

**Report of the
Commission of Inquiry
Into the Conduct of His Worship
John Farnum
A Justice of the Peace**

**The Honourable Associate Chief Judge
Brian W. Lennox
Commissioner**



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May 25, 1998

The Honourable Hilary M. Weston
Lieutenant Governor of the Province of Ontario
Legislative Building
Queen's Park, Suite 131
Toronto, ON M7A 1A1

May it please Your Honour:

**Re: Report of the Commission of Inquiry into the Conduct of His Worship John Farnum
A Justice of the Peace**

Further to my appointment by Order in Council No. 2493/97 to inquire into the question of whether there had been misconduct by His Worship John Farnum, a Justice of the Peace, and pursuant to s.12 of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4 as amended, I have the honour to submit my report.

A handwritten signature in cursive script, appearing to read 'B. Lennox', with a long horizontal flourish extending to the right.

Brian W. Lennox
Commissioner

**REPORT OF THE COMMISSION OF INQUIRY
INTO THE CONDUCT OF HIS WORSHIP JOHN FARNUM,
A JUSTICE OF THE PEACE**

On March 3, 1997, following its investigation into certain complaints, the Justices of the Peace Review Council recommended to the Attorney General of Ontario that a Commission of Inquiry be established to determine whether there had been misconduct by His Worship John Farnum, a Justice of the Peace, and to make recommendations regarding discipline if misconduct were found. The following is the report of that Inquiry, established by Order in Council dated December 17, 1997.

Background:

Justice of the Peace John Farnum is presently 55 years old. He was appointed a Justice of the Peace in September 1988 at the age of 46 and progressed through a series of designations to the point where he started to preside over provincial offence trials by 1990, within about 18 months of his appointment. Although he worked principally as a Justice of the Peace in Brampton, he also performed occasional Justice of the Peace duties in Toronto.

Prior to his appointment, Justice of the Peace Farnum had been Executive Director of Labour and Community Services in Brampton (a youth development service for Peel Region) for approximately 6 years. Before that, he had been employed for approximately five years by McDonnell Douglas, first as a skilled tradesman, then as a union representative in arbitrations and negotiations, having been elected to represent the skilled trades on the Canadian Auto Workers Bargaining Committee at McDonnell Douglas. While at McDonnell Douglas, Justice of the Peace Farnum obtained a social service work diploma from Humber College.

The Statutory Framework:

The *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended, provides in s.9 for the creation of the Justices of the Peace Review Council and assigns to it under s.11(1) the authority to investigate any complaints it receives regarding the conduct of a justice of the peace. In the course of an investigation, the Review Council has all the powers of a commission under Part II

of the *Public Inquiries Act* (s.11(5)). Once the investigation is complete, the Review Council may report its opinion regarding the complaint to the Attorney General and may recommend that an inquiry be held under s.12 of the *Act* (s.11(7)(a)). If the holding of an inquiry is recommended, s.12(1) provides that the Lieutenant Governor in Council may appoint a provincial judge to inquire into the question whether there has been misconduct by a justice of the peace. The *Public Inquiries Act* applies to the inquiry (s.12(2)). Upon completion of the inquiry and in the event that misconduct is found, the report of the inquiry may recommend;

- (i) that the Lieutenant Governor in Council remove the justice of the peace from office (s.12(3)) or
- (ii) that the Review Council implement a disposition under s.12(3.3).

(i) Removal from Office:

Section 8 of the *Justices of the Peace Act* provides that a justice of the peace may be removed from office only by order of the Lieutenant Governor in Council. This order can not be made unless;

- (a) a complaint regarding a justice of the peace has been made to the Review Council and
- (b) the removal is recommended following an inquiry held under s.12, on the ground that the justice of the peace has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) infirmity,
 - (ii) conduct that is incompatible with the execution of the duties of his or her office, or
 - (iii) having failed to perform the duties of his or her office as assigned.

(ii) Implementation of Disposition by the Review Council:

Where misconduct is found but the report of the inquiry recommends the implementation by the Review Council of a disposition under section 12(3.3) rather than removal from office, the Council 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 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 up to 30 days.

Whether or not misconduct is found, the report of the inquiry may 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 (s.12(3.1)).

The substance of the complaint in this matter is an allegation that Justice of the Peace Farnum conducted himself in a manner that was incompatible with the execution of his office.

The Complaints:

The Commission of Inquiry was directed to consider two matters of complaint which had been reported to the Attorney General by the Justices of the Peace Review Council:

- (1) Whether Justice of the Peace Farnum failed to disqualify himself from hearing evidence and rendering judgment on charges in respect of which he had prior knowledge and in respect of which he had formed opinions.
- (2) Whether Justice of the Peace Farnum associated with a known criminal and identified himself as a friend or associate of a known criminal in circumstances in which he knew or ought to have known that the persons to whom he so identified himself would rely upon his position as member of the judiciary to confirm the trustworthiness of the known criminal.

These matters of complaint had been raised in a letter sent on September 30, 1994 to the Justices of the Peace Review Council by Michael Code, Assistant Deputy Attorney General - Criminal Law. Justice of the Peace Farnum was formally advised of the complaints by Notice of Inquiry from the Justices of the Peace Review Council on June 6, 1995. The Justices of the Peace Review Council heard evidence and submissions with respect to the complaints over a period of four days in the late spring and early summer of 1996 before submitting its report recommending a public inquiry to the Attorney General on March 3, 1997. On December 17, 1997, the Commission of Inquiry was established by Order in Council. Subsequently, a Notice of Public Hearing was published in the *Ontario Reports* (January 16, 1998) and the *Brampton Guardian*. The Inquiry began on February 17, 1998 and continued on February 18, 19, 24 and 25, 1998.

Details of the Complaints:**1. Prior knowledge and failure to disqualify.****(a) The Agreed Facts:**

The first complaint against Justice of the Peace Farnum related to charges laid on July 6, 1992 under the *Occupational Health and Safety Act* against Thermoset Thermoplastic Custom Molding Limited ("Thermoset") and Wasad Ali ("Ali"). The charges arose as a result of an injury to an employee of Thermoset that had occurred on July 23, 1991. In the late summer or early fall of 1992, Mr. Ali retained the services of Richard Allman, a lawyer, to represent both him and the company with respect to the charges. However, in January 1993, Mr. Allman became seriously ill and referred the file to another lawyer, John Kalina. Because of his illness, Mr. Allman was unable to have any discussion about the content of the file with Mr. Kalina prior to trial. Mr. Kalina represented Mr. Ali and Thermoset at the trial which began before Justice of the Peace Farnum on April 29th, 1993 and continued on July 19th, August 17th and October 19th, 1993. At the conclusion of the trial, Justice of the Peace Farnum dismissed all charges against Thermoset and Mr. Ali.

Following the acquittal at trial, the Crown filed a Notice of Appeal dated October 25, 1993. The charges were eventually resolved by a plea of guilty from Thermoset without the appeal being heard on its merits.

(b) The Alleged Misconduct:

Once the Crown had given notice of its intention to appeal, Mr. Kalina referred the file to Mr. Allman for an opinion with respect to the merits of the appeal. Both Mr. Kalina and Mr. Allman testified at the Inquiry that Mr. Allman had had no involvement with any aspect of the file from the time he first transferred the matter to Mr. Kalina in January 1993 until after the filing of the Notice of Appeal. Mr. Allman stated that he became aware for the first time that Justice of the Peace Farnum had presided over the trial when he received the file from Mr. Kalina for the appeal opinion. (Mr. Kalina testified that this was probably in the early spring of 1994.) Both witnesses agreed that Mr. Allman subsequently advised Mr. Kalina that Justice of the Peace Farnum had

originally referred Mr. Ali to Mr. Allman and was accordingly in a position of conflict of interest. Mr. Allman later discussed the matter with Stephen Sherriff, a senior Assistant Crown Attorney in Brampton. That conversation ultimately led to the complaint of Michael Code, Assistant Deputy Attorney General - Criminal Law to the Justices of the Peace Review Council on September 30, 1994.

Mr. Allman alleged that Justice of the Peace Farnum had initially spoken to him about the Thermoset and Ali matter at the Brampton courthouse. Subsequently, the two met on at least two occasions for approximately one hour at the St. Hubert restaurant across from the courthouse to discuss the case. Mr. Allman testified that he was introduced for the first time to Mr. Ali by Justice of The Peace Farnum in the course of one of those meetings at the restaurant. (On cross-examination, Mr. Allman agreed that he might have first met Mr. Ali very briefly at the courthouse, but testified that he had no recollection of such a meeting.) According to Mr. Allman, Justice of the Peace Farnum was aware of the specific facts and circumstances of the case, had a detailed knowledge of the operation of the machinery involved and of the possible defences available to the defendants. Mr. Allman testified that Justice of the Peace Farnum expressed the opinion that the injured worker had probably injured himself deliberately to set up a claim for compensation. Justice of the Peace Farnum allegedly indicated to Mr. Allman that he felt free to discuss the matter since he would not be hearing the case. After these initial detailed discussions, Mr. Allman indicated that Justice of the Peace Farnum would occasionally ask about the progress of the case when the two met in the courthouse prior to Mr. Allman's illness. Mr. Allman testified that this was the only *Occupational Health and Safety Act* matter that he had ever dealt with in his practice.

It was Mr. Allman's evidence at the Inquiry that he had received so much information about the case from Justice of the Peace Farnum that he would have had to do very little preparation for the trial if he had actually defended Thermoset and Mr. Ali. When he did speak to Mr. Ali about the case, Mr. Allman indicated that he did so only to confirm the information that Justice of the Peace Farnum had already provided.

2. Association with a known criminal.

(a) Agreed Facts

The person referred to as a "known criminal" was identified throughout the course of the Inquiry as Mr. O. Mr. O had both a lengthy and a current criminal record which dated from 1971 and

included a series of convictions for offences of dishonesty. Sometime prior to the fall of 1992, Detective Paul Chisholm of the Peel Regional Police Force introduced Mr. O to Justice of the Peace Farnum, indicating that Mr. O was an excellent automobile mechanic. At the time that he introduced Mr. O to Justice of the Peace Farnum, Detective Chisholm was aware of Mr. O's record. Detective Chisholm had himself become a friend of Justice of the Peace Farnum in approximately 1984 when Justice of the Peace Farnum was Executive Director of Labour and Community services in Brampton. They had become close friends and socialized quite regularly.

Following the initial introduction, Justice of the Peace Farnum arranged on several occasions to have Mr. O do mechanical work on his car.

The facts relating to Mr. O can conveniently be divided into three separate headings;

i) First Canadian Auto Collision; ii) Kennedy Hi-Fi and iii) Minit-Tune

i) First Canadian Auto Collision.

In September 1992, Mr. O's wife was involved in a car accident. Mr. O had her car towed to First Canadian Auto Collision in Brampton, a business owned in part by Paul Foreman. Mr. O told Mr. Foreman that he worked for the Peel Regional Police and that he knew Detective Chisholm. Mr. Foreman agreed to do the repairs at cost for Mr. O since he was a police officer. In the course of his frequent attendances at First Canadian Auto Collision, Mr. O mentioned to Mr. Foreman that he knew a judge and that he wanted Mr. Foreman to meet him. Shortly thereafter, Mr. O and Mr. Foreman went to the Brampton Courthouse at 141 Clarence Street where Mr. O introduced Mr. Foreman to Justice of the Peace Farnum. Subsequently, Justice of the Peace Farnum went to First Canadian Auto Collision on one occasion and spoke to Mr. Foreman about an apprenticeship program for troubled youth. At a later date, Mr. O removed his vehicle without paying for over \$4,000.00 in repairs that had been effected by Mr. Foreman.

(ii) Kennedy Hi-Fi

a) In the fall of 1992, Terry Esch was an Assistant Manager and Manager of the Car Audio unit at Kennedy Hi-Fi in Brampton. In October of that year, Mr. O came to Kennedy Hi-Fi and told Mr. Esch that car stereos had been stolen from his car and approximately 12 other cars at a local car dealership where he claimed to be a service manager. Mr. O told Mr. Esch that, if Mr. Esch gave him a good deal for a stereo replacement for his own car, he would refer the other car

owners to Kennedy Hi-Fi for their stereo replacements. Mr. Esch advised Mr. O that he could not proceed to replace the car stereo until he received Mr. O's insurance information. Mr. O returned several times to Kennedy Hi-Fi but did not produce the required insurance information. He did, however, mention that he had a friend who was a judge and invited Mr. Esch to meet with him for lunch. Sometime after that conversation, Messrs. Esch and O went to the Brampton Courthouse and sat in Justice of the Peace Farnum's court until the court ended for the morning. Mr. O then walked up to the front of the court beside the bench, began playing with Justice of the Peace Farnum's robes and said, "That's a nice dress, where can I get one like that?". Justice of the Peace Farnum told him in a friendly but firm manner to get away. The three men later went to a local restaurant for lunch where they talked about a sound system for Justice of the Peace Farnum. Within a week after the lunch, Mr. Esch agreed to put a stereo into Mr. O's car even though he had not received any insurance information.

At different points in time, Mr. O told Mr. Esch that he had a firearms acquisition certificate and was an undercover police officer. Mr. O also introduced Detective Paul Chisholm to Mr. Esch. On one occasion, Justice of the Peace Farnum, Detective Chisholm and Mr. O were all present at Kennedy Hi-Fi when Mr. Esch demonstrated a sound system to Justice of the Peace Farnum. At that time, it was arranged that Mr. Esch would attend at Justice of the Peace Farnum's home a day or two later. When Mr. Esch did appear at the home, Mr. O arrived shortly after.

b) Late in 1992, Trevor Morrow was working at Kennedy Hi-Fi as an installation bay manager. He met Mr. O through Terry Esch and was also introduced to Justice of the Peace Farnum and to Detective Paul Chisholm. Mr. O told Mr. Morrow that he was a police officer and indicated to Mr. Morrow that he would be able to get him a car at a reduced price. As a result of that representation, Mr. Morrow gave Mr. O \$1,600.00. After approximately 4 or 5 weeks, Mr. Morrow began to become concerned and tried to reach both Mr. O and Detective Chisholm.

iii) Minit-Tune.

In January 1993, Terry Louizos and his father Jim Louizos owned an automobile repair shop in Mississauga known as Minit-Tune. During the month of January, Mr. O was hired as a mechanic by Minit-Tune. He advised Terry Louizos that he had worked as an undercover police officer, that Detective Paul Chisholm was a friend of his and that he could get the Peel Regional Police to come to Minit-Tune for repairs. He also frequently mentioned that he knew a judge, whom he identified as Judge Farnum. Some time after Mr. O was hired by Minit-Tune, Justice of the Peace Farnum came into Minit-Tune for servicing of his car, returning on several occasions for

owners to Kennedy Hi-Fi for their stereo replacements. Mr. Esch advised Mr. O that he could not proceed to replace the car stereo until he received Mr. O's insurance information. Mr. O returned several times to Kennedy Hi-Fi but did not produce the required insurance information. He did, however, mention that he had a friend who was a judge and invited Mr. Esch to meet with him for lunch. Sometime after that conversation, Messrs. Esch and O went to the Brampton Courthouse and sat in Justice of the Peace Farnum's court until the court ended for the morning. Mr. O then walked up to the front of the court beside the bench, began playing with Justice of the Peace Farnum's robes and said, "That's a nice dress, where can I get one like that?". Justice of the Peace Farnum told him in a friendly but firm manner to get away. The three men later went to a local restaurant for lunch where they talked about a sound system for Justice of the Peace Farnum. Within a week after the lunch, Mr. Esch agreed to put a stereo into Mr. O's car even though he had not received any insurance information.

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the same reason. While Justice of the Peace Farnum had originally come to Minit-Tune because his mechanic, Mr. O, worked there, Jim Louizos did almost all of the work on Justice of the Peace Farnum's car.

Mr. O told Terry Louizos that he could get a Corvette automobile for him at a very good price through Justice of the Peace Farnum, who was required to sign papers to release cars that had been seized for non-payment of debt. Terry Louizos and a friend gave \$1,000.00 to Mr. O as a deposit on the Corvette. At a later date, when Terry Louizos mentioned the scheme to obtain the Corvette to Justice of the Peace Farnum, Justice of the Peace Farnum immediately told Mr. Louizos that he knew nothing of the matter and that Mr. Louizos should get his money back. In April of 1993, Mr. O left Minit-Tune and did not return to work.

After Mr. O's departure, Terry Louizos advised his father, Jim Louizos, that he had given \$1,000.00 to Mr. O on the representation that Mr. O could get a Corvette for him with the help of Justice of the Peace Farnum. Jim Louizos phoned Justice of the Peace Farnum and demanded the return of his son's money, advising Justice of the Peace Farnum that he was coming to the courthouse to attempt to resolve the matter. He indicated to Justice of the Peace Farnum that he intended to involve the police and that he wanted his son's money back. In the course of the discussion at the courthouse, Justice of the Peace Farnum left the room briefly, then returned and went to a local coffee shop with Jim Louizos to discuss the matter. As they were returning from the coffee shop to the courthouse, Mr. O pulled up in his car and Jim Louizos walked to Mr. O's vehicle to speak to him. Justice of the Peace Farnum continued into the courthouse. Two days later, Mr. O returned Terry Louizos' money to him.

(b) The Alleged Misconduct

Commission counsel took the position that Justice of the Peace Farnum continued to associate openly with Mr. O even after he knew (as early as September of 1992) that Mr. O had an extensive criminal record. It was also the position of Commission counsel that a number of people relied to their detriment on Justice of the Peace Farnum's judicial position and his association with Mr. O to confirm the trustworthiness of Mr. O. On this argument, Mr. O was able more readily to cheat or to defraud John Foreman, Terry Esch, Trevor Morrow and Terry Louizos because of his apparent friendship with Justice of the Peace Farnum.

In order for me to conclude that there was any misconduct with respect to this complaint, the evidence would first have to establish, not only that Mr. O was a criminal, but also that Justice of the Peace Farnum was aware of that fact.

Motion under Section 7 of the *Canadian Charter of Rights and Freedoms*:

At the conclusion of all of the evidence heard in the course of the Inquiry, counsel for Justice of the Peace Farnum brought an application pursuant to sections 7 and 24(1) of the *Canadian Charter of Rights and Freedoms* for a stay of the proceedings, arguing that the delays in the disciplinary process up to and including the Inquiry had deprived Justice of the Peace Farnum of the ability to make full answer and defence. This issue was argued by counsel at the same time as the argument with respect to the evidence heard by the Inquiry.

The initial *Charter* inquiry involves two questions;

- 1) does the *Canadian Charter of Rights and Freedoms* apply to disciplinary proceedings under the *Justices of the Peace Act*; and
- 2) assuming that the *Charter* is generally applicable, does s.7 apply to such disciplinary proceedings?

In the event that I find that s.7 does apply, further issues arise with respect to the nature and degree of prejudice that may be required to establish a violation of the rights guaranteed by that section.

1) The Applicability of the *Charter*;

As a preliminary matter, both Commission counsel and counsel for Justice of the Peace Farnum agreed that the disciplinary process set out in the *Justices of the Peace Act* falls within the scope of "government action" and is accordingly subject to the *Charter*. In the absence of argument on the issue, I have proceeded on the basis that the provisions of the *Charter* generally do apply to these proceedings.

2) The Applicability of s.7 of the *Charter*:

Section 7 of the *Canadian Charter of Rights and Freedoms* reads as follows:

“Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

The conclusion that the provisions of the *Charter* generally apply to this Inquiry is not determinative of the issue of the specific application of s.7. In order for s.7 of the *Charter* to apply, the potential removal from office of a justice of the peace as a result of the disciplinary process under the *Justices of the Peace Act* would have to constitute a deprivation of “...the right to life, liberty and security of the person...”. Further, assuming that s.7 were to apply, there would be no violation of “...the right to life, liberty and security of the person...” unless the deprivation were found to be contrary to “...the principles of fundamental justice.”

i) “...life, liberty and security of the person...”

Commission counsel initially took the position that s.7 is not available in the present circumstances since that section does not protect the right to engage in a particular type of employment or professional calling. While this may have been the position in Ontario during the early evolution of the caselaw relating to s.7 (*R. v. Quesnel* (1985), 53 O.R. (2d) 338 (O.C.A.); *Feldman v. Law Society of Upper Canada* (unreported)[1987] O.J. No. 1979, File No. 639/85 (Ont. Div. Ct.); *Arlington Crane Service Ltd. v. Ontario (Minister of Labour)* (1988), 67 O.R. (2d) 225 (Ont. H. C.)) the decision of the Supreme Court of Canada in *Pearlman v. Manitoba Law Society Judicial Committee* (1991), 84 D. L. R. (4th) 105 clearly indicated that the issue of whether the right to certain kinds of employment was encompassed by the expression “right to life, liberty, and security of the person” in s.7 had not yet been determined. Although it declined to decide the issue specifically, the Court in *Pearlman* held that the disputed provisions of the *Manitoba Law Society Act* did not contravene the principles of fundamental justice, even assuming that s.7 of the *Charter* did apply.

Prior to the decision in *Pearlman*, the British Columbia Court of Appeal in *Wilson v. Med. Services Comm. of B.C.* [1989], 2 W.W.R. 1 had held that s.7 of the *Charter* applied to legislation which deprived some medical doctors in British Columbia of the opportunity to practice in competition with all other doctors in the province. The issue in that case was whether “liberty” in s.7 was broad enough to include the opportunity of a qualified physician to practice medicine in British Columbia. The court rejected the characterization of the issue as “...right to work (a purely economic question)” and focused its attention on what it called “...a more important

aspect of liberty, the right to pursue a livelihood or profession (a matter concerning one's dignity and sense of self worth)." (p.18) It concluded that geographic restrictions imposed by government on the right to practice medicine in British Columbia did constitute a violation of the right to liberty protected by s.7 (p.26). The Nova Scotia Court of Appeal in *Khaliq-Kareemi (Re)* (1989), 57 D. L. R. (4th) 505 had similarly ruled that s.7 of the *Charter* applied to disciplinary proceedings against a physician before the Nova Scotia Health Services and Insurance Commission.

Subsequent to *Pearlman*, the Newfoundland Supreme Court in *Harvey v. Law Society of Newfoundland* (1992), 88 D. L. R. (4th) 487 held that unacceptable delays in dealing with an allegation of professional misconduct against a lawyer which had the effect of depriving the lawyer of his right to make full answer and defence constituted a violation of s.7 of the *Charter*.

While the matter of the scope of the application of s.7 of the *Canadian Charter of Rights and Freedoms* may not yet be settled law in Ontario, I am persuaded by the reasoning in *Harvey*, *Wilson* and *Khaliq-Kareemi*. I see no reason in principle and no imperative of public policy that would require that a Justice of the Peace faced with the potential of removal from office be deprived of the protections of s.7 of the *Charter*. Indeed, the principle of judicial independence militates strongly in favour of the application of s.7 to disciplinary proceedings under the *Justices of the Peace Act* and I have no hesitation in concluding that s.7 does apply in the circumstances of this matter.

ii) "...principles of fundamental justice."

Counsel for Justice of the Peace Farnum first argued that, depending on the length of the delay in the particular case, there may be no need to demonstrate actual prejudice in order to establish a breach of the principles of fundamental justice contrary to s.7 and to be entitled to a remedy. He submitted that, once significant delays had been established, prejudice to the right to make full answer and defence was presumed. He was unable to provide any authority for this proposition and I reject it.

The main argument of counsel for Justice of the Peace Farnum was that the cumulative effect of the various delays in dealing with the matters of complaint against Justice of the Peace Farnum prevented him from making full answer and defence.

There is little doubt that there has been a significant delay in the present process which is sufficient on its face to warrant investigation. Of particular concern are the following periods of time:

- a) the eight months between the written complaint from the Assistant Deputy Attorney General – Criminal Law, Michael Code and the Notice of Inquiry from the Justices of the Peace Review Council to Justice of the Peace Farnum; September 30, 1994 to June 6, 1995.
- b) the eight month period from the date on which the Justices of the Peace Review Council received submissions from counsel following its hearing until the report to the Attorney General; July 8, 1996 to March 3, 1997.
- c) the nine and one half months from the date of the report of the Justices of the Peace Review Council until the signature of the Order in Council creating the Commission of Inquiry; March 3, 1997 to December 17, 1997.

While there may be justification for the delays in each case, they were largely unexplained on the evidence before me. As a result of the time periods involved and of the overall delay, counsel for Justice of the Peace Farnum has alleged the existence of prejudice at three levels;

- (1) The personal and emotional strain on Justice of the Peace Farnum and his family over the course of the proceedings.
- (2) Double jeopardy. Shortly before Justice of the Peace Farnum was advised of the matters which gave rise to the present inquiry, a separate complaint relating to Justice of the Peace Farnum's relationship with Mr. O had been dealt with by the Justices of the Peace Review Council. Counsel for Justice of the Peace Farnum alleged that dealing with the complaints involving Mr. O in the present matter constituted a form of double jeopardy.
- (3) The most significant prejudice alleged related to the impact of the passage of time on the evidence, particularly as follows;
 - a) the witness Wasad Ali was not available to testify either before the Justices of the Peace Review Council or the Inquiry, and

b) the memories of the witnesses who did testify (including Justice of the Peace Farnum) had been dimmed by the passage of time to the prejudice of Justice of the Peace Farnum.

All three issues raise the question of the nature and of the degree of prejudice required to be demonstrated in an application of this type.

Where delay has been argued as giving rise to a s.7 breach in criminal matters, the Ontario Court of Appeal has consistently held that argument on the issue of delay and its impact should be reserved at least until sufficient evidence is heard to permit the court to determine the effect of the delay on the applicant's ability to make full answer and defence (*R.v.François* (1993), 15 O.R. (3d) 627; *R. v. R.C.* (1995), 77 O.A.C. 56). The reason for this is apparent in the judgment of Lamer J. (as he then was) in *R.v.Mills* (1986), 26 C.C.C.(3d) 481 at 558:

Pre-charge delay is relevant under ss.7 and 11(d) because it is not the *length* of the delay which matters but rather the *effect* of that delay upon the fairness of the trial.

Moreover, where it is alleged that delay has led to a violation of s.7, the Ontario Court of Appeal has required the demonstration of a prejudice "...of such magnitude and importance that it can be fairly said to amount to a deprivation of the opportunity to make full answer and defence." *R.v.B.(D.J.)* (1993), 16 C.R.R.(2d) 381 at 382, quoted with approval in *R.v.François* and *R.v.R.C. supra*.

Although the cases referred to all speak to the criminal law, I see no reason to come to a different conclusion in this matter where the subject of the s.7 inquiry is the same, namely, the *effect* of the delay on the ability to defend. Accordingly, I agree with Commission counsel that Justice of the Peace Farnum can not succeed on his application unless he is able to demonstrate actual prejudice of such a nature as to deprive him of the ability to make full answer and defence.

(1) With respect to the first argument of counsel for Justice of the Peace Farnum, I am not satisfied that the emotional impact upon Justice of the Peace Farnum is of the nature and degree contemplated in an application under s.7 of the *Charter*.

(2) Turning to the double jeopardy argument, the complaints involving Mr. O. before the Inquiry arose in different circumstances than the complaint which had previously been dealt with by the Justices of the Peace Review Council. Although occurring within the same time frame as the

previous complaint, the complaints before me became known to the Justices of the Peace Review Council only once that earlier complaint had been disposed of. While Justice of the Peace Farnum's relationship to Mr. O was the basis for all of the complaints, they relate to different individuals in different contexts and I see no reason to conclude that Justice of the Peace Farnum has been prejudiced by the manner in which the complaints were dealt with successively by the Justices of the Peace Review Council.

(3) I propose now to deal briefly with the most serious allegations of prejudice relating to (a) the unavailability of Mr. Ali and (b) the effect of the passage of time on the witnesses' memories.

(a) It was agreed by both counsel that Mr. Ali left Canada shortly after he was interviewed by the Ontario Provincial Police in 1994. In those circumstances, the most important periods of delay had no impact on his availability to testify before the Justices of the Peace Review Council or before the Inquiry. Even if they had, I have not been advised of any significant effort to locate Mr. Ali, to interview him or to have his evidence otherwise brought before the Inquiry. Furthermore, his evidence is in part available by virtue of his written statement to the Ontario Provincial Police on August 15, 1994 and that statement is generally favourable to Justice of the Peace Farnum.

(b) It is undoubtedly true that the passage of time has weakened the memory of certain witnesses, including Justice of the Peace Farnum. Although the memories of a number of the witnesses were in some respects remarkably clear almost five years after the events they were describing, in other respects that same evidence was problematic, particularly regarding the timing and sequencing of events. However, it is at least arguable on the evidence before me, as Commission counsel has submitted, that any deterioration in memory has generally operated to the benefit of Justice of the Peace Farnum

In the final analysis, the issue of the prejudice, if any, that has been caused by the delays associated with this proceeding can be determined by reference to the findings of fact which follow.

The Standard of Proof

In disciplinary proceedings, it is clear that the standard of proof required is the balance of probabilities. There are, however, degrees of probability within that standard of proof which increase with the gravity of the allegation and the seriousness of the consequences *R. v. Oakes*

(1986), 24 C.C.C. (3d) 321 (S.C.C.); *Coates v. Ontario (Registrar of Motor Vehicle Dealers and Salesmen)* (1988), 52 D.L.R. (4th) 272 (Ont. Div. Ct). Where the disciplinary proceedings involve serious allegations which may result in the removal of a professional license or removal from office, the proof of those allegations "...must be clear and convincing and based upon cogent evidence which is accepted by the tribunal." *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977), 15 O.R.(2d) 447 at 485 (Ont. Div. Ct.); *Coates v. Ontario, supra*. While this standard of proof requires more than simple probability, it is not the equivalent of the criminal standard of proof beyond a reasonable doubt.

Findings of Fact

1. Prior knowledge and failure to disqualify

Richard Allman gave his evidence in a clear and consistent manner. He was a credible witness whose evidence was essentially unshaken on cross-examination. His actions subsequent to the trial of Thermoset and Ali were consistent with the evidence which he gave and with his stated belief in the inappropriateness of Justice of the Peace Farnum's conduct. Mr. Kalina confirmed that Mr. Allman spoke to him about the potential misconduct of Justice of the Peace Farnum only after Mr. Allman had received the trial transcripts.. There is no issue taken with the fact that Mr. Allman subsequently discussed the matter with Stephen Sherriff, a senior Assistant Crown Attorney, before a formal complaint was made through the Assistant Deputy Attorney General - Criminal Law to the Justices of the Peace Review Council. Taken by itself, Mr. Allman's evidence is internally consistent and coherent.

The evidence of Justice of the Peace Farnum was similarly given in a straightforward manner. He did not recall meeting with Mr. Ali at the courthouse or anywhere else. However, he testified that he could have spoken briefly to Mr. Ali and referred him to Mr. Allman without having remembered it, given the nature and the volume of work required of a justice of the peace in a busy intake office. He denied having any prior knowledge of the charges or having discussed the matter with Mr. Allman. The fact that he sat on the Thermoset and Ali matter without comment and proceeded to judgment is consistent with his evidence that he had no prior knowledge of the charges. Absent the evidence of Mr. Allman, there would be no reason to doubt the testimony of Justice of the Peace Farnum to that effect.

Counsel for Justice of the Peace Farnum suggested that the absence of Mr. Allman at the trial of Thermoset and Mr. Ali was a significant factor that might have prevented Justice of the Peace Farnum from realizing that the Thermoset and Ali matter was the one that he had previously discussed with Mr. Allman (if such discussions had in fact taken place and simply been forgotten by Justice of the Peace Farnum). There are, however, marked and irreconcilable differences between the evidence of Mr. Allman and of Justice of the Peace Farnum with respect to possible conversations about Thermoset and Mr. Ali. I am satisfied that Justice of the Peace Farnum would have remembered the Thermoset and Ali matter if he had discussed the issues in the case with Richard Allman as Mr. Allman has alleged in his evidence. Accordingly, this is not a case in which it would be open to me to conclude that Justice of the Peace Farnum had spoken of the charges in the manner described by Mr. Allman and had simply forgotten both the facts and his earlier interest by the time the matter came to trial.

While the actions of Mr. Allman following the trial of Thermoset and Ali are consistent with the allegations which he makes in his evidence, they do not in law constitute confirmation of those allegations. Similarly, I do not find that the conduct of the trial or the reasons for judgment confirm either that Justice of the Peace Farnum had prior knowledge of the case or that he had formed opinions about it beforehand. While the judgment may have been favourable to the defendants, that is not necessarily indicative of bias. Nor am I assisted on this issue by the subjective assessments of counsel who appeared at the trial.

There is no suggestion of any motive that Mr. Allman might have had to fabricate an allegation against Justice of the Peace Farnum. On the contrary, their relationship prior to this incident appeared to be positive, amicable and professional. The obvious lack of motive, it might be argued, adds to the credibility both of Mr. Allman and of his allegations of misconduct.

If I am to consider motive, there is, on the other hand, no evidence of any real or potential benefit to Justice of the Peace Farnum from hearing the Thermoset and Ali matter, nor of any reason for him to do so if he had the extensive knowledge of the case alleged by Mr. Allman. The only explanation available on the evidence is that Justice of the Peace Farnum had a strong interest in the subject matter of the charges, an explanation which I do not find persuasive. Although there is no necessity to prove motive in order to establish misconduct, the apparent absence of motive on the part of Justice of the Peace Farnum does nothing to strengthen the arguments of Commission counsel.

As I indicated earlier, Justice of the Peace Farnum's conduct in hearing and determining the Thermoset and Ali matter is entirely consistent with his having no prior knowledge of it. Further, the impressive character evidence presented in the form of 25 letters from a broad spectrum of the community (Exhibit 4) supports his credibility and lessens the likelihood that he would knowingly have been guilty of misconduct. In addition, the statement of Wasad Ali (found at Tab 7 of Exhibit 2) constitutes evidence independent of that of Justice of the Peace Farnum which tends to confirm his version of events.

Wasad Ali did not testify in the course of the inquiry. It is common ground that he left Canada shortly after being interviewed by the Ontario Provincial Police in 1994. In the circumstances, both Commission counsel and counsel for Justice of the Peace Farnum agreed that Mr. Ali's evidence would be put before the Commission by way of his signed statement given to the Ontario Provincial Police on August 15, 1994. It was also agreed by counsel that the statement, although not meeting the customary tests of reliability, could be used by the Commission for all purposes.

There are a number of difficulties with the statement of Wasad Ali; the police questioning of Mr. Ali was rather summary and left significant gaps in areas which would have been of use to the inquiry; Mr. Ali's answers were brief, and he was not subject to any form of cross-examination. Without the opportunity to observe the witness, there is no ability to assess his credibility. The statement is, however, the only evidence from Mr. Ali before the Commission.

Mr. Ali indicated in his statement that he went to the Clarence Street courthouse in Brampton once he was charged under the *Occupational Health and Safety Act*. A friend had suggested that he speak to a justice of the peace for a referral to a lawyer. At the courthouse, he spoke to a justice of the peace (whom he later recognized as Justice of the Peace Farnum), went into his office and told him about the case, indicating that he was looking for a lawyer with industrial accident experience. The only further involvement which Mr. Ali recalled was that the justice of the peace accompanied him from the office into the hall and pointed out Richard Allman, suggesting that Mr. Ali retain Mr. Allman's services for the purpose of his defence. Mr. Ali confirmed in his statement that his file was later transferred from Mr. Allman to Mr. Kalina. He also indicated that when he first appeared for trial before Justice of the Peace Farnum, he did not recognize the justice of the peace, only later realizing that it was the same person whom he had seen at the Clarence Street courthouse. Mr. Ali told the Ontario Provincial Police that he did not know Justice of the Peace Farnum prior to meeting him at the office in Brampton and that he had spoken to him only on that one occasion at the courthouse. He said that the subject matter of the

conversation was not about the case but rather about finding a lawyer. When asked if he recalled meeting at St. Hubert's restaurant with Justice of the Peace Farnum and Mr. Allman, he replied: "I would like to say 'No' because I don't recall meeting Farnum more than once, and that's in the courthouse." Mr. Ali indicated that he was surprised to see Justice of the Peace Farnum hearing the case because he thought that only judges heard such cases.

Wasad Ali's statement tends to support the position of Justice of the Peace Farnum in the following significant respects; i) that there was no contact between himself and Justice of the Peace Farnum before Mr. Ali went to the Brampton courthouse; ii) that he met only once with Justice of the Peace Farnum and that meeting took place at the courthouse and iii) that there was no extensive discussion about the case since the conversation related principally to finding a lawyer for Mr. Ali.

I am satisfied that Justice of the Peace Farnum did speak briefly to Mr. Ali and did refer him to Mr. Allman at the courthouse. Further, whatever the reason for the referral to Mr. Allman, I find that it was not appropriate for the Justice of the Peace to refer Mr. Ali to a lawyer when the charges were going to be dealt with in a provincial offences court over which Justice of the Peace Farnum presided from time to time. However, that conclusion is of no particular assistance since the issue of a simple referral after a brief conversation is neither the subject nor the substance of this complaint. The misconduct alleged is that Justice of the Peace Farnum deliberately chose to preside over the trial in circumstances where he had detailed and intimate knowledge of the facts and had formed opinions about the issues to be litigated. For the reasons which I have given above, I am unable to conclude that those facts have been established on a balance of probabilities. Accordingly, I find that the misconduct alleged in this complaint has not been proven.

2. Association with a known criminal

The evidence that Justice of the Peace Farnum knew of Mr. O's criminal background at any time prior to mid-January 1993 is far from compelling.

(i) Justice of the Peace Farnum testified that he knew that Mr. O was a native Canadian who had had some difficulty adjusting to life off the reserve. Mr. O had advised him of this but had spoken of no other problems. In the fall of 1992, Justice of the Peace Farnum commented to Mr. Foreman that he was "...trying to help Mr. O straighten out his life." Commission counsel suggested that this comment indicated that the Justice of the Peace knew that Mr. O had a

criminal record. Mr. Foreman testified that he did not take this comment to refer to knowledge of any criminal activity. I have come to the same conclusion.

ii)(a) Terry Esch first testified that he had a conversation in the fall of 1992 with Justice of the Peace Farnum in which the Justice of the Peace told him that Mr. O was a "con artist". Subsequently, Mr. Esch testified on cross-examination that the conversation could well have taken place in March 1993 or at a later date.

(b) Trevor Morrow gave evidence that he spoke to Justice of the Peace Farnum when he first became worried about the money that he had given to Mr. O and that Justice of the Peace Farnum expressed concern because Mr. O was a "criminal-type person". While Justice of the Peace Farnum had no specific recollection of such a conversation with Trevor Morrow, he testified that he could have spoken to Mr. Morrow in January 1993 about Mr. O's criminal behaviour. On cross-examination, Mr. Morrow indicated that he had also talked to Detective Chisholm about Mr. O at about the same time and received some information from him. At the conclusion of his evidence, Mr. Morrow testified that he could not be sure of the source of his information about Mr. O. As is the case with much of the evidence presented in the course of the Inquiry, there is a great deal of imprecision with respect to dates. There is nothing in the evidence of Trevor Morrow that would preclude any conversation with Justice of the Peace Farnum occurring after mid-January 1993.

(iii) Although evidence with respect to the date is similarly imprecise, it is clear that Justice of the Peace Farnum's conversation with Terry Louizos in which the two discussed Mr. O's apparent defrauding of Terry Louizos took place early in 1993, as did the Justice of the Peace's later conversation on the same subject with Jim Louizos. When the matter was first raised, Justice of the Peace Farnum promptly advised Terry Louizos that he was not involved in any scheme to obtain inexpensive motor vehicles and that Terry Louizos should try to get his money back from Mr. O. While I find that Justice of the Peace Farnum spoke by telephone to Detective Chisholm when Jim Louizos was at the courthouse, there is no evidence to explain how Mr. O happened to appear in the parking lot of the courthouse when Justice of the Peace Farnum and Jim Louizos returned from having coffee.

It is significant that Mr. O, while indicating that it was Justice of the Peace Farnum who had access to cheap automobiles, also told Terry Louizos not to talk about the scheme with Justice of the Peace Farnum since it was "inside stuff" and Justice of the Peace Farnum would not want to discuss it. I am satisfied that there is no evidence which would permit me to conclude that

Justice of the Peace Farnum was ever involved in any of the various schemes that were concocted by Mr. O or that he ever intended to be a party to any fraudulent transaction.

It is largely on the basis of the above evidence that Commission counsel suggested that I could infer that Justice of the Peace Farnum knew of Mr. O's criminal background. There is, however, further evidence on the point to the opposite effect. Detective Paul Chisholm testified that, although he himself knew that Mr. O had an extensive criminal background, he did not advise Justice of the Peace Farnum of that fact until mid-January, at which time Justice of the Peace Farnum appeared to be "surprised" or "shocked". Initially he told Justice of the Peace Farnum that Mr. O was a "con artist" and it was not until approximately two months later that he advised the Justice of the Peace that Mr. O had an extensive criminal record for fraud and obstruction and hinted at other activities. Justice of the Peace Farnum in his evidence also testified that he had no knowledge of Mr. O's criminal background until his conversation with Detective Chisholm in January 1993. He further testified that the basis of his relationship with Mr. O was that Mr. O was his mechanic. He did recognize, however, that it may have appeared to others that they were friends.

Mr. O did not testify at the Inquiry. Although the issue of his absence was not dealt with directly on the record, it is clear that neither Commission counsel nor counsel for Justice of the Peace Farnum wished to call him as a witness, since neither would have been prepared to vouch for his credibility.

All of the witnesses who testified with respect to Mr. O attested to the manner in which he had ingratiated himself with anyone that he met. He was obviously prepared to use any of his acquaintances to his own advantage and he did do so on several occasions. He consistently misrepresented his role with the Peel Regional Police, inflated his own importance and exaggerated the nature of his relationship with Justice of the Peace Farnum for his own ends. He represented himself in different ways to different people, depending entirely on what he wanted to obtain from them. As Justice of the Peace Farnum said in his cross-examination: "(Mr. O) used everyone for his own purpose the way he could and he did it very well....(He) played me very well. He used the office that I have and this so-called friendship to influence others."

The date of mid-January 1993 is important since there is no evidence of any association between Justice of the Peace Farnum and Mr. O after that date. Justice of the Peace Farnum testified that he ceased all contact with Mr. O once he had been told that Mr. O was a "con-artist". Moreover,

after January 15, 1993 Justice of the Peace Farnum appears to have warned anyone who spoke to him in the context of these complaints that Mr. O was not to be trusted.

On the basis of the evidence which I heard and of the submissions by counsel, I am not satisfied on the balance of probabilities that Justice of the Peace Farnum knew of Mr. O's criminal background or record prior to mid-January 1993. Further, I find that Justice of the Peace Farnum ceased all association with Mr. O once he became aware of Mr. O's criminal character. It follows that the allegation of association with a known criminal contained in this complaint has not been proven.

Ruling on Charter Motion

Given my findings of fact, I have no difficulty in concluding that Justice of the Peace Farnum has not been prevented from making full answer and defence and I find no violation of s.7 of the *Charter*.

Conclusions:

As I indicated at the beginning of this report, I was directed to consider two matters of complaint:

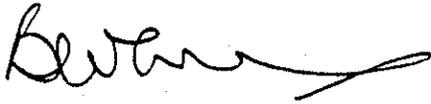
- (1) Whether Justice of the Peace Farnum failed to disqualify himself from hearing evidence and rendering judgment on charges in respect of which he had prior knowledge and in respect of which he had formed opinions.
- (2) Whether Justice of the Peace Farnum associated with a known criminal and identified himself as a friend or associate of a known criminal in circumstances in which he knew or ought to have known that the persons to whom he so identified himself would rely upon his position as member of the judiciary to confirm the trustworthiness of the known criminal.

Since I have found that the evidence does not establish the conduct alleged, I would answer each of the matters of complaint in the negative.

Recommendation:

Pursuant to s.12 (3.1) of the *Justices of the Peace Act*, I recommend that Justice of the Peace John Farnum be compensated for all of his costs for legal services incurred in connection with the Inquiry.

Dated at Toronto this 25th day of May, 1998.

A handwritten signature in black ink, appearing to read "B. Lennox", with a long horizontal flourish extending to the right.

Brian W. Lennox
Commissioner

INDEX OF APPENDICES

1. Order in Council (2493/97)
2. Notice of Public Hearing
3. Statement of Agreed Facts
4. Witness List
5. Exhibit List



Ontario
Executive Council
Conseil des ministres

Order in Council
Décret

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that:

Sur la recommandation du soussigné, le lieutenant-gouverneur, sur l'avis et avec le consentement du Conseil des ministres, décrète ce qui suit :

Pursuant to s. 12(1) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended by the *Courts of Justice Statute Law Amendment Act*, 1994, S.O. 1994, c. 12, Part III, s. 53, the Honourable Brian W. Lennox, Associate Chief Judge, Ontario Court of Justice (Provincial Division) be appointed to inquire into the question of whether, based on the complaints investigated by the Justices of the Peace Review Council in its report dated March 3, 1997, there has been misconduct by His Worship John Farnum, a Justice of the Peace, and to recommend whether the Lieutenant Governor in Council should remove the Justice of the Peace from office, or to recommend that the Review Council implement a disposition to:

- 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 up to thirty days.

Recommended

Concurred

Attorney General

Chair of Cabinet

Approved and Ordered

DEC 17 1997

Date

Lieutenant-Governor



COMMISSION OF INQUIRY INTO THE CONDUCT OF HIS WORSHIP JOHN FARNUM, A JUSTICE OF THE PEACE

NOTICE OF PUBLIC HEARING

Pursuant to subsection 12(1) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended, the Honourable Judge Brian W. Lennox, Associate Chief Judge of the Ontario Court of Justice (Provincial Division) has been appointed to inquire into the question whether a recommendation should be made that the Lieutenant-Governor in Council should remove His Worship John Farnum, a Justice of the Peace, from office, or whether a recommendation should be made that the Justices of the Peace Review Council implement a decision to:

- (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 up to thirty days.

The inquiry will consider:

1. Whether Justice of the Peace Farnum failed to disqualify himself from hearing evidence and rendering judgment on charges in respect of which he had prior knowledge and in respect of which he had formed opinions.
2. Whether Justice of the Peace Farnum associated with a known criminal and identified himself as a friend or associate of a known criminal in circumstances in which he knew or ought to have known that the persons to whom he so identified himself would rely upon his position as a member of the judiciary to confirm the trustworthiness of the known criminal.

The public hearing will commence on Tuesday, February 17, 1998 at 10:00 a.m. at hearing room #1, 21st floor, 180 Dundas St. W., Toronto and will continue daily at the same time and place until completed.

Any person who wishes to give evidence at the inquiry or who has information he or she believes will be of interest to the inquiry or who wishes to make preliminary motion is requested to contact Gavin MacKenzie, Commission Counsel, no later than Friday, February 13, 1998 at the address below.

Applications by the electronic media to televise or otherwise record all or part of the proceedings must be made to Commission Counsel at the address below by Monday, February 2, 1998.

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The Honourable Associate Chief Judge
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**COMMISSION OF INQUIRY
INTO THE CONDUCT OF
HIS WORSHIP JOHN FARNUM
A JUSTICE OF THE PEACE**

STATEMENT OF AGREED FACTS

I. APPOINTMENT OF COMMISSION OF INQUIRY

1. By Order in Council dated December 17, 1997, His Honour Associate Chief Judge Brian W. Lennox, Ontario Court of Justice (Provincial Division), was appointed pursuant to Section 12 of the Justices of the Peace Act, R.S.O. 1990, c.J. 4, to inquire into the question of whether, based on the complaints investigated by the Justices of the Peace Review Council in its report dated March 3, 1997 there has been misconduct by His Worship John Farnum, a Justice of the Peace, and to recommend whether the Lieutenant-Governor in Council should remove the Justice of the Peace from office, or to recommend that the Review Council implement a disposition to:

- 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 up to thirty days.

2. The Commission of Inquiry was appointed on the recommendation of the Justices of the Peace Review Council upon the completion of an investigation into a complaint of Michael Code.

3. The Order in Council dated December 17, 1997, is under Tab 1 of the Book of Agreed Documents. The Report of the Opinion of the Justices of the Peace Review Council dated March 3, 1997, is under Tab 2 of the Book of Agreed Documents. The Notice of Public Hearing, which was published in the Ontario Reports and the Brampton Guardian, is under Tab 3 of the Book of Agreed Documents.

II. BACKGROUND INFORMATION CONCERNING JUSTICE OF THE PEACE FARNUM

4. Justice of the Peace Farnum is 55 years old. He was appointed a Justice of the Peace in September, 1988. He started as a designation "D" Justice of the Peace, but passed tests that were administered to enable a Justice of the Peace to move from one designation to another. Justice of the Peace Farnum became a designation "C" Justice of the Peace, and later a designation "B" Justice of the Peace, within approximately a year after his appointment. He started presiding at trials by 1990, within about eighteen months of his appointment.

5. Before he began presiding at trials in 1990, Justice of the Peace Farnum attended at least two seminars designed to assist Justices of the Peace in presiding at trials. In 1989 he attended a seminar at which he was provided with a book by former Chief Judge Frederick C. Hayes of the Provincial Court (Criminal Division), *Conduct at Trial*. In 1990, he attended a seminar in Kingston that dealt with evidence, among other things.

6. Justice of the Peace Farnum also had the opportunity of sitting in with other Justices of the Peace to see how they conducted trials as part of his training. He sat in on trials twice with Justice of the Peace Fitzhenry, and twice with Justice of the Peace Nadkharni.

7. Justice of the Peace Farnum was 46 years old at the time of his appointment. Prior to his appointment he served as the Executive Director of Labour and Community Services in Brampton, a youth development service for Peel Region, a position that he held for approximately six years. For approximately five years before that he was employed by McDonnell Douglas, first as a skilled tradesman (a machinist and elected as a shop steward), then as a union representative in arbitrations and negotiations. Later while he was employed by McDonnell Douglas, Justice of the Peace Farnum was elected to represent the skilled trades on the Canadian Auto Workers Bargaining Committee at McDonnell Douglas, in which capacity he was required to understand the operation and safety of machinery.

8. While employed by McDonnell Douglas, Justice of the Peace Farnum obtained a social service work diploma from Humber College, which was financed through the union in which he was active at the time. Justice of the Peace Farnum was laid off from McDonnell Douglas in 1982.

III. ISSUES

9. The following issues, as set forth in the notice of public hearing under Tab 2 of the book of agreed documents, are raised for determination by this Commission of Inquiry:

- (:) Whether Justice of the Peace Farnum failed to disqualify himself from hearing evidence and rendering judgment on charges in respect of which he had prior knowledge and in respect of which he had formed opinions.
- (::) Whether Justice of the Peace Farnum associated with a known criminal and identified himself as a friend or associate of a known criminal in circumstances in which he knew or

ought to have known that the persons to whom he so identified himself would rely upon his position as a member of the judiciary to confirm the trustworthiness of the known criminal.

10. In the event that either or both of these questions are answered affirmatively, the Commission of Inquiry will be called upon to decide whether a recommendation should be made that the Lieutenant-Governor in Council should remove Justice of the Peace Farnum from office, or whether a recommendation should be made that the Justices of the Peace Review Council implement a decision to:

- (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 up to thirty days.

IV. ISSUE NUMBER ONE:

Thermoset Thermoplastic Custom Moulding Ltd. and Wasad Ali

11. On July 6, 1992 Thermoset Thermoplastic Custom Moulding Ltd. ("Thermoset") and Wasad Ali ("Ali") were charged with offences under the *Occupational and Health and Safety Act* of Ontario. The charges against Thermoset were that it failed, as an employer, to ensure that the measures and procedures prescribed by the regulations under the *Occupational and Health and Safety Act* were carried out in the workplace in an industrial establishment in Mississauga operated by Thermoset; and that it failed to comply with an order of an inspector. Ali was charged with failing, as a supervisor, to ensure that a worker worked in the manner and with the protective devices, measures and procedures required by the regulations under the *Occupational and Health and Safety Act*. The charges arose out of an incident that occurred on July 23, 1991 in which an employee of Thermoset, Ashok Kawalsingh, suffered serious injuries to his left hand in an industrial accident. The theory of the Crown was that a 25 ton compression (moulding) machine with an exposed moving part that endangered the safety of Mr. Kawalsingh was not equipped with and guarded by a guard or other device that prevented access to the moving part. Copies of the summons sworn July 6, 1992 are under Tab 4 of the Book of Agreed Documents.

12. The first appearance for Thermoset and Ali on these charges was on August 17, 1992. Justice of the Peace Farnum did not preside either at the first appearance or at any other appearances prior to the trial of the charges.

13. In the late summer or early fall of 1992, Thermoset and Ali retained Richard Allman, a lawyer, to represent them in relation to the charges. In early January, 1993, however, Mr. Allman fell ill, and another lawyer, John Kalina, took charge of the matter.

14. Mr. Kalina represented Thermoset and Ali at trial. Justice of the Peace Farnum presided at trial. The trial was held on April 29, July 19, and August 17, 1993. Counsel made submissions and Justice of the Peace Farnum delivered his reasons for judgment on October 19, 1993, dismissing all charges against Thermoset and Ali.

15. David Strang appeared as counsel for the Crown on the first day of trial, April 29, 1993. Deborah McPhail appeared as counsel for the Crown on July 19 and August 17, 1993 and she also attended on October 19, 1993 when Justice of the Peace Farnum delivered his reasons for judgment.

16. Transcripts of the trial are reproduced under Tabs 1 (April 29, 1993), 2 (July 19, 1993) and 3 (August 17, 1993) of the Book of Transcripts that is being filed with this Statement of Agreed Facts. Justice of the Peace Farnum's reasons for judgment are reproduced under Tab 5 of the Book of Agreed Documents.

17. The Crown filed a notice of appeal dated October 25, 1993, from the dismissal of the charges. A copy of the notice of appeal is under Tab 6 of the Book of Agreed Documents.

18. The appeal was scheduled to be argued on February 15, 1994, but was adjourned to April 29, 1994. Again, on April 29, 1994, the appeal was adjourned to August 5, 1994. By August 5, 1994, Mr. Kalina was no longer representing Thermoset and Ali. From August 5, 1994, Thermoset and Ali were represented by another lawyer, Irving Andre. The appeal was adjourned again on August 5, 1994 and December 16, 1994, by which time Mr. Andre and Ms McPhail were engaged in plea discussions. On January 27, 1995, the Court accepted a guilty plea from Thermoset to both charges that had been laid against it, and pursuant to a joint submission imposed fines of \$3,000 and \$2,000 on these two charges. The charge against Ali was withdrawn at the request of the Crown.

19. As set forth above, the first issue to be determined by this commission of inquiry is whether Justice of the Peace Farnum failed to disqualify himself from hearing evidence and rendering judgment on charges on which he had prior knowledge and in respect of which he had formed opinions. This issue arises in connection with the Thermoset and Ali prosecution. Justice of the Peace Farnum's position is that he has no recollection of referring Ali to Mr. Allman, and that he has no recollection of discussions with Ali or Mr. Allman with respect to the facts on which the charges against Thermoset and Ali were based. Ali (who now lives in Guyana and is unavailable to testify) gave a statement to the Ontario Provincial Police concerning contact that he had with Justice of the Peace Farnum. Ali's statement is under Tab 7 of the Book of Agreed Facts.

V. ISSUE TWO - MR. O

20. Mr. O has a criminal record dating from 1971. A copy of his criminal record is under Tab 8 of the Book of Agreed Documents.

21. Mr. O was a Peel police informant at all material times to and including 1993.

22. Mr. O was the informant of Detective Paul Chisholm of the Peel Regional Police Force. Chisholm has been with the Peel Regional Police Force since 1977.

23. Chisholm was a close friend of Justice of the Peace Farnum at all times material to the matters in issue at this inquiry. They became friends in approximately 1984, while Justice of the Peace Farnum was employed as the Executive Director of Labour and Community Services. Chisholm and Justice of the Peace Farnum socialized quite regularly together on Friday nights, and on two occasions went to Atlanta to play golf together.

24. After loaning Justice of the Peace Farnum a used Ford, which required regular mechanical attention, in 1992 Chisholm introduced Mr. O to Justice of the Peace Farnum as a mechanic. Justice of the Peace Farnum arranged to pay Mr. O to do mechanical work on this car.

(a) First Canadian Auto Collision

25. On September 19, 1992 Mr. O's wife was in a car accident. Her car was towed to First Canadian Auto Collision ("First Canadian") in Brampton, a business owned in part by Paul Foreman.

26. On September 21, 1992 Mr. O attended at First Canadian to speak to Mr. Foreman about completing repairs to the vehicle. Mr. O told Foreman that he worked for the Peel Regional Police as an undercover narcotics officer, and that he knew Detective Paul Chisholm. The following day, Foreman told Mr. O that he would do the repairs for cost since Mr. O was a Peel Regional Police Officer.

27. Thereafter Mr. O attended at First Canadian almost every day for period of two weeks, until the repairs to the vehicle were complete.

28. During one of his visits, Mr. O mentioned to Foreman that he knew a "judge" and that he wanted Foreman to meet him. Throughout his dealings with Justice of the Peace Farnum, Mr. O used the term "Judge" in addressing and describing him, perhaps because he considered the terms to be synonymous. Such a mistake is common among lay people who do not appreciate the difference, or do not appreciate that while Justices of the Peace sit in judgment they are not judges.

29. Shortly thereafter, Mr. O attended at First Canadian and invited Foreman to come with him to meet the "judge". Mr. O and Foreman drove to the Brampton Courthouse at 141 Clarence Street, where they met Justice of the Peace Farnum in an office in the Courthouse. Mr. O introduced Justice of the Peace Farnum to Foreman.

30. Foreman was impressed that Mr. O knew Justice of the Peace Farnum.

31. Thereafter, approximately a week and a half into the repairs, Justice of the Peace Farnum attended at First Canadian Auto and spoke to Foreman about an apprenticeship program that he wanted to set up to steer youth who had been in trouble back onto the right track. Foreman was interested in the program and took some literature from Justice of the Peace Farnum. Foreman did not have any further conversations or contact with Justice of the Peace Farnum.

32. Later, Mr. O attended at First Canadian and removed his vehicle without paying for the repairs. The total cost of the repairs was \$4,300. First Canadian has not been paid for the repairs.

33. Mr. O was charged with defrauding First Canadian of an amount in excess of \$1,000.

(b) Kennedy Hi-Fi

34. In October and November, 1992, Terry Esch was the assistant manager of Kennedy Hi-Fi, 158 Kennedy Road South, Brampton. He was the manager of the car audio unit there.

35. In late October, 1992 Mr. O came into Kennedy Hi-Fi and told Terry Esch that he was a service manager at "Tower Ford", a Ford car dealership, and that there had been a stereo stolen from his own car and from approximately twelve other cars in the Tower Ford parking lot. Mr. O told Mr. Esch that if he got a good deal at Kennedy Hi-Fi then he would see to it that the other people who had had their stereos stolen would be referred to Kennedy Hi-Fi as well.

36. Mr. Esch told Mr. O that he required his insurance information, and that once he received that information he would begin work on Mr. O's car.

37. Mr. O came back to Kennedy Hi-Fi a couple of days later, at which time Esch told him again that there was nothing that he could do until he obtained the insurance information that he had requested.

38. Mr. O came into Kennedy Hi-Fi approximately three or four more times just to talk. He said that he still wanted to get his stereo fixed, and he selected some stereo equipment that he wanted to have installed when the insurance information came through.

39. In conversations with Mr. Esch, Mr. O mentioned that he had a friend who was a "judge". He asked Esch whether Esch would like to go with lunch with him. Esch agreed to go along with Mr. O and meet the "judge".

40. Esch and Mr. O drove to the Brampton Courthouse at 141 Clarence Street. They walked into a courtroom that was presided over by Justice of the Peace Farnum, and sat down at the back of the courtroom.

41. While proceedings were still under way, Mr. O tried to get Justice of the Peace Farnum's attention. Justice of the Peace Farnum did not respond. After court ended for the morning, everyone filed out of the courtroom except for the Clerk of the Court, Justice of the Peace Farnum, Mr. O and Esch.

42. Mr. O then walked up to the front of the court and beside the bench and grabbed Justice of the Peace Farnum's robes and said "that's a nice dress, where can I get one like that?". He then proceeded to wrestle playfully with Justice of the Peace Farnum. Justice of the Peace Farnum told him to get away.

43. Thereafter, the three of them went to St. Hubert's Chicken restaurant across the road from the Courthouse where they had lunch. Over lunch, they talked about Justice of the Peace Farnum's sound system. Justice of the Peace Farnum said that his sound system needed looking at, and that he was going to go to Kennedy Hi-Fi and see about buying a new sound system.

44. After lunch, Mr. O and Esch went back to Kennedy Hi-Fi and Justice of the Peace Farnum returned to the Courthouse. Within a week after the lunch, Esch agreed to put the stereo into Mr. O's car even though he had not received any insurance information from Mr. O. Esch was advised by Mr. O that Mr. O had a firearms acquisition certificate, was an undercover policeman, and was licensed to carry a gun.

45. Mr. O also introduced Esch to Chisholm. Mr. O, in the absence of Justice of the Peace Farnum, informed Esch that he and Chisholm were going to buy a surround-sound system as a gift for Justice of the Peace Farnum.

46. A day or two later, Justice of the Peace Farnum, Chisholm and Mr. O went with Esch into the sound room at Kennedy Hi-Fi, and Esch gave Justice of the Peace Farnum a sales pitch with respect to a sound system. Nothing was stated about Mr. O and Chisholm purchasing a sound system for Justice of the Peace Farnum. At that meeting, a time was set within a day or so for Esch to visit Justice of the Peace Farnum's residence for the purpose of inspecting his home for the installation of a sound system.

47. A day or two after that Esch came to Justice of the Peace Farnum's home, where he was introduced to Justice of the Peace Farnum's wife and daughter. He was taken down to a basement room where he was shown a sound system that Justice of the Peace Farnum wanted upgraded. Mr. O showed up at Justice of the Peace Farnum's home just after Esch.

(c) Minit-Tune

48. In January, 1993 Terry Louizos was a part owner (with his father Jim Louizos) of Minit-Tune, 5020 McLaughlin Road, Mississauga, an automobile repair shop.

49. In January, 1993, Mr. O came into Minit-Tune looking for a job as a mechanic. He stated that he was an "executive mechanic" from Ford. He was hired.

50. Mr. O told Terry Louizos that he had worked as an undercover police officer and that Paul Chisholm, a police officer, was a friend of his and was also an undercover police officer. He said he knew a lot of cops and could get the Peel Regional Police to come to Minit-Tune.

51. Mr. O frequently said that he knew a "Judge". When people in the shop did not believe him he would tell them to call a certain number and ask for "Judge Farnum". They called the

court house and asked for "Judge" Farnum. When they were put through they hung up. As a result, Terry Louizos believed Mr. O was telling the truth.

52. Later, Justice of the Peace Farnum came into Minit-Tune and said that he had a problem with his white Ford Escort. He could not pay for the repairs immediately, he said, but after a week he came into Minit-Tune and paid for the repairs. Justice of the Peace Farnum came in on several other occasions. On one occasion Justice of the Peace Farnum came into the shop wearing court clothes, including his black jacket and with his tabs visible in his jacket pocket, but not his robes.

53. Mr. O told Terry Louizos that he could obtain a Corvette for him at a very good price through Justice of the Peace Farnum. Mr. O told Terry Louizos that Justice of the Peace Farnum had to sign the "papers" to release cars that had been seized from debtors before they were auctioned.

54. Terry Louizos and a friend gave \$1,000 to Mr. O as a deposit on a Corvette. One of the factors in Terry Louizos' mind in deciding to give Mr. O the money was that Mr. O appeared to be friends with a "Judge", "Judge" Farnum.

55. Terry Louizos never received the Corvette. Justice of the Peace Farnum went to Minit-Tune to get his car repaired and he was driven to his work at Hensall Circle by Terry Louizos. Discussions took place in his car about the Corvette and signing the papers. Justice of the Peace Farnum said he had no authority to sign the papers. Justice of the Peace Farnum said that he knew nothing about the matter and said that they would have to get their money back because he did not know anything about it. Mr. O did not comply at this time with Terry Louizos' demand that he pay him back the money that he had given Mr. O. In approximately late April, 1993 Mr. O disappeared from work and never returned. Mr. O later blamed Justice of the Peace Farnum for losing his job when he was interviewed by the police at the time he was charged in connection with the Corvette. Justice of the Peace Farnum had originally come to Minit-Tune through the employment there of his mechanic Mr. O but Jim Louizos did almost all of the work on Justice of the Peace Farnum's car.

56. Terry Louizos was unable to obtain his money back from Mr. O. Terry Louizos explained to his father, Jim Louizos, what had happened. Jim Louizos had met Justice of the Peace Farnum when he brought his car into Minit-Tune and when Justice of the Peace Farnum came to Minit-Tune to visit Mr. O. Jim Louizos believed that Justice of the Peace Farnum and Mr. O to be very good friends. Jim Louizos had also met Detective Paul Chisholm of the Peel Regional Police at Minit-Tune. He believed Detective Chisholm to be good friends with Mr. O and Justice of the Peace Farnum.

57. After Mr. O disappeared from work without returning Terry Louizos' money, Terry Louizos explained to his father that according to Mr. O "Judge" Farnum had to sign papers to release the car, but that "Judge" Farnum had later told Terry Louizos that he knew nothing about it.

58. Jim Louizos phoned Justice of the Peace Farnum at the Courthouse and informed him that he wanted his son's money back. He said he would report the matter to the R.C.M.P., where he had a friend. Jim Louizos told Justice of the Peace Farnum he was coming to the Courthouse to meet him so that they could attempt to resolve the matter. Justice of the Peace Farnum invited Jim Louizos to come to the Courthouse and meet him so that they could attempt to resolve the matter.

59. Jim Louizos went to the Courthouse in Mississauga. He met with Justice of the Peace Farnum in the latter's office and informed him what had happened and that Mr. O had been mentioning his name and Chisholm's name, and that he wanted his son's money back.

60. As he seemed upset, Justice of the Peace Farnum left the briefly and then suggested to Jim Louizos that they go next door to the coffee shop to discuss the matter. They went to the coffee shop and had a coffee.

61. As they were walking from the coffee shop back to the Courthouse Mr. O pulled up in his car in the Courthouse parking lot. Jim Louizos walked over to Mr. O's vehicle and demanded his money back. Justice of the Peace Farnum continued into the Courthouse without participating in the conversation between Jim Louizos and Mr. O. Mr. O then left, as did Jim Louizos. Two days later Mr. O returned Terry Louizos' money to him.

62. Mr. O was charged with defrauding Terry Louizos and his friend of an amount in excess of \$1,000.

63. Justice of the Peace Farnum's position is that he was not aware of Mr. O's criminal record, or the fact that Mr. O was a police informant, until he was informed of these matters by Detective Chisholm after Jim Louizos attended at the Courthouse in late April, 1993.

VI. ACKNOWLEDGEMENT

64. Justice of the Peace Farnum acknowledges that before signing this Statement of Agreed Facts he reviewed it carefully and obtained the advice of his counsel, Thomas Carey.

DATED at Toronto, this 17th day of February, 1998.

Gavin MacKenzie
Commission of Inquiry Counsel
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Justice of the Peace Farnum

Appendix '4'

Witness List

1. Richard Allman
2. John Kalina
3. Deborah MacPhail
4. John Foreman
5. Terry Esch
6. Terry Louizos
7. Trevor Morrow
8. Jim Louizos
9. Sergeant Paul Chisholm
10. Justice of the Peace John Farnum

Appendix '5'

Exhibit List

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| Exhibit 1 | Statement of Agreed Facts |
| Exhibit 2 | Book of Agreed Documents |
| Exhibit 3 | Book of Transcripts |
| Exhibit 4 | Letters of Reference |
| Exhibit 5 | Brief on Section 7 <i>Charter of Rights</i> Motion |
| Exhibit 6 | Correspondence Concerning Complaint |
| Exhibit 7 | Correspondence Concerning Justices of the
Peace Review Council Hearing |