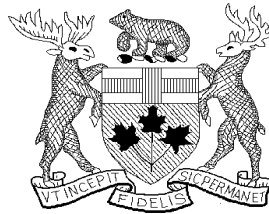


Report of a Judicial Inquiry
Re: His Worship
John Farnum
A Justice of the Peace

The Honourable
Madam Justice Mary L. Hogan
Commissioner



Gavin Mackenzie/Trevor Guy
Commission of Inquiry Counsel
Heenan Blaikie, LL.P
P.O. Box 185, Suite 2600
South Tower, Royal Bank Plaza
Toronto, Ontario, M5J 2J4

Tom Carey
Counsel for Justice of the Peace Farnum
1325 Burnhamthorpe Rd. E.
Mississauga, ON, L4Y 3V8

Eugene J. Bhattacharya
Counsel for Justice of the Peace Farnum
295 Matheson Blvd. E.
Mississauga, ON, L4Z 1X8

THE HONOURABLE MADAM JUSTICE MARY HOGAN
ONTARIO COURT OF JUSTICE
TORONTO REGION



OLD CITY HALL
60 QUEEN STREET WEST
TORONTO, ONTARIO M5H 2M4

L'HONORABLE JUGE MARY HOGAN
COUR DE JUSTICE DE L'ONTARIO
RÉGION DE TORONTO

ANCIEN HÔTEL DE VILLE
60, RUE QUEEN OUEST
TORONTO (ONTARIO) M5H 2M4
TELEPHONE/TÉLÉPHONE (416) 327-5907
FAX/TÉLÉCOPIEUR (416) 327-6003

September 17, 2008

The Honourable David Onley
Lieutenant Governor of the Province of Ontario
Legislative Building
Queen's Park, Suite 131
Toronto, Ontario
M7A 1A1

May it please Your Honour:

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

Further to my appointment by Order in Council No. OC1620/2007 to inquire into the question whether there has been misconduct by His Worship John B. 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 now have the honour to submit my report.

Mary L. Hogan
Commissioner

Enclosures

Public Inquiry Decision

Introduction

I was appointed by Order in Council dated June 27, 2007 to conduct an Inquiry pursuant to s.12 (1) of the *Justices of the Peace Act*, R.S.O. 1990, c.J.4, as it read immediately before January 1, 2007 (hereinafter referred to as the Act), into complaints about misconduct on the part of His Worship John Farnum, a Justice of the Peace. A copy of the Order in Council is attached as Appendix 1.

The complaints were investigated by the Justices of the Peace Review Council and a recommendation was made in their report dated January 25, 2007, that this Inquiry be held. A copy of their report is attached as Appendix 2. A Notice of Public Hearing regarding this Inquiry was published in the *Mississauga Le Metropolitan* (February 13, 2008), the *Ontario Reports* (February 15, 2008), *The Mississauga News* (February 13, 2008) and the *Brampton Guardian* (February 15, 2008). A copy of this Notice is attached as Appendix 3.

This Commission of Inquiry was held to determine whether there had been misconduct by Justice of the Peace Farnum, and if misconduct was found, to determine whether a recommendation should be made to the Lieutenant Governor in Council to remove His Worship John Farnum from office or recommend that the Justices of the Peace Review Council implement a disposition under s. 12 (3.3) of the Act.

The Statutory Framework

Pursuant to section 12(1) of the Act, 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. Pursuant to s. 12 (3) of the Act the report of the Inquiry may recommend that the Lieutenant Governor in Council remove the justice of the peace from office in accordance with s. 8, or that the Review Council implement a disposition under subsection (3.3). The Lieutenant Governor in Council's order to remove the justice of the peace from office can only be made if the prerequisites in s. 8(2) have been established. That section reads:

8. – (2) The order may be made only if,
- (a) a complaint regarding the justice of the peace has been made to the Review Council; and
 - (b) the removal is recommended, following an inquiry held under section 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.

If a determination is made that removal is not warranted under this provision, then the question becomes whether a recommendation should be made pursuant to section 12 (3.3). If a recommendation is made pursuant to that section, the Review 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.

The Inquiry

On March 31, 2008 the Inquiry commenced. A Statement of Agreed Facts (hereinafter referred to as the Statement) signed by Commission Counsel Gavin MacKenzie and Justice of the Peace Farnum was filed. A copy of this Statement is attached as Appendix 4. Viva voce evidence was called both by counsel for the Commission and counsel for Justice of the Peace Farnum.

Background of Justice of the Peace Farnum

Justice of the Peace Farnum at the time of the Inquiry was 65 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 offences trials by 1990. He worked primarily as a Justice of the Peace in Brampton, although he 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 for approximately six 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 Issues

The Commission of Inquiry was directed to consider five issues. They were:

- i) Whether, on or about August 13, 2003 Justice of the Peace Farnum made use for personal purposes of a van clearly marked as belonging to a paralegal firm that represents parties on proceedings in a court in which Justice of the Peace Farnum presides.
- ii) Whether, on January 15, 2004, Justice of the Peace Farnum convicted an accused of a traffic offence, then registered a conviction for a

lesser offence and imposed a smaller fine, notwithstanding the outcome of the trial process.

- iii) Whether, on or about May 18, 2004 as a result of his being approached by a defendant in a pending Provincial Offences Act prosecution, Justice of the Peace Farnum instructed a member of the court services staff to retrieve two Certificates of Offence from courts administration, then decided to hear the two matters in intake court, notwithstanding that neither matter was scheduled to be heard that day and that Justice of the Peace Farnum was not presiding in intake court that day.
- iv) Whether, on or about August 16, 2004 Justice of the Peace Farnum, while assigned to the criminal intake court, processed and granted a Provincial Offences Court request for reopening without having the original documents before him, without recording the proceeding, and after purporting to commission an affidavit that was not signed by the affiant.
- v) Whether, on February 14, 2006, while serving as Intake Justice of the Peace at the courthouse at 7755 Hurontario Street, Brampton, Justice of the Peace Farnum abandoned his duties for a period of approximately four hours, after which he returned intoxicated by alcohol.

If the Commission of Inquiry were to find that the answer to any of the above issues was yes, then it was agreed by all parties, that the Commission would have to decide whether such conduct constituted misconduct and, if so, whether a recommendation ought to be made that the Lieutenant-Governor in Council should remove Justice of the Peace Farnum from office or whether a recommendation ought to be made that the Justices of the Peace Review Council implement a decision pursuant to s. 12 (3.3) of the Act. Counsel for both the Commission of Inquiry and Justice of the Peace Farnum did agree that if the answer to issue (v) above were yes, then this would constitute misconduct.

Issue (i)

It was agreed in the Statement, that the Honourable Justice Nancy Kastner on or about August 13, 2003 saw Justice of the Peace Farnum driving a van. On the van were the words “Defend Impaired Driving”, “Fight Traffic Tickets”, “Stevens Paralegal” and a phone number “905 840 0243”. Justice Kastner had seen this van parked in the secure underground parking lot at the courthouse at 7755 Hurontario St. in Brampton. This parking lot was reserved for judges and justices of the peace with no access to the public. Justice of the Peace Farnum sent a letter dated November 18, 2003 to the Justices of the Peace Review Council explaining his conduct regarding the use of this van. This letter was filed as Tab 5 of the Statement. He stated in that letter that he did use Mr. Steven’s van since he was rescheduled at the last minute and had to preside at the 7755 Hurontario St. court, rather than the 50 Kennedy Rd. court. He was unable to secure a taxi that would get him to the Hurontario courthouse in time. He did not have his car since he had

dropped it off for repairs at a shop close to the 50 Kennedy Road courthouse. He accepted the offer of the van as he did not want to be late. In that letter Justice of the Peace Farnum stated that the date in question was October 14, 2003 and that he borrowed the van in the morning. He seemed to indicate in the letter that the van was to be returned around lunchtime, however he did not state at what time the van was actually returned. An email sent September 21, 2005 from Christopher Stevens to Mr. Tom Carey was included in the Statement as Tab 6. Mr. Stevens stated in that email that it was his van that Justice of the Peace Farnum used that day. He stated that he met Justice of the Peace Farnum at the Kennedy Road courthouse, that it was around noon, it was raining and that Justice of the Peace Farnum did not have his own car available to travel to another courthouse. He stated that he volunteered the use of his car and that it was returned to him around 5:00 p.m. on the same day.

Justice of the Peace Farnum testified before the Commission of Inquiry that the October 14, 2003 date in his letter was incorrect and that it ought to have been August 13, 2003. He testified that at the time of borrowing the van, he did not see the writing in question as he did not inspect the van and it was only after the complaint that he saw what was written on it. He stated that the writing was on the back window of the van and he agreed that it would be visible to anyone behind the van. There was no evidence called to indicate that the signage on the van was anywhere but on the back window of the van. Justice of the Peace Farnum testified in cross examination that he knows as a Justice of the Peace that not only is impartiality very important but also the appearance of impartiality. He testified that Mr. Stevens does not appear in his court, but regardless he never would

have borrowed the van had he seen the sign on it advertising Mr. Steven's paralegal business. He testified that on the day in question his main concern was to arrive at the Hurontario courthouse on time so as not to inconvenience the public.

I find that Justice of the Peace Farnum's testimony on this issue was forthright and credible. He did not deny borrowing the van and I believe his evidence that he did not see the signage and had he done so he would not have used the van. I believe Justice of the Peace Farnum's overriding concern that day was to be on time and not keep anyone waiting. I do not find the discrepancy between Justice of the Peace Farnum and Mr. Stevens regarding the time of borrowing the van to be of any significance. This happened approximately five years ago and two years prior to Mr. Stevens' email. Memories fade. I find no misconduct with regard to this issue.

Issue (ii)

It was agreed in the Statement that on January 15, 2004 Justice of the Peace Farnum convicted Roberto Reyes Cruz after a trial of driving 80 km/hr in a 60 km/hr zone contrary to s. 128 of the Highway Traffic Act. It was also agreed that the set fine for this offence was \$80.00 and that Justice of the Peace Farnum did not impose the set fine of \$80.00, but ordered Mr. Reyes Cruz to pay \$42.50. According to the Statement, on January 16, 2004, Mr. Mark Nicol, the prosecutor in this matter, obtained a copy of the Certificate of Offence and noticed that the face of the document had been changed to suggest that the offence with which Mr. Reyes Cruz was charged was driving 75 km/hr in a 60 km/hr zone, a change accompanied by Justice of the Peace Farnum's initials. Mr. Nicol also noticed that

the back of the document had been completed to suggest that Mr. Reyes Cruz pleaded guilty to the amended charge of driving 75km/hr in a 60 km/hr zone. As a result the Certificate of Offence did not support the findings on the record with respect to this matter.

Justice of the Peace Farnum testified that he did not know Mr. Reyes Cruz, had never met him nor had he had discussions with him prior to court. He agreed that he was the one who had completed the Certificate of Offence indicating a plea of guilty to a speed of 15 km/hr over the speed limit. He testified that what had happened was a mistake and his explanation for the mistake having been made was as follows: Justice of the Peace Farnum was under the impression that Mr. Reyes Cruz had agreed with the prosecutor Mr. Nicol to plead guilty. Apparently, Mr. Reyes Cruz had changed his mind. Justice of the Peace Farnum testified that at the beginning of Court he would hear guilty pleas and move very fast. He testified that he had done seven or eight guilty pleas prior to conducting any trials and that he and the clerk/ court monitor, Judy Whitehouse, were in his words “on a roll”. His evidence was that he mistakenly marked the Certificate of Offence as if it was going to be a guilty plea and then when it wasn’t, he did not change the Certificate of Offence. The Certificate of Offence was therefore inaccurate and did not accord with what had happened in Court. He testified that as a result of this error he now checks the documents more thoroughly. I read the excerpt of the testimony before the Justices of the Peace Review Council of Ms. Whitehouse found at Tab 13 of the Statement. Her testimony did not contradict that of Justice of the Peace Farnum in that what happened that day was a mistake and nothing more. I refer to her testimony found at page 42, lines 24 to 33 and at page 43, lines 1 to 19 of the transcript at Tab 13 wherein it was stated:

- Q. “Brampton’s a big place. Would it be fair to say there’s other Justices that you’ve had similar conversations with and assisted them in correcting a mistake that was made on the face of the offence notice?”
- A. Every single day with the new ones, every single day.
- Q. And so there’s nothing unusual about mistakes being made.
- A. Nothing unusual at all.
- Q. And is there anything that occurred here that would cause you any doubt to think that the marks on this particular offence notice are anything but a mistake, as opposed to an intentional act to thwart justice?
- A. No. As I said in my interview, it was a very busy court and I think it was an anticipated guilty plea, like about five or six we just had before that.
- Q. All right. And so is that typical in that court that there’d be a lot of guilty pleas to a lesser amount?
- A. Especially speeding, yes.
- Q. And that particular speed, 75 in a 60, there’s a certain magic in that particular amount because it takes one out of the demerit point area.
- A. Yes, 15 over there’s no points.
- Q. And that’s why so many – or that appears to be why so many people will take that particular plea.
- A. Yes.
- Q. And that’s based on your experience sitting in that court for –
- A. Yes, it is.”

She also confirmed that it was a busy day and testified before the Justices of the Peace Review Council that – and I refer here to page 45 of the transcript of her testimony, lines 20 to 27 of Tab 13, – “No, that happens a lot and it happens a lot in first attendance court where they’ll make the amendment anticipating it, or then the person will change their mind, so then it goes out to be a Trial Notice and the Justice forgets to re-mark it back and initial it, so when it goes into a trial court, it’s still marked with the lower speed or lesser charge – it might not be speeding, it could be something else – and it wasn’t marked back, just as an oversight.” Copies of the docket for that day time were filed under Tab 15 of the Statement and they also confirmed that it was a busy day. In his submissions counsel for the Commission noted that there was some inconsistency between the testimony of Ms Whitehouse and Justice of the Peace Farnum with regard to whether Ms Whitehouse or Justice of the Peace Farnum has made the entries on the Certificate of Offence and in what sequence. I do not find these inconsistencies to be of any significance. They both testified that what occurred was a mistake and that mistakes happen.

I find Justice of the Peace Farnum’s explanation as to how this mistake happened, to be credible. Unfortunately mistakes happen – particularly in busy courtrooms. There was no evidence presented that contradicted his explanation. I also accept Justice of the Peace Farnum’s evidence that now he is more careful. I find no misconduct with regard to this issue.

Issue (iii)

It was agreed in the Statement that on May 18, 2004 Justice of the Peace Farnum was assigned to the Provincial Offences Act court at the Hensall Circle Courthouse in Mississauga and agreed to preside over two matters in intake court which were not scheduled to be heard. These matters involved two friends, Manisay Visouvath and Erin Miatello, both of whom had been charged with failing to wear a complete seatbelt assembly contrary to s. 106 (3) of the *Highway Traffic Act*. Counsel for the Commission, Mr. MacKenzie, stated in his final submissions that with regard to this issue the real issue was the appearance of favouritism, given that Justice of the Peace Farnum and Ms. Visouvath knew each other, as they had worked together.

Justice of the Peace Farnum testified that he came out of his courtroom on the day in question, was going to the front of the courthouse and saw Ms. Visouvath at the front counter. He testified that he wasn't looking for her nor did he think she was looking for him. He stated that he didn't direct that the matter come to his court but it did. Ms. Susan Nocera, a Court Officer, in her evidence before the Commission contradicted this but I do not find this significant since Justice of the Peace Farnum testified before the Commission of Inquiry that at the time he saw no problem in dealing with these two matters and it was clear to me that he would have dealt with them regardless of how they arrived in his court. He testified that the matter was dealt with in open court and a provincial prosecutor would have been present. He further testified that he did not set a trial date for Ms. Visouvath but did allow her to appear as agent for her friend and plead guilty on her friend's behalf. He testified that in hearing this matter he was trying to avoid Ms Visouvath having to come

back to court on another day. Ms. Martin, the acting manager of Court Services at the Hensall Circle courthouse testified before the Justices of the Peace Review Council – and her testimony was filed under Tab 19 of the Statement - that a Justice of the Peace assigned to a presiding court would sometimes do walk in guilty pleas. Ms. Nocera, further testified before the Commission of Inquiry that it was possible that Justice of the Peace Farnum was the only Justice of the Peace in the building that day, that there was nothing unusual about Justice of the Peace Farnum's request for the documents and that there was nothing to indicate that Ms. Visouvath was specifically looking for Justice of the Peace Farnum. She testified that Ms. Visouvath would have known from the paralegals that Justice of the Peace Farnum was presiding. She further stated that in her experience Justice of the Peace Farnum would've done the same thing for anyone and that nothing regarding this incident in her opinion smacked of favouritism. Given the evidence I heard and read regarding this issue, I find that once again Justice of the Peace Farnum's main concern was to assist and not inconvenience the public. I find that his testimony that he treated Ms. Visouvath no differently than anyone else and that he made a judgment call in dealing with her matters was credible. He testified that he thought he was following policy and thought it best to deal with the matter and not have her take another day off. Counsel for the Commission submitted that he was not taking issue with the suspended sentence that Ms. Miatello received but with the fact that Justice of the Peace Farnum was prepared to hear a case with Ms. Visouvath acting as agent. He also submitted that Justice of the Peace Farnum's testimony that in hindsight he might now deal with it differently was problematic since this had more to do with the consequences that had occurred as a result than the issue of the appearance of favouritism. Having heard Justice of the Peace Farnum's evidence on this

issue I agree with Mr. MacKenzie's opinion as to why Justice of the Peace Farnum might not do this again. However, it is clear that in future regardless of the reason why, he will think twice should a similar situation arise. He also testified that he hears many cases where the agents appearing are known to him through their work in the courts so he did not find it unusual or inappropriate to deal with this matter. He made a judgment call and in hindsight not the best decision was made. However, I find that at the time he had the best of intentions, made a judgment call and did not treat Ms Visouvath differently than he would anyone else. I find no misconduct with regard to this issue.

Issue (iv)

In the Statement, Justice of the Peace Farnum agreed that while assigned to the criminal intake court he decided to deal with a matter under the Provincial Offences Act and granted an application for a re-opening brought by Mohinder Kooner. In doing so he commissioned an affidavit signed not by Mr. Kooner but by Mr. Kooner's agent Mr. Martin. Justice of the Peace Farnum agreed that the affidavit itself was incomplete; the material sections relating to the reason for Mr. Kooner's request, as well as the date upon which Mr. Kooner discovered his conviction, were not completed. Justice of the Peace Farnum also agreed that he did not have the original court documents before him when he processed the application nor was the interaction recorded.

Justice of the Peace Farnum testified that re-openings were a regular occurrence and that he would often receive faxed documents from the City of Brampton and would not have the originals. With regard to the affidavit itself, Justice of the Peace Farnum testified

that he made a mistake; he stated that he didn't notice the defects in the affidavit and ought not to have had the agent swear it particularly when clearly the name on the top of the document was Mr. Kooner's not the agent's. He testified that he did not notice that the name on the top was that of Mr. Kooner and not Mr. Martin. The signature, however, was Mr. Martin's. He stated that he had no personal relationship with either the applicant or his agent. He further testified that as a result of his actions regarding this re-opening he received a note from Justice of the Peace Jadis instructing him as to the proper procedure for processing a re-opening. He testified that he took this very seriously and now is very, very careful particularly when commissioning affidavits. Justice of the Peace Farnum testified that he made a mistake, regrets his mistake and was only attempting to assist. There was no testimony that contradicted Justice of the Peace Farnum's nor was there any allegation of any relationship with either Mr. Kooner or Mr. Martin.

Having heard the testimony of Justice of the Peace Farnum regarding this issue, I find him to be credible and find that what occurred was an error, that he not only regrets it but is embarrassed by it and now deals with these matters differently and extremely carefully. I would note here that this was not a case where he commissioned the signature of Mr. Kooner. It was Mr. Martin who appeared in front of him, who signed the affidavit and who swore the contents to be true. Unfortunately, they did not notice that the name at the top of the affidavit had not been changed from Mr. Kooner's to Mr. Martin's. Therefore, this was not a case of him commissioning an affidavit signed by an individual not appearing in front of him – a far more serious circumstance. I find no misconduct with regard to this issue.

Issue (v)

This issue involved allegations that on February 14, 2006 Justice of the Peace Farnum abandoned his duties for a period of time and then returned to work intoxicated. I heard viva voce evidence from Ms Seepersaad, a Client Service Representative working in the Brampton courthouses, and Justices of the Peace Huston, Jensen, Florence, Spadafora and Farnum regarding the events of the afternoon of February 14, 2006. The only witness who testified definitively that in her opinion Justice of the Peace Farnum had been drinking that day was Justice of the Peace Huston. She was a new Justice of the Peace who was at the Courthouse that day working with and being mentored by Justice of the Peace Florence. She testified that when Justice of the Peace Farnum passed her in the hall - about one foot away from her - she could smell alcohol on him. She also testified that when she went into the office that he had been using, it smelled so much of alcohol that she wanted to have it sprayed so people would not think she had been drinking. She testified that she overheard Justice of the Peace Spadafora state to Justice of the Peace Florence that Justice of the Peace Farnum had shown up late and drunk. In cross examination she stated that she had had no conversation with Justice of the Peace Farnum that day, didn't notice anything unusual about him and that members of the public had probably been in the particular intake office with the alcohol smell.

Justice of the Peace Florence testified that she absolutely did not smell alcohol on Justice of the Peace Farnum and that she had been in close proximity to him. She testified that she saw Justice of the Peace Spadafora make a gesture that she thought had to do with drinking but that she could have misinterpreted it. She also testified that she did not recall

Justice of the Peace Spadafora using the words drunk or intoxicated. She was the individual who spoke to Justice of the Peace Jensen, the assistant administrative Justice of the Peace, concerning Justice of the Peace Farnum. She testified that the only reason she did so was because Justice of the Peace Huston asked her what she was going to do about the situation with Justice of the Peace Farnum. She testified that she was very clear and unequivocal with Justice of the Peace Jensen that she had drawn no conclusion and stated only that there was a concern that Justice of the Peace Jensen might want to look at. Unfortunately, Justice of the Peace Jensen did not look into the situation. She testified that she never spoke to Justice of the Peace Farnum to ascertain what his apparent condition was nor did she confront him regarding allegations of not being at work and/or being intoxicated. This was despite the fact that she was the assistant administrative Justice of the Peace, and as such I find she should have taken on this responsibility.

Justice of the Peace Spadafora testified that on February 14, 2006 he saw Justice of the Peace Farnum around 11:30 a.m. He testified that Justice of the Peace Farnum appeared sluggish and told him he was not feeling well. He testified that he had seen a police officer make a gesture that could have signified drinking but that he did not understand the police officer's gesture to mean that Justice of the Peace Farnum had been drinking. He denied stating to Justice of the Peace Florence that Justice of the Peace Farnum was drunk and testified that he did not notice an odour of alcohol coming from Justice of the Peace Farnum. He testified that when asked by Justice of the Peace Jensen if Justice of the Peace Farnum was drunk he told her that he didn't think he was drunk. It was Justice of the Peace Spadafora who ultimately sent Justice of the Peace Farnum home and

he testified that he never would have done so if he had thought he had been drinking as he would not have wanted him to drive.

Justice of the Peace Farnum testified and categorically denied that he had abandoned his duties that afternoon or that he had been drinking. He stated that he had been feeling quite unwell and had gone to his office as a result. The courthouse paging system does not reach the Justice of the Peace offices so he did not realize he was being paged and no one telephoned his office. After a few hours he came back down and it was shortly after that that Justice of the Peace Spadafora told him to go home.

The only clear evidence of intoxication came from Justice of the Peace Huston and all other testimony contradicted hers. Justice of the Peace Jensen testified that both Justice of the Peace Florence and Justice of the Peace Spadafora told her that Justice of the Peace Farnum was intoxicated; however, they both denied giving her this information. I find it odd that if she had received this information from both justices of the peace that she would not have fulfilled her responsibilities as assistant administrative Justice of the Peace and spoken to Justice of the Peace Farnum. It is most unfortunate that Justice of the Peace Jensen regardless of whether or not she received any clear and unequivocal information from Justices of the Peace Florence and Spadafora, as an administrative Justice of the Peace, chose not to speak to Justice of the Peace Farnum herself and ask him directly about drinking. The evidence from Justice of the Peace Florence was that she had raised a concern, nothing more, with Justice of the Peace Jensen. I have found that Justice of the Peace Jensen ought to have taken some action. The situation might well have been resolved

right then and there if she had done so. Given the testimony I heard, there is nothing except the opinion of Justice of the Peace Huston – which was contradicted by all others who saw Justice of the Peace Farnum that afternoon – upon which I could conclude that Justice of the Peace Farnum abandoned his duties and/or was intoxicated on the afternoon of February 14, 2006. I would emphasize here Justice of the Peace Huston’s testimony that she had not spoken with him or noticed anything unusual about him. Counsel for the Commission in his submissions submitted that there was some and I quote “revisionist history on Justice of the Peace Spadafora’s part”. I have reviewed his evidence at the Commission of Inquiry and at the Justices of the Peace Review Council. His evidence at the Review Council was that he did not conclude that Justice of the Peace Farnum was intoxicated. While I agree with Mr. MacKenzie that there were some differences between the evidence at the Justices of the Peace Review Council and the Commission of Inquiry, I still have no evidence upon which I could base a conclusion that Justice of the Peace Farnum was intoxicated that afternoon or that he abandoned his duties. I therefore do not find that Justice of the Peace Farnum abandoned his duties or was intoxicated on that afternoon.

I therefore find no misconduct with regard to this issue.

In conclusion, what I have found with regard to all of these issues is a pattern of behaviour on Justice of the Peace Farnum’s part that puts the public first. He appears to have always tried not to inconvenience the public nor keep them waiting. There were many letters filed which attested to Justice of the Peace Farnum’s solid work ethic, his willingness to assist others including his fellow justices of the peace, his knowledge of the law and his

polite and respectful manner in dealing with all who came before him. This was confirmed for me when I read the transcript of the trial of Mr. Reyes Cruz, the defendant involved with Issue (ii). This transcript was filed under Tab 8 of the Statement. Justice of the Peace Farnum was polite, took time with the trial and explained the proceedings to Mr. Reyes Cruz. In addition almost every witness who gave viva voce evidence at the Commission of Inquiry confirmed his stellar reputation. Unfortunately, in his efforts to serve the public he appears to have moved too quickly on occasion and not to have taken the necessary time to step back and think about what he was about to do. Commission counsel, Mr. MacKenzie in his submissions asked me to conclude that this pattern of behaviour on Justice of the Peace Farnum's part constituted a cumulative pattern of mistakes which ought when taken in totality to be considered misconduct. I disagree with this submission. I have found that Justice of the Peace Farnum's primary focus was on serving the public in the context of very busy and demanding courthouse situations. Everyone can make mistakes in these circumstances. Of crucial importance is that people learn from their mistakes. Justice of the Peace Farnum testified that he has learned from his mistakes and conducts himself differently now and will continue to do so in the future. Having heard the evidence, particularly the viva voce evidence of Justice of the Peace Farnum and having read all of the letters, and heard the viva voce evidence of the witnesses attesting to his character, I have no doubt that he will. I therefore find no basis for findings of misconduct on any of the individual issues or on the basis of a pattern of conduct based on a cumulative examination of these issues.

Pursuant to s.12 (3.1) of the Act, I recommend in light of my findings of no misconduct that Justice of the Peace Farnum be compensated for all of his costs for legal services incurred in connection with the Inquiry.

LIST OF APPENDICES

1. Order in Council No. 1620/2007
2. Report of the Opinion of the Justices of the Peace Review Council
3. Notice of Public Hearing
4. Statement of Agreed Facts

Order in Council
Décret

(Ontario logo)
Executive Council
Conseil des ministres

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:

WHEREAS under subsection 11.1(22) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, a complaint against a justice of the peace that was made to the Review Council before January 1, 2007, and considered at a meeting of the Review Council before that day, shall be dealt with in accordance with sections 11 and 12 of the *Justices of the Peace Act* as those sections read immediately before January 1, 2007;

AND WHEREAS a complaint against His Worship John B. Farnum was made and considered at a meeting of the Review Council prior to January 1, 2007;

AND WHEREAS pursuant to subsection 12(1) of the *Justices of the Peace Act* as it read immediately before January 1, 2007, the Lieutenant Governor in Council may appoint a provincial judge to inquire into the question of whether there has been misconduct by a justice of the peace;

AND WHEREAS the Justice of the Peace Review Council has, pursuant to subsection 11(7) of the *Justices of the Peace Act* as it read immediately before January 1, 2007, made a report dated January 25, 2007 to the Attorney General regarding His Worship John B. Farnum, a Justice of the Peace, in which the Justices of the Peace Review Council recommended that an inquiry regarding His Worship John B. Farnum be held under subsection 12 of the *Justice of the Peace Act*;

NOW THEREFORE, pursuant to subsection 12(1) of the *Justices of the Peace Act*, the Honourable Madam Justice Mary Lynne Hogan of the Ontario Court of Justice be appointed to inquire into the question of whether there has been misconduct by His Worship John B. Farnum and to prepare a report in accordance with subsection 12 of the *Justices of the Peace Act*.

Recommended _____ Concurred _____
Attorney General Chair of Cabinet

Approved and Ordered June 27, 2007 _____
Date Lieutenant Governor

NOTICE

Subsections 11(3) and 11(4) of the *Justices of the Peace Act*, R.S.O. 1990, c.J.4, provide, *inter alia*, that the proceedings of the Justices of the Peace Review Council shall not be public.

C O N F I D E N T I A L

REPORT OF THE OPINION OF THE JUSTICES OF THE PEACE REVIEW COUNCIL TO THE ATTORNEY GENERAL OF ONTARIO RESPECTING AN INVESTIGATION INTO VARIOUS COMPLAINTS AGAINST JUSTICE OF THE PEACE JOHN B. FARNUM

The Justices of the Peace Review Council hereby makes the following report to the Attorney General for Ontario, pursuant to subsection 11(7) of the *Justices of the Peace Act*, R.S.O. 1990:

1. The Justices of the Peace Review Council convened on numerous occasions in the years 2003, 2004, 2005 and 2006 to consider complaints against Justice of the Peace John B. Farnum which had been received during this time period. On May 16, 2006, all of the outstanding complaints and accompanying material were reviewed by the members present at that meeting. After discussion, Council decided that five complaints against His Worship John B. Farnum should proceed collectively to a section 11 inquiry.

The Justices of the Peace Review Council directed to Justice of the Peace John B. Farnum, a Notice of Inquiry, dated May 31, 2006, with Particulars (a copy of which is attached), alleging that he conducted himself in a manner that is incompatible with the execution of the duties of his office and that by reason thereof he had become incapacitated or disabled from the due execution of his office.

The section 11 inquiry was held on August 8, 2006 and November 21, 2006.

Mr. Doug Hunt, Q.C., Barrister and Solicitor, acted as Counsel to the Justices of the Peace Review Council.

Justice of the Peace Farnum was present at the investigative hearing and was represented by Mr. Tom Carey.

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2. After considering the sworn testimony of witnesses called, the partial Agreed Statement of Facts (a copy of which forms part of this report and is attached hereto) and submissions by counsel, the Justices of the Peace Review Council recommends that an inquiry be held under section 12 of the *Justices of the Peace Act*, R.S.O. 1990 to inquire into the question of whether Justice of the Peace John B. Farnum should be removed from office.
3. Transcript of the s. 11 hearing proceedings on August 8, 2006 and November 21, 2006 form part of this report and are attached hereto.
4. The *Justices of the Peace Act*, R.S.O. 1990, provides, *inter alia*, that “the proceedings of the Review Council shall not be public...”. However, subsection 11(8) of the aforementioned *Act* provides that “...a copy of the report shall be given to the justice of the peace”.

Accordingly, a copy of this report will be conveyed to Justice of the Peace Farnum.

Dated at Toronto, Ontario

Tara Dier
A/Registrar
Justices of the Peace Review Council

STRICTLY PRIVATE & CONFIDENTIAL

January 25, 2007

His Worship John B. Farnum
Justice of the Peace
Ontario Court of Justice
7755 Hurontario Street
Brampton, Ontario
L6W 4T6

Your Worship:

Pursuant to the instructions of the Justices of the Peace Review Council, and pursuant to subsections 11(6), (11(7) and 11(8) of the *Justices of the Peace Act*, R.S.O. 1990, I am writing to inform you of the disposition of the complaints made against you as set out in the amended Notice of Inquiry dated May 31, 2006.

You will find enclosed a copy of the Report made to the Attorney General.

It is your decision as to whether to provide a copy of the Report to counsel.

Yours truly,

Tara Dier
A/Registrar
Justices of the Peace Review Council

Enclosure

STRICTLY PRIVATE & CONFIDENTIAL

January 25, 2007

The Honourable Michael Bryant
Attorney General for Ontario
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto, Ontario
M5G 2K1

Dear Mr. Attorney:

I enclose a copy of the Report of the Justices of the Peace Review Council, pursuant to subsection 11(7) of the *Justices of the Peace Act*, R.S.O. 1990 with respect to its investigation of complaints against Justice of the Peace John B. Farnum.

Yours truly,

Tara Dier
A/Registrar
Justices of the Peace Review Council

Enclosures

cc: Mr. Murray Segal, Deputy Attorney General

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF a complaint respecting

Justice of the Peace John B. Farnum

Justice of the Peace in the

Central West Region

AMENDED NOTICE OF INQUIRY

The Justices of the Peace Review Council (the “Review Council”), pursuant to section 11 of the *Justices of the Peace Act*, S.O. 1989, c. 46, as amended, has directed that the following matter of a several complaints regarding the conduct or actions of Justice of the Peace John B. Farnum be referred to the Review Council, for investigation.

A complaint has been made to the Review Council regarding your conduct. It is alleged that you have conducted yourself in a manner that is incompatible with the execution of the duties of your office and that by reason thereof you have become incapacitated or disabled from the due execution of your office. The particulars of the complaint regarding your conduct are set out in Appendix “A”, Particulars of the Complaint, is attached to this Amended Notice of Inquiry.

The Review Council will convene in the Boardroom, Suite 2310, 1 Queen Street East, in the City of Toronto, on Tuesday the 8th of August at 9:30 in the forenoon to conduct an inquiry into the complaint.

A Justice of the Peace whose conduct is being investigated in proceedings before the Review Council may be represented by counsel and shall be given the opportunity to be heard and to produce evidence.

The Review Council may, pursuant to sections 11(6) and (7) of the *Justices of the Peace Act*:

- (a) dispose of the complaint;
- (b) report its opinion regarding the complaint to the Attorney General and recommend that an inquiry be held under section 12 of the *Justices of the Peace Act*; and
- (c) report its opinion regarding the complaint to the Attorney General and recommend that the Justice of the Peace be compensated for all or part of his or her costs in connection with the investigation;

and it shall inform the person who made the complaint and the Justice of the Peace of its disposition of the complaint.

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

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

May 31, 2006

Valerie P. Sharp
A/Registrar
Justices of the Peace Review Council

TO: **Justice Of The Peace John B. Farnum**
c/o Thomas Carey
1325 Burnhamthorpe Road East
Mississauga,
L4Y 3V8

APPENDIX "A"

PARTICULARS OF THE COMPLAINT

Use of Paralegal's Vehicle

1. On or about August 13, 2003, you made use of a van belonging to a member of the public who dealings with the court system when you used a paralegal firm's van for personal purposes. You were seen driving the van out of the parking area reserved for Justices of the Peace at the Hurontario Street Courthouse in Brampton. The paralegal firm's advertising, name and contact information were clearly marked on the side of the vehicle.

Amendment of Charge After Conviction

2. On January 15th 2004, Mr. Roberto Antonio Reyes-Cruz appeared before you on a charge of driving 80 kph. in a 60 kph zone. He was tried before you on that charge, and convicted of that offence. The infraction attracted a total fine and surcharge of \$100.00.
3. Having convicted this defendant of this charge, you then proceeded to endorse the Certificate of Offence. You registered a conviction for driving 75 kph. in a 60 kph. zone, and imposed a fine of \$42.50, notwithstanding the result reached through the trial process.

Walk-In Disposition

4. On or about May 18th, 2004, you instructed a member of the court services staff to retrieve two Certificates of Offence from courts administration. One Certificate cited Erin Miatello, as a passenger, with having failed to wear her complete seatbelt assembly. The other Certificate cited Manisay Visouvath, as a driver, with having failed to wear her complete seatbelt assembly. You gave this instruction after being approached by Ms. Visouvath. Ms. Visouvath was at that

time under suspension from her duties as a court employee, as a result of a pending fraud investigation.

5. Neither of these matters was scheduled to be heard that day. You were not presiding in the intake court that day. You processed Ms. Miatello's matter. You accepted her guilty plea and gave her a suspended sentence, entering this information on a walk-in guilty form. For Ms. Visouvath, you set a trial date of February 3rd, 2005.

Improper Procedure and Deficient Affidavit in Support of Re-opening

6. On or about August 16th, 2004, you were assigned to the criminal intake court. Despite this, you processed a provincial offences court request for reopening. You processed the request without having the original documents before you. You did not record this proceeding. The Affidavit in support of the request is not signed by the affiant, but by his agent. You commissioned the Affidavit. You struck the conviction and granted the re-opening.

Intoxication and Abandonment of Duties

7. On February 14th, 2006, Justice of the Peace Farnum attended at the Courthouse at 7755 Hurontario Street, Brampton, and began his duties at approximately 11:15 a.m. as an Intake Justice of the Peace in intake office "D".
8. At approximately 12:00 noon, Justice of the Peace Farnum left 7755 Hurontario Street without informing the Local Administrative Justice of the Peace, or the other intake Justice of the Peace sitting that day, of his departure.
9. Justice of the Peace Farnum returned to 7755 Hurontario Street at approximately 4:00 p.m. on February 14th, 2006. During his absence of approximately 4 hours, there was only 1 intake Justice of the Peace left on duty at 7755 Hurontario Street.
10. When Justice of the Peace Farnum returned to the courthouse at 7755 Hurontario Street, an odour of alcohol was detected by colleagues in his vicinity. He appeared to colleagues to be intoxicated. Justice of the Peace Farnum was told to

go home at approximately 4:30 p.m. After his departure, an odour of alcohol was detected in the intake office he had occupied.

11. The above-noted conduct as set out in paragraphs 1 through 10 is incompatible with the due execution of your duties and has brought the administration of justice into disrepute.



Ontario

**COMMISSION OF INQUIRY INTO THE CONDUCT OF
HIS WORSHIP JOHN B. 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 it read immediately before January 1, 2007, the Honourable Justice Mary Lynne Hogan of the Ontario Court of Justice 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 B. 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, on or about August 13, 2003, Justice of the Peace Farnum made use for personal purposes of a van clearly marked as belonging to a paralegal firm that represents parties in proceedings in a court in which Justice of the Peace Farnum presides.
2. Whether, on January 15, 2004, Justice of the Peace Farnum convicted an accused of a traffic offence, then registered a conviction for a lesser offence and imposed a smaller fine, notwithstanding the outcome of the trial process.
3. Whether, on or about May 18, 2004, as a result of his having been approached by a defendant in a pending *Provincial Offences Act* prosecution, Justice of the Peace Farnum instructed a member of the court services staff to retrieve two Certificates of Offence from courts administration, then decided to hear the two matters in intake court, notwithstanding that neither matter was scheduled to be heard that day and that Justice of the Peace Farnum was not presiding in intake court that day.
4. Whether, on or about August 16, 2004, Justice of the Peace Farnum, while assigned to the criminal intake court, processed and granted a provincial offences court request for reopening without having the original documents before him, without recording the proceeding, and after commissioning an affidavit that was not signed by the affiant.
5. Whether, on February 14, 2006, while serving as Intake Justice of the Peace at the Courthouse at 7755 Hurontario Street, Brampton, Justice of the Peace Farnum abandoned his duties for a period of approximately four hours, after which he returned intoxicated by alcohol.

The public hearing will commence on **March 31, 2008** at 10:00 a.m. at **JPR Arbitration Hearing Centre Inc., 390 Bay Street, Hearing Room A, 3rd Floor, Toronto, Ontario, M5H 2Y2** 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 bring a preliminary motion is requested to contact Gavin MacKenzie or Trevor Guy, Commission Counsel, no later than **March 14, 2008** at the address below:

Gavin MacKenzie/Trevor Guy
Commission Counsel
Heenan Blaikie LLP
Suite 2600, 200 Bay Street, South Tower
P.O. Box 185, Royal Bank Plaza
Toronto, ON M5J 2J4
Tel: 416-360-2892 or 416-643-6913
Fax: 416-360-8425
E-mail: gmackenzie@heenan.ca
tguy@heenan.ca

The Honourable Justice Mary Lynne Hogan
Commissioner
Ontario Court of Justice
60 Queen Street West
Toronto, ON M5H 2M4

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF a complaint respecting

Justice of the Peace John B. Farnum

Justice of the Peace in the

Central West Region

AGREED STATEMENT OF FACTS

Overview

1. His Worship, Justice of the Peace John Farnum (“Justice of the Peace Farnum”) is the Respondent in a matter commenced by the Justices of the Peace Review Council (“the Review Council”), by way of a Notice of Inquiry dated January 31, 2005, and amended May 31, 2006. All references herein to the Notice of Inquiry refer to the Amended Notice in Inquiry dated May 31, 2006.
2. The Notice of Inquiry was duly issued pursuant to section 11 of the *Justices of the Peace Act*, R.S.O. 1990, c. J-4. For the purposes of that Inquiry, and for any other proceedings before the Review Council flowing from the Notice of Inquiry, but for no other matter or purpose whatsoever, the following facts are agreed upon by Justice of the Peace Farnum, and Presenting Counsel.

Re: Paragraph 1 of the Notice of Inquiry Particulars

3. On or about August 13th, 2005, Justice Nancy Kastner observed a grey Honda van parked in secure judicial parking area at the courthouse located at 7755 Hurontario Street in Brampton.
4. On the side of the van were the words “Defend Impaired Driving”, “Fight Traffic Tickets”, “Stevens Paralegal” with the phone number 905-840-0243 also displayed.

5. Justice Kastner observed this vehicle leave the parking area driven by Justice of the Peace Farnum. It proceeded onto Highway 410 before she lost sight of it.
6. On August 16th 2003, Justice of the Peace Fayolle inquired of Justice of the Peace Farnum about his use of the paralegal firm's vehicle, and Justice of the Peace Farnum indicated he was driving a replacement vehicle that day as his vehicle was in a mechanic's shop for repairs.
7. Justice Kastner telephoned Regional Senior Justice of the Peace Carol Jadis (as she then was) and reported these events to her. RSJP Jadis then conveyed this information to Regional Senior Justice Timothy Culver in the form of an e-mail dated August 26th, 2003. A copy of the e-mail is found at **Tab 1** of the Joint Document Brief.
8. On November 18th, 2003, Justice of the Peace Farnum provided the Review Council with a written explanation of the circumstances around his use of the paralegal firm's vehicle. A copy of that letter is found at **Tab 2** of the Joint Document Brief.

Re: Paragraph 6 of the Notice of Inquiry

9. On September 13, 2004, the Review Council received a letter and enclosures from Regional Senior Justice Timothy Culver, pertaining to actions taken by Justice of the Peace Farnum on a re-opening matter. A copy of that letter is found at **Tab 30** of the Joint Document Brief.
10. The first attachment to that letter was a memorandum of RSJP Jadis to Justice of the Peace Farnum describing the concerns raised by Justice of the Peace Farnum's handling of a particular re-opening. A copy of RSJP Jadis'

Memorandum to Justice of the Peace Farnum is found at **Tab 31** of the Joint Document Brief.

11. On or about August 16th, 2004, Justice of the Peace Farnum was assigned to the criminal intake court at the courthouse at 7755 Hurontario Street in Brampton.
12. An agent for an accused appeared before Justice of the Peace Farnum on a *Highway Traffic Act* matter, to request a re-opening. A copy of the Record of Re-Opening Application signed by Justice of the Peace Farnum is found at **Tab 32** of the Joint Document Brief.
13. Mohinder Kooner was the accused person on the *Highway Traffic Act* matter. Gerald Martin was the agent for Mr. Kooner.
14. The affidavit sworn in support of the request for the re-opening is that of Mohinder Kooner. Mohinder Kooner's affidavit is signed by Gerald Martin. A copy of that Affidavit is found at **Tab 33** of the Joint Document Brief.
15. Acceptance of an affidavit signed by an agent is contrary to the Superior Court decision in *Regional Municipality of York v. Abrams*, which decision had been provided to Justice of the Peace Farnum on or about November 7th, 2003. A copy of a Memorandum entitled "Items of Interest", containing a synopsis of the *Abrams* case is found at **Tab 35** of the Joint Document Brief.
16. On it's face the affidavit appears to be defective.
17. The affidavit is incomplete as the material sections relating to the reason for the request, and the date the conviction came to the affiant's attention, are blank.

18. Justice of the Peace Farnum commissioned the affidavit.
19. Justice of the Peace Farnum granted the request for the re-opening and struck Mohinder Kooner's conviction on the *Highway Traffic Act* offence. A copy of the Certificate of Striking Out Conviction is found at **Tab 34** of the Joint Document Brief.
20. Justice of the Peace Farnum processed the request for a re-opening without having the original court documents before him.
21. Justice of the Peace Farnum, along with other Justices of the Peace, had been previously reminded by the Regional Senior Justice of the Peace that it was absolutely essential for them to have the original charging documents before them before adjudicating upon a matter before them.

His Worship Justice of the Peace John
Farnum

Mr. Thomas Carey
Counsel to Justice of the Peace Farnum

Douglas C. Hunt Q.C.
Presenting Counsel