

Conseil d'évaluation des juges de paix

**DANS L'AFFAIRE D'UNE AUDIENCE EN VERTU DE
L'ARTICLE 11.1 DE LA LOI SUR LES JUGES DE PAIX,
L.R.O. 1990, ch. J.4, DANS SA VERSION MODIFIÉE,**

**En ce qui concerne une plainte au sujet de la conduite du
juge de paix Tom Foulds**

Devant : L'honorable juge Peter Tetley, président
La juge de paix Monique Seguin
Mme Madame Jenny Gumbs, membre du public

Comité d'audition du Conseil d'évaluation des juges de paix

**DÉCISION SUR LA MESURE À PRENDRE ET
L'INDEMNISATION DES FRAIS POUR SERVICES JURIDIQUES
APRÈS UNE CONCLUSION D'INCONDUITE JUDICIAIRE**

Me Scott K. Fenton
Me Amy Ohler
Avocats chargés de la présentation

Me Mark Sandler
Me Amanda Ross
Avocats du juge de paix
Tom Foulds

DÉCISION SUR LA MESURE À PRENDRE ET L'INDEMNISATION DES FRAIS POUR SERVICES JURIDIQUES APRÈS UNE CONCLUSION D'INCONDUITE JUDICIAIRE

Partie I - Introduction

- [1] Après le dépôt d'une plainte au Conseil d'évaluation des juges de paix (le « Conseil d'évaluation »), le comité des plaintes du Conseil d'évaluation a ordonné la tenue d'une audience formelle, en vertu de l'article 11.1 de la *Loi sur les juges de paix*, L.R.O. 1990, chap. J.4 (la « Loi »), en ce qui concerne les agissements du juge de paix Tom Foulds. Les détails de la plainte sont énoncés à l'Annexe A de l'avis d'audience (ci-joint à l'addendum des présents motifs).
- [2] Le comité d'audition du Conseil d'évaluation a entendu les témoignages relatifs à la plainte, les 10, 11, 12, 13 et 16 octobre et le 7 novembre 2017.
- [3] Le 1^{er} février 2018, le comité d'audition a conclu que certains actes du juge de paix constituaient une inconduite judiciaire, comme il est soutenu aux paragraphes 3 a), c), d), e) et f) de l'Annexe A de l'Avis d'audience.
- [4] Ces conclusions se fondaient sur le fait établi que le juge de paix était activement intervenu dans des dossiers liés à la poursuite pénale contre BB, dans des circonstances où le juge de paix était un ami proche ou un partenaire romantique de la plaignante, Mme AA, et qu'il connaissait M. BB.
- [5] Les initiales AA ont été utilisées pour décrire la personne qui était la plaignante dans la procédure pénale au cours de l'audience. Les initiales BB ont été utilisées pour décrire la personne qui était l'accusé dans la procédure pénale et le plaignant dans le processus disciplinaire judiciaire en question.
- [6] Ces initiales ont été utilisées à des fins d'identification dans l'Avis d'audience mentionné et dans les Motifs de décision. Ces initiales continueront d'être employées tout au long des présents motifs afin de protéger la confidentialité des noms de la plaignante et de l'accusé dans l'affaire pénale, qui n'a abouti à aucune conclusion, ainsi que le nom du plaignant dans la procédure devant nous.
- [7] Conformément à une interdiction de publication antérieure, les noms d'AA et de BB ne seront pas publiés ni aucun renseignement susceptible de les identifier.
- [8] Pour résumer, les motifs de décision divulguent les constatations suivantes, qui constituent des incidents spécifiques d'inconduite judiciaire :
 - (i) La réception et la signature de la dénonciation originale alléguant une accusation criminelle contre BB dans des circonstances où le juge de paix se trouvait dans une situation de conflit d'intérêts en raison de son amitié

avec la plaignante AA et du fait qu'il était un témoin potentiel dans cette poursuite;

- (ii) De multiples prises de contact et tentatives de communication avec l'avocat de la Couronne chargé de la poursuite contre BB dans des circonstances où le juge de paix savait qu'il se trouvait dans une situation de conflit d'intérêts;
- (iii) La réception et la signature d'une assignation enjoignant à la plaignante d'assister au procès de BB dans des circonstances où le juge de paix entretenait des relations romantiques avec la plaignante et cohabitait avec elle, en plus d'être un témoin potentiel au procès de BB. Outre la signature de l'assignation, il a été établi que le juge de paix a tenté d'influer sur le mode de signification de l'assignation à la plaignante;
- (iv) De multiples interventions dans la procédure accusatoire étayant la prétention que le juge de paix tentait d'exploiter les relations particulières qu'il entretenait avec le Service de police de Toronto et les avocats de la Couronne en raison de ses fonctions judiciaires.

[9] Au vu de ces conclusions, le comité d'audition a conclu que les actes du juge de paix constituent une inconduite judiciaire. Le comité d'audition a conclu que les preuves avaient établi un cycle d'inconduites, depuis le 21 mai 2014, date à laquelle le juge de paix a signé la dénonciation originale contre BB, jusqu'à avril 2015, lorsque le juge de paix a abordé Mme Jenkins et mentionné la poursuite contre BB.

[10] Aux paragraphes 166-173 des Motifs de décision, nous avons résumé les conclusions d'inconduite judiciaire de la façon suivante :

[166] Le comité d'audition conclut que le juge de paix a délibérément fourni des renseignements incomplets ou trompeurs au sujet de sa relation avec AA aux membres du SPT et au Bureau des avocats de la Couronne. Nous trouvons que le juge de paix a intentionnellement agi de manière à dissimuler ou cacher son intérêt personnel dans la poursuite contre BB en agissant d'une façon trompeuse et calculée.

[167] Le comité d'audition conclut que le juge de paix a intentionnellement fourni des renseignements limités à divers fonctionnaires au fur et à mesure de l'avancement de la poursuite contre BB. L'omission de divulguer entièrement la nature de sa relation avec AA aux diverses étapes de la poursuite contre BB est contraire aux considérations éthiques qui régissent la conduite d'un officier de justice.

[168] En raison de l'omission du juge de paix de s'abstenir d'intervenir dans la poursuite contre BB dans des circonstances où il se trouvait dans une situation de conflit d'intérêts, un certain

nombre d'interactions inappropriées avec des membres du SPT et plusieurs procureurs de la Couronne ont suivi. Bien qu'aucun élément de preuve ne suggère que ces contacts aient eu des répercussions préjudiciables sur la poursuite contre BB, on ne peut pas dire que la conduite du juge de paix n'a pas eu de conséquences directes sur BB personnellement. Il ne serait pas déraisonnable de conclure que la conduite du juge de paix a eu des conséquences négatives sur les frais d'avocat que BB a payés pour se défendre contre l'accusation découlant des allégations d'AA.

[169] Les preuves suggèrent que les frais de justice de BB découlaient, en partie, directement de l'intervention du juge de paix Foulds dans la procédure pénale. Le dossier de la preuve appuie la conclusion que la requête en production de dossiers de tiers, dans laquelle l'avocat de la défense de BB a demandé la divulgation de toute forme de communications écrites entre AA et le juge de paix, a été déposée en grande partie en raison des actes d'inconduite judiciaire établis dans l'audience en question.

[170] Dans ces circonstances, le comité d'audition reconnaît que BB avait des motifs raisonnables de croire que la poursuite contre lui était influencée d'une manière inappropriée par l'intervention connue du juge de paix Foulds dans des processus liés à cette poursuite. Comme l'a dit BB : « Je savais qu'il était un juge de paix dans ce tribunal et j'ai senti que j'avais contre moi, vous savez, le système de justice et, vous savez, il travaille là-bas. Vous savez, je vais être représenté et je sentais que j'affrontais un mur. J'imagine... il y avait un officier de justice expérimenté qui intervenait très efficacement dans mon dossier. Et, vous savez, je ne sais pas comment fonctionnent les tribunaux, mais je sais comment fonctionne un lieu de travail. Et, vous savez, les gens se rencontrent fortuitement, partagent de l'information, parlent de choses et d'autres, et tout d'un coup, avant même que vous ne vous en rendiez compte, d'autres décisions sont prises. »

[171] Les actes du juge de paix, ses commentaires et ses interventions au cours de la procédure pénale ont aussi négativement influé sur la perception qu'ont divers participants du système de justice pénale, y compris les procureurs de la Couronne et le personnel du SPT, et ont eu pour résultat que la conduite du juge de paix a été considérée comme ayant compromis l'indépendance, l'impartialité et l'intégrité du pouvoir judiciaire qu'il détient.

[172] En conséquence directe de la conduite du juge de paix, une partie importante des ressources publiques a dû être utilisée, parce que le procureur de la Couronne a été contraint de divulguer

plusieurs prises de contact par le juge de paix Foulds. Ces communications n'avaient rien à voir avec son rôle de témoin potentiel dans la poursuite pénale. Il s'agit d'une autre circonstance qui a entraîné des frais de justice additionnels, car l'avocat de BB a demandé des renseignements. En temps utile, cela a conduit à la demande de production de dossiers de tiers.

[173] Le comité d'audition conclut qu'après une évaluation objective, les actes répétés d'inconduite du juge de paix ont eu pour effet de discréditer l'administration de la justice. Ces actes ont eu pour effet que BB a perdu confiance dans le juge de paix comme officier de justice et que BB et d'autres personnes ont eu une impression négative du système de justice pénale en général. Nous concluons que la gravité des divers actes d'inconduite judiciaire du juge de paix exige qu'une mesure soit prise en vertu du paragraphe 11.1 (10) de la Loi afin de rétablir la confiance du public dans l'officier de justice et dans la magistrature.

Applicable Legal Principles on Disposition

Cadre législatif

[11] Le paragraphe 11.1 (10) de la *Loi sur les juges de paix* (la Loi) prévoit ce qui suit :

Une fois qu'il a terminé l'audience, le comité d'audition peut rejeter la plainte, qu'il ait conclu ou non que la plainte n'est pas fondée ou, s'il donne droit à la plainte, il peut, selon le cas :

- a) donner un avertissement au juge de paix;
- b) réprimander le juge de paix;
- c) ordonner au juge de paix de présenter des excuses au plaignant ou à toute autre personne;
- d) ordonner que le juge de paix prenne des dispositions précises, telles suivre une formation ou un traitement, comme condition pour continuer de siéger à titre de juge de paix;
- e) suspendre le juge de paix, avec rémunération, pendant une période quelle qu'elle soit;
- f) suspendre le juge de paix, sans rémunération mais avec avantages sociaux, pendant une période maximale de 30 jours;
- g) recommander au procureur général la destitution du juge de paix conformément à l'article 11.2 de la Loi.

[12] Le paragraphe 11.1 (11) de la Loi prévoit que le comité d'audition « peut prendre toute combinaison des mesures énoncées aux alinéas (10) a) à f) ». Une décision prise en vertu de l'alinéa 11.1 (10) g) de recommander au procureur général la destitution du juge de paix ne peut pas être combinée à une autre mesure prévue par le paragraphe 11.1 (10).

[13] Le paragraphe 11.2 (1) de la Loi stipule que le juge de paix ne peut être destitué que par décret du lieutenant-gouverneur en conseil. Le paragraphe 11.2 (2) de la Loi énonce les conditions en vertu desquelles le décret de destitution peut être pris;

Le décret ne peut être pris que si les conditions suivantes sont réunies :

- a) une plainte a été déposée au sujet du juge de paix devant le Conseil d'évaluation;
- b) un comité d'audition, à l'issue d'une audience tenue en application de l'article 11.1, recommande au procureur général la destitution du juge de paix en raison du fait qu'il est devenu incapable d'exercer convenablement ses fonctions ou inhabile pour l'une des raisons suivantes :
 - (i) il est inapte, pour cause d'invalidité, à remplir les fonctions essentielles de sa charge, si une ordonnance visant à tenir compte de ses besoins ne remédie pas à l'inaptitude ou ne peut pas être rendue parce qu'elle causerait un préjudice injustifié à la personne à laquelle il incomberait de tenir compte de ces besoins, ou a été rendue mais n'a pas remédié à l'inaptitude,
 - (ii) il a eu une conduite incompatible avec l'exercice convenable de ses fonctions,
 - (iii) il n'a pas rempli les fonctions de sa charge.. 2006, chap. 21, annexe B, art. 10.

[14] Le 1^{er} février 2018, le comité d'audition a jugé que certains actes du juge de paix Foulds constituaient une inconduite judiciaire. En conséquence, le comité d'audition doit examiner la question de savoir si une des mesures prévues aux alinéas 11.1 (10) a) à f) de la Loi, ou une combinaison de ces mesures, comme l'autorise le cadre législatif, est nécessaire afin de rétablir la confiance du public dans la magistrature.

[15] Le comité d'audition ne peut faire une recommandation de destitution, aux termes de l'alinéa 11.1 (10) g), que s'il n'est pas convaincu que l'une des mesures prévues aux alinéas 11.1 (10) a) à f), ou une combinaison de ces mesures, est suffisante pour rétablir la confiance du public et qu'il conclut que l'inconduite du juge de paix l'a rendu inhabile à remplir les fonctions essentielles de sa charge.

Observations des avocats

[16] Submissions on disposition were received from Mr. Sandler on behalf of Justice of the Peace Foulds, who was largely self-represented throughout the course of the Hearing. In light of the Hearing Panel's findings, a disposition at the "higher end of the spectrum" was acknowledged as being required in order to restore public confidence in His Worship and the administration of justice generally. A recommendation for removal from office was not viewed as being warranted given the remedial focus of this judicial disciplinary proceeding, regard for His Worship's personal circumstances, and Justice of the Peace Foulds' long service as a judicial officer.

[17] Presenting Counsel, Mr. Fenton, prefaced his submissions by referencing the scope of the role of Presenting Counsel on a section 11.1 hearing as delineated in the Reasons for Decision in *Barroilhet*:¹

Counsel agree that pursuant to section 4 of the *Justice 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 *Justice of the Peace Act*, are required to restore public confidence in the judiciary (hereinafter simply "Judicial Misconduct")....

[18] In furtherance of Presenting Counsel's role to "impartially assist" the Hearing Panel in its consideration of the appropriate disposition "such that the public's confidence and view of the administration of justice and the judiciary are fostered and maintained", Mr. Fenton directed the Hearing Panel's attention to the findings referenced in the Reasons for Decision that would support a disposition at the upper range of the available options. These findings were categorized as being compelling in nature and of sufficient seriousness to support a recommendation for removal from office.²

¹ In the Matter of Hearing ordered under section 11(15) of the *Justice of the Peace Act*, R.S.O. 1990, c. J.4, *J.P. Jorge Barroilhet (Re)*, Dated February 28, 2008, at page 1.

² The role of Presenting Counsel in relation to the issue of disposition is reviewed in a number of previous decisions on disposition. It has been compared to that of *amicus curiae* with the role limited to the offering of impartial assistance to draw the panel's attention to the various factors, both evidentiary and legal, that are germane to the determination of the appropriate disposition. The role is not viewed by Presenting Counsel as including the seeking of a particular disposition. See *Barroilhet* disposition, *supra*, at paragraph 8; In the Matter of Hearing ordered under section 11.1 of the *Justice of the Peace Act*, R.S.O. 1990, c. J.4, *(Re) J.P. Errol Massiah, Reasons for Disposition*, April 12, 2012 ("*Massiah 2012*"), at paragraph 3; In the Matter of Hearing ordered under section 11.1 of the *Justice of the Peace Act*, R.S.O. 1990, c. J.4, *(Re) J.P. Donna Phillips*, Decision on Disposition ("*Phillips*"), October 24, 2013, at paragraph 13; and see also, In the Matter of Hearing ordered under section 11.1 of the *Justice of the Peace Act*,

- [19] After noting the remedial focus of judicial misconduct proceedings, Presenting Counsel submitted, in light of the Hearing Panel's findings of judicial misconduct, that a disposition at "the more serious end of the range of available dispositions" as being required to restore the public's confidence in the judiciary and the administration of justice.
- [20] Based on the findings made by the Hearing Panel in the Reasons for Decision, Mr. Fenton submitted that it would "not be unreasonable" for the Hearing Panel to conclude that the conduct of His Worship was akin to that described by the Hearing Panel in *Phillips*,³ at paragraph 2 of that disposition, as follows:
- ...so manifestly and profoundly destructive of the concept of the impartiality, integrity, and independence of the judicial role, that public confidence would be sufficiently undermined so as to render her incapable of executing the judicial office. (See the Canadian Judicial Council's *Report to the Minister of Justice Concerning Mr. Justice Paul Cosgrove of the Superior Court of Ontario* (2009) at para. 19).
- [21] In the event a similar conclusion were to be reached by the Hearing Panel here, Presenting Counsel submits that it would be open to the Panel to determine that the appropriate remedy to restore public confidence in the judiciary would be to recommend to the Attorney General, pursuant to sections 11.1(10)(g) and 11.2(2)(ii), that His Worship Justice of the Peace Foulds be removed from office.

Applicable Legal Principles

- [22] 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 Supreme Court of Canada concluded that the purpose of judicial misconduct proceedings is essentially remedial.
- [23] In *Therrien*, the Supreme Court of Canada addressed a number of jurisdictional issues relating to disciplinary proceedings involving a provincially appointed Quebec-based judge. The appeal involved consideration of a circumstance where the judge had deliberately concealed the fact he had been charged with illegally and unlawfully giving assistance to four individuals associated with the kidnapping of Cabinet Minister Pierre Laporte and had plead guilty to related offences and been sentenced to a period of imprisonment as a consequence. The decision to revoke the judge's commission was upheld. At paragraph 147 of the judgment, Justice Gonthier, for the court, referenced the importance to be attached to the maintenance of public confidence in the justice system:

R.S.O. 1990, c. J.4, (Re) Paul Welsh, Reasons for Decision ("*Welsh* 2018"), February 15, 2018, at paragraph 50.

³ *Re: Phillips*, (2013).

The public's invaluable confidence in its justice system, which every judge must strive to preserve, is at the very heart of this case. The issue of confidence governs every aspect of this case, and ultimately dictates the result. Thus, before making a recommendation that a judge be removed, the question to be asked is whether the conduct for which he or she is blamed is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office [citation omitted].

[24] Similar sentiments were expressed on behalf of the court, by Justice Arbour in *Moreau-Bérubé*, a case involving the appeal of a decision by the Judicial Council of New Brunswick, recommending removal from the office of a provincial court judge because of statements she made in court while presiding over a sentencing hearing.

[25] In upholding the decision of the Judicial Council, Justice Arbour referenced the public's high expectations of those that hold judicial office:

The comments of Judge Moreau-Bérubé, as well as her apology, are a matter of record. In deciding whether the comments created a reasonable apprehension of bias, the Council applied an objective test, and attempted to ascertain the degree of apprehension that might exist in an ordinary, reasonable person. The expertise to decide that difficult issue rests in the Council, a large collegial body composed primarily of judges of all levels of jurisdiction in the province, but also of non-judges whose input is important in formulating that judgment. The Judicial Council has been charged by statute to guard the integrity of the provincial judicial system in New Brunswick. In discharging its function, the Council must be acutely sensitive to the requirements of judicial independence, and it must ensure never to chill the expression of unpopular, honestly held views in the context of court proceedings. It must also be equally sensitive to the reasonable expectations of an informed dispassionate public that holders of judicial office will remain at all times worthy of trust, confidence and respect.

[26] The terms “judicial misconduct” and “upholding a complaint” are not defined in the *Act*. The Hearing Panel accepts that the test for judicial misconduct was accurately defined in the Reasons for Decision⁴ in *Welsh* (2009). Decisions relating to the Canadian Judicial Council and the Ontario Judicial Council are concluded to have application in the determination of whether a complaint is or is not upheld in a disciplinary matter involving a justice of the peace pursuant to section 11.1(10) of

⁴ *In the Matter of Hearing Ordered Under Section 11(15) of the Justice of the Peace Act, R.S.O. 1990, c. J.4, as amended, Respecting the Conduct of Justice of the Peace Paul A. Welsh, December 8, 2009.*

the *Act*. Once the complaint(s) have been concluded to have been established, the available dispositions under the *Act* mirror the same dispositions that are available to the Ontario Judicial Council under subsection 51.6(11) of the *Courts of Justice Act*, R.S.O. 1990 c. C43 (C.J.A.) in judicial disciplinary hearings. Dispositions in section 51.6(11) are invoked, when necessary, in order to restore loss of public confidence arising as a consequence of judicial misconduct.

[27] It is only when the impugned conduct is so seriously contrary to the impartiality, integrity and independence expected of the judiciary that it undermines the public's confidence in the ability of a justice of the peace to perform the duties of office or the public's faith in the administration of justice generally that one of the dispositions referenced in the section is necessary in order to restore that confidence.⁵

[28] In another Supreme Court of Canada judgment, *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 (SCC) at paragraph 68, the court considered the role of a body comparable to the Justice of the Peace Review Council under the *Quebec Courts of Justice Act*. Gonthier J. described the remedial nature and the purpose of judicial disciplinary proceedings as follows:

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 reflect 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.

⁵ See *Welsh*, 2009, at paragraphs 30-31, *Therrien v. Minister of Justice*, at paragraph 147, and *Moreau-Bérubé v. New Brunswick, (Judicial Council)*, at paragraph 88.

[29] In *Re: Baldwin*, (2002), O.J.C.,⁶ the Ontario Judicial Council recognized the progressive approach to judicial discipline that follows a finding of misconduct, noting as follows:

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.

[30] This approach was also adopted and applied by the Ontario Judicial Council in the matter of *Re: Douglas*, (2006) O.J.C.,⁷ at paragraph 5, where the following principles were concluded to have apply in the determination of an appropriate disposition:

- (i) The Hearing Panel should first consider the least serious disposition and move sequentially to the most serious;
- (ii) The disposition must restore the public confidence in the judicial officer; and,
- (iii) The disposition must restore the public confidence in the administration of justice generally.

[31] As noted previously, a recommendation to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2, can only be made if the Hearing Panel is not satisfied that one of the alternative dispositions under subsection 11.1(10)(a) to (f) or a combination of those dispositions, is sufficient to restore public confidence in the judicial officer and the administration of justice generally.

[32] In *Re: Chisvin* (2012), O.J.C.,⁸ at paragraph 38, the Hearing Panel provided a list of factors that were viewed as being relevant to the determination of an appropriate disposition following a finding of judicial misconduct.⁹

[33] The factors referenced in *Re: Chisvin* include the following:

⁶ In the matter of a complaint respecting the Honourable Madam Justice Lesley M. Baldwin, May 10, 2002.

⁷ In the matter of a complaint respecting the Honourable Justice Norman Douglas, March 6, 2006.

⁸ In the Matter of a Hearing under Section 51.6 of the *Courts of Justice Act*, R.S.O. 1990, c. 43, as amended, Concerning Complaints about the Conduct of the Honourable Justice Howard I. Chisvin.

⁹ See *Phillips*, at paragraph 18; and *Massiah*, (2015) at paragraph 16.

- (i) Whether the misconduct was isolated in nature or reflected a pattern of conduct of like nature;
- (ii) The nature, extent and frequency of the acts of misconduct;
- (iii) Whether the misconduct occurred inside or outside of the courtroom;
- (iv) Whether the misconduct occurred in the course of the judicial officer's official capacity or during the course of his/her private life;
- (v) Whether the judicial officer acknowledged or recognized that the acts of misconduct had occurred;
- (vi) Whether the judicial officer had demonstrated an effort to change or modify his/her conduct;
- (vii) The length of service of the judicial officer;
- (viii) Whether there had been prior complaints of misconduct in relation to the judicial officer;
- (ix) The effect of the misconduct on the integrity of the justice system and respect for the judiciary; and,
- (x) The extent to which the judicial officer exploited his/her position in order to satisfy his/her own personal desires.

[34] Presenting Counsel provided a helpful review of all of the previously reported dispositions of the Justices of the Peace Review Council. That review revealed previous Hearing Panels to have considered a number of different factors in their deliberations on disposition. Those factors include the following:

- (a) Whether the Hearing Panel had found more than one incident of judicial misconduct to have occurred¹⁰;
- (b) Whether the misconduct was isolated in nature, or alternatively, had taken place over a period of time or constituted a pattern of conduct¹¹;
- (c) The length of the justice of the peace's time of service on the bench¹²;
- (d) Whether there were multiple complaints¹³;

¹⁰ See *Massiah* (2012), at paragraph 21; *Phillips*, at paragraph 13; *Massiah* (2105), at paragraph 17 and *Welsh* (2018), at paragraph 63;

¹¹ See *Massiah* (2012), at paragraph 21; *Phillips*, at paragraph 13, *Massiah* (2015), at paragraph 18; and, *Welsh* (2018), at paragraph 73.

¹² *Massiah* (2015), at paragraph 19; and, *Welsh* (2018), at paragraph 68.

¹³ *Massiah* (2012), at paragraph 21.

- (e) Whether the misconduct took place outside the courtroom, or in the justice of the peace's capacity as a private citizen¹⁴;
- (f) Whether the acts that were concluded to have constituted judicial misconduct were also the subject of criminal sanction¹⁵;
- (g) Whether there was an element of corruption to the judicial misconduct;¹⁶
- (h) Whether the justice of the peace had exploited his/her position for personal gain¹⁷;
- (i) The effect of the misconduct on the integrity of the judicial officer and respect for the judiciary at large¹⁸;
- (j) Whether the justice of the peace demonstrated an understanding of the seriousness of the misconduct¹⁹;
- (k) Whether the justice of the peace has demonstrated a willingness to address the cause of the misconduct, demonstrating that he/she is capable of rehabilitation²⁰;
- (l) Whether the justice of the peace acknowledged the misconduct or otherwise demonstrated remorse²¹;
- (m) Whether there has been a previous finding of judicial misconduct²²;

[35] In *Re: Douglas, supra*, at paragraphs 8 and 9, the Hearing Panel noted the following:

[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,

¹⁴ *Phillips*, at paragraph 23; *Massiah* (2015), paragraph 20; and, *Welsh* (2018), at paragraph 64.

¹⁵ *Welsh* (2009), at paragraph 78.

¹⁶ *Welsh* (2009), at paragraph 84.

¹⁷ *Foulds* (2013), at paragraphs 20, 32; *Phillips*, at paragraph 25.

¹⁸ *Phillips*, at paragraphs 25-28; *Massiah* (2015), at paragraphs 31-34; and, *Welsh* (2018), at paragraph 71.

¹⁹ *Phillips*, at paragraph 13; and, *Welsh* (2018), at paragraph 65.

²⁰ *Massiah* (2012), at paragraph 33; *Foulds* (2013), at paragraph 23.

²¹ *Massiah* (2012), at paragraph 29; *Phillips*, at paragraph 13; *Foulds* (2013), at paragraph 25; *Massiah* (2015), at paragraph 22; and *Welsh* (2018), at paragraph 65.

²² *Massiah* (2012), at paragraph 36; *Phillips*, at paragraph 13; *Foulds* (2013), at paragraph 26; *Massiah* (2015), at paragraph 21; and, *Welsh* (2018), at paragraph 69.

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 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.

Application of the Principles to this Hearing

- [36] The determination of the appropriate disposition in this hearing begins with consideration of the factors outlined in *Re: Chisvin* and the considerations referenced in the analysis of previous disciplinary proceedings as canvassed in paragraph 34 of this decision. The Hearing Panel notes His Worship's long service as a justice of the peace. Justice of the Peace Foulds was appointed on July 12, 1999 and has performed the duties as a justice of the peace for over 16 years with His Worship's continuous years of service disrupted by two periods of administrative suspension as a result of his misconduct.
- [37] Prior to his appointment as justice of the peace, His Worship accumulated over 41 years of military experience. He served for a number of year on the legal committee of the Confédération interalliée des officiers de Réserve (C.I.O.R.) where he was responsible for the delivery of Law of Armed Conflict (L.O.A.C.) education and testing. His Worship received a number of awards and official recognition for his commitment to these initiatives.
- [38] His Worship has also served as an adult educator and executive for certain non-profit endeavours. He was a founding director and now, life member, of the Canadian Society for Training and Development (C.S.T.D.), now the Institute for Performance and Learning, and was an executive director of the Toronto Advisory Committee on Employment Training (T.A.C.E.T), an agency involved in the funding of employment training. His Worship has also been an active community volunteer with a variety of amateur sports organizations.
- [39] Unfortunately, Justice of the Peace Foulds has been previously concluded to have engaged in judicial misconduct by involving himself in a public health inspection that occurred in a restaurant owned by a friend. In Reasons for Decision dated July 23, 2013, just ten months before Justice of the Peace Foulds issued the Information relating to the allegation of assault against BB, the Hearing Panel in that case found that His Worship had: "[A]ttempted to influence the regulatory duties of public officials whose employer, the City of Toronto, appears before him and other justices of the peace in this region as a litigant."

- [40] In the previous disciplinary proceeding, Justice of the Peace Foulds made certain admissions, including the acknowledgment that his actions, as detailed in an Agreed Statement of Facts, constituted judicial misconduct. His Worship also undertook that he would “not repeat such conduct in the future, mindful of the potential harm that such conduct poses to public confidence in the integrity and impartiality of the judiciary and to the administration of justice”.²³
- [41] At that time, Justice of the Peace Foulds agreed: “that a disposition ordered by the Justices of the Peace Review Council must be sufficient to restore and preserve the dignity and integrity of the judicial position. The disposition should also seek to restore public confidence in His Worship Foulds’ integrity and ability to carry out his duties as a justice of the peace.”²⁴
- [42] The Hearing Panel presiding over that hearing ordered that Justice of the Peace Foulds serve a seven-day suspension, without pay, commencing September 9, 2013.
- [43] His Worship acknowledged that his presence during the public health inspection and his actions thereafter “were inappropriate”. He expressed regret for allowing his personal concern for a friend “to compromise his judgment”. He agreed that he would “...not repeat such conduct in the future, mindful of the potential harm that such conduct poses to public confidence in the integrity and impartiality of the judiciary and to the administration of justice.”²⁵
- [44] The Hearing Panel concludes, that less than a year later, His Worship again allowed concern for a friend to compromise his judgment resulting in a course of conduct that served to undermine public confidence in His Worship personally and in the judiciary and administration of justice generally.
- [45] The incidents of judicial misconduct here, as referenced in the Reasons for Decision at paragraph 165, were not isolated in nature and occurred over the course of approximately 10 months. The misconduct occurred both in the courtroom as well as outside of the courtroom. The signing of the Information and involvement with the witness subpoena were activities that occurred during the course of the discharge of His Worship’s activities as an aspect of his job function. Repeated contacts with the police and several Crown Attorneys occurred outside the courtroom and were not directly relation to His Worship’s role as a justice of the peace.
- [46] In these circumstances, the Hearing Panel concludes that His Worship’s out-of-court actions were inextricably linked to his role as a justice of the peace with His Worship being concluded to have intentionally and inappropriately exploited the relationship he enjoyed with both the police and Crown counsel by virtue of his judicial position. The incidents of misconduct, when considered in their entirety,

²³ Re: Foulds, July 10, 2013, Agreed Statement of Facts, paragraph 30.

²⁴ Re: Foulds, Agreed Statement of Facts, at paragraph 28.

²⁵ Re: Foulds, Agreed Statement of Fact, July 10, 2013, at paragraphs 29-30.

are viewed as illustrating the absence of understanding by His Worship of the clear demarcation between the public and private life of a judicial officer.

- [47] As noted in the Reasons for Decision, His Worship's determination to advance his personal agenda or interest is concluded to have compromised and undermined the principles of impartiality, independence and integrity expected of all members of the judiciary.
- [48] In the view of the Hearing Panel, Justice of the Peace Foulds has not truly acknowledged any wrongdoing. He is concluded to continue to view the swearing of the Information against BB and the issuance of the witness summons for AA as merely being events that would have taken place regardless of whether or not he was personally involved. He is concluded to lack insight as to the impact his actions had on other criminal justice participants, including BB, several Crown Attorneys and both civilian and enlisted members of the Toronto Police Service. While Justice of the Peace Foulds is entitled to disagree with the conclusions reached by the Hearing Panel, his lack of appreciation for the consequences of his actions, acknowledgement of wrongdoing or expressed contrition, are relevant considerations in considering the appropriate disposition to preserve and restore public confidence in the integrity of the judiciary.
- [49] This is not a circumstance, like that reviewed in *Re: Chisvin, supra*, where there was an immediate recognition of the act of misconduct, an immediate rehabilitative response and an expressed apology, with numerous letters of support from judicial colleagues confirming that the action in issue was an aberration.
- [50] Similarly, the circumstances are not viewed as being analogous to those in *Re: Douglas*, where Justice Douglas was concluded to have "acknowledged his errors and admit that he conducted himself inappropriately".
- [51] Justice Douglas was viewed by the Hearing Panel as having effectively "conceded that he failed to conduct himself in a manner that the public expects of a judge, resulting in the loss of public confidence". His Honour was concluded to be sincere in acknowledging his inappropriate conduct and concluded to have learned "a hard lesson" from the events leading to the disciplinary hearing and from the hearing itself.
- [52] Most importantly, none of the conduct in which Justice Douglas engaged (conduct primarily related to the expression of his displeasure in relation to the manner in which "Over 80" cases were being defended and his frustration with the resulting trial delays arising from the limited availability of defence toxicologists, essential witnesses in the defence of those charges) was concluded to constitute incidents of judicial misconduct.
- [53] The same degree of insight, self-awareness and acknowledgement of inappropriate conduct demonstrated by Justice Douglas is not concluded to have been demonstrated here by Justice of the Peace Foulds.

- [54] Although no evidence was presented during the course of the hearing in relation to any proposed initiatives to change or modify the impugned conduct, His Worship has stated, in the written submissions filed by counsel during the disposition phase of the proceedings, that he is prepared to offer a formal apology to the Crown Attorneys, police officers and police staff affected by his actions. His Worship did not offer any apology to BB.
- [55] At paragraph 7 of His Worship's Written Submissions Respecting Disposition, the following representation is made, "...the entire process has reinforced for him what he is not entitled to do, how he must act prudently to avoid potential conflicts of interest, and how he should ensure that he avoids situations which may give rise to both apprehension of bias as well as actual bias...".
- [56] In the Reasons for Decision, the Hearing Panel concluded that Justice of the Foulds' actions were motivated by animus towards BB and an effort to advance the criminal prosecution against BB while ensuring that BB was aware of his Worship's involvement and interest in that criminal prosecution. The decision to sign the BB Information was concluded to constitute an abuse of His Worship's judicial office and to demonstrate an improper or ulterior motive. The actions of Justice of the Peace Foulds were viewed as being intentional and of a continuing nature, despite the fact His Worship either knew, or ought to have known, that he was in a clear position of conflict of interest.
- [57] The actions were concluded to go well beyond a display of poor judgment. The conduct was found to constitute an exploitation of his role as a justice of the peace as His Worship used his position to facilitate access to Crown Attorneys who were responsible for the prosecution of the BB matter. The Hearing Panel concluded these actions were intentional and designed to ensure that the prosecution staff knew that His Worship had a continuing interest in that prosecution. His Worship was also concluded to have shared incomplete or misleading information about his relationship with the complainant in the BB case with members of both the Toronto Police Service and the Crown Attorney's office. This was also concluded to be an intentional act designed to conceal His Worship's personal interest in the prosecution of BB in a way that both calculated and deceptive.
- [58] As noted as paragraphs 161 to 162 of the Reasons for Decision, the evidentiary record does not support the contention that Justice of the Peace Foulds truly acknowledges and accepts that he conducted himself inappropriately or, unlike the circumstances discussed in *Re: Douglas, supra*, that he has "learned his lesson". The record confirms that His Worship has in fact failed to fully accept or recognize the seriousness of his conduct or to fully understand why it is inappropriate for a justice of a peace to engage in the behaviours detailed in the *Reasons*.
- [59] Acknowledgement of having "erred in his approach", having "...mishandled certain processes", or the acknowledgement of "...shortcomings on how I approach certain elements of this situation..." underscore the lack of insight into the profound effect that His Worship's acts of misconduct had on BB personally and on the

administration of justice generally. His Worship continues to minimize the seriousness of his misconduct and its impact on those affected by it, as well as its impact on public confidence in the judiciary and the administration of justice.

- [60] Justifications for these actions, on either moral or ethical grounds, based on the vulnerabilities of AA, underscore the lack of insight into the impropriety of his actions and serve as a basis for the Hearing Panel to conclude that His Worship does not appear to sincerely accept, comprehend or acknowledge the impropriety of his conduct.
- [61] The effect of His Worship's misconduct on the integrity of and respect for the judiciary is concluded to be significant. The Hearing Panel concludes that BB had an objectively reasonable basis to believe that his prosecution was being influenced in an improper manner as a consequence of Justice of the Peace Foulds' involvement in matters relating to that prosecution. As noted in the Reasons at paragraph 170-171 and 173, BB's conclusion that "...there was a senior judicial official effectively running interference on my file" was not too far off the mark.
- [62] His Worship's actions, comments and interventions during the criminal process involving BB were concluded to have negatively swayed the perception of other participants in the criminal justice system including several Crown Attorneys and members of the Toronto Police Service. His Worship's conduct is determined to have compromised the independence, impartiality and integrity of the judicial office he holds and to be incompatible with the due execution of the responsibilities of that office.
- [63] As a result of the repeated acts of misconduct, the administration of justice is concluded to have been brought into disrepute. His Worship's misconduct resulted in a loss of confidence on the part of BB in His Worship as a judicial officer and in the creation of a negative impression in the mind of BB and others, and of the criminal justice system in general.
- [64] Each of the incidents of judicial misconduct is concluded to have involved a circumstance where Justice of the Peace Foulds exploited his position in order to advance his own personal interest. These acts are determined to have undermined the confidence of the public in the justice system.
- [65] The evidentiary record establishes that, beginning with the decision to sign the BB Information and concluding with the improper interaction with Assistant Crown Attorney Christine Jenkins, His Worship engaged in a continuing series of acts of judicial misconduct demonstrating an improper ulterior motive. In so doing, His Worship failed to fulfil his ethical responsibilities, as a jurist, to remain independent from the prosecution service and criminal prosecutions generally.
- [66] In its Reasons for Decision, this Panel concluded that Justice of the Peace Foulds, by his actions, intended to influence the prosecutor's perception of the relative merits of the allegations of AA against BB, or alternatively, was endeavouring to

inform the Crown attorney that he, a justice of the peace, had a particular interest in the BB prosecution.

- [67] As detailed in paragraphs 106, 128, 157 and 163 of the Reasons, the Hearing Panel concludes that His Worship intentionally utilized the special relationship that he enjoyed with the police and Crown counsel by virtue of his position as a justice of the peace, a position he has been concluded to have exploited in order to further his own personal interests as those interests related to AA, a person of significance in his life.
- [68] His Worship's decision to advance his personal agenda or interests, in a manner that has been concluded to have compromised and undermined the principles of impartiality, independence and integrity expected of all members of the judiciary, is misconduct that offends the principles that constitute the essence of the ethical conduct expected of a judicial officer.
- [69] In determining the appropriate disposition in this matter, the Hearing Panel has considered the most recent circumstances where recommendations of removal from office has been made, *Barroilhet*, *Phillips* and *Massiah*, April 28, 2015.
- [70] In *Massiah* (2016), the Hearing Panel described the sexually oppressive conduct in issue as being "relentless" and having involved a number of complainants over an extended period of time. The absence of any significant mitigating factors was also referenced by the Hearing Panel in concluding that a recommendation for removal from office, in accordance with section 11.2 of the *Act*, was warranted.
- [71] In *Phillips*, the Hearing Panel considered a circumstance in which the justice of the peace had been concluded to have intentionally lied to a police officer regarding the identity of her own daughter. This misrepresentation occurred during the course of an active police investigation and was compounded by a subsequent false denial of the initial misrepresentation.
- [72] Justice of the Peace Phillips had no previous disciplinary history unlike the circumstance considered by the Hearing Panel in *Massiah*.
- [73] *Barroilhet* involved consideration of a veritable litany of misconduct including numerous acts of dishonesty and professional impropriety involving manipulation of the outcome of certain Provincial Offence matters. The circumstances were further aggravated by the fact Justice of the Peace Barroilhet had continued to be actively associated with a paralegal firm in which he was professionally connected prior to his appointment to the bench.
- [74] The factual scenarios reviewed in each of these three cases are submitted by Mr. Sandler as being qualitatively different from the acts under consideration in this disposition hearing. As the *Massiah*, *Phillips* and *Barroilhet* disposition decisions demonstrate, a recommendation for removal from office should only be made in the most compelling circumstances where no other disposition is concluded to be

capable of restoring confidence in the justice of the peace and the administration of justice.

- [75] On reflecting on these submissions, the Hearing Panel acknowledges that Justice of the Peace Foulds had been subject to administrative suspension for more than two years during the course of these disciplinary proceedings. During this period of time, the hearing has attracted wide publicity. This has no doubt occasioned personal embarrassment to His Worship. The proceedings have also exacted a heavy financial toll. Legal costs incurred relate primarily to His Worship's unsuccessful Divisional Court challenge of the referral of the complaint of judicial misconduct to this Hearing Panel.
- [76] The Hearing Panel has considered the various incidents of misconduct of Justice of the Peace Foulds, and has concluded that this is not a situation where these acts could be attributed to inadvertence, indiscretion or an error in judgment. Consideration of the latter circumstances have been construed by other Hearing Panels to result in some allowance being accorded to acts that might be reasonably concluded to have occurred as a consequence of human frailty or fallibility.²⁶

Disposition

- [77] Given the findings of fact supporting the conclusion that Justice of the Peace Foulds actively involved himself in the criminal prosecution of BB in circumstances where he was in a clear conflict of interest as a result of his relationship with AA, the complainant in that criminal prosecution, the Hearing Panel is of the view that the public would not have any confidence in the continuing ability of His Worship to perform the duties that his judicial function entails. A member of the public might well be left to wonder whether their case might be of particular interest to His Worship, an interest sufficient to result in His Worship deciding to personally intervene in the legal process. A person may have a suspicion that the outcome of his or her case may be influenced by His Worship's interest in another party in the case.
- [78] His Worship has not demonstrated a willingness or ability to refrain from misconduct that is reasonably perceived as attempting to influence or interfere with a course of action being undertaken in accordance with the law. Following his undertaking during his first disciplinary hearing in 2013 that he would not repeat such conduct in the future, Justice of the Peace Foulds engaged yet again in misconduct that may be reasonably perceived as an attempt to influence or interfere with the conduct a criminal proceeding.
- [79] As indicated above, throughout this hearing, His Worship failed to demonstrate a meaningful acknowledgment of, and appreciation for, the concerns about his

²⁶ The Honourable Mr. Justice Sydney L. Robins, *Commission of Inquiry re: Provincial Judge Harry J. Williams* (1978), quoted in Hon. J. MacFarland, *Report of Judicial Inquiry re: His Honour Judge W.P. Hryciuk* (1993), p. 55, as cited in paragraphs 61 of Massiah (April 28, 2015).

misconduct and its impact of that conduct on the public's confidence in him as a justice of the peace, and on the confidence in the integrity of the judiciary in general.

- [80] For the foregoing reasons, the Hearing Panel concludes that the incidents of judicial misconduct are so profoundly contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before His Worship, and the confidence of the public in its justice system, would be undermined, rendering Justice of the Peace Foulds incapable of performing the duties of his office. No statutorily available period of suspension without pay or combination of other available remedial sanctions is concluded to be sufficient to rectify this situation.
- [81] For the foregoing reasons, the Hearing Panel concludes that the actions of Justice of the Peace Foulds, as detailed in the Reasons for Decision, have eroded the confidence of the public in His Worship as a judicial officer beyond reclamation. In the process, the integrity of the judiciary and confidence in the administration of justice has also been damaged.
- [82] For the foregoing reasons, the Hearing Panel concludes that the only appropriate sanction that will restore public confidence in the judiciary is a recommendation to the Attorney General, pursuant to section 11.1(10)(g) and 11.2(2)(ii), that His Worship, Justice of the Peace Foulds, be removed from office, on the basis that he has been incapacitated in his ability to perform the duties of his office by reason of conduct that is incompatible with the standard of conduct required to discharge the responsibilities of that office.
- [83] His Worship's misconduct is concluded to have irreparably undermined the principles of impartiality, integrity and independence that are essential to the performance of the judicial function so as to render His Worship incapable of executing the duties of judicial office.

Compensation for Legal Costs Incurred by the Hearing

- [84] Justice of the Peace Foulds seeks a recommendation to the Attorney General that he should be compensated for legal costs incurred by the hearing in the total amount of \$49,813.01. This sum includes \$43,250.00 in fees, HST and disbursements. These expenses were incurred between August 4, 2016 through to March 23, 2018.
- [85] Written submissions in relation to the issue of costs were received from both Mr. Fenton and Mr. Sandler. Presenting Counsel took no position on the issue of compensation.
- [86] In furtherance of this request, Mr. Sandler submitted that Justice of the Peace Foulds had been largely unrepresented throughout the course of the disciplinary hearing. Reference was also made to the fact that His Worship had incurred legal expenses and disbursements totalling almost \$100,000.00 in his unsuccessful effort in the Divisional Court to challenge the referral of the misconduct allegations

by the Complaints Committee of the Justice of the Peace Review Council to the Hearing Panel.

- [87] The Bill of Costs is submitted as being reasonable. Mr. Sandler argues that the costs account for only about a third of the total of the legal expenses incurred by Justice of the Peace Foulds, given that he incurred additional costs at the Divisional Court in relation to this disciplinary proceeding.
- [88] In considering this costs request, guidance is provided by the Divisional Court decision in *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 (Div. Ct.) and Reasons for Decision – Compensation for Legal Costs, *Re: Keast*, Ontario Judicial Council, February 6, 2018. The principles in these two decisions have also been applied by the Justices of the Peace Review Council in *Welsh* and in the *Reasons for Decision on Reconsideration of the Issue of Compensation for Legal Costs, in the Matter of a Hearing under Section 11.1 of the Justices of the Peace Act*, R.S.O. 1990, c. J.4, *Concerning a Complaint About the Conduct of Justice of the Peace, Errol Massiah*, March 29, 2018.
- [89] The following principles arise from consideration of the Divisional Court ruling in *Massiah* (paragraphs 48-57):
- (i) A finding of judicial misconduct does not lead to the presumption that an order of compensation for costs will not be warranted;
 - (ii) Administrative bodies involved in addressing complaints involving judicial office holders should start from the premise that it is always in the best interests of the administration of justice for those subject to such complaints to be represented by counsel;
 - (iii) The awarding of costs helps ensure that the process is “...fair, full and complete”; and,
 - (iv) Costs, in these circumstances, should usually be borne by the public as it is the interests of the public that are primarily advanced through the judicial complaint process.
- [90] In assessing the request for costs, the Hearing Panel is to consider the following factors as detailed in paragraph 57 of the *Massiah* judgment in determining whether to make a recommendation for compensation, and if so, what that amount should be:
- (i) A decision on costs must be made separately in each case on consideration of the particular circumstances of the case when viewed within the context of the objective of the disciplinary process;
 - (ii) The nature of the misconduct and its connection to the judicial function is to be considered;

- (iii) Conduct more directly related to the judicial function may be more deserving of compensation than conduct that is less directly related;
- (iv) Conduct that is obviously inappropriate will be less deserving of compensation for costs;
- (v) Multiple incidents of misconduct may be less deserving of compensation than a single incident of misconduct;
- (vi) Repeated incidents of misconduct may be less deserving of a costs recommendation than one isolated incident; and,
- (vii) If a recommendation for costs is to be made, the recommendation may not be warranted for steps that are concluded to have been “unmeritorious or unnecessary”.

[91] As summarized in paragraph [26] of the *Keast* cost decision, compensation for legal costs, as directed by the *Massiah* cost directives, in cases involving “successful” complaints, is not automatic. Compensation of costs is to be made following due deliberation of the circumstances of the particular case as “viewed within the context of the objective of the process.” The objective of the process is to preserve and restore confidence in the judiciary in general.

Analysis

- [92] The Hearing Panel’s authority to award compensation for legal costs under section 11.1(17) of the *Act* is limited to the costs incurred in connection with the hearing over which the Panel is presiding. This authority does not extend to consideration of legal costs resulting from steps in another court proceeding.
- [93] Section 11.1(17) must be considered within the context of the provisions of the *Justices of the Peace Act* that govern the complaints process. The “hearing” is the proceeding ordered under section 11(15)(c) by a complaints committee. The hearing is conducted in accordance with section 11.1 which is titled “Hearings”. Section 11.1(17) does not authorize the panel to consider costs incurred in connection with proceedings other than those directly relating to “the Hearing”.
- [94] Mr. Sandler’s characterization of the \$49,813.01 account for legal services as being “reasonable” based on the fact the account reflects approximately one-third of the total costs (inclusive of disbursements and taxes) incurred by Justice of the Peace Foulds, is concluded to be a factor of no significance in the determination of the assessment of the costs issue. Mr. Sandler’s bill is the only account for which compensation is being sought and the only legal expense that falls within the purview of the Hearing Panel by virtue of section 11.1(17) of the *Act*.

- [95] Turning now to consider the application of the factors referenced by Justice Nordheimer in *Massiah*, the Hearing Panel notes that if misconduct is more directly related to the judicial function, it may be more deserving of a compensation order than conduct that is less directly related. In contrast, if the misconduct is so obvious that any person would have to know it was inappropriate conduct, the justice of the peace will be viewed as being less deserving of a compensation decision. The misconduct in issue in this Hearing was not of one type or variety. It consisted of the intentional performance of several acts directly related to the exercise or the functions of a justice of the peace in circumstances where His Worship was in a position of conflict of interest. The misconduct also included incidents where he engaged in inappropriate communications with various criminal justice officials, including members of the Crown Attorney's Office and both lay and enlisted members of the Toronto Police Service. His Worship has been determined to have inappropriately attempted to assert influence in a matter before the court.
- [96] The Hearing Panel has concluded that the incidents of judicial misconduct in issue in this proceeding took place both inside and outside the courtroom. Many aspects of the misconduct that the Hearing Panel found to have occurred were acts that took place during the exercise of Justice of the Peace Foulds judicial authority with the misconduct concluded to have essentially blurred the lines between His Worship's judicial and personal life.
- [97] The misconduct in issue is concluded to have occurred in circumstances where the fact His Worship was in a position of conflict of interest was evident. The nature of the conduct was such that any justice of the peace would have assessed it as being inappropriate. Based on His Worship's long record of service and previous disciplinary experience, His Worship must have known that his conduct was in conflict with the standard of conduct expected by the public of those appointed to this position.
- [98] The misconduct was concluded to demonstrate a bias toward BB, and an appearance of bias that is the antithesis of the type of behaviour expected to characterize the conduct of a judicial officer. Anyone in the same position would therefore be reasonably expected to take active steps to ensure there was no compromise to the criminal justice process or the appearance of justice as a result of a personal connection to a matter before the court, particularly a court in which the judicial officer routinely presides. Overall, the misconduct is serious and any person would have known that it was inappropriate. The consequences of His Worship's misconduct were significant.
- [99] More than one incident of misconduct has been determined to have occurred. There was a pattern of misconduct that extended from May 21, 2014, when His Worship signed the original Information against BB, to late April 2015 when he approached Ms. Jenkins and made reference to the BB prosecution.
- [100] This hearing was a second instance resulting in a finding of judicial misconduct against His Worship. The seriousness of His Worship's actions were compounded

by the fact that Justice of the Peace Foulds was an experienced judicial officer who had only recently been subject to a previous disciplinary proceeding in 2013 following which he agreed not to repeat such conduct in the future. Public funds paid for that disciplinary hearing and His Worship received \$3,000 for his legal costs. In that proceeding, His Worship acknowledged that he was mindful of the potential harm that could arise in situations where matters of personal concern were permitted to compromise the ethical standards expected of a judicial officer and the potential compromise to public confidence and the integrity and impartiality of the judiciary and the administration of justice that might be reasonable anticipated to ensue as a consequence.

- [101] Mr. Sandler's bill includes services provided during the period starting on August 4, 2016. Mr. Sandler attended the set-date on September 28, 2016. He indicated that he was not properly retained at that time but would be making submissions on His Worship's behalf. Mr. Sandler made submissions on further motions on January 20, 2017 although he was still not yet retained. The Hearing Panel provided its decision on the motions on February 1, 2017, refusing to adjourn the hearing. The Hearing Panel agreed to delay the hearing until October of 2017 in order to allow His Worship to get his financial affairs in order so that he might be in a financial position that would enable him to retain counsel. On June 20, 2017, His Worship raised motions that were not filed properly. He then proceeded to re-argue some of the same issues that had already been decided by the Panel in February of 2017.
- [102] His Worship was self-represented through the stage of the hearing when evidence was called, commenced October 10, 2017. Presenting Counsel closed his case on October 16, 2017. His Worship argued a meritless motion for a non-suit and sought reconsideration of the entire hearing process after the findings of misconduct were made by the Panel.
- [103] Mr. Sandler was subsequently retained to make submissions in relation to a medical report submitted in evidence by His Worship, submissions on the evidence and submissions on disposition. The Hearing Panel acknowledges that the participation of Mr. Sandler and Ms. Ross as counsel during aspects of this proceeding served to expedite those phases of the Hearing and to delineate and define the issues in dispute. Counsel's participation during the disposition phase of the hearing was of particular assistance to the Hearing Panel.
- [104] Section 11.1(18) of the *Act* requires that any compensation recommendation under subsection (17) be based on the rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services. We have been advised by counsel, and accept, that the account submitted by Justice of the Peace Foulds' counsel references the applicable rate and take no issue with the services provided or the fees related to those services.
- [105] Accordingly, the Hearing Panel concludes that an award of compensation is warranted for legal costs on application of the criteria referenced by the Divisional

Court in *Massiah*. The public interest is concluded to have been advanced, and the best interests of the administration of justice served, by Justice of the Peace Foulds having had the benefit, even on an intermittent basis, of the services of experienced legal counsel.

[106] A balancing of the *Massiah* factors leads the Hearing Panel to conclude that partial compensation for legal expenses incurred is warranted as the majority of the factors referenced by Justice Nordheimer in the *Massiah* costs decision mitigate against full or even substantial indemnity of His Worship's legal costs.

[107] Factors mitigating against full compensation include the following:

- (i) The fact that His Worship engaged in a number of different forms of judicial misconduct;
- (ii) The fact the misconduct was not entirely related to His Worship's judicial function;
- (iii) The fact these acts occurred in circumstances where His Worship ought to have known that he was in a position of conflict of interest and that the acts were accordingly inappropriate;
- (iv) His Worship's prior disciplinary history, a factor that serves to make His Worship less deserving of compensation for legal costs associated with a subsequent misconduct hearing.

[108] The factors that are capable of supporting a claim for partial compensation of the legal expenses incurred can be captured on a much more abbreviated list and are summarized in the following:

- (i) As indicated above, the helpful assistance of Mr. Sandler and Ms. Ross facilitated the hearing process, and contributed to a full, fair and complete hearing.

[109] The balancing of the aforementioned factors leads the Hearing Panel to recommend that partial compensation in the amount of \$20,000.00 be recommended as compensation for legal costs incurred by His Worship.

[110] In reaching this determination, the Hearing Panel has endeavoured to balance the principles delineated in the *Massiah* costs judgment, while recognizing that it is in the best interests of the administration of justice and the interest of the public, that those subject to such complaints be represented by counsel.

Fait à Toronto le 27 avril 2018

COMITÉ D'AUDITION :

L'honorable juge Peter Tetley, président

La juge de paix Monique Seguin, membre juge de paix

Madame Jenny Gumbs, membre du public

ANNEXE A

DÉTAILS SUR LA PLAINTÉ

Les détails concernant la plainte sur la conduite du juge de paix Foulds (le « juge de paix ») sont énoncés ci-dessous :

1. La société est en droit de s'attendre à ce que les juges de paix soient indépendants et autonomes des autres charges et participants au système de justice, ainsi que de l'administration de la justice, et à ce qu'ils soient perçus comme tels. Bien que les juges de paix soient des personnes qui ont une vie personnelle en dehors du palais de justice, la société est en droit de s'attendre à ce que les juges de paix respectent les limites importantes entre leur vie personnelle et leur charge judiciaire.

Les juges de paix de la Cour de justice de l'Ontario reconnaissent qu'il leur incombe d'adopter, de maintenir et d'encourager une conduite et un professionnalisme irréprochables de manière à préserver l'indépendance et l'intégrité de leur charge judiciaire ainsi que la confiance accordée par la société aux hommes et aux femmes qui ont accepté les responsabilités liées à la charge judiciaire. Un juge de paix doit personnellement adhérer à ces normes de manière à préserver l'intégrité, l'indépendance et l'impartialité de sa charge judiciaire.

La conduite d'un juge de paix est un élément important et essentiel qui favorise la confiance du public envers la magistrature. La confiance du public est érodée par des perceptions négatives à l'égard de la conduite des officiers de justice. La justice ne doit pas seulement être rendue, elle doit aussi être perçue comme étant rendue. La perception qu'un juge de paix n'est pas indépendant, impartial ou intègre jette le discrédit sur tous les magistrats.

Les parties à un litige sont en droit de s'attendre à ce que leurs causes soient traitées en conformité avec les lois, normes et procédures qui régissent la police, les avocats de la Couronne et les officiers de justice, qui remplissent chacun un rôle bien défini. Le fait qu'un juge de paix tente d'utiliser son pouvoir judiciaire ou ses fonctions judiciaires, ou qu'il soit perçu comme utilisant son pouvoir judiciaire ou ses fonctions judiciaires, pour promouvoir des intérêts personnels ou les intérêts d'une autre partie, pourrait constituer un abus de pouvoir judiciaire ou être perçu comme constituant un abus de pouvoir judiciaire. Des conflits d'intérêts, réels et perçus, doivent être assidûment évités.

Un abus de pouvoir judiciaire peut se produire, par exemple, dans les circonstances suivantes : intervenir dans le processus accusatoire de l'administration de la justice; agir d'une manière qui suggère que le juge de paix entretient ou cherche à entretenir une relation particulière avec la police ou un avocat de la Couronne; se trouver dans une situation de conflit d'intérêts. Ce genre d'intervention, par un juge de paix, peut donner lieu à un traitement spécial, réel ou perçu, de la part du public, de la police ou de l'avocat de la Couronne. Une

intervention de ce genre par un juge de paix pourrait également être perçue comme la tentative, par le juge de paix, d'utiliser sa position pour influencer sur l'instance judiciaire.

2. Entre le printemps 2014 et l'été 2015, le juge de paix a agi de mauvaise foi ou dans un motif illégitime, ou d'une manière qui pouvait raisonnablement être perçue comme telle, et a compromis l'indépendance, l'impartialité et l'intégrité des fonctions judiciaires du juge de paix, lorsqu'il est activement intervenu dans une enquête pénale et la poursuite concernant M. BB en : délivrant une dénonciation contre M. BB; délivrant une assignation à la plaignante Mme AA (la « plaignante ») à une époque où il entretenait une relation amoureuse avec elle, et en communiquant d'une façon inappropriée avec la police et des agents de la Couronne qui étaient responsables de la poursuite contre M. BB, alors que le juge de paix se trouvait dans un évident conflit d'intérêts, ce qui a constitué un abus de ses fonctions judiciaires.
3. Plus précisément, le juge de paix a agi de mauvaise foi ou dans un motif illégitime, ou d'une manière qui pouvait raisonnablement être perçue comme telle, et a compromis l'indépendance, l'impartialité et l'intégrité des fonctions judiciaires du juge de paix, lorsque :
 - a. le 21 mai 2014, le juge de paix a reçu et signé la dénonciation contenant une accusation criminelle présumée contre M. BB, dans des circonstances où le juge de paix était un ami proche ou le partenaire de la plaignante, ainsi qu'un témoin potentiel dans l'instance contre M. BB, ce qui constitue un abus de pouvoir judiciaire;
 - b. le 21 mai 2014, dans des circonstances où le juge de paix entretenait une relation personnelle avec la plaignante et M. BB, le juge de paix n'a pas enregistré sur bande audio l'instance au cours de laquelle il a reçu et signé la dénonciation contre M. BB, ce qui constitue un abus de pouvoir judiciaire;
 - c. le 2 mars 2015, le juge de paix a reçu et signé une assignation ordonnant à la plaignante d'assister au procès de M. BB, dans des circonstances où le juge de paix était le partenaire de la plaignante et vivait avec elle, et qu'il était un témoin potentiel dans le cadre de l'instance, ce qui constitue un abus de pouvoir judiciaire;
 - d. le 2 mars 2015, le juge de paix a tenté d'être présent au moment où la plaignante recevait l'assignation ou de recevoir l'assignation au nom de la plaignante. Ces tentatives ont été faites même si le juge de paix avait délivré l'assignation d'une manière inappropriée, qu'il était le partenaire de la plaignante et qu'il vivait avec elle, et qu'il était un témoin potentiel dans le cadre de l'instance contre M. BB, ce qui constitue un abus de pouvoir judiciaire;

- e. entre le 13 juin 2014 et le 27 octobre 2014, et à nouveau au cours de l'été 2015, le juge de paix a pris contact avec l'avocat de la Couronne chargé de la poursuite contre M. BB, même s'il savait qu'il se trouvait dans une situation de profond conflit d'intérêts dans cette affaire et que l'avocat de la Couronne le lui avait fait observer, ce qui constitue un abus de pouvoir judiciaire;
- e. pendant la période mentionnée ci-dessus, le juge de paix est continuellement intervenu, d'une manière inappropriée, dans le processus accusatoire et a agi d'une façon qui laissait entendre qu'il entretenait des relations particulières avec la police et les avocats de la Couronne, ou qu'il cherchait à exploiter ces relations, ce qui constitue un abus de pouvoir judiciaire;
- f. le 16 avril 2015 ou avant cette date, malgré le principe de la publicité des débats, le juge de paix a tenté d'obtenir une ordonnance de non-publication et une ordonnance de mise sous scellés en réponse à la demande de production des dossiers de tiers de M. BB, qui visait à obtenir les courriels personnels du juge de paix au sujet de son intervention dans l'enquête et la poursuite concernant M. BB, ce qui constitue un abus de pouvoir judiciaire.

Intervention personnelle dans l'enquête sur M. BB

- 4. Le 19 février 2014, le juge de paix a contacté le Bureau de la sécurité pour le secteur de la justice pour signaler des commentaires perturbants que M. BB aurait faits à la plaignante, qui était à cette époque une amie du juge de paix. M. BB et la plaignante avaient récemment mis fin à leur relation amoureuse.
- 5. Le 15 mars 2014, la plaignante a appelé le Service de police de Toronto (le « SPT ») pour signaler le vol de son manteau de fourrure. Le juge de paix se trouvait avec la plaignante au moment de son appel. La plaignante a indiqué que le juge de paix était son « partenaire ». L'agent de police qui a enregistré la déclaration a reconnu M. Foulds comme étant un juge de paix. Le juge de paix a demandé que son nom ne figure pas dans le rapport d'incident du SPT.
- 6. Le 18 mai 2014, le juge de paix s'est rendu avec la plaignante au poste de police de la 53^e Division, qui se trouve dans le territoire qui relève de sa compétence judiciaire et il a été identifié comme un juge de paix. La plaignante s'était rendue au poste de police pour signaler que son ancien partenaire, M. BB, l'avait agressée. Le juge de paix a expliqué à des membres du SPT qu'il accompagnait la plaignante pour l'aider à faire sa déclaration et qu'il n'entretenait pas de relation amoureuse avec Mme AA. Le juge de paix a fourni à la police des renseignements contextuels et des renseignements au sujet de l'état de la plaignante. Il a indiqué pourquoi elle s'était rendue au poste de police et est demeuré au poste de police pendant que la plaignante faisait sa déclaration. Le juge de paix a également

précisé aux membres du SPT que la plaignante avait demandé que M. BB ne soit pas détenu pour la nuit en attendant son enquête sur le cautionnement et qu'elle accepterait que la police le relâche à condition qu'il s'engage à ne pas avoir de contact avec elle.

7. Le 19 mai 2014, le juge de paix s'est rendu à l'hôpital avec la plaignante et a été témoin de la signature qu'elle a apposée sur un formulaire de consentement à la divulgation de renseignements médicaux concernant ses blessures présumées, qu'elle a dû signer dans le cadre des accusations criminelles portées contre M. BB. Ce jour-là, le juge de paix a aussi pris contact avec la police pour lui signaler qu'il avait vu M. BB dans un restaurant.

Procédure judiciaire contre M. BB

8. Le 21 mai 2014, un membre du SPT s'est présenté devant le juge de paix à la Cour des juges de paix, au palais de justice de College Park, pour prêter serment sur un formulaire de dénonciation accusant M. BB d'avoir agressé la plaignante. Le juge de paix n'a pas divulgué la nature de sa relation avec la plaignante et/ou M. BB au policier. Le juge de paix a signé et confirmé le processus de dénonciation, alors qu'il se trouvait clairement dans une situation de conflit d'intérêts.

Omission d'enregistrer numériquement sur bande audio l'instance devant la Cour des juges de paix

9. Le 21 mai 2014, dans des circonstances où le juge de paix avait une relation personnelle avec la plaignante et M. BB, il n'a pas allumé le système d'enregistrement numérique sur bande audio utilisé pour confirmer la comparution de l'agent devant le juge de paix, à la Cour des juges de paix, qui voulait prêter serment sur une Dénonciation et faire confirmer le processus.

Contact avec le procureur adjoint de la Couronne

10. Le 13 juin 2014, le juge de paix s'est rendu au Bureau des avocats de la Couronne, au palais de justice de College Park, et s'est entretenu directement avec le procureur de la Couronne au sujet de la poursuite contre M. BB. Le juge de paix a demandé de ne pas être assigné à une salle d'audience où le dossier de M. BB pourrait être entendu, en raison du fait qu'il connaissait la plaignante. Le juge de paix a ensuite informé le procureur de la Couronne qu'il avait signé la Dénonciation dans laquelle M. BB était accusé d'avoir agressé la plaignante. Au cours de la conversation avec le procureur de la Couronne, le juge de paix a fait une remarque désobligeante au sujet de M. BB qui suggérait que M. BB avait fait preuve de « violence » envers la plaignante pendant leur relation.

11. Après sa conversation avec le juge de paix, le procureur de la Couronne a immédiatement fait le nécessaire pour qu'une autre Dénonciation soit signée sous serment devant un autre juge de paix, car il semblait que le juge de paix avait délivré la Dénonciation originale alors qu'il se trouvait dans une situation de conflit d'intérêts, ce qui a compromettrait l'intégrité et l'impartialité de l'instance.
12. Le juge de paix savait qu'il se trouvait encore dans une situation de conflit d'intérêts en raison de ses liens étroits avec la plaignante et du fait qu'il pourrait être un témoin. Malgré cela, le 8 ou 9 septembre 2014, ou vers cette date, le juge de paix a contacté à nouveau le même procureur de la Couronne pour lui demander s'il devrait remettre une déclaration de témoin à la police.
13. Le juge de paix savait très bien qu'il se trouvait encore dans une situation de conflit d'intérêts en raison de ses liens étroits avec la plaignante et du fait qu'il pourrait être un témoin. Néanmoins, le 23 octobre 2014, le juge de paix a envoyé un courriel au même procureur de la Couronne pour lui demander des conseils juridiques au sujet de son intervention dans l'affaire de M. BB.

Délivrance d'une assignation et tentative d'obtenir un traitement spécial pour Mme AA

14. Le 2 mars 2015, un membre civil du SPT a comparu devant le juge de paix pour demander la délivrance d'une assignation ordonnant à la plaignante de se présenter au tribunal pour le procès de M. BB. Le juge de paix a signé l'assignation malgré le fait qu'il savait se trouver dans une situation de conflit d'intérêts en raison de sa relation intime avec la plaignante et du fait qu'il pourrait être un témoin, tout en sachant que la dénonciation qu'il avait signée sans en avoir le droit, le 21 mai 2014, avait dû être remplacée.
15. En dépit de ce qui précède, le juge de paix a alors demandé d'être informé de la date de signification de l'assignation pour qu'il puisse être présent au moment de l'assignation. Le juge de paix a ensuite contacté l'agent de police chargé de l'enquête et lui a proposé de remettre lui-même l'assignation à la plaignante.

Tentative d'obtenir une ordonnance de non-publication et une ordonnance de mise sous scellés du dossier

16. Au cours de sa défense, M. BB a déposé une demande de communication de dossiers de tiers afin de pouvoir obtenir la production des courriels personnels du juge de paix relatifs à son intervention dans l'enquête et la poursuite le concernant. Malgré le principe de la publicité des débats, le 16 avril 2015 ou vers cette date, ou avant cette date, le juge de paix a tenté d'obtenir une ordonnance de non-publication et une ordonnance de mise sous scellés concernant les documents visés par la demande de communication de dossiers de tiers. La motion a été retirée le 16 avril 2015 après la décision du procureur de la Couronne de demander un arrêt des procédures contre M. BB.

Communication avec le procureur de la Couronne pour discuter de l'affaire de M. BB après la conclusion du dossier

17. Comme indiqué, le juge de paix savait qu'il se trouvait dans un conflit d'intérêts en raison de ses liens étroits avec la plaignante. Néanmoins, au cours de l'été 2015, après le retrait des accusations portées contre M. BB, le juge de paix est entré en contact avec une autre procureure de la Couronne qui, à un moment donné, s'était occupée du dossier BB, et lui a demandé « Tout va bien? », ce qui a mis mal à l'aise la procureure de la Couronne. Cette dernière a donc décidé d'éviter de parler de l'affaire avec le juge de paix.

Conséquences de la conduite du juge de paix

18. Par ailleurs, le juge de paix s'est comporté de façon à masquer son intérêt personnel dans la poursuite contre M. BB en agissant d'une manière calculée et trompeuse. Le juge de paix n'a communiqué que des renseignements limités à diverses étapes de la procédure pour faire croire qu'il était franc, alors qu'en réalité il n'était pas complètement honnête ou franc. Les actes du juge de paix, ses commentaires et ses interventions pendant la procédure pénale ont conduit aux résultats suivants :
 - a. Des interactions inappropriées avec des membres du SPT et des procureurs adjoints de la Couronne;
 - b. L'augmentation considérable des frais d'avocat de M. BB;
 - c. La perception, par différents participants au système de justice pénale, dont les procureurs de la Couronne et le personnel du SPT, que la conduite du juge de paix avait compromis l'indépendance, l'impartialité et l'intégrité des fonctions judiciaires des juges de paix;
 - c. L'utilisation excédentaire des ressources publiques en augmentant la charge de travail du Bureau des procureurs de la Couronne, qui a dû répondre aux allégations d'intervention inappropriée du juge de paix, formulées par M. BB, ainsi qu'aux demandes de production de documents additionnels et de documents de tiers concernant le juge de paix;
 - d. L'érosion de la confiance de M. BB envers le juge de paix en qualité d'officier de justice et envers le système de justice.
19. Étant donné les sentiments du juge de paix à l'égard de la plaignante, son opinion bien ancrée de M. BB et les leçons que le juge de paix aurait dû avoir retiré de son audience disciplinaire en 2013 [où il a avoué avoir commis une inconduite judiciaire lorsqu'il est intervenu dans une enquête d'inspecteurs des services de santé publique de Toronto sur un restaurant appartenant à un ami du juge de paix], le juge de paix a agi de mauvaise foi ou dans un motif illégitime, ou d'une manière

qui pouvait raisonnablement être perçue comme telle, et a compromis l'indépendance, l'impartialité et l'intégrité des fonctions judiciaires des juges de paix, lorsqu'il a signé la dénonciation et plus tard l'assignation destinée à la plaignante, et qu'il a continué de communiquer de façon inappropriée avec des membres du SPT et des procureurs de la Couronne, abusant ainsi de sa charge de juge de paix.

20. En outre, le juge de paix a fait preuve de plusieurs comportements inappropriés qui ont violé les principes d'indépendance, d'impartialité et d'intégrité à la base de ses fonctions judiciaires, et/ou il a donné l'impression qu'il n'agissait pas avec indépendance, impartialité et intégrité, en ce qui concerne les allégations de la plaignante contre M. BB.
21. Les actes du juge de paix ont été, ou auraient pu être, perçus par une personne raisonnable et impartiale, comme un abus du pouvoir des juges de paix.
22. Individuellement et cumulativement, les actes du juge de paix concernant la procédure pénale relative à la plaignante et/ou à M. BB, telle que résumée ci-dessus, constituent une inconduite judiciaire.
23. L'acte ou les actes décrits aux paragraphes 2 à 20, inclusivement, constituent une inconduite judiciaire qui justifie l'application d'une mesure en vertu du paragraphe 11.1 (10) de la *Loi sur les juges de paix*.