for re-opening. However, the committee did observe that His Worship was less helpful and courteous with the complainant than the *Principles of Judicial Office for Justices of the Peace* would contemplate. The committee noted that although His Worship did not misconduct the proceedings, he could have explained the process and the reasons for his decision more fully out of courtesy to the complainant.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 19-017/08

The complainant, Justice of the Peace “A”, filed a complaint against Justice of the Peace “B”, alleging that Justice of the Peace “B” had issued a scheduling directive that the complainant and her colleague, Justice of the Peace “C”, could not be assigned to preside at the same court location. The complainant was of the view that she and Justice of the Peace “C” were unfairly restricted in not being permitted to be scheduled at the same court location.

The complainant expressed the view that an incident that gave rise to scheduling Justices of the Peace “A” and “C” apart was largely manufactured. In addition, the complainant raised concerns about the “lack of due process” with which the matter was handled.

Further, the complainant alleged that Justice of the Peace “B” was not truthful when asked by the complainant about the existence of a directive or policy that Justices of the Peace “A” and “C” could not be scheduled at the same court location. The complainant felt that Justice of the Peace “B” was biased in her actions toward Justices of the Peace “A” and “C”, and that the scheduling directive was part of a systemic problem involving professional harassment.

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The complaints committee carefully reviewed the complainant's letter and materials provided with the letter which included internal email communications among judicial officers within the region. The committee requested and reviewed a response from Justice of the Peace "B", the subject of the complaint. The complaints committee advised that scheduling assignments are not matters of conduct within the jurisdiction of the Council. Rather, under the *Justices of the Peace Act*, judicial assignment or scheduling was a matter within the responsibility and authority of judicial officers.

With respect to the allegations of bias or professional harassment, the committee reported that they found no evidence of bias or professional harassment by Justice of the Peace "B" in her dealings with the complainant.

In relation to the allegation that Justice of the Peace "B" had been untruthful in her communications between the complainant and Justice of the Peace "B" about the existence of a directive, pursuant to section 11(15)(b) of the *Justices of the Peace Act*, the complaints committee sent a letter of advice to Justice of the Peace "B". While the committee concluded that Justice of the Peace "B" had no improper motive, upon reviewing the full context of the communications, the committee accepted that the remarks of Justice of the Peace "B" gave rise to a perception on the part of Justice of the Peace "A" that the response by Justice of the Peace "B" was intentionally lacking in candour. The committee advised Justice of the Peace "B" that perceptions about how information is expressed by justices of the peace can affect public confidence in the administration of justice. Having the benefit of hindsight, with an objective of maintaining the high standards of excellence and integrity to which all justices of the peace subscribe, the committee expressed their observation to Justice of the Peace "B" that the remarks made to Justice of the Peace "A" might have been handled differently, and noted the committee's confidence in a relationship of trust and confidence between the judicial colleagues in the future.

For the above mentioned reasons, and having provided its advice, the complaints committee was of the view that no further action was required and the file was closed.

CASE NO. 19-018/08

The complainant attended before the subject justice of the peace to contest his speeding charge. The complainant indicated he attended court at 10:00 a.m. It began with pleas from two agents with a number of clients scheduled before the court. The complainant indicated that Her Worship took a lengthy recess from 10:35 a.m. to about 12:00 noon, after which she continued to hear from the agents, while the self-represented defendants were made to wait. The complainant further indicated that at around 1:15 p.m., Her Worship took another recess

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for about 20 minutes. Following the afternoon recess, Her Worship began her first trial. After hearing the evidence in the first trial, Her Worship recessed again, then returned and rendered her decision.

Following the first trial, the prosecutor indicated that there were four trials remaining, including that of the complainant. Her Worship allegedly responded by granting a hearing to one individual who had apparently attended court for an entire day last year without being heard and who was anxious to present his defence. After rendering her decision in “short order” with a finding of guilt, the complainant indicated that at about 2:30 p.m. Her Worship abruptly closed her court for the day after adjourning the three remaining matters to future dates.

According to the complainant, the court was in recess for more than two hours between 10 a.m. and 2:30 p.m. The complainant contacted the court manager to request a different justice of the peace, indicating that he had “lost confidence” in Her Worship’s “grasp of subtle factors, and wished to appear before someone else qualified and experienced”. The complainant was of the view that this date in court was wasted by excessive recess breaks and expressed frustration that he would have to return another day in order to have a trial.

The complaints committee requested and reviewed the transcript and audio recording of the entire court day. The committee also requested and reviewed a response from Her Worship to the concerns expressed by the complainant. After a thorough review, the committee noted that the record reflected a total recess time of 1 hour and 38 minutes, which the committee viewed as not excessive on any given court day, particularly given the circumstances in this instance where Her Worship was waiting on counsel who had requested time to discuss cases on the docket.

In her response, Her Worship indicated that she made attempts during the recesses to find out if counsel were ready to return. Through her response, the complaints committee was of the view that Her Worship demonstrated awareness and due diligence in attempting to manage the court time. The perception that the wheels of justice appeared to be moving slowly that day and the impression left with the complainant that the court was working inefficiently, are, without evidence of misconduct on the part of the presiding justice of the peace, matters outside the Review Council’s jurisdiction to comment on.

With respect to the issue of closing court early that day, the committee was concerned that Her Worship made no remarks on the record to inform the various court participants on her docket of her need to shorten the court session. Although Her Worship indicated in her response that her Regional Senior Justice of the Peace was aware of her need to leave early, the committee was of the opinion that she should have announced the early closing of court at the outset of the proceedings and provided a brief explanation to those in attendance. Although there was no information provided to the committee about any efforts made to traverse the remaining trials

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to another court, the committee expressed that in such circumstances, all alternatives should be explored to avoid the need for defendants to re-attend for their trials.

The complaints committee, in considering its disposition, was of the view that there was some merit to the complaint, as it related to the lack of communication by Her Worship that the court session was being shortened. The committee viewed this complaint review as an opportunity for Her Worship to learn from this experience through receiving the committee's advice in writing, pursuant to section 11(15)(b) of the *Justices of the Peace Act*.

In its letter of advice to Her Worship, the committee encouraged Her Worship to reconsider her handling of this judicial assignment, having regard to another commitment that would require her to shorten the court session. The committee also encouraged Her Worship to reflect upon the manner in which she communicated to those affected by a shortened session with a view to improving her ability to conduct similar situations in the future more appropriately and effectively.

Having provided its advice, the complaints committee closed the complaint file in this matter.

CASE NO. 19-020/08

The complainant attended before the subject justice of the peace in relation to a problem with a neighbour's barking dog. The complainant indicated that he wished to lay a private information under a municipal by-law charging the pet owner with excessive noise caused by the dog. According to the complainant, the justice of the peace, rather than proceeding with his private information, directed him to City Hall to speak with the by-law office. The complainant felt that this was an improper course of action but attended and spoke to a by-law officer as directed. The response he received was that the by-law office had "no authority to prosecute private informations" and apparently no further action was taken.

The complainant's allegations against the justice of the peace were that His Worship re-directed him in error to the city's by-law office, rather than proceeding with the private information. In addition, he alleged that when the complainant later re-attended before His Worship, His Worship did not inform the complainant that their conversation was being recorded. Also, he alleged that His Worship did not make a decision on the facts that he received from the complainant, and did not ask him to swear his evidence under oath. It was further alleged that His Worship abruptly ended their conversation when the recording device timer elapsed. As well, he alleged that His Worship failed to respond to a voicemail message left by the complainant regarding His Worship's decision to not lay a private information.

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The complainant also alleged that His Worship later phoned the complainant at his home and advised that he had ruled on his decision, determining that there was “insufficient evidence” based on reading the complainant’s unsworn written material. The complainant expressed concern that His Worship thereby considered his application without sworn testimony under oath or in a courtroom setting. The complainant felt that he was being denied his right to bring this matter to court and was being victimized by both the Court and his neighbour’s barking dog.

The complaints committee reviewed the letters of complaint and sought further information and clarification from the complainant to gain an understanding of the sequence of events and to clarify what information was before His Worship. The committee received further information from Court Services as to what was received by the court. The committee also requested and reviewed the transcript and audiotape of the complainant’s attendance before His Worship following his visit to the by-law office.

After careful review, the complaints committee was of the view that many of the complainant’s concerns were supported by the record and materials. The committee requested a response from His Worship. In his response, His Worship explained that he was following standard procedure in recording the complainant’s attendance and was exercising his judicial discretion in referring the complainant to the by-law office. In dealing with the complainant, His Worship was of the opinion that he dealt with him in a fair and appropriate manner.

The complaints committee, in considering the appropriate disposition, was of the view while there was some merit to the complaint, there was no evidence to suggest His Worship was acting in bad faith in how he handled the complainant’s matter. The complaints process is remedial. The committee decided to provide advice in writing to His Worship pursuant to section 11(15) (b) of the *Justices of the Peace Act*. The committee noted that the complaints process was an opportunity for His Worship to reflect on the manner in which he dealt with the complainant’s application and to learn from this experience.

In its letter of advice to His Worship, the committee expressed its view that deficiencies in procedures and not following best practices had led to the filing of this complaint and to the complainant’s perception that he was being denied access to justice. The committee’s investigation had confirmed that a private information was received by the Court; however, that private information was never formally sworn and considered in accordance with best practices. Although the committee agreed that His Worship could exercise his judicial discretion to refer the complainant to the by-law office for investigative purposes, the committee noted that in accordance with best practices, the application should have returned formally before His Worship and been considered in the context of the complainant’s sworn information before His Worship decided there was insufficient evidence.

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With respect to the recording of the attendance, the committee agreed with His Worship that it was standard practice. The committee recognized that notifying complainants of the practice of recording may vary from location to location.

The committee viewed no evidence that His Worship abruptly ended the conversation as alleged and found that the record reflected a friendly and cordial exchange.

The committee recommended that His Worship reconsider his conduct with respect to how he had handled this matter and encouraged him to seek any additional education through the office of the Chief Justice that he feels would assist him in considering similar applications in the future.

Having provided its advice, the complaints committee closed the complaint file in this matter.

CASE NO. 19-021/08

The complainant, a Director of Court Services, was reviewing all quashed charges for the purpose of improving the quality of charging documents and updating training materials for law enforcement and prosecutions staff. The complainant advised that during one review, he observed that there appeared to be an atypical decision arising from a POA Intake Court within his jurisdiction that gave some concern. The complainant alleged that a justice of the peace decided to quash an Offence Notice issued under Part I of the *Provincial Offences Act* in circumstances that appeared “somewhat unusual”.

According to the information provided, a defendant received a speeding ticket one morning. It was alleged that the defendant attended later the same morning at the local Intake Court and signed in with the intention of dealing with the ticket as a walk-in guilty plea. According to the court record of the defendant’s appearance, the presiding justice of the peace stated that this was a “walk-in ticket”, arraigned the defendant and stated “based on your explanation I will – I will quash the ticket. I will dismiss the ticket”. The complainant informed that the record did not reflect the defendant’s plea of guilt, nor did it contain any explanation from the defendant to support Her Worship’s comments on the record or her decision to quash/dismiss the ticket. It appeared that there may have been an earlier conversation between the defendant and Her Worship regarding this ticket, during which an explanation was given and the defendant’s desire to plead guilty was discussed. However, no such conversation was on the record. An additional concern expressed by the complainant was “given the shared family name of the defendant and the presiding Justice of the Peace, it seems feasible that a conflict of interest could perhaps exist”.

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The complaints committee reviewed the complainant's letter, and the court documents and the transcript of the proceeding. The committee also requested and reviewed the audiotape of the proceedings. In addition, the complaint's committee requested a response from Her Worship to the concerns of the complainant.

After careful review, the complaints committee concluded that the complaint should be dismissed. The committee was satisfied that, despite the similarity in the surname, there was no familial relationship, or otherwise, between the justice of the peace and the defendant. The committee found that there was no conflict of interest. With respect to the issue of Her Worship's decision to quash the ticket "based on information provided", the committee advised that this matter was decision-based and as such was outside the jurisdiction of the Justices of the Peace Review Council.

Although the complaint was dismissed, the complaints committee expressed the importance of ensuring a complete record of all proceedings and observed that in future Her Worship should be mindful of the decision of *R. v. Billingham*. The committee commented that even in the busiest of court locations or on the busiest of days, it is preferable that the justice of the peace have all conversations with individuals on the record.

For the reasons indicated, the complaint was dismissed and the file was closed.

CASE NO. 19-022/08

The complainant was charged and convicted of unlawful activities contrary to the *Fisheries Act*. He filed a complaint against the subject justice of the peace arising from informations being sworn against him before Her Worship and from Her Worship presiding over the trial. The complainant alleged that the charges before the court were "hybrid criminal offences" and that justices of the peace are "precluded from presiding at any trial relating to criminal offences in Ontario". The complainant also alleged that Her Worship "falsely held herself out to be a provincial court judge" by signing the second page of the information which indicated "judge" underneath the signature line on the form. The complainant provided a partial transcript of the court proceeding.

The complaints committee reviewed the complainant's letters and attachments, and requested and reviewed copies of all relevant informations before the court. They also requested and reviewed a complete transcript of the proceeding.

After careful consideration of the materials and the complaint, the complaints committee advised that the issues raised were matters within the authority of an appeal court to consider,

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and related to jurisdictional issues outside of the Review Council’s mandate. The committee observed that while an appeal court could consider the question of whether the presiding justice of the peace had jurisdiction to hear and decide the charges before the court, it was not a matter of conduct within the jurisdiction of the Justices of the Peace Council.

The committee noted no evidence of misconduct by the presiding justice of the peace in her dealings with these charges. The committee further noted that the complainant was represented by counsel in the matter, and the complainant or his counsel could have addressed any questions of jurisdiction. Further, while the complaints committee noted that it is preferable for justices of the peace to use their stamp on such forms for the purpose of clarifying their Justice of the Peace designation in order to avoid any confusion, they viewed no willing misrepresentation by Her Worship in signing the forms before the court.

Following a thorough review, for the reasons indicated, the committee dismissed the complaint and closed its file in the matter.

CASE NO. 19-023/08

The complainants were a mother and son who filed a complaint against the presiding justice of the peace in relation to the mother’s trial for a by-law infraction for making a prohibited turn.

According to the mother, His Worship’s manner was unprofessional, belligerent, angry and “almost prejudiced” towards herself, and in cases before hers during the court session. She felt that his behaviour did “not reflect the trust and reliability citizens associate with Ontario’s Justice System”. Her son and her two granddaughters were also in attendance and witnessed his behaviour.

According to the son, His Worship conducted himself in a very unprofessional, unethical, intimidating, and hostile manner towards the defendant and the granddaughters. The son alleged that His Worship “unduly and belligerently threatened to have his mother, a 65 year old grandmother and professional person, thrown out of the court. He further alleged that His Worship intimidated his mother by insulting and demeaning her for not having full knowledge of trial procedures. He alleged that His Worship behaved in a loud, aggressive and offensive manner. The son also alleged that His Worship “antagonistically and repeatedly attacked [the mother]’s rational line of questioning” of the officer which curtailed her questioning of the officer’s evidence. It was alleged that at one point during the court session, His Worship yelled “quiet in the courtroom” at the two young granddaughters, who were described as sitting quietly. Aside from the mother’s trial, the son alleged that His Worship was hostile towards defendants in earlier cases including an Asian lady at whom he shouted

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words to the effect, “You’re free to go! Don’t you understand what that means! Go on... leave the courtroom!”

The complaints committee requested and reviewed the transcript and audio recording of the entire court day. The committee also requested and reviewed a response from His Worship to the concerns expressed by the complainants. Prior to responding, His Worship took the opportunity to review the audio recording. In his response, His Worship acknowledged that the mother was self-represented and was not aware of court proceedings. However, His Worship felt he had acted in an appropriate judicial manner and that he was “polite and judicial” in his dealings with the mother at all times. His Worship expressed regret for any anxiety he may have caused her although he did not believe that his conduct or behaviour was in any way unprofessional.

The Committee found that after a careful review of the matter, the record did support many of the complainants’ concerns and that His Worship’s conduct could be perceived as “almost prejudiced” towards the mother.

Having found that there was merit to the complaint, the complaints committee was of the opinion that sending His Worship a letter of advice pursuant to section 11(15)(b) of the *Justices of the Peace Act* was a suitable means, in the circumstances, of informing him of the concerns with respect to his conduct and treatment of the complainant. The committee advised His Worship to reconsider his conduct with respect to this trial with the view of improving his ability to conduct himself more appropriately in the future. The committee reminded His Worship that when a defendant is self-represented, it is the duty of the justice of the peace to explain the trial process at the outset of the trial and to be helpful while maintaining control of the trial process. This would enable the defendant to conclude that the justice was fundamentally fair and would better maintain public confidence in the administration of justice.

Having provided its advice, the complaints committee closed its file on the matter.

CASE NO. 19-024/08

The complainant was charged by the local detachment of Ontario Provincial Police (OPP) with a provincial offence. The complainant had previously filed an appeal of the original trial decision and was granted a re-trial. This was a complaint against the presiding justice of the peace in relation to the re-trial. During the re-trial, the complainant alleged that His Worship refused to hear or review the complainant’s motion, and that His Worship rudely waved him away when he stood up and objected. The complainant further alleged that His Worship refused to allow any evidence that contradicted his predisposition that everyone was guilty and liars, except for his friends, the OPP.

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According to the complainant, His Worship allowed the Crown Attorney to run the courtroom, believed everything the Crown Attorney said and submitted in evidence, and refused to allow anyone else to speak. The complainant alleged that His Worship apparently wanted to leave as soon as possible, as he refused to allow the complainant to conduct a proper trial. The complainant also alleged that His Worship disallowed cross-examination of a witness by “refusing to allow me to ask questions, cutting me off, making false allegations against me, harassing him, being the most abusive individual I have ever come across administering justice”.

The complainant described His Worship’s behaviour as “arrogant, pompous, rude, condescending, abusive and threatening”. According to the complainant, His Worship appeared to suffer from “psychotic, psychological perhaps chemical, mineral imbalance and outstanding personal issues with an extreme need to administer abuse, persecution and pervert the course of justice”.

In assessing this matter, the members of the complaints committee reviewed a number of documents including the complainant’s letter and numerous attachments, the transcript of the appeal decision, at which the new trial date made pre-emptory on the complainant/accused was set, and the transcript of the re-trial before the subject justice of the peace. The audiotape of the re-trial was also reviewed. The committee requested a response from the justice of the peace to this complaint and his response was also reviewed.

Following careful consideration, the committee was of the opinion that none of the material supported the complainant’s allegations that His Worship was “arrogant, pompous, rude, condescending, abusive and threatening”. In addition, there was no evidence in the material that His Worship suffered from “psychotic imbalance with an extreme need to administer abuse, persecution, and pervert the course of justice”.

Following its investigation, the committee found that His Worship was aware that this matter was a re-trial and was not prepared to allow the complainant to consume the court’s time with repetitive or unacceptable questions. Noting that the complainant was self-represented, the committee observed that His Worship’s firmness may have been misunderstood by the complainant and mistakenly perceived as His Worship favouring the Crown, demonstrating a predisposition and attempting to get the trial to its conclusion.

The committee did not agree with complainant’s allegation that His Worship was biased or that he allowed the Crown Attorney to run the courtroom, believed everything the Crown said and submitted in evidence or refused to allow anyone else to speak. Rather, the transcript showed that the complainant was permitted to speak at length and that His Worship was courteous and patient in allowing the complainant to conduct his trial, only interfering with the complainant’s presentation when His Worship perceived that questions were improper and the complainant’s demeanour was inappropriate.

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The committee was satisfied that the conduct of the justice of the peace did not constitute misconduct and therefore dismissed the complaint and closed its file.

CASE NO. 19-025/08

The complainant filed a complaint against the justice of the peace who presided over his trial on a charge of proceeding through an intersection on a red light. The complainant alleged that Her Worship was “clearly biased in granting latitude to the prosecutor” and allowing him to treat people in an unprofessional manner.

The complainant also advised although the key witness for the prosecution was absent, Her Worship did not agree to withdraw the charge and instead proceeded with the trial. He alleged that the justice of the peace and the prosecutor became flustered after he proved that the police officer was not a credible expert on the traffic lights of the particular intersection and following this, Her Worship demonstrated bias by asking the prosecutor if he wanted to take a break and regroup his case. The complainant informed that he objected but Her Worship advised that they would break for lunch and, in his opinion, he would not have been given the same courtesy if his case had faltered. He stated that “Her Worship was clearly doing all she could in collusion with the prosecutor to deprive all defendants of justice.”

The complaints committee reviewed the complainant’s letter and requested and reviewed the transcript and audiotape of the proceeding in question. The complaints committee found that the allegations against the presiding justice of the peace were not supported by the record. The complaints committee observed that the transcript showed that Her Worship conducted herself appropriately and did not exhibit any bias toward the complainant. The complaints committee advised that if errors in law were committed (and they made no such finding), the appropriate remedy for the complainant would be to appeal the decision.

For the reasons noted above the complaint committee dismissed the complaint and closed the file.

CASE NO. 19-026/08

The complainants, a husband and wife, filed a complaint against a justice of the peace in relation to summonses for peace bonds that Her Worship had issued against them. The complainants had been in a conflict with their next-door neighbours. The neighbours attended before the justice of the peace and had the summonses issued against the complainants. The complainants alleged gross incompetence or neglect on the part the justice of the peace in relation to the

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issuance of the summonses and completion of informations in such bad form that they were later nullified by another justice of the peace.

The complainants enclosed a copy of the transcript which indicated that the second justice of the peace was critical of the form in which the peace bond informations were drafted and ruled that the informations were nullities. The complainants also provided copies of the summonses and affidavits of the informants. According to the complainants, the informants re-applied for the peace bond before another justice of the peace, but were unsuccessful in having the peace bonds applications re-issued. The complainants indicated that the whole ordeal resulted in stress and health issues, as well as financial strain due to legal costs incurred. The complainants wanted the matter reviewed so that others are not victimized in this manner by malicious complainants and incompetence by the justice of the peace.

The complaints committee reviewed the letter of complaint and ordered the history of appearances in the matter, as well as supporting documentation. Although much of requested information was received, Court Services advised that, after an extensive search, the record pertaining to the issuance of the summonses by the subject justice of the peace was not available. In the absence of the record, the committee was unable to make an assessment as to Her Worship's specific conduct in acting on the informant's information in issuing the summonses against the complainants.

In reviewing the information available and transcripts of two proceedings which followed the issuance of the summonses against the complainants, the complaints committee noted that there was no evidence of gross incompetence or neglect on the part of the subject justice of the peace. The committee further noted that at the peace bond set date appearance, despite both parties being represented by legal counsel, no one raised any issues as to the form of the informations before the court.

The committee was of the opinion that questions about the content of the legal document and whether it is accepted by a court are both subjective and a matter of law and, without evidence of judicial misconduct, are outside the jurisdiction of the Review Council.

For the above mentioned reasons, the complaints committee has dismissed the complaint and closed its file.

CASE NO. 19-027/08

The complainant had a trial date scheduled for her speeding charge. She attended court three months before her trial date with a motion to change the time of her appearance to the

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afternoon, rather than the morning, as it conflicted with an educational program that she was enrolled in. According to the complainant, His Worship “started to belittle me and raised his voice in a disrespectful manner proceeding to humiliate me”. The complainant alleged that His Worship’s demeanour was rude, demeaning and unprofessional in dealing with her request to change the appearance time. The complainant further alleged that His Worship failed to listen to her explanation, and failed to explain to her the scheduling issues related to her request. The complainant indicated that she was “mortified” at the “abominable and traumatizing” treatment that she received and indicated that after leaving the courtroom she was so stressed and upset that she had an anxiety attack and began to hyperventilate.

The complaints committee reviewed the letter of complaint and requested and reviewed the transcript and audio recording of the court appearance. After review, the complaints committee was of the view that the record supported many of allegations made by the complainant. As a result, the committee requested a response from His Worship to the concerns expressed by the complainant.

In his response, His Worship felt that the language used by the complainant in expressing her allegations was strong. Although he had no specific memory of the case, His Worship expressed that he never wishes to have anyone leave his courtroom feeling they had been treated in the manner the complainant described. His Worship explained in his response that the court was busy that day and that there was an apparent misunderstanding of the history the complainant’s matter. His Worship commented that he was concerned about the age of the matter and in considering the societal interests of court matters being dealt with efficiently and in a timely manner.

His Worship acknowledged that he became perplexed and confused over what the complainant was seeking as she seemed to abandon her adjournment request but then follow-up by stating “it’s just that I would rather be there”, which His Worship viewed as contradictory. His Worship further acknowledged that he raised his voice at one point in what he viewed as an attempt to stop interruptions. In conclusion, His Worship expressed he was extremely sorry that the complainant was left feeling that she was treated so badly.

After careful consideration of His Worship’s response to the complaint and his overall conduct and handling of the matter, the complaints committee, pursuant to section 11(15)(b) of the *Justices of the Peace Act*, sent a letter of advice to the justice of the peace.

While the committee was of the view that His Worship demonstrated some understanding of the complainant’s concerns and did acknowledge areas of his conduct and handling of the matter that were less than ideal, the committee did not feel that His Worship demonstrated full acknowledgment or displayed true empathy for how the complainant felt after her attendance before him. The committee viewed their advice disposition as a suitable means of informing His Worship

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that his conduct was inappropriate. The committee's letter of advice encouraged His Worship to reconsider his conduct in his dealings with the complainant and reflect upon his conduct with a view to improving his ability to conduct similar situations in the future differently.

Having provided its advice, the complaints committee closed the complaint file.

CASE NO. 19-029/08

The complaint was filed against a justice of the peace who issued a summons against the complainant and his wife. The complainant alleged that Her Worship failed to “properly apply the procedures / rule of law”, and she had no grounds to initiate any form under section 810 of the *Criminal Code*. He further alleged that Her Worship had accepted and pursued a summons to appear while failing to apply or recognize due diligence/rule of law in the performance of her duties.

According to the complainant, Her Worship issued summonses without detailed consideration of the evidence. He indicated that the affidavit sworn before Her Worship by the informant, whom the complainant referred to as a “third party at best” and whom the complainant felt “held very little connectivity to [his wife]”, was accepted by Her Worship in support of both summonses. Furthermore, he alleged that the description of the grounds for seeking the peace bond were so general that it was difficult to know the case against which they must respond. It was the complainant's view that, based on the information and disclosure provided, “the Crown Attorney, the Ontario Court of Justice nor the JP had any evidence to validate the information sworn”.

The complainant alleged that during the court appearance, Her Worship abused her authority by governing the proceedings without regard to the law. According to the complainant, Her Worship “unilaterally decided that all parties to the information would receive 5 minutes without oath to explain their respective positions” and that “Counsel and the Crown Attorney were not permitted to make any oral submissions”. This action by Her Worship was viewed by the complainant as an “abuse of law, failure to provide due process and appeared bias”.

The complaints committee requested and reviewed the transcripts of all appearances before the subject justice of the peace and two other justices of the peace regarding this matter, including the appearances of the informants, and of the court appearance where it was alleged that Her Worship's conduct of the proceedings was an “abuse of law, failure to provide due process and appeared bias”.

After careful review, the complaints committee was of the view that there was no judicial misconduct on the part of the subject justice of the peace in the conduct of this matter or in the exercise of her judicial discretion in issuing the summonses against the complainant and

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his wife. Nor was there misconduct in Her Worship's attempt to facilitate a resolution between the parties, which resulted in the peace bond applications against the complainant and his wife being withdrawn.

In considering the allegation that Her Worship "failed to apply or recognize due diligence/rule of law in the performance of her duties" by promoting the mediation of the issues instead of advancing the matter to a peace bond hearing or pre-trial, the complaints committee was of the opinion that if errors in law or process/procedure were committed by Her Worship (and the complaints committee made no such finding), such errors could be subject to review by a higher court and, without evidence of judicial misconduct, was outside of the jurisdiction of the Justices of the Peace Review Council.

For the above reasons, the complaints committee has dismissed the complaint and has closed its file on the matter.

CASE NO. 19-030/08

The complainant attended Intake Court seeking to lay charges against her estranged husband, alleging that he falsified information about her. According to the complainant, her husband had lied in his affidavits to the court, indicating that she was schizophrenic, heard voices and had a split personality. The complainant indicated that her husband had successfully convinced his lawyers, her lawyers, family members and friends and their three children of these falsehoods. The complainant indicated that she was not schizophrenic but rather suffered from post-traumatic stress disorder as a result of physical and psychological abuse against her by her husband. She indicated that she believed that he was fabricating things about her with the intent to mislead others in order to cover up his abuse on her.

The subject justice of the peace was presiding in Intake Court when the complainant attended. The complainant alleged that Her Worship stated that "it is not against the law to lie in affidavits" and did not accept her paperwork. The complainant also indicated that when she challenged Her Worship on this information, Her Worship got up from her chair and went into the main office. The complainant felt that she was misinformed by Her Worship about the law and that Her Worship was wrong about the law and may mislead others in the same way.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audio recording of the complainant's attendance before the justice of the peace. In addition, the committee requested a copy of the information that the complainant had submitted to the court that day.

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The committee noted that Her Worship could have provided more information to the complainant as to the reason why she would not or could not process the information, and she was not as courteous and helpful as she could have been. However, the committee did not view Her Worship's conduct as requiring further action. With respect to the allegation that Her Worship said, "it is not against the law to lie in affidavits", the record did not support that allegation. According to the transcript, Her Worship indicated, "I would need more in order to deal with that" after previously remarking "it's not a criminal offence to lie".

Following their investigation and review, the committee dismissed the complaint and closed its file in the matter.

CASE NO. 19-032/08

The complainant was charged with failure to apply for a new permit for a modified vehicle under the *Highway Traffic Act* and elected to have a trial. Following the trial of evidence, the complainant was convicted by the presiding justice of the peace. The complainant alleged the justice of the peace:

- 1) Mistreated him by not assisting him as a self-represented defendant, who was unfamiliar with court procedures;
- 2) Mistreated him by not assisting him as a known individual with a disability that affected his ability to communicate his thoughts and ideas;
- 3) Ignored evidence that he presented in his defence;
- 4) Would not allow him to present some of his evidence; and,
- 5) Made errors in deciding the case and in convicting him.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the proceeding in question. The committee found no evidence that His Worship mistreated or was unfair to the complainant. The committee noted from its review of the record that His Worship was patient and courteous throughout the proceeding and attempted to explain the court procedures to the complainant. The court record showed that the complainant was allowed to present his case and His Worship only disallowed evidence that was not relevant to the case.

The committee noted that the complainant's disability was only referred to at the conclusion of the trial. At that time, His Worship, on his own motion, reduced the fine because of the complainant's financial situation and extended his time to pay.

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For the reasons noted above the complaint committee dismissed the complaint and closed the file.

CASE NO. 19-033/08

The complainant, who identified himself as a member of a religious order, attended court to answer to a charge under federal legislation and filed a complaint about a justice of the peace who presided over a pre-trial court appearance. The complainant, who had attended wearing what he described to the court as a religious headwear, enclosed a copy of the transcript of the court attendance as well as a news article written about the court attendance. The complainant indicated in his letter of complaint that he “was disappointed when you [the presiding justice of the peace] attacked me in your courtroom” and felt “denigrated and humiliated publicly” by His Worship. The complainant was seeking an apology from His Worship. The news article described His Worship as having “bellowed” and “hollered” in a volume of voice that could be heard outside the closed courtroom doors.

The complaints committee reviewed the complainant’s letter and the attached news article and requested and reviewed both the transcript and audiotape of the court appearance. The committee found that the court record supported the allegations of the complainant. The committee requested and received a written response from His Worship to the complainant’s concerns.

Following consideration of His Worship’s response, the complaints committee was of the view that His Worship’s conduct fell below the standard expected of justices of the peace in their interactions with individuals before the court. Having found that there was some merit to the complaint, the committee decided, pursuant to section 11(15)(d) of the *Justices of the Peace Act*, to refer the complaint to the Chief Justice of the Ontario Court of Justice for discussion of the committee’s concerns. The committee was prepared to refer the complaint on the condition that His Worship would listen to the audiotape of the proceeding to consider how the complainant and others may have perceived his tone and manner; and, His Worship would agree to attend a remedial course on dealing with litigants, as arranged by the Chief Justice. His Worship acknowledged that there was some merit to the complaint and agreed to meet with the Chief Justice on these conditions.

The Chief Justice met with His Worship and reported back to the complaints committee and noted that she had done a further review of the audio recording with him. She reported that His Worship appreciated that his conduct on this occasion fell short of the expected standards and that he undertook to conduct himself and carry out his duties in a manner that will maintain and foster public confidence and uphold the high standards of the Ontario Court of Justice. The

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Chief Justice confirmed that His Worship was prepared to attend a remedial course on dealing with litigants and that arrangements would be made for the appropriate education.

After considering the report from the Chief Justice, the complaints committee closed its file.

CASE NO. 19-034/08

The complainant wrote a letter of complaint containing allegations that a justice of the peace had been encouraging people in the community in which she presided to obtain information about a case that was ongoing before the courts in which she had made an order. He alleged that she had been encouraging them to take action to let their views on the case be known and to put pressure on one of the parties involved in the court case. The complainant expressed the concern that Her Worship was attempting to avoid being seen as the force behind political efforts to bring about results related to the court case. He also alleged that Her Worship made efforts to disguise her involvement in the matter and pretend that she had no active participation in those efforts.

Based on the circumstances, the complainant alleged that:

- 1) “The conduct is incompatible with the due execution of her office and the performance of her duties.
- 2) The standards of conduct of the office that require appointed justices of the peace to be honourable and worthy of trust and confidence of the public have not been met.
- 3) The active support of actions related to a [court] matter before her, and her demand for [action] relating to a matter before her, from [a public body] by political means raises the spectre of her being influenced by partisan interests and public pressure, that she is creating in a clandestine manner. Her objectivity and bias toward [a party in the court case] was compromised.
- 4) Her personal conduct in maintaining political views on a [court] case and her activities to force [action] by secret means creates questions as to her personal conduct ensuring the public trust and confidence, as well as raising an appearance at least of a conflict of interest between her public duties and her private political agenda.
- 5) She appears to be involved in partisan political activity.”

The complaints committee reviewed the complainant’s letter and the information provided by him. They retained an independent external investigator to conduct in-person interviews of witnesses who had knowledge of the events. The committee determined this to be particularly

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important as an investigative step, given that the complainant had advised in his letter that he had no direct contact with the justice of the peace regarding the circumstances giving rise to the complaint. Rather, he advised that the complaint was based on information provided to him by other persons.

Two lawyers from the investigator's office interviewed persons who had direct knowledge of all aspects of the allegations that he had raised. The investigating lawyers provided a report containing transcripts of the interviews to the complaints committee.

Following their review of the report, the committee requested and reviewed a response to the complaint from Her Worship.

Following their careful consideration of all of the materials, the response from Her Worship, and the report from the independent investigator, the committee concluded that while the results of the investigation did indicate that there was a suggestion of innuendo and rumour in relation to Her Worship's conduct, the interviews of numerous witnesses did not substantiate some of the allegations.

The investigation did not substantiate the allegations that the justice of the peace was actively supporting actions related to the court case by political means, or that she was influenced by partisan interests or public pressure, or that she was doing so in a clandestine manner. There was also no support for the allegation that her objectivity and bias toward a party in the court case was compromised. The committee did not find that the investigation substantiated the allegation that Her Worship maintained political views on the ongoing case and attempted to force the disclosure of information by secret means.

Further, following their review and investigation, the committee advised that the results did not lead to the conclusion that Her Worship's conduct was incompatible with the due execution of her office and the performance of her duties or that she conducted herself in a manner that was not honourable.

However, the complaints committee reported that their review and investigation did support a finding that actions by Her Worship had an impact on public trust and confidence arising from perceptions of a conflict of interest between her public duties and her personal views.

The committee found that their investigation confirmed that Her Worship was personally involved in a family business, along with her husband. As well, they found that the investigation showed that while engaged in activities related to the family business, she approached a person who worked for an organization involved in the court case and engaged in conversation that raised concerns. The investigation showed Her Worship did so in a loud voice in the presence of other members of the public.

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As well, the committee found that in a private meeting with the same person Her Worship discussed the court case and encouraged the person to inform herself about the case.

The committee had concerns that in a public forum within hearing of several members of the public, Her Worship initiated the discussion related to the court case. As well, in her private conversation with the person, Her Worship promoted a stronger interest in the case. While the committee appreciated that a justice of the peace may have the desire to express his or her concerns or views, whether from the perspective of a concerned parent or otherwise, because of the position held by a judicial officer, the complaints committee held the view that a justice of the peace must be very aware of the boundaries of propriety, and must guide their actions accordingly.

The complaints committee concluded that Her Worship's conduct with respect to her public conversations about the court case fell below the standard expected of justices of the peace in their interactions with members of the public.

The committee expressed the view that if a justice of the peace is to maintain the confidence and respect of the public, it is critical that he or she possesses, and is seen to possess, impartiality. The committee observed that even if a justice of the peace has developed points of view on legal issues or cases, because of the pivotal role justices of the peace play in preserving the rule of law, their conduct must foster respect for their role as a judicial officer, for their decisions, and for the judiciary at large. Given that they hold positions of considerable authority and are entrusted with a great deal of power and discretion, justices of the peace are expected to conduct themselves according to high standards of conduct. Justices of the peace are held to higher standards of conduct than other persons who are not invested with the public trust. This heightened standard of conduct extends beyond the limits of the court. Even in a justice of the peace's private life, he or she must adhere to standards of conduct higher than those deemed acceptable for others.

Further, the committee accepted that when a justice of the peace engages in extra-remunerative work, great care must be taken to avoid any actual or perceived conflict of interest between judicial duties and the extra-remunerative activities.

After carefully considering the complaint, the response from the justice of the peace, and the results of the investigation, the complaints committee determined that the matter warranted a referral to the Chief Justice of the Ontario Court of Justice, pursuant to section 11(15)(d) of the *Justices of the Peace Act* for discussion.

Following her meeting with the justice of the peace, the Chief Justice reported back to the complaints committee. The Chief Justice reported that upon reflection, Her Worship agreed that she should not have met with the person to discuss the court case. After reviewing the

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report from the Chief Justice, the complaints committee was satisfied that Her Worship had looked back at her conduct and had a stronger appreciation of the responsibility of a justice of the peace to refrain from actions that demonstrate, or could be perceived to demonstrate, a lack of impartiality or a conflict of interest in relation to matters before the court, and cases in which the justice of the peace has made or may make a decision or carry out an official duty. The committee noted that Her Worship had expressed that she had learned from the experience and that it would not happen again. In addition, the Chief Justice reported that Her Worship agreed with the recommendation of the Council that she should attend a remedial course on conflict of interest.

After considering the report from the Chief Justice and taking into account that the justice of the peace would be taking a remedial course on conflict of interest, the complaints committee determined that no further action was required and the file was closed.

CASE NO. 19-037/08

The complainant indicated that he was the victim of an assault and, after the police attended the scene and decided not to lay charges, he attended at the Intake Court of the local courthouse to lay a private information against his attacker. The complainant indicated that the date for a section 810 peace bond hearing was repeatedly adjourned until finally being heard three and a half months later by a justice of the peace, who was the subject of this complaint. The complainant alleged that during the hearing, His Worship's "attitude and manner towards me as a victim of a violent and brutal attack was ignorant and callous". The complainant also alleged that his evidence was declared inadmissible by the Crown Attorney and His Worship "refused to review anything".

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audio recording of the complainant's attendance before the subject justice of the peace. To gain an understanding of the history of appearances on this matter, the committee also requested and reviewed a copy of the information and endorsements relating to the s. 810 peace bond application, as well as the transcripts of two related appearances before different justices of the peace. The committee carefully reviewed the manner in which the justice of the peace dealt with the complainant and his application on the date in question.

The complaints committee requested and reviewed a response from His Worship to the concerns raised by the complainant. In his response, His Worship accepted responsibility over the proceedings and expressed his apology to the complainant for leaving him with the impression that he was acting in an ignorant and callous way towards his matter. His Worship explained

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that he was trying to communicate the inadmissibility of third party statements and that it was more important to hear the direct evidence from him as the informant. His Worship expressed regret for the manner in which he communicated at times and undertook to make improvements in expressing himself in the future.

Following its investigation, the complaints committee concluded that there was some merit to the complaint. The record confirmed confusion and/or misunderstanding of the process by the complainant. In addition, the record reflected that there was uncertainty on the part of the Crown Attorney as to history of the matter and his belief that the application before the court had been previously withdrawn. The committee did not question or assess His Worship's judicial discretion in making the decisions he made. Rather, the committee observed that His Worship could have been more helpful in clarifying the process and in sorting out the apparent confusion relating to the history of appearances. The committee was of the view that it is incumbent upon justices of the peace to assist self-represented individuals before the court.

The committee viewed this complaint review as an opportunity for His Worship to learn from this experience through receiving the committee's advice in writing, pursuant to section 11(15) (b) of the *Justices of the Peace Act*. The complaints process through the Review Council is remedial in nature and through the review of one's conduct improvements are made to how situations and individuals are treated and handled in the future.

In its letter of advice, the committee provided suggestions in dealing with any future situations of a similar nature. That advice included ensuring all parties and the Crown Attorney are ready to proceed and are aware of the nature of the proceedings, that there is an understanding of criteria to be used by the court in considering the merits of the application, that the information is read aloud to ensure that everyone knows the allegations being considered by the court; that there is an assessment of the evidence and witnesses to be called; and, where applicable, an order for the exclusion of witnesses until the court is ready to hear from them. Although much of the advice was procedural, the committee was of the view that the lack of form, decorum and procedure had given to the overall impressions left with the complainant about the hearing and which formed his view of the justice system. The committee noted that for many people, the first exposure to the justice system is before a justice of the peace. In this case, the complaints committee was cognizant that the complainant was an alleged victim of assault who was applying to the court for protection from his attacker. It was the view of the committee that His Worship could have handled the matter differently and in a manner that could have better showed the complainant with the impression that his application and concerns were considered fairly.

With respect to the complainant's concerns about how the Crown Attorney had dealt with his case, the committee informed him that the Review Council did not have jurisdiction over the

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conduct of Crown Attorneys and referred him to the Director of Crown Law Criminal for the Ministry of the Attorney General if he wished to raise his concerns.

Having provided its advice to His Worship, the complaints committee closed its file in the matter.

CASE NO. 20-001/09

The complainant appeared before the justice of the peace in relation to a speeding violation and was convicted of speeding. The complainant felt that he was wrongfully convicted and provided the Council with his Notice of Appeal.

As well as disagreeing with His Worship's decision, the complainant alleged that His Worship committed bias and hate crime against him by forcing upon him frivolous, malicious and vexatious litigation. With respect to the decision of His Worship, the complainant alleged that His Worship relied on unsubstantiated and untested documents which amounted to hearsay to wrongfully question the complainant's character. The complainant further alleged that His Worship made "a deliberate error in judgment", allowed the crime of perjury, and demonstrated bias against him in the "wrongful portrayal of the complainant as an unreliable/unbelievable witness". The complainant also alleged that His Worship's conduct demonstrated an "abuse of process", "deliberate professional negligence", a "lack of due diligence" and "criminal abusive intent". He alleged that there was illegal altering of the certified court transcript. Further, he alleged collusion and complicity on the part of His Worship.

The complaints committee reviewed the complainant's materials and ordered and reviewed the transcripts of the trial and of the sentencing proceedings. After completing their review, the complaints committee was of the view that there was no judicial misconduct on the part of the justice of the peace. With respect to the allegations of bias, hate crime, a lack of due diligence, professional negligence, deliberate actions of abusive or vexatious conduct, and collusion or complicity, the complaints committee reported that the transcripts did not support these allegations. With respect to the allegation that there had been illegal altering of the certified transcripts, the committee noted that the complainant provided no particulars. The committee was unable to find any indication in their review that the transcripts had been altered. With respect to the allegations related to the decision of the justice of the peace, the committee advised that those matters were not conduct-related and were outside of the jurisdiction of the Review Council. For those reasons, the complaint was dismissed.

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CASE NO. 20-002/09

The complainant was pursuing a private information and complaint against several local Crown Attorneys and members of the local Police Services. According to the complainant, he served all of the defendants and was supposed to have an out-of-town Crown Attorney and justice of the peace. When he attended court, he was surprised that none of the summoned defendants were in attendance. The complainant indicated that the attending Crown Attorney informed the court that the complainant had filed a lawsuit against the Crown Attorney and police, naming some of the same parties as the private prosecution presently before the court. The Crown Attorney expressed the view that the application before the court was an abuse of process and requested a stay of the proceedings. The complainant indicated that the presiding justice of the peace granted the stay, which in the complainant's view, was a "denial of a fair hearing as guaranteed under the *Charter*".

The complainant alleged that "there was something fishy going on" and suggested that the justice of the peace may have told the Crown Attorney his decision in advance because the Crown seemed to know the result in advance.

The complaints committee reviewed the complainant's letter and was of the opinion that the complainant's concerns are outside of the jurisdiction of the Council to consider. The committee viewed the decision of whether to stay or withdraw the charge as a matter of prosecutorial discretion. The committee noted that a justice of the peace does not have any discretion in law to reject or interfere with the Crown Attorney's decision to "stay" or withdraw a charge. The exercise of prosecutorial discretion is outside the jurisdiction of the Review Council and in the committee's opinion, the complainant's concerns in regards to the Crown's position are more appropriately the subject of review with the Criminal Law Division of the Ministry of the Attorney General as that division has responsibility for Crown Attorneys.

Following careful consideration of the complainant's concerns and the circumstances of the private complaint before the court, it was the complaints committee's opinion that there was neither a basis for a complaint nor a finding of judicial misconduct on the part of the presiding justice of the peace for his involvement in this matter. For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 20-003/09

The complainant had appeared before the subject justice of the peace in the Provincial Offences Court in relation to a charge of speeding, contrary to the *Highway Traffic Act*. According to the

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complainant, she had previously attended before His Worship a few months earlier but was required to re-attend for her trial and to deal with on-going disclosure issues. Her complaint concerned the language used by the justice of the peace when addressing her in the courtroom. She alleged that his conduct amounted to unprofessional conduct. The complainant indicated that she objected to His Worship's choice of words, and alleged that his language contained a negative connotation and implied emotion that suggested that he had already formed opinions about the case. Further, she alleged that he said he was "going to have fun today", indicating that he was more interested in the entertainment value of her appearance than in reaching an unbiased outcome.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the court appearance. After careful consideration, the complaints committee was of the opinion that the allegations were not supported by the court record or the outcome of the proceedings.

In the committee's view, there was no objective evidence of any pre-conceived opinions by His Worship. Nor was there bias displayed in his dealings with the complainant or her matter before the court.

The complaints committee was also of the view that there was no evidence of inappropriate tone or language by His Worship that would support the allegation of unprofessional conduct. Although the record did show that His Worship said, "We're going to have fun on this one", the committee, after reviewing the full context of the remark, was satisfied that further action in this regard was not necessary.

In addition, the committee noted that His Worship demonstrated fairness and patience in seeking information and the resolution of the disclosure issue and in preserving the complainant's right to a trial through the adjournment of the matter to a future date.

For the above mentioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 20-004/09

The complainants, a husband and wife, filed a complaint against a justice of the peace before whom they attended in an attempt to get a peace bond to protect them from the husband's sister, her husband and their children. According to the complainants, they attended before four different justices of the peace on five separate occasions in an attempt to "successfully procure this very urgent Peace Bond". The complainants indicated that they had previously attended before the subject justice of the peace but the matter was adjourned as the defendants in the

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application were not present. They alleged that on the return date, Her Worship indicated that she had not had the time to review the file and that it was new to her, despite their attendance before her a few months previously, and even though Her Worship undertook on the prior occasion to ensure extra security for the complainants on their next court date.

It was further alleged that Her Worship reviewed the file for about thirty seconds, did not review the entire file, did not allow the complainants more than three minutes to speak, and appeared to have already made up her mind to dismiss the request for a peace bond, stating it was improperly filed. According to the complainants, Her Worship seemed anxious regarding another case before her that day and gave them the impression that the other matter was considered more serious and crucial than theirs. Aside from being unhappy that their application was denied, the complainants alleged that Her Worship failed in her duties in not reviewing the file and the application.

The complaints committee reviewed the complainants' letter and reviewed the transcript and audiotape of the s.810 peace bond hearing.

Following this review, the committee requested a written response from Her Worship to the complainants' concerns. In her response, Her Worship acknowledged that the proceedings may have given the impression that she was unprepared or abrupt in dealing with the complainants' matter. Her Worship acknowledged that she could have spent more time reviewing the entire file before dealing with it, and also that she should have given the complainants more time to fully address the court and ask all of the questions they may have had about her legal decision. Her Worship expressed deep regret that the complainants were left with the impression that their matter was not as important as other matters before the court. Her Worship expressed in her response that this was never her intention.

The complaints committee was satisfied that Her Worship had learned from the review of this case and in the future would do her best to make all parties appearing before her feel that they have had an opportunity to be heard fully and patiently. Having reviewed the record of the proceedings and observed the sincerity of Her Worship's regret at the overall impression of the proceedings, the complaints committee was of the view that the misconduct did not rise to the level of misconduct that required further action on the part of the Review Council. For the above mentioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 20-006/09

The complainant filed a complaint against a justice of the peace alleging "inappropriate and offensive public behaviour". The complainant indicated in his letter that he and his family were

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neighbours of the justice of the peace who was the subject of the complaint. The complainant provided historical context that he felt had given rise to a rift between himself and other neighbours, and specifically between himself and the justice of the peace. The complainant indicated that it was his perception that His Worship had “often challenged me with a mix of comments and glares”. Further, he alleged that there was an instance when, in front of the complainant’s young daughters, His Worship “threatened to lay me flat on my back”. According to the complainant, the incident that precipitated the filing of the complaint occurred when the complainant and his family were returning home in their car, passing His Worship en route to their residence.

The complainant alleged that His Worship glared and postured at them and then very loudly yelled an obscenity, the word “asshole”, directly at them. The complainant indicated that this remark was heard by his wife and his daughters. The complainant indicated that he “loudly asked him if he had a code of conduct in public for someone in his position,” and that His Worship just retreated to his garage.

The complainant requested that there be an apology by His Worship to the complainant’s wife and children, or that the insults and threats cease. He described the behaviour as “a disgrace to the office he serves” and asked that the Review Council bring these incidents to his attention and to a resolution so that “his family does not have to endure this any more”.

Given that the conduct complained of occurred outside of court, and therefore no record could be obtained, the complaints committee assigned to investigate and review the matter asked for His Worship to respond to the complaint. In his response, His Worship disagreed that he had conducted himself in the manner that was alleged toward the complainant or his family. In responding to the specific allegation of yelling an obscenity at the complainant in the presence of his wife and daughters, and the allegation of an earlier threat, His Worship denied the allegations and provided his version of events. His Worship indicated that he had done nothing that would hold the office of the justice of the peace in disrespect.

Recognizing that interviewing family members and neighbours in the same community could amplify neighbourhood conflicts, if they exist, and that the anticipated conflicting results of interviews would likely be of little assistance to the committee in clarifying the issues, the committee did not have others questioned about the events. While taking into account the differing versions of events, the complaints committee made no specific findings of fact as to what had specifically transpired between His Worship and the complainant in the past. In considering a disposition, the committee noted that the complaint could not be considered entirely without merit and, therefore, did not choose to dismiss it after receiving His Worship’s response denying the allegations.

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It appeared to the committee both from the complaint and from His Worship's response that there was a history of disagreement which resulted in both parties still holding some views about each other. Further, the committee noted that some aspect of that history had given rise to a perception on the part of the complainant that His Worship had been acting in a hostile manner towards him and his family, and that perception led to him filing a complaint against His Worship with the Review Council.

The committee was of the view that due to the nature and seriousness of the allegations, and taking into account the perceptions held by the complainant, it was appropriate to provide advice in person to His Worship pursuant to section 11(15)(b) of the *Justices of the Peace Act*. His Worship attended before the complaints committee to receive its advice.

The committee advised His Worship to take this opportunity to reflect upon the high standard of conduct to which judicial officials are held. They referenced the preamble to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, which states:

“The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.”

The committee observed that the *Principles* serve to assist justices of the peace in the performance of both their professional lives and in the conduct of their personal lives.

It was the committee's further advice that His Worship may wish to consider how he might apply the *Principles* within his community. The committee indicated that this was an opportunity for His Worship to reflect upon his personal conduct and interactions with the complainant and his family with a view to building public trust and confidence, by demonstrating a high level of courtesy, patience, understanding, professionalism, restraint, and respect in an effort to mitigate any negative perception or impression held in relation to His Worship's conduct personally, and reflective upon the Ontario Court of Justice bench generally.

Having provided its advice, the complaints committee closed the complaint file in this matter.

CASE NO. 20-007/09

The complainant filed a complaint against a justice of the peace, as well as judges of the Superior Court of Justice and the Ontario Court of Appeal and the police related to the issuance of a Form 2 under the *Mental Health Act* in 2003. The complainant indicated that she was detained by His

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Worship's order and imprisoned without any compliance or regard to her *Charter* rights and in violation of mental health laws. The complainant felt that through conspiracy, false information and coercion, the police and the justice of the peace were able to order her detainment.

The complainant alleged that the police gave false information to her daughter that her mother, the complainant, had placed paper on her windows because "she could not take the intensity of the harassment" from a family in her neighbourhood, who had "placed surveillance visual and audio on the front and back of the house and property...". It was alleged that the police informed the daughter to go to court and speak with a justice of the peace in relation to the issuance of a Form 2 under the *Mental Health Act* to instruct and authorize police to apprehend her mother and obtain mental health services for her. Previously, the complainant's daughter appeared before the subject justice of the peace, where it was alleged that His Worship participated in a conspiracy against the complainant by coercion of false, incorrect and untrue information, and issued the Form 2 for her apprehension.

The complainant alleged that His Worship allowed the police to give false, incorrect, and untrue information to him. Further, she alleged that His Worship gave incorrect information to her daughter as to what would happen once the Form 2 was issued. She indicated that His Worship found that, based on words, she was behaving violently towards other people. She expressed the view that her daughter's signature on the sworn statement was a signature forced by coercion and a hostage situation without contacting the complainant or providing her with her rights to counsel.

The members of the complaints committee reviewed the complainant's letter and numerous attachments, which included a copy of the transcript of the daughter's appearance before the subject justice of the peace. After careful review, the committee was of the opinion that there was no basis to any of the allegations made and that the complaint was in substance an appeal of the justice of the peace's ruling on the issuance of the Form 2 under the *Mental Health Act*, which, without evidence of the judicial misconduct, was a matter outside of the jurisdiction of the Justice of the Peace Review Council.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 20-009/09

The complainant was convicted of a number of motor vehicle violations that spanned several years and multiple jurisdictions. In addition, he was referred to by two different last names

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in both the charges and in previous court documents and orders. The complainant's driver's licence had been suspended pending payment of the outstanding fines. According to the complainant, he attended before the subject justice of the peace to seek an extension of time to pay his outstanding fines. He indicated that he was told that the order would be granted, and that he had received written instructions from His Worship (which he attached to his letter of complaint) on how to complete the documents. The complainant indicated that he followed His Worship's instructions of submitting separate applications for each name, but alleged that he then was informed that he did not follow the instructions, and that the order was denied on the basis that only one application in both names should have been filed. The complainant resubmitted his application as a single application and the order was granted. The complainant wrote to the justice of the peace because he felt that it was inappropriate that the terms were changed without notice and he was required to reapply. He alleged that His Worship did not respond.

The complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audiotape of the complainant's attendances before His Worship. In the opinion of the complaints committee, the record demonstrated that His Worship was courteous, careful and thorough in his dealings with this matter, and in fact adjourned the matter until the afternoon to check on the circumstances behind the complaint's request and to complete his review. The record reflected that His Worship explained the procedure; however, it appeared that there was misunderstanding of the advice provided. The complaints committee was of the view that no misconduct occurred in the manner in which His Worship dealt with the complainant's appearance before him and there was no evidence of intent on the part of His Worship to mislead or frustrate the complainant in seeking an extension. The committee noted that the complainant received the relief he was seeking after re-applying.

With respect to His Worship not responding to the complainant's inquiries, the committee was of the opinion that His Worship was under no obligation to personally respond outside of a courtroom setting and off the record. The complainant's inquiries were questions more appropriate for Courts Services. Allegations of Court Services' failure to respond to inquiries are outside the Council's jurisdiction to review.

For the above mentioned reasons, the complaint was dismissed and the file closed.

CASE NO. 20-018/09

The complainant faced seven charges arising out of one incident where he failed to obey a traffic police officer. He indicated that the charges, which were not scheduled together, had

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been continuing in court for two years with multiple appearances before four different justices of the peace prior to coming before the subject justice of the peace. He alleged that on earlier court appearances, he was unable to have his trial because the court failed to provide him with a “Pashto” interpreter from Kandahar. He indicated that other justices of the peace did not force him to proceed with the trial or withdrew some charges. At the appearance before the subject justice of the peace, the complainant indicated that a Persian interpreter from Kabul was present, not a Pashto interpreter from Kandahar. The complainant expressed the view that the two languages are different.

The complainant alleged that His Worship forced him to proceed with his trial in English even though he had indicated that he was not able to fully understand what was being said. He alleged that as a result, he had a problem understanding the proceedings and the evidence of the officer, and in expressing himself in English to the court. Further, the complainant alleged that His Worship “was lecturing and commenting and comparing about my interpreter and me in the court that the Persian language from Kabul and Pashto from Kandahar is same as English from London and Toronto”.

The complainant indicated that he was left feeling victimized by a court system that delayed his trials on the charges for over two years because an interpreter who spoke the wrong language, or no interpreter, was provided; and, he was then forced to proceed to trial in English without the assistance of an interpreter. The complainant indicated that a witness he wished to call had decided not to participate given the delays and multiple adjournments. The complainant was of the view that the system was unfair, frustrating and prejudicial.

The investigating complaints committee reviewed the complainant’s letter and requested and reviewed the transcript and audio recording of the complainant’s trial before the subject justice of the peace. After careful consideration, the complaints committee was of the view that there was no misconduct on the part of the justice of the peace in the conduct of the hearing before him or in the exercise of his judicial discretion in making the decision to proceed with the complainant’s trial in English. The committee was of the opinion that the decision to proceed without an interpreter was a matter of judicial discretion outside of the jurisdiction of the Review Council. If the complainant disagreed with the decision, the proper way to proceed was by way of appeal.

With respect to the allegation that the scheduling of the various charges had led to delays and frustration for the complainant and his witness, the committee noted that the scheduling of the charges had not involved the subject justice of the peace, and, in any event, was consistent with existing intake and scheduling protocols, given the different types of charges.

The complaints committee found no evidence to support the complainant’s allegation that His Worship was “lecturing” or acting unfairly or with any prejudice. While the complaints

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committee did note that His Worship may have been abrupt with the complainant and that he did make some gratuitous comments towards the complainant leading up to and within His Worship's Reasons for Judgment, the committee found that these comments, although unnecessary, did not amount to misconduct.

For the above reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 20-019/09

The complainant, a lawyer, was representing himself in relation to a traffic violation. The complainant indicated that he did not have the best of relationships with the prosecutor due to an earlier occasion when he represented a client and she had called other matters before his client's matter. On the date of the court appearance giving rise to the complaint, the complainant indicated that he had spoken with the prosecutor in advance to see if she would be withdrawing his charge and advised that if she was not, then he would be requesting an adjournment pending disclosure and, therefore, his appearance would only need a couple of minutes. He stated that, "Notwithstanding this information, [the prosecutor] again called many self-represented litigants rather than calling me or another counsel." The complainant indicated that after about twenty minutes and ten or more matters being called, another lawyer addressed the court to ask why the prosecutor was not calling counsel matters. The complainant alleged that His Worship ignored and dismissed the lawyer's interjections. When the complainant, who was dressed in barrister's attire for a later appearance before the Superior Court of Justice, rose and addressed the court with the same concerns, His Worship allegedly interrupted and "stated that the court does not recognize me". As a result, the complainant felt humiliated before a large gallery of public litigants.

The complainant alleged that His Worship became angry and lost control, and that despite court having been sitting for only about twenty minutes and with more than forty people waiting, His Worship announced a fifteen minute break. Following the break, it was alleged that His Worship stated that, "if anybody speaks in the court, etc. will be immediately held in contempt and contempt proceedings will commence forthwith". When the complainant's case was finally called, it was alleged that His Worship demanded that the complainant apologize to the court and to everyone in the courtroom for the delay he caused. The complainant indicated that he disagreed that he should apologize, to which His Worship allegedly threatened to have him sit in the court until he did. Seeing no other option, the complainant apologized and his matter was heard.

It is the complainant's position that His Worship's conduct was an "unacceptable and improper exercise of the judicial power entrusted on him." He alleged that His Worship's conduct was

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impatient, angry and humiliating. The complainant sought a suspension of His Worship until he completes education in the areas of powers and jurisdiction, as well as anger management; an apology in writing, acknowledging his wrong; and, copies of the apology to the prosecutor and all litigants on the docket.

The investigating complaints committee reviewed the complainant's letter and requested and reviewed the transcript and audio recording of the subject court appearance. After reviewing the court record, the complaints committee was of the view that His Worship's conduct and behavior did not resemble the "impatient, angry and humiliating" tone alleged in the complainant's letter to the Council. The record also did not support the allegation that His Worship "became angry and lost control", taking a fifteen minute break. Rather, the court record confirmed that a recess of six minutes was called to allow the prosecutors time to organize the calling of their list.

The complaints committee observed from their review of the record, that the justice of the peace was presiding in a very busy courtroom on the date in question and that not all of the parties that day were satisfied that they were being called in their proper order by the two prosecutors who were bringing the matters before the court. In addition, the committee noted that the complainant and others believed that they should be given preferential treatment as lawyers in the order of appearance, even though they were appearing in court on that occasion as self-represented defendants, not as lawyers representing clients.

Although the committee was of the view that His Worship's announcement regarding the risk of contempt of court proceedings may have been more forceful than necessary, and his demand for an apology may not have been the preferred manner of dealing with the complainant, the committee advised that this did not amount to misconduct. The committee noted that the record reflected that the prosecutor asked for His Worship's assistance in having the defendants in the court remain seated and refrained from interrupting the proceedings. Although the committee observed that there may have been ways of better handling the matter, the warning regarding possible contempt of court sanctions and the insistence of an apology from the complainant were methods of controlling the courtroom, which may otherwise have been rendered unruly.

For the above reasons, the complaints committee viewed no further action required and dismissed the complaint.

CASE NO. 20-021/09

The complainant was seeking to proceed with a private prosecution against members of a Crown Attorney's office and a police force and filed a complaint against the justice of the peace presiding over a pre-enquête dealing with the applications. According to the complainant, he

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had laid numerous informations and asked the presiding justice of the peace if he could swear three additional informations before her that day. It was alleged that Her Worship would not allow the swearing of the additional informations and, without allowing the complainant to present any evidence, indicated that the charges were not going to proceed. The complainant, who indicated he had two boxes of evidence to present to the court, was of the opinion that he was denied due process and the right to equal protection and equal benefit of the law, as guaranteed by the *Charter*.

The complaints committee reviewed the letter of complaint and requested and reviewed the transcript of the subject court proceeding. The complaints committee was of the view that there was no misconduct on the part of the justice of the peace in the pre-enquete proceeding before her. The complaints committee noted from the record that the Crown Attorney had exercised his discretion to intervene and stay the informations before the court that day. The Crown Attorney expressed the view that to continue the proceedings would be an abuse of process and bring the administration of justice into disrepute. The Crown Attorney noted that the history of the charges had started many years ago and had already been the subject of criminal and civil court decisions, appeal court decisions and private informations which were previously stayed by the Crown Attorney. The Crown Attorney expressed the view that the complainant's charges, including the new informations he was seeking to swear, were "nothing more than a collateral attack on judicial decisions and exercises of Crown discretion that he did not like or agree with".

The complaints committee noted that as the complaint was related to the decisions of the justice of the peace at the pre-enquête, it was outside of the jurisdiction of the Review Council. From a thorough review of the record, the committee found no basis to the allegations that Her Worship's conduct in this proceeding resulted in the complainant being denied due process or fair access to justice.

For the aforementioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 20-024/09

The complainant, who was charged with a red light offence, filed a complaint against the presiding justice of the peace in relation to his trial. The complainant alleged that Her Worship displayed "incompetence in handling this case". According to the complainant, the officer fabricated evidence and perjured himself. When the complainant requested the matter be stood down so that he could bring evidence before the court to prove the perjury of the officer, he was denied this opportunity. The complainant indicated that the Crown Attorney opposed the

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matter being stood down to allow him to bring forth the new evidence, and was “not interested in either the truth or justice, only in winning”. The complainant stated that Her Worship ruled that the new evidence would not affect her decision, found the officer’s evidence to be credible and found the complainant guilty of an offence that he claimed he didn’t do.

The complainant alleged that Her Worship was neither impartial nor objective in hearing his case. He felt that the Crown Attorney and Her Worship should have examined his evidence, and that Her Worship did not properly handle the case. The complainant advised that he had started an appeal of the decision of Her Worship in this case.

After having reviewed the complaint and the transcript and audio recording of the complainant’s trial, the committee was of the opinion that there was no misconduct on the part of the justice of the peace in the conduct of the hearing before her or in the exercise of her judicial discretion in making the decisions that she did in this case. The committee noted that the record did not demonstrate incompetence in Her Worship’s handling of the case, as alleged, or that Her Worship was partial to the Crown and was not interested in the truth or justice. In fact, the committee found that the court record showed that Her Worship was thorough, courteous and explained to the complainant how she made her assessment of the evidence of both the complainant and the police officer in providing her reasons.

For the above mentioned reasons, the complaints committee has dismissed the complaint and closed its file.

CASE NO. 20-026/09

The complainant filed a complaint against the subject justice of the peace in relation to his bail hearing. According to the complainant, he was “falsely arrested” as a result of a “malicious prosecution” started by his estranged sister in response to the complainant’s efforts to pursue criminal charges against her for her role in forging a relative’s will. The complainant indicated in his letter that the justice of the peace was his relative and alleged that his sister, His Worship and His Worship’s mother were all “cohorts”, acting in collusion against him.

The complainant appeared for his bail hearing and indicated that His Worship was scheduled to preside. According to the complainant, His Worship stated that he knew intimate details about the matter, “waived the matter off as a conflict of interest and made a section 516 order under the *Criminal Code* which resulted in the complainant being further detained in custody. The complainant alleged that His Worship colluded with the complainant’s sister, misused his judicial power and acted in a conflict of interest in making the order against him. The complainant alleged that the “collusion continues to this day” between His Worship and the

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complainant's sister through family members. The complainant indicated that the charges were subsequently abandoned by a Crown Attorney.

In addition, the complainant alleged that His Worship “has frequented” a business location where there was a marijuana grow operation on the property, which was allegedly discovered in 2007 by authorities. In addition, the complainant indicated that the business being operated there was previously raided and was believed to be under investigation due to non-payment of income tax.

After having reviewed the complaint, the transcript and the audio recording of the bail hearing, the committee found that the justice of the peace properly declared a conflict, and, with the consent of duty counsel acting on the complainant's behalf, appropriately adjourned the matter to a court where he would not be presiding. After stating he would rather not issue a section 516 order, he did so only when duty counsel consented to the order on behalf of the complainant. The record did not support the allegations that the justice of the peace was acting improperly as a result of collusion with the complainant's sister, that he misused his judicial power, or that he acted in a conflict of interest. On the contrary, the record revealed that the justice of the peace acted properly and did nothing inappropriate in court.

With respect to the complainant's allegation that his estranged sister was involved in the forgery of a will, had maliciously prosecuted the complainant as well as the allegations related to a marijuana grow operation, the Council has no authority to conduct criminal investigations. The complainant was informed that if he had concerns with respect to criminal activities, he would need to contact the police directly to pursue those concerns. For the above mentioned reasons, the complaints committee dismissed the complaint and closed its file.

CASE NO. 20-027/09

The complainant attended court with his client, whose grasp of the English language was described as extremely limited. The complainant indicated that he met with the prosecutor and there was an agreement for his client to plead guilty. When the case was called, the complainant indicated in his letter of complaint that he was standing to the left and a bit behind the defendant, “in case she needed help understanding”. It was alleged that when the defendant looked back for assistance during arraignment, and he told her to say “Guilty”, His Worship ordered her in a loud voice, “Mam, look at me, don't look at him” and then told her agent, the complainant, that he could not tell her what to say and ordered that he take a seat “(i.e. SIT DOWN and SHUT UP)”. The complainant indicated that he took great exception to being ordered to take a seat since he was her representative. The complainant found His

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Worship's "pompous attitude rude, arrogant, abrasive and most certainly very unprofessional". The complainant stated that His Worship's manner left the defendant "visibly upset and shaken", as she sensed his hostility.

The complainant indicated that the prosecutor intervened to help clarify for His Worship that the complainant spoke Chinese. In response, His Worship allegedly questioned the complainant and his ability to speak Chinese but when the complainant was trying to clarify the different dialects spoken by himself and the defendant, His Worship "rudely interrupted him" to instruct the prosecutor to order an interpreter and set a new date. The complainant was of the view that His Worship "mishandled" the case, resulting in additional expense and time to re-attend for a matter that had an agreed-upon resolution. In addition, the complainant felt that His Worship displayed a lack of cultural sensitivity and suggested he attend remedial training.

Upon reviewing the complainant's letter, the transcript and the audio recording of the subject court appearance before the justice of the peace, the complaints committee was of the view that there was no misconduct on the part of the justice of the peace in the disposition of his duties. The committee found no evidence on the court record to support the complainant's allegation that His Worship acted in a "pompous attitude rude, arrogant, abrasive or unprofessional" manner. The court transcript and audio recording showed that His Worship's conduct was professional, calm and even-toned throughout the proceedings. Additionally, the committee viewed no evidence within the court record that supported the complainant's allegation that His Worship displayed a lack of cultural sensitivity.

With respect to the allegation that His Worship "mishandled" the case resulting in additional expense and time to re-attend for a matter that had an agreed-upon resolution, the committee was of the opinion that the justice of the peace acted appropriately knowing that he could not accept a guilty plea without the assistance of an interpreter. His Worship's handling of the matter was consistent with preserving the defendant's rights as guaranteed by the *Charter of Rights and Freedom*, as well as consistent with governing caselaw on the issue of ensuring the defendant understands that she is giving up her right to a trial and that the plea is being made voluntarily.

For the above noted reasons, the complaints committee dismissed the complaint as unfounded and closed the file.

CASE NO. 20-038/09

The complainant alleged that he went to the Intake Court where a justice of the peace issued an information to be prepared by court staff. The complainant alleged that he followed up to

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see when it would be ready to be sworn. He was advised that he would be required to address that information and future informations with an out-of-town justice of the peace, and that the direction to do so had been received from the Regional Senior Justice of the Peace. After a number of inquiries about the information, the complainant wrote to the courthouse. He alleged that the tone of a letter that he received from the Regional Senior Justice of the Peace suggested that officers of the court, court staff and justices of the peace are above the law and that he should not have had the audacity to have ever laid an information against parties of their social standing.

The complaints committee reviewed two letters from the complainant and materials that he had provided, including a letter to him from the Regional Senior Justice of the Peace. The committee was advised by court staff that there was no audio recording or transcript available of the proceeding in Intake Court for the committee to review as part of its investigation.

The complainant's letter of complaint alleged that the Regional Senior Justice of the Peace:

- 1) Directed a justice of the peace to ignore his administrative duties;
- 2) Directed the Local Administrative Justice of the Peace to ignore his administrative duties; and,
- 3) Obstructed justice by interfering with a private citizen's right to lay/file a private information which was reviewed by a justice of the peace in the intake office, deemed to be in keeping with the *Criminal Code of Canada*, in proper format and directed to the staff of the court house to be prepared to be sworn by the complainant.

His additional letter alleged that the Regional Senior Justice of the Peace:

- 1) Blacklisted him and defamed his name;
- 2) Discriminated against him;
- 3) Impeded his ability to defend himself and protect his family; and,
- 4) Further, obstructed justice.

The committee noted that the materials indicated that after the justice of the peace in Intake Court received the private prosecutions particulars, the matter was referred to the court office for processing. Subsequently, the Regional Senior Justice of the Peace took on the assignment of assisting in the matter. It appeared to the committee that the complainant had not yet appeared before the Regional Senior Justice of the Peace to deal with the matter further.

The committee advised that a justice of the peace who receives private prosecutions particulars

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A in respect of a matter is not seized of the matter. Thus, a person may attend before a different justice of the peace for the purpose of swearing an information. A member of the public does not have a right to attend before the same justice of the peace for the purpose of swearing the information.

With respect to the decision by the Regional Senior Justice of the Peace to take on the assignment of dealing with the swearing of the information, the committee found that this decision did not constitute directing either a justice of the peace or the Local Administrative Justice of the Peace to ignore their administrative duties; nor did it amount to an obstruction of justice. A Regional Senior Justice of the Peace has the jurisdiction to schedule a matter before a particular justice of the peace, including himself or herself. Under section 15(3) of the *Justices of the Peace Act*, a Regional Senior Justice may delegate the authority to assign cases to the Regional Senior Justice of the Peace. Scheduling and assigning cases had been delegated to the Regional Senior Justice of the Peace in the particular region where the matter arose.

Scheduling decisions by a Regional Senior Justice of the Peace do not fall within the legislative authority of the Justices of the Peace Review Council to review, absent evidence of judicial misconduct. The reviewing committee found no indication of judicial misconduct in the scheduling decision in the fact situation raised by the complainant. If he disagreed with the decision by the Regional Senior Justice of the Peace to take on the assignment of dealing with the complainant's matter, the proper way for him to proceed was by pursuing other legal remedies.

He also indicated that the tone of the letter that he received from the Regional Senior Justice of the Peace suggested that officers of the court, court staff and justices of the peace are above the law and that he "should not have had the audacity to have ever laid an information against parties of their social standing". The complaints committee reviewed the letter from the Regional Senior Justice of the Peace and observed that the letter was neutral and professional in its tone. As well, the complaints committee also noted that the Regional Senior Justice of the Peace, in the letter to the complainant confirmed that the Regional Senior Justice of the Peace would be available to assist him once he had coordinated dates with the Local Administrative Justice of the Peace.

Further, the complaints committee advised that disclosure of the existence of a complaint against him or her, if that occurred, does not constitute misconduct.

For the reasons set out above, the complaints committee found no basis for a finding of misconduct. The complaint was dismissed and the file was closed.

APPENDIX B

EXTRA-REMUNERATIVE WORK APPLICATIONS

Extra-Remunerative Work Applications

APPLICATIONS FOR APPROVAL OF EXTRA-REMUNERATIVE WORK IN 2009

CASE NO. ER-19-004/08

The Review Council approved a request by a *per diem* justice of the peace to operate a small classic car facility that would carry an inventory of about four high quality vintage vehicles subject to the following conditions:

- 1) His Worship must refrain from knowingly conducting any sales or transactions with anyone directly involved with the justice system. He must demonstrate sensitivity in business transactions related to the car dealership, to ensure the avoidance of any real or perceived conflict of interest or bias. Of particular concern to Council is the occurrence of any sales to or purchases from known members of the justice community such as Crown Attorneys, police, agents, paralegals, lawyers, or others who may have the opportunity to appear before His Worship in his decision-making capacity;
- 2) Council approved the request on the basis of the scale of business operations (of approximately four classic cars). Should the inventory and sales increase beyond this contemplated scale or should any other change in circumstance arise that affects the status of the operation, His Worship must advise the Council in writing in order that the appropriateness of the extra-remunerative work may be re-considered;
- 3) His Worship must maintain distance as a classic car dealer from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position in advertising or informational materials related to his business;
- 4) Council reserved the right to revisit the request and its decision should any relevant circumstances change.

CASE NO. ER-20-002/09

The justice of the peace requested approval to continue to engage in extra-remunerative work as a visual artist. The Council approved the request subject to the following conditions:

- 1) The justice of the peace must refrain from knowingly conducting any sales or transactions with anyone directly involved with the justice system. To ensure the avoidance of

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any real or perceived conflict of interest or bias, he must demonstrate sensitivity in transactions related to his artwork, in particular any sales to known members of the justice community such as Crown Attorneys, police, agents, paralegals, lawyers, or others who may have the opportunity to appear before His Worship in his decision-making capacity, or persons with whom justices of the peace have a relationship in the course of their duties, including court administration and court security staff.

- 2) Sales to justices of the peace or to judges are exempt from the provisions of the first condition. He may conduct sales with justices of the peace or judges. However, he must refrain from using the Court's email network to promote, advertise, or sell his artwork. His personal business in relation to his artwork must not be conducted on the Court's resources, which are provided for purposes associated with the position's official responsibilities.
- 3) He must maintain distance as an artist from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position in advertising or informational materials related to his artwork.
- 4) He may accept remuneration for these services, but such remuneration must be the same as that paid to other artists and be without regard to his position as a justice of the peace.
- 5) Council approved the occasional sale of his artwork. Should his sales increase beyond occasional or should any other change in circumstances arise that affects the status outlined in his correspondence, he must advise the Review Council in writing.
- 6) Council cautioned him respecting the donation of his artwork for fundraising purposes. Council's concerns centred around the public's sensitivity in regards to a justice of the peace participating in fundraising activities having regard to the public perceptions of judicial demeanour, independence and impartiality. Council recognized this is not an issue of extra remuneration, but could be an issue for Council to address should a complaint regarding the ethics of such involvement arise.
- 7) The Review Council reserved the right to revisit his request and its decision should any relevant circumstances change.

CASE NO. ER-20-003/09

The Review Council approved an application by a justice of the peace for approval to teach at a local community college. The Review Council took into account that the Regional Senior Justice of the Peace confirmed that the teaching would present no difficulties in fulfilling judicial assignments during the teaching term. It is the Review Council's view and preference

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that educational teachings by justices of the peace should be engaged in during the evenings rather than during weekdays, so as not to present any potential impact on judicial responsibilities or pose issues relating to fulfilling scheduling obligations at a base court location.

The approval was subject to the following conditions:

- 1) Any remuneration accepted for these services must be the same as that paid to other instructors without regard to his position as a justice of the peace; and,
- 2) His availability to instruct must be subject to primary responsibilities as a justice of the peace and as such must be undertaken at times when he is not otherwise assigned to judicial duties and where he had requested either vacation or compensating time off. Council was of the view that non-presiding days should not be used for such purposes.
- 3) The Review Council reserved the right to revisit his request and its decision should any relevant circumstances change.

CASE NO. ER-20-004/09

The Review Council approved an application for approval to engage in activities as a Synagogue Cantor subject to the following conditions:

- 1) The justice of the peace may accept remuneration for these services, but such remuneration must be the same as that paid to other Synagogue Cantors and be without regard to his position as a justice of the peace.
- 2) He must maintain distance as a Synagogue Cantor from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position in his extra-remunerative work activities.
- 3) The Review Council reserved the right to revisit his request and its decision should any relevant circumstances change.

CASE NO. ER-20-007/09

The Review Council approved a request by a *per diem* justice of the peace to continue extra-remunerative work activities as a volunteer for golf associations upon the following conditions:

- 1) He may accept remuneration for these services, but such remuneration must be the same as that paid to other volunteers at the golf events and be without regard to his position

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as a justice of the peace. He must maintain distance as a volunteer at the golf events from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position in his extra-remunerative work activities.

- 2) The Review Council reserved the right to revisit his request and its decision should any relevant circumstances change.

CASE NO. ER-20-008/09

The Review Council approved a request by a justice of the peace to continue his extra-remunerative work as a sub-deacon contingent upon the conditions set out below and on the assumption that any honorarium paid to him would be modest:

- 1) He may accept remuneration for these services, but such remuneration must be the same as that paid to other sub-deacons and be without regard to his position as a justice of the peace.
- 2) He must maintain distance as a sub-deacon from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position in his extra-remunerative work activities.
- 3) He must ensure that in answering any questions, or in providing any commentary, opinions, or advice as a sub-deacon, he will ensure that his role and responsibilities as a justice of the peace are not compromised.
- 4) The Review Council reserved the right to revisit his request and its decision should any relevant circumstances change.

CASE NO. ER-20-009/09, ER-20-010/09 AND ER-20-017/09

Three justices of the peace requested approval of extra-remunerative work as Commissioned Reserve Officers in Her Majesty's Canadian Forces. The Council had no concern that the activities in that regard would give rise to any actual, or perceived, conflict of interest between the duties as assigned and their activities as Commissioned Reserve Officers. Based on the information provided, the Council was satisfied that the requirements of the position would not present an intrusive demand on their time, availability, or ability to properly perform the judicial duties assigned. Further, the Review Council had no concern that the public could perceive their military service to be inappropriate or unseemly.

The approval of Council was granted on the assumption that any remuneration paid would be the same as that paid to other Commissioned Reserve Officers without regard to their position as

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justices of the peace. The approval was also based on the assumption that they would continue to seek approval for leave from the Associate Chief Justice of the Ontario Court of Justice. The Council further assumed that they would maintain their distance as Commissioned Reserve Officers from their role and responsibilities as judicial officers, particularly in relation to avoiding any reference to their judicial position.

Should the status of their participation change, each justice of the peace was instructed to advise the Review Council in writing in order that the appropriateness of the extra-remunerative work may be re-considered. The Review Council reserved the right to revisit any of the requests and its decisions should any relevant circumstances change.

CASE NO. ER-20-012/09

A part-time justice of the peace applied for approval to engage in a variety of extra-remunerative activities including restaurant work and bus-driving. Given the nature of her appointment as a part-time justice of the peace in an isolated community in which she presided, the Review Council approved the request to continue the extra-remunerative work upon the conditions set out below:

- 1) The justice of the peace must demonstrate sensitivity in business transactions related to the other work activities, to ensure the avoidance of any real or perceived conflict of interest or bias. Of particular concern to Council is the need for sensitivity in relation to interactions with known members of the justice community such as Crown Attorneys, police, agents, paralegals, lawyers, or others who may have the opportunity to appear before her in his decision-making capacity;
- 2) She may accept remuneration for these services, but such remuneration must be the same as that paid to others doing the same work and be without regard to her position as a justice of the peace.
- 3) The Review Council reserved the right to revisit her request and its decision should any relevant circumstances change.

CASE NO. ER-20-013/09

The Review Council approved a request by a justice of the peace to continue his extra-remunerative work as a pottery craftsperson contingent upon the following conditions:

- 1) He must refrain from knowingly conducting any sales or transactions with anyone directly involved with the justice system. He must demonstrate sensitivity in transactions related

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to his pottery, to ensure the avoidance of any real or perceived conflict of interest or bias. Of particular concern to Council is the occurrence of any sales to known members of the justice community such as Crown Attorneys, police, agents, paralegals, lawyers, or others who may have the opportunity to appear before him in his decision-making capacity;

- 2) He must maintain distance as a pottery craftsperson from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position in advertising or informational materials related to his pottery.
- 3) He may accept remuneration for these services, but such remuneration must be the same as that paid to other potters and be without regard to his position as a justice of the peace.
- 4) Council approved the occasional sale of his pottery. Should his sales increase beyond occasional or should any other change in circumstance arise that affects the status, he must advise the Review Council in writing.
- 5) The Council cautioned him respecting the donation of his pottery for fundraising purposes. Council's concerns centred around the public's sensitivity in regards to a justice of the peace participating in fundraising activities having regard to the public perceptions of judicial demeanour, independence and impartiality. Council recognized this is not an issue of extra remuneration, but could be an issue for Council to address should a complaint regarding the ethics of such involvement arise.
- 6) The Review Council reserved the right to revisit his request and its decision should any relevant circumstances change.

CASE NO. ER-20-014/09

The Review Council approved a request by a justice of the peace to continue his extra-remunerative work as a Cantor contingent upon the conditions set out below and on the assumption that any honorarium paid to him would be modest:

- 1) He may accept remuneration for these services, but such remuneration must be the same as that paid to other Cantors and be without regard to his position as a justice of the peace.
- 2) He must maintain distance as a Cantor from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position in his extra-remunerative work activities.
- 3) The Review Council reserved the right to revisit his request and its decision should any relevant circumstances change.

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CASE NO. ER-20-015/09

A justice of the peace requested approval to serve as a community advisor for a television station. Subsequently, she informed the Council that she was immediately relinquishing her role as community advisor and she requested permission to withdraw her application. Her request to withdraw the application was granted and the file was closed.

CASE NO. ER-20-020/09

The Review Council approved a request by a justice of the peace to continue her extra-remunerative work as a craftsperson contingent upon the conditions below:

- 1) The justice of the peace must refrain from knowingly conducting any sales or transactions with anyone directly involved with the justice system. She must demonstrate sensitivity in transactions related to her crafts, to ensure the avoidance of any real or perceived conflict of interest or bias. Of particular concern to Council is the occurrence of any sales to known members of the justice community such as Crown Attorneys, police, agents, paralegals, lawyers, or others who may have the opportunity to appear before her in her decision-making capacity.
- 2) She must maintain distance as a craftsperson from her role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to her judicial position in advertising or informational materials related to his crafts.
- 3) She may accept remuneration for these services, but such remuneration must be the same as that paid to other craftspersons and be without regard to her position as a justice of the peace.
- 4) Council approved the occasional sale of crafts. Should the sales increase beyond occasional or should any other change in circumstance arise that affects the status, the justice of the peace must advise the Review Council in writing.
- 5) Council cautioned the justice of the peace respecting the donation of her crafts for fundraising purposes. Council's concerns centred around the public's sensitivity in regards to a justice of the peace participating in fundraising activities having regard to the public perceptions of judicial demeanour, independence and impartiality. Council recognized this is not an issue of extra remuneration, but could be an issue for Council to address should a complaint regarding the ethics of such involvement arise.
- 6) The Review Council reserved the right to revisit her request and its decision should any relevant circumstances change.

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CASE NO. ER-20-021/09

The Review Council approved of a request by a justice of the peace to teach a course at a community college. The approval was subject to the following conditions:

- 1) The justice of the peace must maintain distance in the completion of his teaching of this course from his role and responsibilities as a judicial officer, particularly in relation to avoiding any reference to his judicial position in his extra-remunerative work activities.
- 2) He may accept remuneration for these services, but such remuneration must be the same as that paid to others and be without regard to his position as a justice of the peace.
- 3) Teaching the course must not interfere with his obligations as a justice of the peace.
- 4) The Review Council reserved the right to revisit his request and its decision should any relevant circumstances change.

CASE NO. ER-20-022/09

The Review Council approved a request by a justice of the peace to teach a course at a community college. Council confirmed with the Regional Senior Justice of the Peace that Council's approval of the request would present no difficulties in fulfilling judicial assignments during the period of his teaching. It is the view and preference of Council that educational teachings by justices of the peace be engaged in during the evenings rather than during weekdays, so as not to present any potential impact on judicial responsibilities or pose issues relating to fulfilling scheduling obligations at a base court location. The approval was subject to the following conditions:

- 1) Any remuneration accepted for these services be the same as that paid to other instructors without regard to his position as a justice of the peace.
- 2) His availability to instruct must be subject to primary responsibilities as a justice of the peace and as such must be undertaken at times when he was not otherwise assigned to judicial duties and where he had requested either vacation or compensating time off. Council was of the view that non-presiding days should not be used for such purposes.
- 3) The Review Council reserved the right to revisit his request and its decision should any relevant circumstances change.

APPENDIX C

PRINCIPLES
OF JUDICIAL OFFICE OF
JUSTICES OF THE PEACE
OF THE ONTARIO
COURT OF JUSTICE

APPENDIX C

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

*“Respect for the Judiciary is acquired through
the pursuit of excellence in administering justice.”*

PRINCIPLES OF JUDICIAL OFFICE OF JUSTICES OF THE PEACE OF THE ONTARIO COURT OF JUSTICE

PREAMBLE

A strong and independent judiciary is indispensable to the proper administration of justice in our society. Justices of the peace must be free to perform their judicial duties without fear of reprisal or influence from any person, group, institution or level of government. In turn, society has a right to expect those appointed as justices of the peace to be honourable and worthy of its trust and confidence.

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

The following principles of judicial office are established by the justices of the peace of the Ontario Court of Justice and set out standards of excellence and integrity to which all justices of the peace subscribe. These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives.

APPENDIX C

Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

1. THE JUSTICE OF THE PEACE IN COURT

- 1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

Commentaries:

Justices of the peace should not be influenced by partisan interests, public pressure or fear of criticism.

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

- 1.2 Justices of the peace have a duty to follow the law.

Commentaries:

Justices of the peace have a duty to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law.

- 1.3 Justices of the peace will endeavour to maintain order and decorum in court.

Commentaries:

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

2. THE JUSTICE OF THE PEACE AND THE COURT

- 2.1 Justices of the peace should approach their judicial duties in a spirit of collegiality, cooperation and mutual assistance.
- 2.2 Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.
- 2.3 Reasons for judgment should be delivered in a timely manner.

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Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice

- 2.4 Justices of the peace have a duty to maintain their professional competence in the law.

Commentaries:

Justices of the peace should attend and participate in continuing legal and general education programs.

- 2.5 The primary responsibility of justices of the peace is the discharge of their judicial duties.

Commentaries:

Subject to applicable legislation, justices of the peace may participate in law related activities such as teaching, participating in educational conferences, writing and working on committees for the advancement of judicial interests and concerns, provided such activities do not interfere with their primary duty to the court.

3. THE JUSTICE OF THE PEACE IN THE COMMUNITY

- 3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.
- 3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

Commentaries:

Justices of the peace must not participate in any partisan political activity.

Justices of the peace must not contribute financially to any political party.

- 3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.
- 3.4 Justices of the peace are encouraged to be involved in community activities provided such involvement is not incompatible with their judicial office.

Commentaries:

Justices of the peace should not lend the prestige of their office to fund-raising activities.

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**PUBLIC HEARING RE:
JUSTICE OF THE PEACE
JORGE BARROILHET**

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Public Hearing Re: Justice of the Peace Jorge Barroilhet



JUSTICES OF THE PEACE REVIEW COUNCIL

**IN THE MATTER OF A HEARING ORDERED UNDER SECTION 11(15) OF THE
JUSTICES OF THE PEACE ACT, R.S.O. 1990, c. J.4, as amended,**

**Respecting the conduct of
Justice of the Peace Jorge Barroilhet,
Justice of the Peace in the Toronto Region**

Before: The Honourable Justice Deborah K. Livingstone
Her Worship Senior Justice of the Peace Cornelia Mews
Ms. S. Margot Blight

Hearing Panel of the Justices of the Peace Review Council

Reasons for Decision

Counsel:

Mr. Douglas C. Hunt, Q. C.
Mr. Andrew Burns
Ms. Grace David

Hunt Partners LLP

Presenting Counsel

Mr. Julian N. Falconer
Ms. Jackie Esmonde

Falconer Charney LLP

Counsel to His Worship Jorge Barroilhet

JUSTICES OF THE PEACE REVIEW COUNCIL REASONS FOR DECISION

INTRODUCTION

On January 19th through to January 22nd inclusive, March 6th, April 2nd , 3rd and April 8th of 2009 the Hearing Panel in this proceeding heard evidence from a series of witnesses in connection with complaints particularized in Appendix “A” of the Notice of Hearing in this matter, dated February 28, 2008, which is attached hereto.

Counsel agree that pursuant to section 4 of the Justices of the Peace Review Council’s *Procedural Code for Hearings*, Presenting Counsel’s role shall not be to seek a particular order against a respondent, but to see that the complaint against the Justice of the Peace is evaluated fairly and dispassionately to the end of achieving a just result. Our role is now to make findings of fact based on the admissions and the evidence presented, and determine which of those facts result in a finding of judicial misconduct such that one or more of the range of dispositions set out in section 11.1(10) of the *Justices of the Peace Act* are required to restore public confidence in the judiciary (hereinafter simply “judicial misconduct”). The Panel will reconvene to hear submissions from Counsel with respect to the appropriate disposition in view of the findings.

Before concluding that there has been judicial misconduct, we must be satisfied that the evidence presented in the Hearing meets the requisite standard of proof. Both counsel have submitted, and we agree, that that this requires clear and convincing proof based on cogent evidence to establish the allegations as set out in the Notice of Hearing and whether or not the allegations we accept constitute judicial misconduct.

We agree with Presenting Counsel’s submission in relation to the definition of judicial misconduct, which we will apply to our findings herein. The issue is whether the impugned conduct of His Worship Barroilhet is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public’s confidence in the ability of the Justice to perform the duties of office or in the administration of justice generally.

Moreau-Bérubé v. New Brunswick (Judicial Council), [2002] 1 S.C.R. 249.

On June 2nd, 2009 His Worship, through Counsel, informed the Hearing Panel that he would be calling no evidence but that he would make three formal admissions. Counsel stated that

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His Worship's admissions did not restrict or bind the Panel in the course of their determination of findings.

On behalf of His Worship, Counsel admits that these three admissions amount to judicial misconduct.

Counsel for His Worship submitted that there are two main categories of allegations, outside of the admissions, in which findings of fact could be made. The Panel prefers to relate the three admissions to the Particulars in the Notice of Hearing which set out the full extent of the allegations of judicial misconduct. We will set out our findings in that context.

THE FIRST ADMISSION

The first admission was stated as follows in Counsel for His Worship's written submissions:

In respect of the Chad Evans matter, His Worship acknowledges that he improperly intervened in respect of the Provincial Offences matter involving Mr. Evans and he improperly communicated with Her Worship Justice of the Peace Miller and His Worship Justice of the Peace Boon.

Counsel for His Worship submitted that at no time did His Worship offer to swear an affidavit on behalf of Chad Evans.

THE PARTICULARS WHICH RELATE TO THE FIRST ADMISSION

The Chad Evans matter relates to the allegations particularized at paragraphs 11-16 in the Notice of Hearing. Those Particulars are as follows:

- 11) *On or about December 19, 2006, you became actively involved in assisting a personal friend, Chad Evans, with a traffic matter under the POA, in Brantford, Ontario. Mr. Evans had been charged with careless driving, tried and convicted in absentia. Mr. Evans is a resident of the United States.*
- 12) *On or about December 19, 2006, you hired and instructed an agent, Ms. Hernandez, to request a re-opening of a matter on behalf of Chad Evans.*
- 13) *On or about December 19, 2006, you repeatedly contacted the Brantford court clerk, Ms. Debbie Wright, in an effort to speak with the presiding Justice of the Peace in order to ask for a favour with respect to Mr. Evans' matter.*
- 14) *On or about December 19, 2006, you contacted Justice of the Peace Miller directly and requested that she exercise her jurisdiction to re-open the matter on behalf of Chad Evans.*

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- 15) *On or about December 19, 2006, you suggested to Justice of the Peace Miller that she exercise “judicial independence” and re-open the matter on behalf of Chad Evans in spite of the fact that the agent attempted to file an unsigned affidavit on behalf of Mr. Evans.*
- 16) *On or about December 19, 2006, you improperly offered to Justice of the Peace Miller to cure the defect of the unsigned affidavit by signing the affidavit on behalf of Chad Evans.*

THE PANEL’S FINDINGS IN RELATION TO PARTICULARS 11-16

His Worship Justice of the Peace Kerry Boon testified on January 20, 2009. His Worship Kerry Boon was appointed a Justice of the Peace for Ontario in December 2002. Previously, he spent 28 years as a police officer. He is now a *per diem* Justice of the Peace and sits, from time to time, in the Brantford court.

In 2006 His Worship Boon received a note from one of the court clerks with a telephone number on it. The clerk indicated she had difficulty understanding the caller because of a heavy accent. His Worship Boon was asked to phone this Justice of the Peace.

His Worship Boon made the call in between his assigned tiers and spoke with His Worship Jorge Barroilhet. His Worship Barroilhet asked whether someone would be available if an agent drove from Toronto regarding a re-opening. His Worship Boon answered that he would avail himself, even though he was not assigned to intake duties, because he would not have wanted someone to drive from Toronto and arrive at Brantford to find there is no Justice of the Peace available. His Worship Boon regarded this as providing good service, and not as a favour to His Worship Barroilhet.

His Worship Boon remained at the Brantford courthouse for the remainder of the day, and no one showed up. His Worship Boon thought it odd that a Justice of the Peace, rather than a defendant or agent, would be making this call.

Deborah Wright, one of the clerks referred to by His Worship Boon, testified on January 20, 2009. She was able to pinpoint the date of this call from His Worship Barroilhet to the Brantford court as December 12, 2006.

She told the Panel that in the early part of the morning His Worship Barroilhet called and asked if His Worship Boon was in intake. She indicated that His Worship Dan MacDonald was. His Worship Barroilhet did not want to speak with him. She gave the message to His Worship Boon when he arrived that His Worship Barroilhet wished to speak to him. She may have given His Worship Barroilhet information about when Intake Court sits in Brantford.

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A week later, December 19, 2006, Ms. Wright took another call from His Worship Barroilhet. He asked who was in the Intake Court and when she told him it was Her Worship Trillis Miller he asked to have her call him. She gave Her Worship Miller that message, which is Exhibit 7 at this Hearing.

Ms. Wright delivered a second message that same day from His Worship Barroilhet asking Her Worship Miller to call. This message was not in writing.

We accept the uncontradicted evidence of both of these witnesses as factual underpinnings to the admission by His Worship Barroilhet of improper communication in respect of a matter in a Provincial Offences Court.

Her Worship Trillis Miller testified on January 19, 2009. She was appointed a Justice of the Peace in June 2006 and presides in the Brantford area. She was presiding in Intake Court on December 19th, 2006 when the Chad Evans application for re-opening was dealt with by the agent from Stop All Traffic Tickets – Consuelo Hernandez. A transcript of that court appearance was filed as Exhibit 6.

Consuelo Hernandez testified with respect to that court appearance. While differing in some details from the transcript evidence (Exhibit 6), Ms. Hernandez's testimony confirms that she was sent to deal with the Evans matter on behalf of Stop all Traffic Tickets. Her Worship was not prepared to grant the re-opening as the Affidavit of Chad Evans had not been signed by him. During the proceeding Ms. Hernandez asked to call her boss and the transcript confirms that she stated, as she told us in her evidence, that: "she understood her boss talked to somebody here about this". While Ms. Hernandez was out of the court, Her Worship Miller received a message that His Worship Barroilhet had called and wanted a return call and that he had called the previous week with respect to a matter relating to a ticket of a friend. That friend was Chad Evans. Her Worship Miller testified about the conversation with His Worship Barroilhet. There was no evidence that anyone other than His Worship Barroilhet communicated with the court about the Evans matter.

She described in her evidence that her telephone conversations with His Worship Barroilhet made her uncomfortable. Later that day she reported the incident to Regional Senior Justice of the Peace Redmond and Local Administrative Justice of the Peace MacDonald. That email became Exhibit 8 at the Hearing. In that email Her Worship Miller stated:

... In speaking with Justice Barroilhet he advised me that a friend of his, Chad Evans, had received a ticket, but because Mr. Evans lives in the United States, Justice Barroilhet further advised me that he told Mr. Evans that he would take care of the ticket. Justice Barroilhet in speaking to me asked if I would deal with

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the matter and re-open the matter for his friend. I advised him that I could not because the Affidavit was not signed by Mr. Evans. Justice Barroilhet advised me that, we (as Justices) are independent and that the nice thing about being independent is that we can make these types of decisions and Justice Barroilhet then asked me to consider overlooking the fact that the Affidavit was not signed. I advised him that I would not consider re-opening the matter without the Affidavit being signed. He then suggested he could sign the Affidavit because he was looking after the matter for his friend and that he had hired the Agent, Ms. Hernandez, on behalf of Mr. Evans. I told Justice Barroilhet that the Affidavit must be signed by Mr. Evans before a re-opening could be considered. He asked me if I would re-open the matter if the Affidavit was signed by Mr. Evans and I told him I would. I then said goodbye and our telephone conversation ended. I realize now after looking into the matter further that I erred in telling him I would re-open the matter if the Affidavit was signed by Mr. Evans because I did not realize that if I denied the Application the next step would be an appeal. ...

Counsel for His Worship Barroilhet submitted that the communication with Her Worship Miller was a serious error in judgment. His position to us, as put to Her Worship Miller repeatedly in cross-examination, was that because His Worship Barroilhet has a thick Spanish accent, it was Her Worship Miller who misunderstood the context of the call. He submits that His Worship Barroilhet did not offer to sign an affidavit to assist in the reopening of the Chad Evans matter.

Counsel for His Worship Barroilhet accepts that there is evidence from Her Worship Miller that his client stated to her that the nice thing about Justices of the Peace being independent is that they can make these types of decisions. He submits, however, that because she couldn't remember exactly when that comment was made in the context of the call, the only cogent evidence is that His Worship Barroilhet wanted a favour on behalf of a family friend.

In our view, the evidence of Her Worship Trillis Miller, in combination with the evidence of Consuelo Hernandez about her attendance in Brantford on December 19, 2006 supports a finding of fact beyond the admission of His Worship Barroilhet.

The Panel accepts the uncontradicted evidence of Her Worship Miller. She testified that His Worship Barroilhet told her he had hired Ms. Hernandez on behalf of Mr. Evans. She stated that because of language difficulties she asked His Worship Barroilhet to repeat himself several times. She was a new Justice of the Peace and did not know His Worship Barroilhet. However, in examination-in-chief, in cross-examination, and in re-examination she was consistent in her response that what she heard was a request from a more senior Justice of the Peace to re-open a matter on behalf of a friend. When her response was that she could not, because the affidavit was

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not signed, we accept her evidence that His Worship Barroilhet offered to sign the affidavit. This did not sit well with her. It disturbed her. She mulled it over and decided to let Senior Administrative Justices of the Peace know her concerns. This was a courageous stance from a newly appointed Justice of the Peace. We conclude that this evidence is clear and convincing proof that His Worship Barroilhet hired Consuelo Hernandez to request a re-opening on behalf of his friend and asked a colleague to waive the requirements for an affidavit duly sworn by the defendant, in this case Chad Evans, as required under section 11(1) of the *Provincial Offences Act*.

We are satisfied, therefore, that Particulars 11-16 have been proven to the standard required at this Hearing, and that the conduct described in Particulars 13-16 constitutes judicial misconduct.

THE SECOND ADMISSION

The second admission was stated as follows in Counsel for His Worship's written submissions:

His Worship admits that he improperly assisted Marta Mateluna, his wife, from time to time by advising her generally in respect of court documents.

Counsel for His Worship submitted that this assistance was not in respect of individual clients.

THE PARTICULARS WHICH RELATE TO THE SECOND ADMISSION

The second admission relates generally to the allegations particularized at paragraphs 1-6, 9 and 10 in the Notice of Hearing, which are set out below:

- 1) *Prior to your appointment as a Justice of the Peace you were the principal owner and operator of 1401875 Ontario Inc., carrying on business as Stop All Traffic Tickets. Stop All Traffic Tickets provides private, for fee paralegal services to clients, primarily charged with matters under the Provincial Offences Act, R.S.O. 1990, c.P.33, as amended, ("POA") and appearing before the Ontario Court of Justice.*
- 2) *At the time of your appointment as a Justice of the Peace of the Ontario Court of Justice, you had been informed and were aware that you were required to sever all interest, contact or involvement with Stop All Traffic Tickets. You purported to transfer responsibility for the management of the Stop All Traffic Tickets business to your wife, Ms. Marta Marteluna [sic].*
- 3) *Notwithstanding the foregoing, you had continuing inappropriate interest in, contact with or involvement with paralegal services, including but without limitation the Stop All Traffic Ticket business.*

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- 4) *On or about June 2006, you interviewed Ms. Consuela Hernandez further to her potential employment as a Court and Tribunal Agent for Stop All Traffic Tickets. You had the “final say” in respect of her employment. You hired Ms. Consuela Hernandez on behalf of Stop All Traffic Tickets.*
- 5) *On or about June 20, 2006, Ms. Hernandez was provided with a day-timer by Ms. Marteluna, your wife and manager of Stop All Traffic Tickets, in which your name and telephone numbers were inscribed by Ms. Marteluna. Ms. Marteluna instructed Ms. Hernandez that if she had questions, she was to telephone you and speak with you. Ms. Hernandez called you and you assisted her on a number of occasions regarding the cases assigned to her at Stop All Traffic Tickets.*
- 6) *Thereafter you frequently communicated with Ms. Hernandez and discussed the specific facts and procedure for cases assigned to her by Stop All Traffic Tickets.*
- 9) *..... Furthermore, during the term of her employment with Stop All Traffic Tickets, you informed Ms. Hernandez that clients who sought an extension of time to pay and a reduction of fine on a sixty-six dollar (\$66) POA ticket would receive a guaranteed twenty dollar (\$20) reduction and additional time to pay on each ticket. Clients of Stop All Traffic Tickets who were seeking a reopening and extension of time to pay before him would receive a guaranteed forty-six dollar (\$46) reduction and extension of time to pay. Fees paid by the clients to Stop All Traffic Tickets would be negotiated based on the guaranteed reductions offered by you. Stop All Traffic Tickets accumulated client requests for reductions, extensions and reopening until a Court and Tribunal Agent of Stop All Traffic Tickets could appear before you on those matters. You always granted the requested extensions of time to pay, re-openings and reductions based on the foregoing guarantee to clients of Stop All Traffic Tickets.*
- 10) *On or before November 21, 2006, you met with Ms. Hernandez and Mr. Cornejo at the Eglinton courthouse during which meeting you instructed Ms. Hernandez regarding an appeal on behalf of Mr. Cornejo. You subsequently met with Ms. Hernandez at a coffee shop across the street from the courthouse at Old City Hall and assisted Ms. Hernandez with the preparation of the appeal of the Cornejo matter, a client of Stop All Traffic Tickets. Pursuant to your instructions, Ms. Hernandez prepared the appeal and obtained a reduction in fees for the client.*

CORPORATE FRAMEWORK

The corporate records filed as Exhibit 30A indicate the following:

J.H. Barroilhet & Associates Inc. was incorporated on February 15, 2000 as Ontario Corporation Number 1401875 (hereinafter “1401875”). Jorge Barroilhet was the only designated officer of 1401875.

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On September 23, 2002, Jorge Barroilhet on behalf of 1401875 registered the business name “Stop All Traffic Tickets & Associates”. A cancellation was filed on September 24, 2003 and the registration expired on September 22, 2007.

On October 17, 2002, Jorge Barroilhet submitted his Curriculum Vitae to the Attorney General, asking to be considered for appointment as Justice of the Peace.

On November 12, 2002, his wife Marta Mateluna was designated a director of 1401875.

Jorge Barroilhet remained the only designated officer of 1401875 after his appointment as a Justice of the Peace in December 2002 until the date the company was dissolved on December 13, 2007.

Another company, 1184004 Ontario Inc. (hereinafter “1184004”), was incorporated on June 14, 1996 and since that date Marta Mateluna has been its only designated officer and director. On August 1, 2003, Marta Mateluna on behalf of 1184004 registered the business name “Stop All Traffic Ticket & Associates”. The corporate records indicate that a renewal was filed on September 15, 2008.

The registered business names “Stop All Traffic Ticket & Associates” and “Stop All Traffic Tickets & Associates” are obviously similar. Indeed, the singular form of “Traffic” appears in some documentation. Ms. Hernandez’ letter of complaint to the Justice of the Peace Review Council refers to both the singular and plural forms when naming her former employer (Exhibit 20). On the other hand, the plural appears much more frequently in the documentation: in Exhibit 25B (Cornejo Notice of Appeal), in Exhibit 9 (Ms. Hernandez’ day-timer), in Exhibit 6 (Chad Evans transcript), on Francis Chung’s business card (Exhibit 27 – **stopalltraffictickets@bellnet.ca**) and in an advertisement placed subsequent to Ms. Hernandez’ departure from the business. (Exhibit 16A).

The singular form of the name was not registered until several months after His Worship’s appointment.

Shirley Alvarez was employed by Barroilhet & Associates, later Stop All Traffic, between 1997 and 2004. She testified on April 8, 2009. Ms. Alvarez noted that before His Worship’s appointment, the firm operated under a different name, Barroilhet & Associates. About six months or so after His Worship’s appointment, Ms. Mateluna became more involved in the business and it was changed to Stop All Traffic Tickets.

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THE PANEL'S FINDINGS IN RELATION TO PARTICULARS 1-6, 9 AND 10

With respect to paragraph 1 of the Particulars, we find that prior to his appointment, His Worship Barroilhet was principal owner and operator of 1401875, carrying on business as “Barroilhet & Associates” (not “Stop All Traffic Tickets” as specified in the Particular), and as such provided private, for fee paralegal services to clients.

Notably, there is cogent evidence of official documentation referring to the plural form of the business name (with which His Worship continued to be associated as an officer): Consuelo Hernandez’ employment agreement dated July 12, 2006 (Exhibit 15) refers to employment with Stop All Traffic Tickets; and a release (Exhibit 28) executed by Joe Grasso on December 19, 2007 in favour of “Stop All Traffic Tickets and each of its officers, directors, employees, servants and agents, and their successors and assigns.

Based on this evidence, we conclude that there was no clear separation between the business run by His Worship Barroilhet prior to his appointment, and the business run as “Stop All Traffic” afterwards. His Worship’s Counsel submitted that this was no more than sloppy record-keeping and that the Panel should rely on Ms. Alvarez’s evidence. However, Ms. Alvarez testified that it took several months before the business took on a new name.

All of the evidence before us supports our conclusion that His Worship sustained corporate ties to his former business following his appointment.

Further, there is uncontradicted evidence that His Worship Barroilhet was aware, prior to his appointment, that he was required to sever all interest, contact or involvement with his former business.

Justice of the Peace Nadkarni testified that she interviewed His Worship Barroilhet along with Associate Chief Justice Ebbs, a Regional Senior Judge of the Toronto area and two lay members of the Justice of the Peace Review Council on November 13, 2002.

Through her evidence Her Worship’s notes of his responses to questions about his qualifications were tendered as Exhibit 4.

Justice of the Peace Nadkarni testified that when asked the question: “Are you aware that if appointed a Justice of the Peace, that you must relinquish other remunerative positions which you may presently hold?” Mr. Barroilhet’s response was: “Aware and willing.”

Further, when he was asked: “Are you prepared to resign from such positions, if they are in conflict with the duties and responsibilities of a Justice of the Peace?”, Mr. Barroilhet indicated to the interview panel that he would be willing to resign from such positions.

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She also testified that it was the habit of Associate Chief Justice Ebbs at the Justice of the Peace interviews to spend “a great deal of time indicating to the candidates that when they became Justices of the Peace, that meant that was all they did, not only with regards to work, but also with regards to friends.”

Her Worship Nadkarni testified that Mr. Barroilhet was further questioned about his understanding of the concepts “impartial and independent” and described his understanding of these concepts as: “Can distance myself to be impartial and very independent. Not tied or obligated to anyone and can think freely.”

Her Worship Nadkarni testified that when Mr. Barroilhet was asked: “What do you understand the term – ‘conflict of interest’ to mean”?, he responded: “If one of my clients appeared in front of me, would find that to be a conflict of interest, also if I have interests in another firm”; and when asked, “what do you understand by the term ‘perceived conflict of interest’”, his response was: “Office is right beside the Keele Courts. Could not go to lunch with former staff or other paralegals.”

The Panel finds that at the time of his interview, His Worship had a clear idea that meetings with former associates could be perceived as a conflict of interest and that interests in a firm or appearances of former clients before him could create a conflict of interest, which would have to be declared.

In addition, Counsel for his Worship admitted on the record and we accept that his client was aware that he would have to relinquish any and all interests in any paralegal organization.

The Panel finds, therefore, that Particulars 1, 2 and 3 have been proven to the standard required at this Hearing and that the conduct described in Particular 3 constitutes judicial misconduct.

Consuelo Hernandez testified that she met with Marta Mateluna less than a month after graduating from Seneca College, and she was hired after the second interview with Ms. Mateluna. Ms. Hernandez testified that Ms. Mateluna informed her that her husband was a Justice of the Peace. Ms. Hernandez testified that she was subsequently interviewed by Justice of the Peace Barroilhet at a coffee shop by Eglinton and Caledonia. She testified that she asked His Worship about his involvement as a Justice of the Peace, and that His Worship told her: “We need people that are discreet. You have to be discreet.” Ms. Hernandez testified that, at the conclusion of the interview he said: “Welcome, you’re hired.”

Filed as Exhibits 14 and 15 are Ms. Hernandez’s business card and employment agreement as a paralegal with Stop All Traffic Tickets. We accept that Ms. Hernandez was employed at Stop All Traffic Tickets between July 2006 until July 2007. In a complaint made to the Ministry of Labour under the *Employment Standards Act* in July 2007, Ms. Hernandez refers to both Ms. Mateluna

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and His Worship Barroilhet as her immediate supervisors. Filed as Exhibit 9 is Ms. Hernandez's 2006 day-timer, in which His Worship's cellular and office telephone numbers are inscribed. Ms. Hernandez testified that those telephone numbers were inscribed in Ms. Mateluna's hand. Ms. Hernandez testified that Ms. Mateluna instructed Ms. Hernandez that if she had questions, she was to telephone and speak with His Worship Barroilhet. Ms. Hernandez testified that His Worship assisted her with cases assigned to her at Stop All Traffic Tickets.

A specific example of the assistance His Worship Barroilhet provided is Exhibit 10 which is a document which Ms. Hernandez described as "notes" made in His Worship's hand when he provided her with individual instruction as to strategies for advancing clients' interests, to be employed when applying for extensions to pay fines and re-openings. Ms. Hernandez removed this document from His Worship's desk when the session was concluded. The only evidence we have about this document is the testimony of Ms. Hernandez. The document speaks for itself, even if it was "stolen" from His Worship's desk as his Counsel, Mr. Falconer, submitted.

We note that Ms. Hernandez' employment agreement (Exhibit 15) contemplates that "teaching, instructions, methods and materials" provided by Stop All Traffic Tickets were deemed the exclusive property of Stop All Traffic Tickets and were to be treated as confidential.

We conclude from Ms. Hernandez's testimony, and the corroborating documents, that His Worship Barroilhet was actively involved in her employment as a paralegal with Stop All Traffic Tickets. As a result, the Panel finds that Particular 4 has been proven to the standard required and that the conduct described in Particular 4 constitutes judicial misconduct, notwithstanding that the evidence falls short of providing clear and cogent proof that His Worship had the "final say" in her employment as set out in that Particular. We note that these findings also pertain to Particular 3.

The Panel further concludes that Particular 5 has been proven to the standard required and that the conduct described in Particular 5 constitutes judicial misconduct, except in relation to the frequency of communications, as set out in that Particular's final sentence. We are not satisfied that there is cogent evidence about the frequency of communications between His Worship Barroilhet and Ms. Hernandez.

Counsel for His Worship Barroilhet made it clear that the second admission of inappropriate advice to his wife was not in respect of individual clients. We find that there is cogent evidence of involvement with individual clients of Stop All Traffic Tickets. We accept that there is no evidence of advice to His Worship's wife about individual clients. There was, however, evidence about advice to Ms. Hernandez.

In addition to the telephone calls and individual instruction referred to earlier in this decision,

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Consuelo Hernandez testified that she met twice with His Worship Barroilhet to discuss the Cornejo matters, and that the first of those meetings took place at the Eglinton courthouse in the presence of Mr. Cornejo. Although not all of the details set out in Particular 10 have been proven to the standard we require at this Hearing, we find that Ms. Hernandez was representing a gentleman by the name of Mr. Cornejo in her capacity as a paralegal at Stop All Traffic Tickets and that she was introduced to Mr. Cornejo by His Worship. She testified that His Worship Barroilhet reviewed draft pleadings she had prepared on Mr. Cornejo's behalf. Tendered as Exhibits 25A and 25B are documents which Ms. Hernandez testified were her draft Notice of Motion and Notice of Appeal in one of the Cornejo matters, which she presented to His Worship when they met for the second time. These documents show corrections in red ink, which Ms. Hernandez testified were made in His Worship's hand, in her presence. We accept Ms. Hernandez's uncontradicted evidence that the red notations were made by His Worship. Exhibit 25B demonstrates that amendments were made in the same handwriting, which we accept was His Worship Barroilhet's handwriting. We accept this as proof that His Worship had sufficient familiarity with the client's file to insert the information number on the Notice of Appeal. Some of the pleadings ultimately filed with the court in the Cornejo matters, were tendered as Exhibits 11A, 12A, 12B, 12C and 13A. Although the evidence falls short of providing clear and cogent proof of the date of the first meeting or the location of the second meeting, this Panel concludes that that Particular 10 has otherwise been proven to the standard required at this Hearing and that the conduct described in Particular 10 constitutes judicial misconduct. We note that the Cornejo findings also pertain to Particular 3.

In relation to the allegations in Particular 9, the Panel accepts, based on Ms. Hernandez' evidence about Exhibit 10 (the document regarding strategies to be employed when applying for extensions to pay fines and re-openings) that His Worship instructed Ms. Hernandez in relation to obtaining reductions of fines for clients of Stop All Traffic Tickets. We do not find, however, that there is cogent evidence which proves that His Worship guaranteed reductions or that Stop All Traffic Tickets accumulated clients' requests for reductions, extensions and re-openings and presented them to His Worship.

Particular 9, therefore, has not been proven to the standard required at this Hearing.

We conclude that His Worship Barroilhet, as he admits, improperly assisted his wife Marta Mateluna by advising her generally in respect of court documents. We further conclude that His Worship's improper assistance to his wife went far beyond general advice in respect of court documents. In the Cornejo matters, His Worship provided advice about the representation of specific client of Stop All Traffic Tickets. In the Chad Evans matter, His Worship intervened directly on behalf of a client of Stop All Traffic Tickets.

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We also conclude that he improperly assisted Consuelo Hernandez, an employee of Stop All Traffic Tickets, both by improperly providing general instruction and assistance, and by providing improper assistance in respect of individual clients of Stop All Traffic Tickets. As a result, the Panel concludes that Particular 6 has been proven to the standard required at this Hearing and that the conduct described in Particular 6 constitutes judicial misconduct, except insofar as it relates to the frequency of communications which has not been proven to the standard required here.

THE THIRD ADMISSION

The third admission was stated as follows in Counsel for His Worship's written submissions:

His Worship admits that he improperly signed orders in the intake office and presided over joint submissions in Provincial Offences court in respect of individuals who were represented by Stop All Traffic Tickets agents, a paralegal company owned by Marta Mateluna, his wife.

THE PARTICULARS WHICH RELATE TO THE THIRD ADMISSION

The third admission relates generally to the allegations particularized at paragraphs 7 & 8 in the Notice of Hearing, which state:

- 7) *In respect of some of these matters, Ms. Hernandez would appear in front of you while you were presiding over the matters in your capacity as a Justice of the Peace.*
- 8) *You failed to recuse yourself from presiding over matters for clients who were represented by Agents of Stop All Traffic Tickets.*

We will also be addressing the allegations particularized at paragraph 19 under this heading. Particular 19 reads as follows:

- 19) *On September 13, during an appearance of Ms. Consuelo Hernandez before you, when Ms. Hernandez requested that her client's matter be adjourned and set before another Justice of the Peace on the basis of a conflict of interest between she and you, you seized yourself of the matter and adjourned it to December 6, 2007, notwithstanding your knowledge of the relationships between Ms. Hernandez and yourself, your wife Mrs. Marteluna and Stop All Traffic Tickets.*

Ms. Alvarez testified that early on in the history of Justice of the Peace Barroilhet's appearances as the Justice presiding in court, he brought it to the attention of the prosecutor when she, a former employee, was before him as a paralegal from Stop All Traffic Tickets. She testified: "Yes,

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a few times when he was just appointed we'd go into court and if he was there, he would say yes, that you know, we had a relationship before, that there was no conflict, the prosecutor was asked if she had any objections and we proceeded." Ms. Alvarez testified that no prosecutor objected and that she received no special treatment from His Worship. Ms. Alvarez ceased her employment with Stop All Traffic Tickets in 2004.

THE PANEL'S FINDINGS IN RELATION TO PARTICULARS 7, 8, AND 19

In view of Ms. Alvarez's evidence, we assume that the third admission pertains to appearances before His Worship Barroilhet by paralegals employed after 2004 by Stop All Traffic Tickets.

We note that the third admission is consistent with the testimony provided by Ms. Hernandez about appearances in His Worship's court and her evidence that neither she, nor His Worship, ever indicated on the record a possible conflict of interest.

We find, therefore, that Particulars 7 and 8 have been proven to the standard required at this Hearing and that the conduct described in Particulars 7 and 8 constitutes judicial misconduct.

It is interesting to note that in the third admission, His Worship limits his admitted impropriety to being only in relation to improperly signing orders in the intake office and presiding over joint submissions in Provincial Offences Court. Ms. Hernandez' evidence, on the other hand, as to the many occasions on which she appeared in His Worship's court, on behalf of clients of Stop All Traffic Tickets, did not describe any limitations as to where or when she would appear in front of him. Ms. Hernandez was cross-examined vigorously by His Worship's Counsel. It was never put to her that her appearances in front of His Worship Barroilhet were only for those matters which are set out in his third admission.

Although the Panel does not make a finding that there is cogent evidence which clearly and convincingly proves that paralegals from Stop All Traffic Tickets, including Ms. Hernandez, appeared in His Worship Barroilhet's court for matters beyond intake and joint submissions, it is curious that the only suggestion of any limitation in what Stop All Traffic Ticket's agents had in relation to involvement with His Worship Barroilhet comes from the third admission made at the close of Presenting Counsel's case.

In stark contrast to His Worship's lack of attention to formalities surrounding conflicts of interest when paralegals employed by Stop All Traffic Tickets appeared in his court, we have evidence that His Worship was unwilling to consider the existence of a conflict of interest when that was raised in his court by Ms. Hernandez on September 13, 2007. Ms. Hernandez' evidence

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is that by this time she had been terminated by Stop All Traffic Tickets, was working on her own, and had applied for vacation and termination pay which she alleged was owed to her by Stop All Traffic Tickets under the *Employment Standards Act*.

Ms. Hernandez testified that she decided to raise the conflict of interest with His Worship Barroilhet in the Avila matter as a result of a court appearance before His Worship earlier that same day. In the earlier matter, Ms. Hernandez was representing a different client, Wendy Freeman. The transcript of that appearance, filed as Exhibit 18, shows that despite Ms. Hernandez' statement that the defendant had signed the authorization of representation presented to the court, His Worship declined to proceed, adjourned the matter, and insisted that the defendant be present in court for the next scheduled appearance.

Ms. Hernandez testified that she felt her treatment by His Worship during that morning's appearance had been unusual and unexpected. She had never received similar treatment from His Worship. She felt she was being treated differently and that something was wrong. She felt it was the labour complaint that was bothering him. She was worried that her clients would receive different treatment from His Worship and that her livelihood could be affected. She raised the conflict of interest in an attempt to have her matters transferred to another court.

Filed as Exhibit 19 is a transcript of that proceeding:

THE COURT: Yes, what are you doing with matter?

MS. HERNANDEZ: Your Worship, respectfully asking if there is a conflict of interest....

CLERK OF THE COURT: Sorry, can you just state your name on the record, please?

MS. HERNANDEZ: Yeah, for the record Hernandez initial C. H-E-R-N-A-N-D-E-Z. You have a situation of bias, Your Worship, because I work with your wife's company and I think this matter should be handled with another Justice of the Peace asking you respectfully, Your Worship.

THE COURT: Thank you, it is the Court's position that it is not a conflict of interest, I treat every defendant with the same – but if there is a resolution with the prosecutor you deal with the prosecutor and I decide to what conflict of interest or not. So, you have a resolution with the prosecutor that will be fine if it's not then we will have the trial. Now, please, go ahead and speak with the prosecutor and try to resolve it with her, thank you.

MS. AMBROSI: Your Worship, my understanding this is an adjournment request.

THE COURT: Well, my position today was very clear. But before I go farther then that Ms. Fernandez – Hernandez, sorry, I made the decision if I consider to be proper or is a conflict of interest if you are going to have – if you have difficulty well fine, I do not have difficulty and I treat everybody as I say

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to Mr. Sutherland just a minute ago, I treat everybody with the same – the same way; I ask everybody the same question, maybe I ask you some questions today which I do not ask tomorrow; I ask that question at three o'clock, 1:30 which I do not ask the same question now because I already got some of the answers, so in this particular case there is absolutely no conflict of interest, unless you have a very good reason why this matter has to be adjourned. The motion to adjourn it is denied, thank you.

MS. HERNANDEZ: Your Worship, I think it such be – there is a conflict of interest between you and I, you know that I'm taking the matter to the labour board and you – and I know as a fact that you don't like that you just like because I did take this matter to the labour board, so, please I ask in your respectfully to give it some other Justice of the Peace.

THE COURT: Can I see the information, please? I have all the reason to believe that why you want to adjourn this matter...

MS. HERNANDEZ: No.

THE COURT: ... well the Court is not satisfied with the reason that you gave.

MS. HERNANDEZ: Well, I am not ready to proceed, Your Worship, there's a conflict of interest and you are ...

THE COURT: Just have a seat.

Court Monitor's Notes: (Other matters dealt with at this time)

The transcript (Exhibit 19) demonstrates that, with apparent reluctance, His Worship Barroilhet adjourned Ms. Hernandez' request for an adjournment and seized himself of the matter:

THE COURT: Can you come back, please, Ms. Hernandez.; The matter of Mario Avila is coming back; it's adjourned and it's coming back on December the 6th at 10:30 in the court, thank you. The defendants will be here. And, on that date the Court will make a decision with how this matter is going to proceed.

MS. AMBROSI: I'm apologize, Your Worship, December 6th ...

THE COURT: Ten thirty, W3.

MS. AMBROSI: Thank you.

MS. AMBROSI: Your Worship, am I to understand that you are seized of this matter or is this a matter ...

THE COURT: Yes, I'm seized with the matter; yes, thank you. Did you write the date?

MS. HERNANDEZ: No, Your Worship.

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THE COURT: The 6th of December, 10:30, W3.

MS. AMBROSI: Thank you, Your Worship.

THE COURT: And Ms. Avila coming that day and that day I will decide if it's going to be in my court or it's going to be reversed (sic) to another court, all right, thank you.

Although it is not apparent from the transcript, Ms. Hernandez was looking for an adjournment because she had been retained by Mr. Avila outside the courtroom, just before the court appearance. She testified that there had been no disclosure in the matter and that she had nothing to proceed with.

Ms. Hernandez stated on the record of the proceedings that she had made a complaint about His Worship's wife's company to the labour board (in fact, the complaint was made to the Ministry of Labour). We find that His Worship Barroilhet improperly declined to consider the existence of a conflict of interest and seized himself of the Avila matter. On the basis of the transcript of this appearance (Exhibit 19), the Panel concludes that Particular 19 has been proven to the standard required at this Hearing and that the conduct described in Particular 19 constitutes judicial misconduct.

In their legal argument in relation to the findings we should make, Counsel for His Worship Barroilhet argued that no adverse inference should be drawn from His Worship's decision not to call defence evidence. Presenting Counsel conceded, and the Panel accepts that there is no burden upon His Worship to call evidence, or to testify at this Hearing.

It is noteworthy, however, that Counsel for His Worship cross-examined Consuelo Hernandez on the anticipated testimony of a number of people, including two secretaries employed at Stop All Traffic Tickets, Francis Chung, a paralegal at the firm, and Rosamel Cornejo, the client of Stop All Traffic Tickets to whom we have already referred, and asked her to comment on that potential evidence. As no evidence was called by His Worship, we accept Presenting Counsel's submission that any and all of the assertions so posed by Mr. Falconer are unsupported by evidence and of no probative relevance. The Panel goes no further in its findings on this issue. It does not draw an adverse inference against His Worship for not calling the witnesses referred to by his Counsel.

Nor does the Panel draw any adverse inference against Presenting Counsel for not calling those same witnesses, as Counsel for His Worship seemed to suggest we might. His position was that these witnesses, employees and a client of Stop All Traffic Tickets, could have corroborated Ms. Hernandez, if they had been called by Presenting Counsel.

In our view, Presenting Counsel is under no obligation to call witnesses he considers unnecessary. Further, and as Presenting Counsel has pointed out, Mr. Falconer asserted on

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the record that these witnesses would be testifying for the defence and therefore Mr. Hunt had every expectation that their evidence would be before the Panel.

The Panel can make its findings only upon the evidence it has heard and which it deems credible and cogent. We cannot speculate on evidence we have not heard.

We do not accept, as Counsel for His Worship has submitted, that Ms. Hernandez is an incredible witness, motivated to lie because she was dismissed by Stop All Traffic Tickets, possibly owed money by Stop All Traffic Tickets and concerned about her livelihood as a paralegal who would be required to appear in courts where His Worship Barroilhet presided.

The Panel does not find that all of Ms. Hernandez' evidence meets the test required – that is, cogent evidence sufficient of, on a balance of probabilities, clearly and convincingly proving all of the allegations which relate to her. We have referred, in our findings thus far, to the particulars which relate to Ms. Hernandez which are not supported by cogent evidence.

We reject, however, the submissions of Counsel for His Worship that Ms. Hernandez is a liar, who has taken steps to harm His Worship and his wife. Ms. Hernandez was cross-examined in great detail and with great vigour. It is the Panel's view that her evidence, in the aspects we have already referred to, is not only cogent, but also is supported by other evidence, which we accept. Ms. Hernandez, in our view, has put her own livelihood in jeopardy by her testimony, confirmed by Exhibit 6, in relation to her representations of Chad Evans in Brantford on December 19, 2006.

The Panel's assessment of Joe Grasso's credibility, however, is completely the opposite. Particulars 17 and 18 relate specifically to his evidence.

Mr. Grasso, another former employee of Stop All Traffic Tickets, was the subject of a voir dire and declared an adverse witness on April 3, 2009, with written reasons released April 6, 2009. He was cross-examined by both Presenting Counsel and Counsel for His Worship Barroilhet on April 8, 2009.

The Panel finds Mr. Grasso's testimony of no value in our deliberations as to the findings we are required to make. There is, therefore, no clear and convincing proof of Particulars 17 and 18.

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SUMMARY OF FINDINGS

The Panel finds that there is cogent evidence which clearly and convincingly proves Particulars 1, 2, 3, 7, 8, 11, 12, 13, 14, 15, 16 and 19, as well as 4, 5, 6 and 10 in part, and that therefore judicial misconduct has been established beyond the scope of the three admissions made by His Worship Barriolhet.

The Panel will hear submissions from Presenting Counsel and Counsel for His Worship Barroilhet in relation to the appropriate disposition in accordance with Section 11.1 (10) of the *Justices of the Peace Act* on the date of September 17, 2009.

Dated at the city of Toronto in the Province of Ontario, July 29, 2009.

HEARING PANEL: The Honorable Madame Justice Deborah K. Livingstone
Her Worship Senior Justice of the Peace Cornelia Mews
Ms. S. Margot Blight – Borden Ladner Gervais LLP

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ATTACHMENT

NOTICE OF HEARING

*In the Matter of Complaints Respecting
Justice of the Peace Jorge Barroilhet
Justice of the Peace in the
Toronto Region*

D

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JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF a complaint respecting
Justice of the Peace Jorge Barroilhet
Justice of the Peace in the
Toronto Region

NOTICE OF HEARING

The Justices of the Peace Review Council (the “Review Council”), pursuant to subsection 11(15) of the *Justices of the Peace Act*, R. S.O. 1990, c. J.4, as amended, has ordered that the following matter of several complaints regarding the conduct or actions of Justice of the Peace Jorge Barroilhet be referred to a hearing panel of the Review Council, for a formal hearing.

It is alleged that you have conducted yourself in a manner that is incompatible with the due execution of your office and that by reason thereof you have become incapacitated or disabled from the due execution of your office. The particulars of the complaints regarding your conduct are set out in Appendix “A” to this Notice of Hearing.

The Review Council will convene at the Judges Conference Room, Suite 2310, 1 Queen Street East, in the City of Toronto, on 10th day of March, 2008, at 9:30 a.m. in the forenoon or as soon thereafter as the Review Council can be convened to set a date for the inquiry into the complaint.

A Justice of the Peace whose conduct is the subject of a formal hearing before the Review Council may be represented by counsel and shall be given the opportunity to be heard and to produce evidence.

The Review Council may, pursuant to subsection 11.1(10) of the *Justices of the Peace Act*, dismiss the complaints after completing the hearing, with or without a finding that they are unfounded or, if it upholds the complaints, it may:

- a) warn the justice of the peace;
- b) reprimand the justice of the peace;
- c) order the justice of the peace to apologize to the complainants or to any other person;

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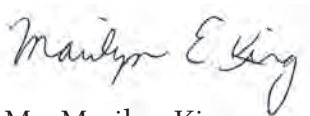
Public Hearing Re: Justice of the Peace Jorge Barroilhet

- d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- e) suspend the justice of the peace with pay, for any period;
- f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or
- g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2 of the *Justices of the Peace Act*.

You, your counsel or your representative may contact the office of the solicitor for the Review Council in this matter, Douglas C. Hunt, Q.C., Hunt Partners LLP, 192 Bedford Road, Toronto, Ontario, M5R 2K9, Telephone: (416) 350-2939, Fax: (416) 943-1484.

If you fail to attend before the Review Council in person or by representative, the Review Council may proceed with the inquiry in your absence.

February 28, 2008



Ms. Marilyn King
Acting Registrar
Justices of the Peace Review Council

TO: **Justice of The Peace Jorge Barroilhet**

CC. Mr. Fernando F. Cugliari
Barrister and Solicitor

APPENDIX “A”

PARTICULARS

- 1) Prior to your appointment as a Justice of the Peace you were the principal owner and operator of 1401875 Ontario Inc., carrying on business as Stop All Traffic Tickets. Stop All Traffic Tickets provides private, for fee paralegal services to clients, primarily charged with matters under the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended, (“POA”) and appearing before the Ontario Court of Justice.
- 2) At the time of your appointment as a Justice of the Peace of the Ontario Court of Justice, you had been informed and were aware that you were required to sever all interest, contact or involvement with Stop All Traffic Tickets. You purported to transfer responsibility for the management of the Stop All Traffic Tickets business to your wife, Ms. Marta Marteluna.
- 3) Notwithstanding the foregoing, you had continuing inappropriate interest in, contact with or involvement with paralegal services, including but without limitation the Stop All Traffic Ticket business.
- 4) On or about June 2006, you interviewed Ms. Consuela Hernandez further to her potential employment as a Court and Tribunal Agent for Stop All Traffic Tickets. You had the “final say” in respect of her employment. You hired Ms. Consuela Hernandez on behalf of Stop All Traffic Tickets.
- 5) On or about June 20, 2006, Ms. Hernandez was provided with a day-timer by Ms. Marteluna, your wife and manager of Stop All Traffic Tickets, in which your name and telephone numbers were inscribed by Ms. Marteluna. Ms. Marteluna instructed Ms. Hernandez that if she had questions, she was to telephone you and speak with you. Ms. Hernandez called you and you assisted her on a number of occasions regarding the cases assigned to her at Stop All Traffic Tickets.
- 6) Thereafter you frequently communicated with Ms. Hernandez and discussed the specific facts and procedure for cases assigned to her by Stop All Traffic Tickets.
- 7) In respect of some of these matters, Ms. Hernandez would appear in front of you while you were presiding over the matters in your capacity as a Justice of the Peace.

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- 8) You failed to recuse yourself from presiding over matters for clients who were represented by Agents of Stop All Traffic Tickets.
- 9) Furthermore, during the term of her employment with Stop All Traffic Tickets, you informed Ms. Hernandez that clients who sought an extension of time to pay and a reduction of fine on a sixty-six dollar (\$66) POA ticket would receive a guaranteed twenty dollar (\$20) reduction and additional time to pay on each ticket. Clients of Stop All Traffic Tickets who were seeking a reopening and extension of time to pay before him would receive a guaranteed forty-six dollar (\$46) reduction and extension of time to pay. Fees paid by the clients to Stop All Traffic Tickets would be negotiated based on the guaranteed reductions offered by you. Stop All Traffic Tickets accumulated client requests for reductions, extensions and reopenings until a Court and Tribunal Agent of Stop All Traffic Tickets could appear before you on those matters. You always granted the requested extensions of time to pay, re-openings and reductions based on the foregoing guarantee to clients of Stop All Traffic Tickets.
- 10) On or before November 21, 2006, you met with Ms. Hernandez and Mr. Cornejo at the Eglinton courthouse during which meeting you instructed Ms. Hernandez regarding an appeal on behalf of Mr. Cornejo. You subsequently met with Ms. Hernandez at a coffee shop across the street from the courthouse at Old City Hall and assisted Ms. Hernandez with the preparation of the appeal of the Cornejo matter, a client of Stop All Traffic Tickets. Pursuant to your instructions, Ms. Hernandez prepared the appeal and obtained a reduction in fees for the client.
- 11) On or about December 19, 2006, you became actively involved in assisting a personal friend, Chad Evans, with a traffic matter under the POA, in Brantford, Ontario. Mr. Evans had been charged with careless driving, tried and convicted in absentia. Mr. Evans is a resident of the United States.
- 12) On or about December 19, 2006, you hired and instructed an agent, Ms. Hernandez, to request a re-opening of a matter on behalf of Chad Evans.
- 13) On or about December 19, 2006, you repeatedly contacted the Brantford court clerk, Ms. Debbie Wright, in an effort to speak with the presiding Justice of the Peace in order to ask for a favour with respect to Mr. Evans' matter.
- 14) On or about December 19, 2006, you contacted Justice of the Peace Miller directly and requested that she exercise her jurisdiction to re-open the matter on behalf of Chad Evans.

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- 15) On or about December 19, 2006, you suggested to Justice of the Peace Miller that she exercise “judicial independence” and re-open the matter on behalf of Chad Evans in spite of the fact that the agent attempted to file an unsigned affidavit on behalf of Mr. Evans.
- 16) On or about December 19, 2006, you improperly offered to Justice of the Peace Miller to cure the defect of the unsigned affidavit by signing the affidavit on behalf of Chad Evans.
- 17) On or about the summer of 2007 you hired John Grasso to work as an agent of Stop All Traffic Tickets. A week into his employment, you informed Mr. Grasso that you were happy with his performance and you offered to pay him \$1,000 a week on a going forward basis. Mr. Grasso agreed and continued with his employment at Stop All Traffic Tickets.
- 18) During the term of his employment at Stop All Traffic Tickets, you spoke with Mr. Grasso on a daily basis regarding the conduct of client files and allowed him to appear in front of you on numerous occasions with respect to matters on which you had instructed him, without recusing yourself.
- 19) On September 13, during an appearance of Ms. Consuelo Hernandez before you, when Ms. Hernandez requested that her client’s matter be adjourned and set before another Justice of the Peace on the basis of a conflict of interest between she and you, you seized yourself of the matter and adjourned it to December 6, 2007, notwithstanding your knowledge of the relationships between Ms. Hernandez and yourself, your wife Mrs. Marteluna and Stop All Traffic Tickets.
- 20) The above-noted conduct as set out in paragraphs 1 through 19 is incompatible with the due execution of your duties and has brought the administration of justice into disrepute.

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JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF A HEARING ORDERED UNDER SECTION 11(15) OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, c. J.4, as amended,

Respecting the conduct of Justice of the Peace Jorge Barroilhet, Justice of the Peace in the Toronto Region

Before: The Honourable Justice Deborah K. Livingstone
Her Worship Senior Justice of the Peace Cornelia Mews
Ms. S. Margot Blight – Borden Ladner Gervais LLP

Hearing Panel of the Justices of the Peace Review Council

Decision on Disposition

Counsel:

Mr. Douglas C. Hunt, Q. C.
Mr. Andrew Burns
Ms. Grace David

Hunt Partners LLP

Presenting Counsel

Mr. Brian Greenspan

Greenspan, Humphrey, Lavine

Counsel to His Worship Jorge Barroilhet

IN THE MATTER OF A HEARING
ORDERED UNDER SECTION 11(15) OF
THE *JUSTICES OF THE PEACE ACT*, R.S.O.
1990, C. J.4, AS AMENDED,

Respecting the conduct of Justice of
the Peace Jorge Barroilhet, Justice of the Peace in the Toronto Region

DECISION ON DISPOSITION

1) The Hearing Panel, pursuant to section 11.1(10) of the *Justices of the Peace Act*, R.S.O., c. J.4, as amended (hereinafter “*the Act*”), having made findings in respect of the Particulars in the Notice of Hearing proved and more specifically, those Particulars that were found to constitute judicial misconduct that went beyond the Admissions of His Worship Barroilhet, must consider the appropriate disposition to restore the public’s confidence in the judiciary and the administration of justice.

2) Section 11.1(10) of the *Act*, provides that:

After completing the hearing, [...], if it upholds the complaint, it [the panel] may,

- a. warn the justice of the peace;
- b. reprimand the justice of the peace;
- c. order the justice of the peace to apologize to the complainant or to any other person;
- d. order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- e. suspend the justice of the peace with pay, for any period;
- f. suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or
- g. recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2.

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- 3) Section 11.1(11) of the *Act* provides that the “panel may adopt any combination of the dispositions set out in [section 11.1] clauses (10) (a) to (f)”.
- 4) Section 11.2(2) of the *Act* provides that a justice of the peace may be removed from office only if a complaint about the justice of the peace has been made to the Review Council and a Hearing Panel, after a hearing under section 11.1, recommends to the Attorney General that the justice of the peace be removed on the ground that “he or she has become incapacitated or disabled from the due execution of his or her office by reason of”, *inter alia*, “conduct that is incompatible with the due execution of his or her office” or the “failure to perform the duties of his or her office.”
- 5) Section 11.1(10) of the *Act* provides that the range of dispositions therein listed may be made should the Hearing Panel “uphold the complaint”. While section 11.1(10) of the *Act* does not expressly refer to “misconduct” by the justice of the peace, section 11.1(10) is substantially similar to section 51.6(11) of the *Courts of Justice Act*, R.S.O. 1990 c.C43, the applicable legislation in respect of complaints proceedings involving judges of the Ontario Court of Justice. Section 51.6(11) provides that: “After completing the hearing, the Judicial Council may [...] if it finds there has been misconduct by the judge ...” impose a range of dispositions that are identical to those of section 11.1(1) of the *Act*. Pursuant to section 51.8 of the *Courts of Justice Act*, the test for the most serious disposition removal from office, is identical to that under section 11.2(2) of the *Act*, that is removal on the ground that a judge has “become incapacitated or disabled from the due execution of his or her office by reason of”, *inter alia*, “conduct that is incompatible with the due execution of his or her office” or the “failure to perform the duties of his or her office.”
- 6) Accordingly, given the similarity of the statutory provisions under the *Act* and the *Courts of Justice Act*, Presenting Counsel has submitted and we agree that that the intent of the legislative scheme is that complaints in respect of justices of the peace are to be considered in light of whether there has been judicial misconduct, and where judicial misconduct is found to be established, the application of the range of dispositions under section 11.2(10) should be considered in the same terms as those applicable to judges of the Ontario Court of Justice.
- 7) Presenting Counsel and Counsel for His Worship agree on the law which we must apply at this disposition hearing. They have both conceded that public confidence in the justice system is at the very heart of the inquiry into alleged judicial misconduct.
- 8) Presenting Counsel has submitted and we agree that his role is to impartially assist the Hearing Panel in its consideration of the appropriate disposition pursuant to section

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11.1(10) of the Act such that the public's confidence and view of the administration of justice and the judiciary are fostered and maintained.

- 9) The Supreme Court of Canada in *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 (S.C.C.) at para. 68 described the role of a body comparable to the Justices of the Peace Review Council under the *Quebec Courts of Justice Act* in the following passage from the judgment of Gonthier J.:

[68] The Comité's role in light of these statutory provisions was accurately described by Parent J., at p. 2214:

[Translation] . . . the Comité is a body established for a purpose relating to the welfare of the public, namely to ensure compliance with the code of ethics that sets out the rules of conduct for and duties of judges toward the public, the parties to a case and counsel. The Comité's role is to inquire into a complaint alleging that a judge has failed to comply with the code, determine whether the complaint is justified and, if so, recommend the appropriate sanction to the Conseil.

The Comité's mandate is thus to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. Its role is remedial and relates to the judiciary rather than the judge affected by a sanction. In this light, as far as the recommendations the Comité may make with respect to sanctions are concerned, the fact that there is only a power to reprimand and the lack of any definitive power of removal become entirely comprehensible and clearly reflects the objectives underlying the Comité's establishment: not to punish a part that stands out by conduct that is deemed unacceptable but rather to preserve the integrity of the whole.

Ruffo v. Conseil de la magistrature, [1995] 4 S.C.R. 267 (S.C.C.) at para. 68

- 10) Accordingly, taking guidance from the principles in the Supreme Court of Canada case of *Ruffo*, supra, in assessing the conduct of justices of the peace, the Hearing Panel's role is remedial and relates to the judiciary rather than the specific justice of the peace affected by a sanction. As such, the role of the Hearing Panel in addressing judicial misconduct is not to punish a part, i.e. the individual justice of the peace who stands out by conduct that is deemed unacceptable but, rather to preserve the integrity of the whole, i.e. the entire judiciary itself.
- 11) In *Re Douglas* (2006) O.J.C., a recent decision of a Hearing Panel of the Ontario Judicial Council, the provisions under section 51.6(11) of the *Courts of Justice Act* were observed

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to empower the Ontario Judicial Council with the ability to impose a broad range of sanctions if it finds that a judge has “engaged in misconduct relative to the degree of the misconduct.”

Re Douglas (2006) O.J.C. at para. 4

- 12) In *Re Douglas*, the Hearing Panel accepted the meaning of judicial misconduct considered in *Re Baldwin* (2002) O.J.C., another case from the Ontario Judicial Council which relied primarily on two leading decisions of the Supreme Court of Canada: *Therrien v. Minister of Justice*, [2001] 2 S.C.R. 3 (S.C.C.) and *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249 (S.C.C.). The hearing panel in *Re Douglas* cited the following important passage from *Re Baldwin*:

[5] Focusing on the broad scope of s. 51.6(1) in *Re: Baldwin* (2002) a Hearing Panel of this Council considered the meaning of judicial misconduct. In doing so, it relied primarily on two leading decisions of the Supreme Court of Canada: *Therrien v. Minister of Justice*, [2001] 2 S.C.R. 3 and *Moreau – Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249. The Council stated:

In *Moreau – Bérubé v. New Brunswick (Judicial Council)*, the Supreme Court discussed the tension between judicial accountability and judicial independence. Judges must be accountable for their judicial and extra-judicial conduct so that the public has [sic] confidence in their capacity to perform the duties of office impartially, independently and with integrity. When public confidence is undermined by a judge’s conduct there must be a process for remedying the harm that has been occasioned by that conduct. It is important to recognize, however, that the manner in which complaints of judicial misconduct are addressed can have an inhibiting or chilling effect on judicial action. The process for reviewing allegations of judicial misconduct must therefore provide for accountability without inappropriately curtailing the independence or integrity of judicial thought and decision-making.

The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in s. 51.6(11) should be invoked, when necessary, in order to restore a loss of public confidence arising from the judicial conduct in issue.

Paraphrasing the test set out by the Supreme Court in *Therrien* and *Moreau-Bérubé*, the question under s. 51.6(11) is whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public’s confidence in the ability of the judge to

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perform the duties of office or in the administration of justice generally and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence.

Re Douglas (2006) O.J.C. at para. 5

Therrien v. Minister of Justice, [2001] 2 S.C.R. 3 (S.C.C.)

Moreau-Bérubé v. New Brunswick (Judicial Council), [2002] 1 S.C.R. 259 (S.C.C.)

- 13) Counsel for His Worship asked us to place particular emphasis on the following passage from *Re Baldwin*, *supra*:

It is only when the conduct complained of crosses this threshold that the range of dispositions in s. 51.6(11) is to be considered. Once it is determined that a disposition under s. 51.6(11) is required, the Council should first consider the least serious – a warning – and move sequentially to the most serious – a recommendation for removal – and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally.

Re: Baldwin (2002) O.J.C. at p.5

- 14) In *Re Douglas* the Hearing Panel noted, citing *Therrien*, *supra*, that a lack of integrity on the part of judges is capable of undermining public respect and confidence and, therefore, judges should strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality and good judgment. Further, judges must be and must give the appearance of being an example of impartiality, independence and integrity. Accordingly, the Hearing Panel in *Re Douglas* stated:

[8] Based on *Re Baldwin* and *Re Evans*, the test for judicial misconduct combines two related concerns: (1) public confidence; and (2) the integrity, impartiality and independence of the judge or the administration of justice. The first concern requires that the Hearing Panel be mindful not only of the conduct in question, but also of the appearance of that conduct in the eyes of the public. As noted in *Therrien*, the public will at least demand that a judge give the appearance of integrity, impartiality and independence. Thus, maintenance of public confidence in the judge personally, and in the administration of justice generally, are central considerations in evaluating impugned conduct. In addition, the conduct must be such that it implicates the integrity, impartiality or independence of the judiciary or the administration of justice.

[9] Accordingly, a judge must be, and appear to be, impartial and independent. He or she must have, and appear to have, personal integrity. If a judge conducts

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himself, or herself, in a manner that displays a lack of any of these attributes, he or she may be found to have engaged in judicial misconduct.

Re Douglas (2006) O.J.C. at paras. 8 to 9

Re Therrien, *supra*, at paras. 110 to 111

- 15) In exercising its mandate in respect of disposition, Presenting Counsel has submitted and we agree that the Hearing Panel should be guided by the ethical duties that are inherent in the judicial function. These ethical duties are well established under Canadian jurisprudence. In *Re Therrien*, *supra*, Justice Gonthier provides clarification of these duties in commenting on the role of the judge and the manner in which the public perceives that role:

[108]The judicial function is absolutely unique. Our society assigns important powers and responsibilities to the members of its judiciary. Apart from the traditional role of an arbiter which settles disputes and adjudicates between the rights of the parties, judges are also responsible for preserving the balance of constitutional powers between the two levels of government in our federal state. Furthermore, following the enactment of the *Canadian Charter*, they have become one of the foremost defenders of individual freedoms and human rights and guardians of the values it embodies: *Beauregard*, *supra*, at p. 70, and *Reference re Remuneration of Judges of the Provincial Court*, *supra*, at para. 123. Accordingly, from the point of view of the individual who appears before them, judges are first and foremost the ones who state the law, grant the person rights or impose obligations on him or her.

[109]If we then look beyond the jurist to whom we assign responsibility for resolving conflicts between parties, judges also play a fundamental role in the eyes of the external observer of the judicial system. The judge is the pillar of our entire justice system, and of the rights and freedoms which that system is designed to promote and protect. Thus, to the public, judges not only swear by taking their oath to serve the ideals of Justice and Truth on which the rule of law in Canada and the foundations of our democracy are built, but they are asked to embody them (Justice Jean Beetz, Introduction of the first speaker at the conference marking the 10th anniversary of the Canadian Institute for the Administration of Justice, observations collected in *Mélanges Jean Beetz* (1995), at pp. 70-71).

[110]Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that

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the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.

(Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14)

[111]The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens....

Re Therrien, supra, at paras. 108 to 111

- 16) With respect to the issue of public confidence, Counsel for His Worship, Mr. Greenspan, provided us with some background information about His Worship Barroilhet including his education in both Chile and Argentina before his arrival in Canada as a refugee in 1978, and his employment as an insurance broker until his marriage in 1992 to Ms Mateluna. It was at that time that the paralegal firm J.H. Barroilhet & Associates Inc. was created. In addition to the education and business background of His Worship, filed as Exhibit 2 were 18 letters in support of His Worship Barroilhet. The letters speak to His Worship's high standing in the Canadian-Hispanic community. The Panel accepts that His Worship has the respect of many and has made significant contributions in the community. We acknowledge his commitment to social justice.
- 17) Exhibit 1 at the disposition hearing is a letter of apology, dated September 17, 2009, in which His Worship expresses his sincere regret for his misconduct as set out by this

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Hearing Panel in its Reasons for Decision, dated July 29, 2009. We have considered the apology at this stage of the proceedings and accept the submission made by Counsel for His Worship, Mr. Greenspan, that it is sincere.

- 18) Counsel for His Worship conceded that the public's confidence may have been eroded by the misconduct engaged in by His Worship Barroilhet but that the ultimate penalty, namely a recommendation for removal, is not appropriate.
- 19) The Panel must however, as set out in *Re: Douglas*, consider the integrity, impartiality and independence of the justice of the peace. The Panel's findings in its Reasons for Decision in relation to Particulars 11-16 pertain to His Worship's misconduct in the "Chad Evans" matter. In that case, His Worship acknowledged that he improperly intervened in respect of Mr. Evans' provincial offences case. This misconduct raises, in the Panel's view, not only the issue of public confidence but also a serious question of whether integrity, impartiality and independence were demonstrated by His Worship Barroilhet.
- 20) His Worship did not make a momentary lapse or error in judgment in the Chad Evans matter. His conduct, or misconduct, as we have found it to be, demonstrated that he was prepared to assist a family friend in a court in another jurisdiction, by using his influence as a justice of the peace, and with the assistance of an employee of the paralegal firm with which he had inappropriate ties.
- 21) In exercising its mandate in respect of disposition, Presenting Counsel has submitted and we agree that the Hearing Panel should be guided by the judicial duty in respect of impartiality. In this regard, the decision of the Quebec Court of Appeal in *Ruffo(Re)*, [2005] Q.J. No. 17953 (C.A.), which was upheld by the Supreme Court of Canada, is instructive:

[148]It is accepted that the judicial duty of impartiality is a continuous one. The oath of office attests to this. The rights of citizens are preserved and their confidence in the judicial system is preserved at the price of a judge's constant vigilance. Primarily, then, it is a judge's duty to preserve this impartiality jealously and to ensure that it be both actual and apparent.

[149]Moreover, the presumption of impartiality that accompanies the judicial function serves a very precise objective, that of the integrity of the judicial system. This premise may not be questioned every time a person who comes before the court is dissatisfied with a decision. Judges may err in fact or in law and be corrected on appeal. This does not mean, however, that the error arose from a lack of impartiality.

Ruffo (Re), [2005] Q.J. No. 17953 (C.A.) at paras. 148 to 149

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- 22) As an indication of the public's confidence in His Worship Barroilhet's integrity and impartiality, His Worship has chosen to file, at Tab 18 of Exhibit 2, a letter from the father-in-law of Chad Evans, who was the old family friend for whom His Worship chose to do a favour. In that letter, the writer states: "Note that Mr. Evans was not charged with a criminal offence, nor that we asked Mr. Barroilhet to amend the charges. My only request to Mr. Barroilhet regarding the above was to assist us to re-open his case in order to have his day in Court...". There is no indication in the letter that the writer appreciates that His Worship's conduct in entertaining the request for a personal favour and acting on it was improper. When His Worship relies upon this letter before this Panel, he underlines the public confidence issue which arises when a justice of the peace entertains and acts on requests for "favours". Such conduct, or misconduct as we have found it to be, must not be perceived by members of the public to be a normal or unexceptional state of affairs within an impartial and independent judiciary.
- 23) In addition, His Worship admitted that he improperly communicated with two judicial colleagues and the panel has held that he asked one of them to waive the requirement for an affidavit duly sworn by Mr. Evans. As we are instructed in *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 (S.C.C.), the integrity of the entire judiciary must be considered when we assess the misconduct of His Worship Barroilhet. We accept the evidence of Her Worship Miller as to how uncomfortable she felt after her conversation with His Worship, a more senior justice of the peace, in the Chad Evans matter. Her response was the appropriate one. She refused to agree to His Worship's request. The administration of justice, however, is undermined if judicial officers within it attempt to use their position and influence to encourage others to circumvent the law or ignore their oath of office.
- 24) As we have already stated, the evidence demonstrated and the Panel found that an employee of the paralegal business with which His Worship maintained an inappropriate involvement was sent to request that a justice of the peace grant the reopening in the Chad Evans matter.
- 25) In his submissions on September 17, 2009, the date of the letter of apology, Counsel for His Worship indicated that His Worship Barroilhet and his wife agreed that it was unwise and imprudent to continue the paralegal business and that in the last several months they have attempted to sell it. Counsel for His Worship stated that it is their unequivocal intention to have the business sold or closed within the next six months, to ensure that there is no perception of conflict. In our view, this submission confirms that His Worship never made a clear, unequivocal break in his business relationship with the paralegal firm and that relationship continues now as he participates in attempts to sell the business.
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- 26) In light of these findings, the Hearing Panel must determine whether the conduct of the justice of the peace in issue is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the justice of the peace, or of the public in its justice system, would be undermined, rendering the justice of the peace incapable of performing the duties of his or her office.

Re Therrien, [2001] 2 S.C.R. 3 (S.C.C.) at para. 147

Moreau-Bérubé v. New Brunswick (Judicial Council), [2002] 1 S.C.R. 249 (S.C.C.) paras. 66 to 73

- 27) The impartiality, integrity and independence of the judiciary and the confidence of individual members of the public appearing before this Justice of the Peace have, we conclude, been irreparably undermined by His Worship Barroilhet's misconduct. There were additional findings of misconduct in our Reasons for Decision, but it is the misconduct in the Chad Evans matter which we find to be the most egregious. We conclude that such misconduct renders His Worship Barroilhet incapable of performing the duties of his office.
- 28) The public's confidence in the ability of His Worship Barroilhet to perform the duties of office, and in the administration of justice generally, would be irreparably undermined, in the Panel's view, if the Panel's response to such behaviour were any disposition other than a recommendation for removal. The range of dispositions set out in section 11.1(10) of the *Act* are remedial, as both counsel have noted. In the case of the misconduct in the Chad Evans matter, the most serious sanction is the only remedy which, in our view, would restore the public's confidence in the administration of justice.
- 29) We therefore recommend to the Attorney General that His Worship Jorge Barroilhet be removed from office in accordance with section 11.2 of the *Act*.

Dated at the city of Toronto in the Province of Ontario, October 15th, 2009.

HEARING PANEL: The Honorable Madame Justice Deborah K. Livingstone
Her Worship Senior Justice of the Peace Cornelia Mews
Ms. S. Margot Blight – Borden Ladner Gervais LLP

APPENDIX E

PUBLIC HEARING RE:
JUSTICE OF THE PEACE
PAUL A. WELSH

APPENDIX E

Public Hearing Re: Justice of the Peace Paul A. Welsh



JUSTICES OF THE PEACE REVIEW COUNCIL

**IN THE MATTER OF A HEARING ORDERED UNDER SECTION 11(15) OF THE
*JUSTICES OF THE PEACE ACT, R.S.O. 1990, c. J.4, as amended,***

**Respecting the conduct of
Justice of the Peace Paul A. Welsh,
Justice of the Peace in the Central West Region**

Before: The Honourable Justice J. David Wake
Her Worship Lorraine A. Watson, Justice of the Peace
Professor Emir Aly Crowne-Mohammed, Community Member

Hearing Panel of the Justices of the Peace Review Council

Reasons for Decisions

Presenting Counsel:

Mr. Douglas C. Hunt, Q. C.
Mr. Andrew Burns
Ms. Grace David

Hunt Partners LLP

Counsel for His Worship Paul A. Welsh:

Mr. Roger D. Yachetti, Q. C.
Mr. Asgar M. Manek

Yachetti, Lanza & Restivo LLP

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Public Hearing Re: Justice of the Peace Paul A. Welsh

IN THE MATTER OF A HEARING ORDERED UNDER SECTION 11(15) OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, C. J.4, AS AMENDED,

Respecting the conduct of
Justice of the Peace Paul A. Welsh,
Justice of the Peace in the Central West Region

REASONS FOR DECISIONS

I. INTRODUCTION

- 1) Four unrelated complaints were received by the Justices of the Peace Review Council (the Review Council) concerning the conduct of Justice of the Peace Welsh. The Review Council established a Complaints Committee pursuant to s. 11(1) of the *Justices of the Peace Act* R.S.O. 1990, c. J. 4, as amended (hereinafter referred to as the “Act”). The complaint committee investigated each matter and ordered that a formal hearing into each complaint be held by a Hearing Panel pursuant to s. 11(15) of the *Act*.
- 2) The Review Council established a Hearing Panel pursuant to s. 11.1 of the *Act* and as a result a hearing took place into all four complaints on September 10, 2009.
- 3) An extensive Agreed Statement of Facts was delivered to the Review Council on September 9, 2009 and filed as Exhibit “B” the following day at the hearing itself. Included in Exhibit “B” were transcripts and recordings of two court proceedings from which two of the complaints arose.
- 4) On September 10, 2009, the Hearing Panel heard from Justice of the Peace Welsh who elected to testify and who was extensively cross-examined by presenting counsel, Mr. Hunt. In addition, the Hearing Panel heard from fourteen character witnesses. A book of approximately seventy character letters was also submitted on behalf of Justice of the Peace Welsh by his counsel, Mr. Yachetti, as well as a brief on absolute discharges.
- 5) At the conclusion of the evidence, both counsel made submissions and were granted permission to make further submissions in writing if they so desired. These have been

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received together with Books of Authorities. The Hearing Panel has considered all of the evidence and material filed at the hearing and the submissions and briefs submitted both at the hearing and subsequently.

- 6) The Hearing Panel has also met subsequent to the hearing to listen to the recordings of the two court proceedings contained in Exhibit “B” referred to above.

II. THE COMPLAINTS

- 7) The particulars of the complaints were set out in the Notice of Hearing which was filed as Exhibit “A” in these proceedings. The particulars are attached to these Reasons as Appendix “A”.
- 8) We will provide a brief description below of each complaint which we propose to deal with in the following order:

A. *The Watkins Complaint*

- 9) On January 11, 2008 Justice of the Peace Welsh presided over a matter in which Mr. Paul Watkins was charged with an offence under the *Building Code Act*, S.O. 1992, c. 23, as amended for failing to comply with a building inspector’s order arising out of a window being built on the side wall of a detached garage on Mr. Watkins’s property which was alleged to be contrary to the *Code*.
- 10) Mr. Watkins was self-represented and it is alleged that Justice of the Peace Welsh’s demeanour and comments during the course of the trial were inappropriate and incompatible with the execution of the duties of his office.

B. *The Caplan Complaint*

- 11) Mr. Frederick Caplan is a barrister and solicitor who represented a person charged with speeding, contrary to s. 128 of the *Highway Traffic Act*, R.S.O., 1990, c. H. 8, as amended. Mr. Caplan sought to cross-examine a police officer for the officer’s non-attendance at a previously scheduled date for the trial. It is alleged that, in questioning counsel as to why he sought to cross-examine the officer, Justice of the Peace Welsh demonstrated inappropriate demeanour and a lack of civility. After allowing cross-examination to take place, it is alleged that Justice of the Peace Welsh interrupted and restrained counsel’s right to cross-examine and that Justice of the Peace Welsh exhibited a lack of impartiality by his own questioning

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of the officer. His refusal to recuse himself upon the request of counsel is alleged to have been improper, together with his conduct and demeanour during the course of the hearing which was alleged to be incompatible with the execution of the duties of his office.

C. The Complaint Regarding Extensions of Time for Paul Hrab

- 12) Mr. Paul Hrab had been convicted of various *Provincial Offences Act* charges as a result of driving a motor vehicle while suspended and without insurance. The fines totalled \$16,396.00.
- 13) Paul Hrab's father, Mr. Steve Hrab, is a Hamilton police officer known to Justice of the Peace Welsh. On December 11, 2007 Steve Hrab appeared before Justice of the Peace Welsh on behalf of his son on four motions to extend the time for payment of these fines.
- 14) The motions were granted for an initial period of one year, during which Paul Hrab would pay \$100.00 per month on the outstanding fines, subject to renewal, extension or variance after than initial year.
- 15) Approximately one year later, on December 5, 2008, Steve Hrab again appeared before Justice of the Peace Welsh on behalf of his son to request a further one year extension for payment of the outstanding fines. On this occasion Steve Hrab did not appear before Justice of the Peace Welsh with the supporting documentation. The motions were granted on the same terms as in the previous year. One of the motions was with respect to a fine imposed in Burlington.
- 16) It was not the policy for Justices of the Peace in Hamilton to hear applications for fine extensions without supporting documentation and for matters outside the Hamilton jurisdiction, like the Burlington fine.

D. The Complaint Regarding the Certificate of Offence for Justice Zivolak

- 17) On October 24, 2008 Justice of the Peace Welsh presided in the Intake Court in Hamilton. During the course of his duties he entered a conviction in respect of a "Red Light Camera System Certificate of Offence" for a vehicle registered to Martha B. Zivolak in relation to the offence of failing to stop at a red light.
- 18) At all times Justice of the Peace Welsh was aware that Martha Zivolak was (and is) a judge of the Ontario Court of Justice and that her husband was a police officer. Justice of the Peace Welsh had first met Justice Zivolak when she was a "drug prosecutor" prior to her appointment as a judge.

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- 19) Justice of the Peace Welsh correctly assumed that Justice Zivolak was unaware of the Certificate of Offence which had been sent to her previous address.
- 20) Justice of the Peace Welsh took the unusual step of contacting Justice Zivolak by e-mail to advise her of the existence of the ticket and suggested ways in which the fines could be reduced, including having her or her husband come to the Hamilton courthouse.
- 21) Justice Zivolak was at a seminar and then on vacation but inquired on October 30, 2008 as to whether Justice of the Peace Welsh would be available on October 31, 2008. Justice of the Peace Welsh replied by e-mail that he was available but shortly thereafter sent a further e-mail indicating that he was going to reduce the fine by half to \$90.00. Justice Zivolak left a voice message that this was not acceptable to her and that she would pay the fine in full. Justice of the Peace Welsh acknowledged this message by e-mail but stated that it was “no problem” and that he would reduce the fine to \$90.00.
- 22) The following day, Justice of the Peace Welsh attended the Provincial Offences administration court office and submitted a form indicating that he had accepted a “walk-in plea of guilt” and imposed a reduced fine of \$90.00 which he personally paid to court staff, who were somewhat confused by the process followed by Justice of the Peace Welsh.
- 23) Later that morning Justice of the Peace Welsh e-mailed Justice Zivolak to advise her that he had paid the reduced fine and that she could reimburse him at her convenience.
- 24) Justice Zivolak continued to leave telephone messages for Justice of the Peace Welsh that she wanted to pay the fine in full without reduction.
- 25) Subsequently, Justice of the Peace Welsh was charged with one count of Obstruction of Justice contrary to s. 139 of the *Criminal Code* R.S.C. 1985, c. C-46, as amended in relation to this conduct. He entered a plea of guilty on April 28, 2009 and was granted an absolute discharge.
- 26) At the outset of the hearing before this Panel, Justice of the Peace Welsh admitted that his conduct in relation to this complaint (regarding the certificate of offence for Justice Zivolak) amounted to judicial misconduct for which he offered an abject apology.

E. Pattern of Conduct

- 27) It is alleged that in all of the complaints a pattern of conduct has been demonstrated indicating, or giving rise to, a perception of favour or bias, conflict of interest and lack of impartiality, that is inconsistent with Justice of the Peace Welsh’s judicial duties.

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III. JUSTICE OF THE PEACE WELSH'S BACKGROUND

- 28) Justice of the Peace Welsh was 60 years of age at the time of the hearing. He is married and has two adult children. He served for 32 years as a police officer with the Burlington Police Department which became the Halton Regional Police Service, finishing with the rank of Sergeant. He was appointed as a Justice of the Peace on January 24, 2001.

IV. AVAILABLE DISPOSITIONS

- 29) Sub-paragraph 11.1(10) of the *Act* reads as follows:

After completing the hearing, the Panel may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may,

- a. warn the justice of the peace;
- b. reprimand the justice of the peace;
- c. order the justice of the peace to apologize to the complainant or to any other persons;
- d. order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- e. suspend the justice of the peace with pay, for any period;
- f. suspend the justice of the peace without pay, but with benefits, for a period of up to 30 days; or
- g. recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2. 2006, c. 21, Sched. B, s. 10.

V. THE TEST FOR UPHOLDING A COMPLAINT

- 30) The terms “judicial misconduct” and “upholding a complaint” are not defined in the *Act*; however, we agree with presenting counsel that decisions of the Canadian Judicial Council and the Ontario Judicial Council that determine whether a judge has engaged in judicial misconduct are apposite to the test we have to apply in determining whether to “uphold” a complaint (pursuant to s. 11.1(10) of the *Act*) and, if so, whether to apply one or more of the dispositions set out in that subsection which mirrors the same dispositions available to the Ontario Judicial Council under subsection 51.6(11) of the *Courts of Justice Act*, R.S.O. 1990, c. 43 (C.J.A.).

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- 31) In *Re: Baldwin* (2002), a Hearing Panel of the Ontario Judicial Council considered the meaning of judicial misconduct as informed by two decisions of the Supreme Court of Canada in *Therrien v. Minister of Justice* [2001] 2 S.C.R. 3 and *Moreau-Bérubé v. New Brunswick* (Judicial Council), [2002] 1 S.C.R. 249. The Hearing Panel in *Re: Baldwin* stated that:

The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in s. 51.6(11) should be invoked, when necessary, in order to restore a loss of public confidence arising from the judicial conduct in issue.

Paraphrasing the test set out by the Supreme Court in *Thierrien* and *Moreau-Bérubé*, the question under s. 51.6(11) is **whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally** and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence.

It is only when the conduct complained of crosses this threshold that the range of dispositions in s. 51.6(11) is to be considered. Once it is determined that a disposition under s. 51.6(11) is required, the Council should first consider the least serious – a warning- and move sequentially to the most serious – a recommendation for removal – and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally. (emphasis added)

We agree with the Hearing Panel in *Re: Baldwin* that this is the proper approach and threshold to be applied in judicial misconduct proceedings.

- 32) Justice of the Peace Welsh has admitted judicial misconduct with respect to the complaint regarding the certificate of offence for Justice Zivolak. Therefore, aside from the disposition itself, we need not make any further findings in this regard. With respect to the remaining three matters we must examine the duty of impartiality.
- 33) Similarly, if judicial misconduct is found, that same duty must be considered in determining the appropriate disposition to ensure that the public's confidence in the impartiality of the judicial system is maintained.
- 34) The judicial duty of impartiality was expressed in *Ruffo (Re)* [2005] Q.J. No. 17953 (C.A.) at para. 148:

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Moreover, the presumption of impartiality that accompanies the judicial function serves a very precise objective, that of the integrity of the judicial system. This premise may not be questioned every time a person who comes before the court is dissatisfied with a decision. Judges may err in fact or in law and be corrected on appeal. This does not mean, however, that the error arose from a lack of impartiality.

35) The Canadian Judicial Council, in an attempt to provide ethical guidance for federally appointed judges, published a document entitled *Ethical Principles for Judges* (Ottawa, Canadian Judicial Council, 1998) which has been adopted for the same purpose by the Ontario Court of Justice for its judges and justices of the peace.

36) Under the topic of impartiality the document states the following:

PRINCIPLES

General

1. Judges should strive to ensure that their conduct, both in and out of court, maintains and enhances confidence in their impartiality and that of the judiciary.
3. The appearance of impartiality is to be assessed from the perspective of a reasonable, fair minded and informed person.

37) It must be remembered that a finding of lack of impartiality, or reasonable apprehension of bias, does not necessarily lead to a finding of judicial misconduct. In fact, in *Re: Douglas* (2006) O.J.C. a Hearing Panel of the Ontario Judicial Council reviewed the conduct of a judge and found that the judge had indeed demonstrated a reasonable apprehension of bias. Yet, the Hearing Panel concluded that the conduct fell short of establishing judicial misconduct.

38) Finally, in addressing each of the complaints we must remain cognizant of the balance between judicial accountability and judicial independence in conducting these types of hearings. As stated in *Re: Baldwin*:

When public confidence is undermined by a judge's conduct there must be a process for remedying the harm that has been occasioned by that conduct. It is important to recognize, however, that the manner in which complaints of judicial misconduct are addressed can have an inhibiting or chilling effect on judicial action. The process for reviewing allegations of judicial misconduct must therefore provide for accountability without inappropriately curtailing the independence or integrity of judicial thought and decision making.

VI. STANDARD OF PROOF

- 39) In *Re Evans* (2004), a Hearing Panel of the Ontario Judicial Council adopted the requirement that a finding of professional misconduct required clear and convincing proof, based on cogent evidence. This requirement was also subsequently accepted in *Re Douglas*, *supra* at paragraph 10.
- 40) In professional misconduct cases, various approaches have been made to the standard of proof – including the “shifting standard” set forth by Lord Denning in *Bater v. Bater* [1950] 2 All E.R. 458 (C.A.) who was of the view that the civil standard of proof (i.e. a balance of probabilities) had degrees of variance that were “commensurate with the occasion”. In other words, the more serious the allegation, the closer the standard would move from the traditional civil standard of proof on a balance of probabilities to a point closer to the criminal standard of proof beyond a reasonable doubt.
- 41) This approach was recently, and unanimously, rejected by the Supreme Court of Canada in *F.H. v. McDougall* [2008] 3 S.C.R. 41:

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is improper to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

[46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

VII. EVIDENCE AND FINDINGS WITH RESPECT TO THE COMPLAINTS IN WHICH MISCONDUCT IS NOT ADMITTED:

A. The Watkins Complaint

- 42) We have heard the recording of the trial and read the transcript concerning this matter. The Justice of the Peace tried to focus the complainant on the issue in the trial but the complainant was determined to raise irrelevant considerations concerning his neighbour's garage and the use to which his neighbour's property was being put as opposed to addressing the charge dealing with his own garage. It is clear that the Justice of the Peace was frustrated in his attempt to focus the complainant on the charge with respect to his own garage, and there was an unfortunate and gratuitous reference to the complainant and his neighbour behaving like school children.
- 43) Nevertheless, in our view the justice of the peace's conduct did not amount to judicial misconduct as it could not be said that his conduct was so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the justice of the peace to perform the duties of his office or in the administration of justice generally.
- 44) We find there is no basis for a finding of judicial misconduct in relation to this complaint and it is therefore dismissed.

B. The Caplan Complaint

- 45) We have some sympathy for the situation Justice of the Peace Welsh found himself in at the outset of the proceeding which gave rise to this complaint. He was presiding over a busy court with many persons waiting to be heard. The matter involved was a speeding ticket which would normally be expected to consume a relatively brief period of time. There was no application in writing that would have given him any notice as to the nature of the relief being sought by counsel for the defendant. Nor would the relief have been readily apparent to him when the matter was called. Similarly, he had no transcript of the prior proceeding where the officer had not attended. He had to rely on the submissions of counsel to discern what had occurred previously, and what remedy was being sought.
- 46) In these circumstances, we find that Justice of the Peace Welsh had the right to question counsel as to the basis for seeking to cross-examine the officer on a matter which, on its face, would appear to have had little relevance to the merits of the charge itself.

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- 47) Counsel's reply that his right to cross-examine was a matter of "natural justice" was not particularly helpful. It did not assist Justice of the Peace Welsh in understanding the nature of the unique remedy being sought by the defence.
- 48) It is clear from the transcript and the recording that there was a level of tension growing between Justice of the Peace Welsh and counsel. Following the quip about "natural justice", the tension was not alleviated by counsel's follow-up remark that: "If Your Worship wishes to prevent me from doing that cross-examination, no problem – just put it on the record".
- 49) After ultimately permitting the cross-examination, Justice of the Peace Welsh clearly intervened inappropriately in his own questioning of the officer. Justice of the Peace Welsh claims that he intervened in an attempt to assist counsel in understanding police procedures based on Justice of the Peace Welsh's own previous experience; but in doing so, particularly in the context of the earlier evident tension between himself and counsel, he gave the impression that he had entered the fray which gave rise to a reasonable apprehension of bias.
- 50) Nevertheless, as noted in *Re: Douglas, supra*, a finding of a lack of impartiality does not lead necessarily to a finding of judicial misconduct. In this matter, Justice of the Peace Welsh has acknowledged that he went too far in his questioning of the officer and that he has learned from this experience, and would make every effort to avoid a repetition in the future. Mr. Caplan has appeared before him in a subsequent careless driving matter without objection so it is reasonable to assume that any further matters involving him and Justice of the Peace Welsh will be conducted with the civility one would expect between counsel and a judicial officer.
- 51) Finally, we note that this complaint and the Watkins complaint are the two complaints dealing with Justice of the Peace Welsh's conduct in court. We have found that there is no basis for the complaint in the Watkins matter. Stacked against this one remaining allegation of inappropriate demeanour and impartiality is the substantial body of character letters and testimonial evidence from persons in the Hamilton legal community that speak to Justice of the Peace Welsh's patience, politeness and understanding of legal and factual issues while presiding in court over *Provincial Offences Act* trials and bail hearings.
- 52) Although he may have intervened excessively in this one instance, for the reasons stated above we do not think that, in all of the circumstances, his conduct amounted to judicial misconduct as that term has been defined by the jurisprudence.
- 53) Accordingly, we would dismiss this complaint.

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C. The Hrab Matter

- 54) The essence of this complaint is that Justice of the Peace Welsh exercised favouritism in granting two extensions for the payment of fines to Paul Hrab because of the intercession of his father, Steve Hrab, a police officer who was known to Justice of the Peace Welsh. The Notice of Hearing did not particularize the complaint in this way but cross-examination was certainly directed to the issue of impartiality and no objection was raised to that cross-examination.
- 55) The particulars of the complaint centred around the confusion caused to court staff in processing the motions to extend payment in December 2008; since the extensions had been made without the original informations and one of the extensions had been made on a Burlington matter (outside of the justice of the peace's usual presiding area).
- 56) We accept Justice of the Peace Welsh's evidence that he was unaware of the policy with respect to the Burlington matter and that he did not take care to have the original informations before him since it was, in his words, a "pre-existing extension" matter which he had granted the year before when the original documents were before him.
- 57) Local Administrative Justice of the Peace Mitchell Baker looked into the matter and concluded that it was not a case of Justice of the Peace Welsh assigning himself to the Intake Court inappropriately to deal with these extensions, since he could have done them "over lunch" rather than in the Intake Court (according to the statement of that Local Administrative Justice of the Peace, filed in the Agreed Statement of Facts at Tab 29).
- 58) On the state of the evidence before us, we are unable to find clear, compelling and cogent evidence from which we can draw a reasonable inference that the extension applications were handled inappropriately so as to lead to a finding of judicial misconduct.
- 59) Justice of the Peace Welsh testified that he viewed Steve Hrab as an embarrassed father attending on behalf of his son and not as a police officer. There is nothing to contradict this evidence and we are prepared to accept it.
- 60) This, of course, does not end the matter. It must still be determined whether Justice of the Peace Welsh's handling of this matter would give rise to a reasonable suspicion by a reasonable, fair minded and informed person that he was not impartial in the conduct of his duties.
- 61) Factors relevant to this consideration are:

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a) Favourable Extension Terms

On its surface, the terms of the extension agreement appear to be quite favourable to Paul Hrab. While this may be true, it might not in fact be the case if he were unemployed, saddled with other debts, and impecunious. It was on the basis of representations from Paul Hrab's father, Steve Hrab, on which Justice of the Peace Welsh testified that he had no reason to disbelieve, that the terms had been set. It might have been preferable if a recording had been made of the representations made by Steve Hrab to Justice of the Peace Welsh in the intake court which could have corroborated Justice of the Peace Welsh's account of what took place. Neither Steve Hrab nor Paul Hrab were called as witnesses by either party at the hearing before us; nor was either apparently interviewed as part of the investigation to determine whether or not Paul Hrab's financial circumstances justified the terms of Justice of the Peace Welsh's extension order.

62) A suggestion was made to Justice of the Peace Welsh in cross-examination that at the rate set for repayment it would take 13 years to pay the fines. While this is true the suggestion fails to take into account that the extensions were time limited to one year each and a review of Paul Hrab's financial circumstances would have to take place on each renewal. It is important to consider the restricted discretion which was available to Justice of the Peace Welsh in entertaining the application to extend the time for payment of the fines as set out in s. 66 of *The Provincial Offences Act* R.S.O. 1990, c. P. 33 which is the governing statutory authority for such an application. The relevant subsection reads as follows:

(3) **Inquiries** – Where the defendant requests an extension of the time for payment of the fine, the court may make such inquiries, on oath or affirmation or otherwise, of and concerning the defendant as the court considers desirable, but the defendant shall not be compelled to answer.

(4) **Granting of extension** – Unless the court finds that the request for extension of time is not made in good faith or that the extension would likely be used to evade payment, the court shall extend the time for payment by ordering periodic payments or otherwise.

(6) **Further motion for extension** – The defendant may, at any time by motion in the prescribed form filed in the office of the court, request an extension or further extension of time for payment of a fine and the motion shall be determined by a justice and the justice has the same powers in respect of the motion as the court has under subsections (3) and (4).

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- 63) From the above, it was mandatory for Justice of the Peace Welsh to grant the extension (i.e. “shall extend the time for payment”) unless he found that it was not made in good faith or that it was being used to evade payment.

b) Was it odd that Paul Hrab did not appear personally?

- 64) In *Provincial Offences Act* matters it is not necessary for a defendant to appear personally unless ordered to do so by the court. It is not uncommon for a defendant to appear by counsel or an agent which can, and often does, include a family member.

c) Should Justice of the Peace Welsh have disqualified himself, as a former police officer from considering the applications of Steve Hrab, a police officer, who had a personal interest in that it involved his son?

- 65) There is no evidence to support the suggestion that Justice of the Peace Welsh purposely, or knowingly, scheduled himself into the Intake Court to facilitate the Hrab applications. In fact, the opposite is true at least with respect to the 2008 renewal application.
- 66) This suggestion calls into question the ability of anyone appointed as a judicial officer from one part of the criminal justice system, be it crown, defence or police to fulfill their oath to remain impartial. We believe that it is generally accepted that persons can come to the bench from different forensic backgrounds and be true to that oath. To hold otherwise would mean that many persons with ideal skill sets would be automatically disqualified from appointment as a judicial officer.
- 67) As a judicial officer, Justice of the Peace Welsh would be required to hear evidence from police officers in Provincial Offence matters, bail hearings and search warrant applications and make credibility findings in many cases with respect to that evidence. If he were required to disqualify himself in those cases by virtue of his previous employment, the scope of his duties would be greatly reduced and, in our view, needlessly so. In *Ethical Principle for Judges, supra*, under the heading of “Impartiality” and the sub-heading of “Conflicts of Interest”, it is the judge’s *personal interest* which is the focus on the issue of whether judges should disqualify themselves. The sub-heading reads as follows:

E. Conflicts of Interest

1. Judges should disqualify themselves in any case in which they believe they will be unable to judge impartially.
2. Judges should disqualify themselves in any case in which they believe that a reasonable, fair minded and informed person would have a reasoned

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suspicion of conflict between a judge's personal interest (or that of a judge's immediate family or close friends or associates) and a judge's duty.

3. Disqualification is not appropriate if: (a) the matter giving rise to the perception of a possibility of conflict is trifling or would not support a plausible argument in favour of disqualification, or (b) no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a miscarriage of justice.
- 68) There is no suggestion that Justice of the Peace Welsh had any personal interest in the fine extension applications.
- 69) In commentary E.7 under the sub-heading of Conflict of Interest in the *Ethical Principles for Judges*, it is suggested that the interests of family members, close friends or associates “could give rise to a reasonable apprehension of conflicting interests and duty” but to “define these matters with greater precision, however, is another matter”. The relationship between Justice of the Peace Welsh and Steve Hrab was not close. They had never been colleagues. Steve Hrab had simply appeared before Justice of the Peace Welsh on a few search warrant applications.
- 70) Under commentary E.19 it is contemplated that a judge may sit on cases involving persons who had previously worked with the judge or even been former clients. That commentary reads as follows:

Judges will face the issue of whether they should hear cases involving former clients, members of the judge's former law firm or lawyers from the government department or legal aid office in which the judge practised before appointment. There are three main factors to be considered. First, the judge should not deal with cases concerning which the judge actually has a conflict of interest, for example, as a result of having had confidential information concerning the matter prior to appointment. Second, circumstances must be avoided in which a reasonable, fair minded and informed person would have a reasoned suspicion that the judge is not impartial. Third, the judge should not withdraw unnecessarily as to do so adds to the burden of his or her colleagues and contributes to delay in the courts.

The following are some general guidelines which may be helpful:

- a) A judge who was in private practice should not sit on any case in which the judge or the judge's former firm was directly involved as either counsel of record or in any other capacity before the judge's appointment.

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- c) With respect to the judge's former law partners, or associates and former clients, the traditional approach is to use a "cooling off period," often established by local tradition at 2, 3 or 5 years and in any event at least as long as there is any indebtedness between the firm and the judge and subject to guideline (a) above concerning former clients.
- 71) After taking these guidelines into consideration, we are of the view that there was no obligation on Justice of the Peace Welsh to disqualify himself from considering these applications.
- 72) After considering all of the factors referred to above, we have concluded that Justice of the Peace Welsh's conduct in this matter would not have given rise to a reasonable suspicion by a reasonable, fair minded and informed person that he had not been impartial.
- 73) As a result this complaint is dismissed.

D. The Justice Zivolak Matter

- 74) The reasons of the Hearing Panel with respect to this matter are delivered by Professor Emir Aly Crowne-Mohammed.
- 75) At the outset, I should note that it is important for members of the public to know that these hearings are conducted with a view towards truth-seeking and restoring the public's confidence in the administration of justice. Hearing Panels are neither pre-disposed to protect, or punish, a judicial officer. Furthermore, each Panel member is, and has been, independent in their decision-making.
- 76) The facts that have given rise to these hearings are agreed with. As are the findings with respect to the Watkins Complaint, the Caplan Complaint and the Hrab Matter.
- 77) With respect to the Justice Zivolak matter, Justice of the Peace Welsh has admitted judicial misconduct. Unlike the other three matters, no threshold inquiry needs to take place. The only matter to be decided is the appropriate disposition.
- 78) In determining the most appropriate disposition to restore confidence in the ability of Justice of the Peace Welsh to continue in office and in the administration of justice generally, we must consider Justice of the Peace Welsh's guilty plea to the criminal charge of obstruct justice. An admission of criminal conduct by a judicial officer is extraordinary. Nevertheless, Justice of the Peace Welsh was granted an absolute discharge which is the lowest form of sanction available in a criminal proceeding. Deterrence or rehabilitation of the offender is not the central concern in deciding to grant a discharge. The discharge

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must not be “contrary to the public interest”, and is normally granted to persons of good character (see, *R. v. Sanchez-Pino* [1973] 2 O.R. 314 (C.A.)).

- 79) We acknowledge that the considerations for granting an absolute discharge in criminal proceedings differ, to some extent, from the factors relevant to the disposition upon which we must decide. For instance, in criminal proceedings the personal interest of the defendant is a consideration as to whether a discharge should be granted; however, that consideration is immaterial for the purposes of this inquiry. Yet, in both dispositions it is relevant to consider the impact of the decision on the public interest and the administration of justice. Therefore some examination of the submissions which resulted in the granting of an absolute discharge in the criminal proceedings would be useful in our deliberations.
- 80) We note that the Crown Attorney who prosecuted the criminal charge acknowledged that Justice of the Peace Welsh’s behaviour in this matter “was out of character according to his references”. She further acknowledged that this conduct was “at the low end of the range in terms of obstruct justice offences which come before the court”. She joined the defence in submitting that an absolute discharge be granted and the presiding judge agreed.
- 81) Sub-paragraph 11.1(10) of the *Act* sets out the dispositions available to the Hearing Panel. The dispositions are arranged from the least serious (i.e. a warning) to the most serious (i.e. a recommendation to the Attorney General to remove the justice of the peace from office).
- 82) The three ‘least’ serious dispositions are warnings, reprimands and apologies (11.10 (a) – 11.10 (c) of the *Act*). These dispositions are not appropriate in this instance. Justice of Peace Welsh had entered a plea of guilty to one count of Obstruction of Justice contrary to s. 139 of the *Criminal Code* R.S.C. 1985, c. C-46, as amended in relation to this conduct. Throughout those criminal proceedings, and the current hearings, Justice of the Peace Welsh has implicitly, if not explicitly, been warned, reprimanded and apologized on numerous occasions.
- 83) Even if those criminal proceedings had not taken place, and Justice of the Peace Welsh had still admitted to judicial misconduct, the Panel would not have restricted itself to ordering the dispositions set out in 11.10 (a) – 11.10 (c) in any event, due to the seriousness of the misconduct in question.
- 84) On the other end of the spectrum are the ‘more’ serious dispositions – suspensions and removal from office (11.10 (e) – 11.10 (g) of the *Act*). We do not believe that we can recommend to the Attorney General that Justice of the Peace Welsh be removed from

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office. There was no element of corruption, implied or express, in Justice of the Peace Welsh's actions. Although he entered a plea of guilty to a charge of obstruct justice, we agree with the Crown Attorney who prosecuted that charge that the conduct involved was at the low end of the range of culpability for this offence. This was reflected in the absolute discharge granted by the court which took into consideration, at least in part, the public interest and the administration of justice generally. These factors, combined with the exceedingly strong testimonial evidence (both in writing and in person) that we have received in support of Justice of the Peace Welsh, allows us to conclude that the public's confidence would not be undermined by his continuation in office.

- 85) Nor do we believe that a suspension is the appropriate disposition in this matter. Justice of the Peace Welsh has not been assigned since January 23, 2009 and, in any event, any further suspension would not remedy the underlying 'cause' of the judicial misconduct.
- 86) This leads us to the middle of the dispositions – education or treatment (11.10 (d) of the *Act*). In the Panel's view, this disposition is the most appropriate remedy for the judicial misconduct in question. The 'cause' of the judicial misconduct in the Justice Zivolak matter stems from a failure to maintain the appropriate independence and impartiality expected of a judicial officer. The Rule of Law was undoubtedly impaired, and judicial education is needed for its repair.
- 87) We believe that the public nature of these proceedings have, in many ways, served to humble and discomfit Justice of the Peace Welsh, in holding him to account for his conduct. We are confident that this conduct will not be repeated in similar situations. However, the continuing obligation to be independent and impartial is a broad concept which must be in the forefront of a judicial officer's mind at all times while in office. We believe that the public's confidence in Justice of the Peace Welsh would be strengthened if he were required to follow an appropriate course of study that reinforced the importance of judicial independence and impartiality.
- 88) In accordance with 11.10 (d) of the *Act*, the Panel orders that Justice of Peace Welsh undergo specific judicial education or training, as a condition of continuing to sit as a justice of the peace, such education to be prescribed by the Associate Chief Justice Co-ordinator for Justices of the Peace, in the areas of judicial independence and impartiality.

E. Pattern of Conduct

- 89) In light of our earlier findings with respect to the Watkins Complaint, the Caplan Complaint and the Hrab Matter, we need not consider any further whether a pattern of

APPENDIX E

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conduct has been demonstrated indicating, or giving rise to, a perception of favour or bias, conflict of interest and lack of impartiality inconsistent with Justice of the Peace Welsh's duties of office.

Dated at the City of Toronto in the Province of Ontario, December 8, 2009.

HEARING PANEL: The Honourable Justice J. David Wake

Her Worship Lorraine A. Watson, Justice of the Peace

Professor Emir Aly Crowne-Mohammed, Community Member

ADDITIONAL NOTE: The Hearing Panel subsequently considered a request by His Worship for compensation of the legal costs incurred in the hearing, and the Panel made a recommendation under section 11.1(17) to the Attorney General that His Worship Welsh be compensated for part of the cost of legal services incurred in connection with the hearing.