**Justices of the Peace Review Council**

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**IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, c. J.4, AS AMENDED**

**Concerning a Complaint about the Conduct of**

**Justice of the Peace Paul Welsh**

**Before:** The Honourable Neil L. Kozloff, Chair

 Her Worship Justice of the Peace Kristine Diaz\

 Ms. Jenny Gumbs, Community Member

**Hearing Panel of the Justices of the Peace Review Council**

**REASONS FOR RULING ON MOTION TO COMBINE PROCEEDINGS**

**Counsel:**

Mr. Scott Fenton Mr. Eugene Bhattacharya

Mr. Ian R. Smith Ms. Mary C. Waters Rodriguez

Fenton, Smith Barristers Barristers and Solicitors

Presenting Counsel Counsel on behalf of His Worship Justice of the Peace Paul Welsh

**PUBLICATION BAN**

On November 28, 2018, this Panel made an order pursuant to Section 11.1(9) of the *Justices of the Peace Act*, R.S.O., c. J-4 as amended, that the names of the parties involved in the underlying court proceedings – namely all persons who appear in any *Provincial Offences Act* Certificate of Offence or Information that is a subject matter of this hearing – shall not be published, nor shall any information that might identify them be published.

**OVERVIEW**

1. On April 9, 2019 – during the course of a hearing into a complaint regarding the conduct or actions of His Worship Justice of the Peace Paul Welsh (hereinafter also “His Worship Welsh”) commenced by Notice of Hearing dated March 15, 2018 – Presenting Counsel brought a Motion to Combine Proceedings.
2. The motion is for an Order combining the proceedings commenced by Notice of Hearing dated March 15, 2018 (hereinafter also “the original proceedings” and “the current proceedings” and “the first hearing” and “the hearing respecting the first notice”) with the proceedings commenced by Notice of Hearing dated February 28, 2019 (hereinafter also “the new proceedings” and “the second hearing”.)
3. At the same time, Counsel for His Worship Welsh brought a Cross-Motion and Response on behalf of His Worship Welsh.
4. The cross-motion is for an Order staying the proceedings relating to the Notice of Hearing dated February 28, 2019 until the completion of the proceedings relating to the Notice of Hearing dated March 15, 2018, and for an Order that the Notice of Hearing dated February 28, 2019 be put before a new Panel of the Justices of the Peace Review Council.
5. The cross-motion and response alleges an absence of jurisdiction with reference to certain of the allegations of misconduct set out in Appendix “A” of the Notice of Hearing dated February 28, 2019 on the basis that they “were never the subject of a written complaint made to the Review Council.”
6. During the course of oral submissions, Counsel for His Worship Welsh agreed that said jurisdictional argument could be held in abeyance until the commencement of the new proceedings.
7. On the completion of oral submissions, the Chair announced the ruling on behalf of the Hearing Panel:

“The Panel has determined that we will be conducting a consecutive hearing on the new allegations, and that we will complete the first hearing by way of hearing your remaining evidence, your final submissions. We will make a finding with respect to whether judicial misconduct is made out, and if we so find judicial misconduct, we will make a recommendation.”

1. The Chair then indicated that written reasons would follow.
2. These are the written reasons of the Panel.

**HISTORY OF THE PROCEEDINGS**

1. A complaints committee of the Justices of the Peace Review Council, pursuant to Section 11 (15) (c) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (hereinafter “the *Act*”), ordered that “the following matter of a complaint” regarding the conduct or actions of His Worship Justice of the Peace Paul Welsh be referred to a Hearing Panel of the Review Council for a formal hearing under Section 11.1 of the *Act*.
2. The particulars of the complaint are set out in Appendix “A” of the Notice of Hearing dated March 15, 2018. The said Notice of Hearing provides that the Hearing Panel of the Review Council will convene at the Justices of the Peace Review Council Boardroom on Friday, April 27, 2018 “to set a date for the hearing into the complaint.”
3. The allegations involve dealings by His Worship Welsh with various applications – including a Record of Reopening Application brought on behalf of AI in April 2017, a Record of Reopening Application brought on behalf of JMW in June 2017, and Motions for Extension of Time to Pay Fines brought by MP in October 2017 – in a manner contrary to the procedures established for dealing with such matters at the John Sopinka Courthouse in Hamilton, Ontario.
4. The first appearance/set-date took place on April 27, 2018. The Notice of Hearing was filed as Exhibit 1. It was agreed that a pre-hearing conference would be arranged before a Pre-hearing Conference Judge once the hearing dates were set, and that a disclosure motion brought by counsel for His Worship Welsh would be adjourned to the same (pre-hearing conference) date to be heard by the Pre-hearing Conference Judge.
5. Originally October 16, 17, and 18, 2018 were set as the hearing dates. Those dates were subsequently vacated and new hearing dates were set for November 28, 29, and 30, 2018.
6. On November 28, 2018, the hearing was convened. Presenting Counsel made some opening remarks. The panel was provided with an AGREED BOOK OF DOCUMENTS which was filed as Exhibit 2.
7. Presenting Counsel called four witnesses on November 28 and 29, 2018. Following his re-examination of the fourth witness, Presenting Counsel began to announce that he had completed his case.
8. Before that occurred – and before His Worship Welsh and his counsel were asked to make a decision about whether or not His Worship would testify and/or call evidence – the Panel indicated that it wanted to hear from Justice of the Peace Kelly and Justice of the Peace Baker (who were respectively the Regional Senior Justice of the Peace and the Local Administrative Justice of the Peace for Hamilton at the material times between April and October of 2017). Specifically, the Panel wanted Justice of the Peace Kelly and Justice of the Peace Baker to be interviewed with regard to their involvement (if any) in these matters, including whether and when they received or were made aware of (any of) these complaints, what (if any) specific actions they took, whether they spoke to or otherwise addressed (any of) these complaints with His Worship Welsh, and what (if any) response His Worship Welsh made at the time that they were related to him (if they were).
9. The hearing was adjourned to January 31, 2019 in order to set date(s) for further evidence.
10. On January 31, 2019, Presenting Counsel announced on the record via telephone conference call that both Justice of the Peace Kelly and Justice of the Peace Baker had been interviewed, and that the audio recording was in the process of being transcribed, reviewed and corrected as needed before disclosure to Counsel for His Worship Welsh.
11. Presenting Counsel then referred to “a new development that the Panel needs to be aware of” and asked for a publication ban pursuant to Rule 18.3 (g) regarding “matters that relate to the work of the Complaints Committee”. He was joined in the request for a publication ban by Counsel for His Worship Welsh, with whom Presenting Counsel had spoken the previous day.
12. Presenting Counsel advised that:
13. He was in possession of information having to do with the work of the Complaints Committee and an order it had made allowing him to reveal certain information to the Hearing Panel:

“ … additional complaints against Justice of the Peace Welsh have been received and investigated and considered in accordance with the legislation and the Procedures that govern the Complaints Committee. Those complaints have resulted in a decision of the Complaints Committee that they should be subject to a formal hearing”;

1. He did not yet have the reasons for the decision of the Complaints Committee and, that when those reasons were received both Presenting Counsel and Counsel for His Worship Welsh would need time to consider them;
2. Counsel for His Worship Welsh had received disclosure of the investigation in connection with the new complaints;
3. Materials in connection with the new complaints had been received by Presenting Counsel the previous afternoon, and
4. Presenting Counsel would be required to draft a new Notice of Hearing in connection with the recent order made by the Complaints Committee directing a formal hearing into the new complaints.
5. Finally, Presenting Counsel advised that “as a consequence of this new development” Presenting Counsel would have to consider whether to bring a motion to consolidate the new allegations with the current hearing, or, in the alternative, to ask that the new complaints be heard by the same panel consecutively; that is, to consider the new complaints “after this hearing is finished.”
6. The Hearing Panel made an order banning publication of the fact that the Complaints Committee had received additional complaints which had been investigated and considered and that the Complaints Committee had made a decision that those additional complaints should be subject to a formal hearing.
7. The hearing was adjourned to April 9, 2019.
8. In the interim, a Complaints Committee of the Justices of the Peace Review Council, pursuant to Section 11 (15) (c) the *Act*, ordered that “the following matter of two complaints” regarding the conduct or actions of His Worship Justice of the Peace Paul Welsh be referred to a Hearing Panel of the Review Council for a formal hearing under Section 11.1 of the *Act*.
9. The particulars of the complaints are set out in Appendix “A” of the Notice of Hearing dated February 28, 2019. The said Notice of Hearing provides that the Hearing Panel of the Review Council will convene at the Justices of the Peace Review Council Boardroom and by telephone conference on March 12, 2019 “to set a date for the hearing into the complaints.”
10. On March 11, 2019, Presenting Counsel served notice on Counsel for His Worship Welsh that a Motion to Combine Proceedings would be brought seeking an Order combining two proceedings respecting the alleged conduct of His Worship Justice of the Peace Paul Welsh, or for an Order that those proceedings be heard consecutively, pursuant to section 11.1 the *Act*, paragraph 18 of the Justices of the Peace Review Council’s Procedures Document (hereinafter the “Procedures Document”)[[1]](#footnote-1), and section 9.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S-22, as amended (hereinafter the “*SPPA*”).
11. At the March 12, 2019 set-date for the hearing into the new complaints, Presenting Counsel announced on the record via telephone conference call that the additional complaints about the conduct of His Worship Welsh had been ordered to a hearing and that the Notice of Hearing in relation to the new complaints was served on Counsel for His Worship Welsh by letter dated March 4, 2019. The February 28, 2019 Notice of Hearing was filed as Exhibit 1. Pursuant to Rule 6 of the Procedural Code for Hearings in the Procedures Document, once the Notice of Hearing is filed as an exhibit in the initial set-date proceeding presided over by the Hearing Panel, the complaints process will become public, subject to any orders of the Hearing Panel.
12. In answer to a question from the Chair of the Hearing Panel regarding what he was proposing to do regarding combining proceedings, Presenting Counsel referred to three options (two of which would require the consent of His Worship Welsh) and stated that he wanted the Hearing Panel to make an Order combining the new proceedings with the on-going proceedings. Presenting Counsel then advised that the Notice of Motion to Combine Proceedings had been served the day before, and that he wished it to be dealt with by the Panel on April 9.
13. Counsel for His Worship Welsh objected, stating that this was not enough time to review, consider, and consult with his client about the matter.
14. When asked to explain why the time between March 12 and April 9 was not sufficient, Counsel for His Worship Welsh replied that the April 9 date should be used to complete the ongoing hearing first, including the additional evidence (by filing the transcripts of the interviews of Justices of the Peace Baker and Kelly) and final submissions.
15. In the result, the Panel ruled that the Motion to Combine Proceedings would be heard on April 9th, and ordered that a pre-hearing conference take place in the interim.
16. The Motion to Combine Proceedings was heard and argued on April 9, 2019.

**THE MOTION TO COMBINE PROCEEDINGS**

1. On March 11, 2019, pursuant to the Order of Disclosure made by the Complaints Committee Assigned to JRPC File 29-021/18 and JRPC File 29-034/18 and dated January 25, 2019 (hereinafter the “Disclosure Order”) and now in possession of the relevant investigation materials, Presenting Counsel filed a NOTICE OF MOTION TO COMBINE PROCEEDINGS - namely, the original proceedings commenced by Notice of Hearing dated March 15, 2018 (the “First Notice”) with the new proceedings commenced by Notice of Hearing dated February 28, 2019 (the “Second Notice”).
2. On April 1, 2019, Counsel for His Worship Welsh served a CROSS-MOTION AND RESPONSE ON BEHALF OF JUSTICE OF THE PEACE PAUL WELSH, a CROSS-MOTION AND RESPONSE FACTUM ON BEHALF OF JUSTICE OF THE PEACE PAUL WELSH , and, a BOOK OF AUTHORITIES RE: CROSS-MOTION AND RESPONSE ON BEHALF OF JUSTICE OF THE PEACE PAUL WELSH.
3. On April 4, 2019, Presenting Counsel served a FACTUM OF PRESENTING COUNSEL RE: MOTION TO COMBINE PROCEEDINGS and a CROSS-MOTION RE JURISDICTION and STAY OF PROCEEDINGS.
4. On April 5, 2019, Presenting Council served a MOTION RECORD TO COMBINE PROCEEDINGS.
5. The Disclosure Order states in part:
6. The Registrar shall disclose to Mr. Scott Fenton, Presenting Counsel in the ongoing JPRC public hearing in relation to allegations contained in JRPC File 28-O22/17 , the following information which Mr. Fenton may disclose in the proceedings of that hearing:
7. Additional complaints were received by the JRPC about the conduct of His Worship Paul Welsh (contained in JPRC Files 29-021/18, and 29-034/19 that have been investigated and considered in accordance with the legislation and the Procedures that govern the complaints committee. Accordingly, His Worship Welsh has received disclosure in relation to these complaints and has had an opportunity to respond to them.
8. The complaints committee has determined, pursuant to section 11(15)(c) of the *Justices of the Peace Act* and the criteria for decisions by complaints committees contained in the JPRC Procedures, that these complaints should be ordered to a formal hearing.
9. There is evidence upon which a finder of fact could find a pattern of misconduct whereby His Worship appears to disregard proper court processes and the law, fails to remain independent of the police, and shows disrespect for the important role of the judicial discipline process in preserving public confidence in the judiciary and in the administration of justice.
10. The committee is of the view that public confidence in the judiciary and in the administration of justice would best be served by the following:
11. After His Worship Welsh is informed that the complaints contained in JPRC Files 29’021/18, and 29-034/18 are ordered to a hearing, Presenting Counsel should have the opportunity to inform the Hearing Panel that a set-date will be scheduled for a Notice of Hearing to be filed containing additional allegations about His Worship Welsh’s conduct, including an allegation of a pattern of misconduct; and
12. Presenting Counsel should have the opportunity to bring a motion to consolidate the additional allegations arising from JPRC Files 29-021/18, and 29-034/18 into the ongoing hearing, and/or a motion to have the Hearing Panel consecutively hear the evidence in relation to JPRC File 28-022/17 and the evidence in relation to JPRC Files 29-021/18, and 29-034/18.
13. In that way, the risk of harm to public confidence could be avoided that could otherwise arise if a Hearing Panel renders a decision based upon incomplete information that may be relevant to the allegations of judicial misconduct before it.
14. In the Factum of Presenting Counsel, Part 11 Statement of Facts, a chronology with respect to the allegations contained in (Appendix “A” of) the Second Notice is set out, and reproduced below (with the Panel’s amplifications italicized):

**May 25, 2018:** the Review Council received a complaint from Frances Evans (the “Evans Complaint”);

**July 12, 2018**: counsel appointed by the Complaints Committee to assist it in investigating the Evans complaint (Mr. Ian Scott) interviewed Ms. Evans;

**August 14, 2018**:On behalf of the Complaints Committee, the Registrar wrote to His Worship, indicating that the Complaints Committee was considering making a recommendation that His Worship be not assigned pending the final disposition of the complaint and inviting His Worship to make submissions regarding whether such an interim recommendation should be made. At this time, His Worship was provided with a copy of the Evans Complaint and a transcript of her interview;

**August 14-20, 2018**: Mr. Scott conducted interviews of five witnesses in furtherance of the Complaints Committee’s investigation into the Evans Complaint;

**September 19, 2018:** His Worship was advised by the Regional Senior Justice of his Non-Assignment, effective September 20, 2018;

**October 15, 2018:** the Review Council received a new complaint respecting His Worship from Regional Senior Justice Sharon Nicklas (the “Nicklas Complaint”);

**November 14 & December 3, 2018:** Mr. Scott conducted interviews of two additional witnesses in furtherance of the Complaints Committee’s investigation into the Nicklas Complaint;

**December 18, 2018:** on behalf of the Complaints Committee, the Registrar wrote to His Worship and invited him to respond to the allegations contained in both the Evans and Nicklas Complaints and provided a detailed summary of the evidence collected during the investigation of those complaints. Accompanying this 10-page letter were: a copy of the Nicklas Complaint (with its enclosures); and, transcripts (with exhibits) of seven interviews conducted by Mr. Scott during the Complaints Committee investigation – five in connection with the Evans Complaint and two relating to the Nicklas Complaint;

**January 21, 2019:** through his counsel, His Worship responded to the complaints;

**January 28, 2019:** by letter from the Registrar, His Worship was advised that both complaints had been referred to a section 11.1 hearing;

**February 28, 2019**: the Second Notice of Hearing, which sets out allegations contained in the Evans and Nicklas Complaints and allegations revealed in the Complaints Committee’s investigation into those complaints (the “New Allegations”), was served and filed.

**March 12, 2019:** the second Notice of Hearing was filed as an exhibit, thereby commencing the hearing process into the new allegations.

**POSITIONS OF THE PARTIES**

**Presenting Counsel**

1. In the Factum of Presenting Counsel, Part III Issues and Law (and again in his oral submissions) Presenting Counsel concedes “that without His Worship’s consent, the Hearing Panel does not have the authority to combine the proceedings or to hear them at the same time. “

Subsection 9.1(1) paragraphs (a) and (b) of the *SPPA*

1. Presenting Counsel adds that the Hearing Panel does, however, have the authority under the *SPPA* – absent the consent of His Worship – to order that the two proceedings be heard “one immediately after the other”, or, to stay one of the proceedings until after the determination of the other.

Subsection 9.1(1) paragraphs (c) and (d) of the *SPPA*

1. Presenting Counsel states that there are various factors which militate in favour of the same Panel hearing and disposing of both proceedings.
2. More particularly, Presenting Counsel notes that the allegations made in the First Notice of Hearing and the Second Notice of Hearing (collectively: the “Notices”) raise some similar questions of fact, law, and policy:
* Both Notices allege that His Worship failed to follow established court procedures.
* Both Notices allege that His Worship executed judicial acts outside of court.
* Both Notices allege that His Worship executed judicial acts in the absence of prop-er documentation.
* Both Notices allege that His Worship demonstrated preferential treatment or favouritism to particular individuals, including defence counsel and police officers.
* Both Notices allege that His Worship engaged in conduct that could give rise to a perception of preferential treatment or favouritism towards certain litigants.
* Both Notices allege that His Worship demonstrated a pattern of disregard for the administration of justice, negatively impacting the public’s confidence in the integrity, independence, and impartiality of his judicial office.
1. Presenting Counsel observes that:
2. While these allegations individually and collectively raise important issues of judicial misconduct, the allegations themselves are not especially complicated nor do they rest on a complex or voluminous body of evidence.
3. Since the hearing respecting the First Notice is nearly complete, little or no prejudice to His Worship will be occasioned by (this Panel) continuing to consider the Second Notice immediately after. A second proceeding will happen in any event; indeed, delay will be attenuated by having the proceedings go forward one after the other before the same panel.
4. Because (absent His Worship’s consent) there is no jurisdiction to (a) combine the proceedings, or (b) hear the proceedings at the same time, His Worship is free to choose separately whether (or not) to testify in each hearing, just as he would be if the panel dismisses this motion. His Worship can choose to testify (or not testify) in both, one, or neither of the hearings.
5. There is no “risk of inconsistent verdicts”: His Worship may properly be found to have committed, or not committed, judicial misconduct in either of the two proceedings.
6. Evidence tendered in the hearing on the first Notice may constitute “similar fact evidence” in the hearing on the Second Notice.
7. This Panel will be especially well-situated to determine the appropriate disposition pursuant to subsection 11.1(10) of the *Act* if it upholds the complaint at the end of the hearing into the allegations in the Second Notice.
8. Presenting Counsel leaves it to the Hearing Panel’s discretion to determine whether this is a proper case in which to exercise the authority to order that the matters be heard by the same panel one immediately after the other or, in the alternative, to stay proceedings in connection with the Second Notice and order that they be heard by a differently constituted Panel of the Review Council.
9. In the course of his oral argument on the motion, Presenting Counsel addressed the preconditions set out in section 9.1 of the *SPPA* and, in support of his submission that those preconditions are met, expanded on the details set out in (the Appendices to) both Notices of Hearing informing the two main issues which he says are repeatedly raised (by the various allegations of judicial misconduct): (1) the failure by His Worship Welsh to demonstrate impartiality; and, (2) the failure by His Worship Welsh to follow proper processes and procedures.
10. In summing up, Presenting Counsel posits:

Last, and perhaps most important, it is my respectful submission that one of the benefits of having the same panel determine the matter is in the event that His Worship is found to have committed judicial misconduct in one or both of these matters, that all the evidence be heard by a single panel, who then becomes uniquely well-situated to make the best determination about what the appropriate order ought to be at the end of the day.

**The Respondent**

1. In the Factum on the Cross-Motion and Response, Part III – ISSUES AND THE LAW, the issues are framed as follows:
2. **The Issues on the Cross-Motion:**
3. Does this Panel have the jurisdiction to conduct the proceedings relating to the Notice of Hearing dated February 28, 2019 where there appears to be a deficiency in the case of an absence of written complaints made with respect to some of the allegations of misconduct?
4. Should the current Panel hear about a new matter prior to completing its ongoing hearing, thereby creating a reasonable apprehension of bias or prejudice in respect to any determination relating to the ongoing matter?
5. Did the Complaints Committee act outside its jurisdiction in making an Order on January 25, 2019 directing Presenting Counsel to bring the Motion to Combine Proceedings?
6. **The Issues on the Motion to Combine Proceedings**
7. Do the complaints in the respective Notices of Hearing share a sufficient factual nexus to justify the joinder of proceedings?
8. Is it in the interests of justice that this Panel hear the proceedings in connection with the Notice of Hearing dated February 28, 2019 consecutively upon completing the proceedings in connection with the Notice of Hearing dated March 15, 2018?
9. In the Cross-Motion and Response on Behalf of Justice of the Peace Paul Welsh and in the Factum on the Cross-Motion and Response, Part III – ISSUES AND THE LAW, Counsel for His Worship Welsh makes the following jurisdictional arguments:

**The Written Complaint Requirement**

1. The Notice of Hearing dated February 28, 2019 includes particulars of the complaints that are the subject matter of Presenting Counsel’s Motion to Combine Proceedings.
2. Appendix “A” of the Notice of Hearing dated February 28, 2019 outlines the particulars of the “Evans Complaint” and the “Nicklas Complaint”, but also includes reference to allegations of misconduct that were “never the subject of a written complaint made to the Review Council.
3. Allegations made against His Worship during the investigation – other than those that were the subject of the “Evans Complaint” and “Nicklas Complaint” – cannot be considered as PARTICULARS OF THE COMPLAINT in (Appendix “A” of) the Notice of Hearing dated February 28, 2019, as they were never the subject of any written complaint or identified as such.
4. Subsection 10.2(2) of the *Act* states that a complaint about a Justice of the Peace must be made in writing to the Review Council.

**Improper Delegation by the Complaints Committee**

1. Paragraph 11 of the Notice of Motion to Combine Proceedings (under History of the Proceedings) states that “the Complaints Committee authorized Presenting Counsel” to advise this Panel of the Notice of Hearing dated February 28, 2019 and to bring a motion to either consolidate that Notice of Hearing with the Notice of Hearing dated March 15, 2018 or to have this Panel hear the matters consecutively.
2. The actions that can be taken by a complaints committee when it has completed its investigation are set out in section 11(15) of the *Act*:

a. Dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;

b. Invite the justice of the peace to present himself before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;

c. Order that a formal hearing into the complaint be held by a hearing panel; or

d. Refer the complaint to the Chief Justice of the Ontario Court of Justice.

1. Although the (Justice of the Peace Review Council) Rules of Procedure allow the Registrar to assign “any new complaints against a justice of the peace who already has an open complaint file, or files, to the same complaints committee that is/are investigating the outstanding complaint(s), no corresponding rule exists to permit the Complaints Committee to authorize Presenting Counsel to join new complaints with those currently before a Panel, or to bring a new Notice of Hearing before a Panel currently hearing a matter for the purpose of making a motion to combine the proceedings.
2. In authorizing Presenting Counsel to bring the Notice of Hearing dated February 28, 2019 before the Panel charged with hearing evidence on the Notice of Hearing dated March 15, 2018, the Complaints Committee engaged in an improper delegation of its responsibilities and/or acted *ultra vires* in that the said action was outside its legislated purpose and scope as set out in section 11 of the *Act* and the Rules of Procedure.
3. In purporting to act pursuant to subsection 8(18) of the *Act*, the Complaints Committee’s interpretation of the legislation is incomplete and flawed, and, conflicts with the legislative intent of the *Act* and of the proceedings before the Review Council.
4. The role of the Complaints Committee is to “review and investigate complaints under section 11” and to make “decisions about the disposition of a complaint after their investigation is complete”.
5. The effective consequence of the January 25, 2019 Order of Disclosure made by the Complaints Committee was a *de facto* joinder of the proceedings. This is illustrated by the fact that at the set-date on March 12, 2019 – pertaining and pursuant to the Notice of Hearing dated February 28, 2019 – the Panel discussed matters pertaining to the Notice of Hearing dated March 15, 2018.
6. In the result, the actions of the Complaint Committee caused procedural unfairness to His Worship Welsh, and,
7. Accordingly, it is the position of Counsel for His Worship Welsh that jurisdiction of this Panel over the Notice of Hearing dated February 28, 2019 is therefore in question (a) because the Notice contains allegations that were never the subject of a written complaint, and (b) as a result of the process by which the Notice came before this Panel.
8. Counsel for His Worship Welsh further submits that:
9. The remedial nature of these proceedings and public interest require that the complaint against the justice of the peace be evaluated fairly and dispassionately to achieve a just result and to preserve or restore confidence in the judiciary.
10. Bringing the Notice of Hearing dated February 28, 2019 before the same Panel charged with hearing evidence on the Notice of Hearing dated March 15, 2018 directly conflicts with the purpose of the Justice of the Peace Review Council proceedings and infringes upon His Worship Welsh’s procedural rights to a fair and dispassionate presentation of the complaints against him.
11. Joining the proceedings in respect of the Notice of Hearing dated February 28, 2019 with the proceedings in respect of Notice of Hearing dated March 18, 2018 at this stage of the hearing would be contrary to the interests of justice, fairness and judicial economy.
12. Without His Worship Welsh’s consent, the Hearing Panel does not have the authority to combine the proceedings or to hear them at the same time.

Subsection 9.1(1) paragraphs (a) and (b) of the *SPPA*

1. The only remaining options for this Panel’s consideration are:

(c) hear the proceedings one immediately after the other; or

(d) stay one or more of the proceedings until after the determination of another one of them

Subsection 9.1(1) paragraphs (c) and (d) of the *SPPA*

1. The question of whether to combine proceedings by hearing them consecutively requires the Panel to consider the two-part common law test for joinder of charges set out by the Supreme Court of Canada in *R. v. Clunas*, [1992] 1 S.C.R. 595 at page 610.
2. His Worship Welsh relies on the case *of Barriolhet v. Justices of the Peace Review Council*, 2011 ONSC in which the Divisional Court of the Ontario Superior Court of Justice held that a Hearing Panel applied the correct test in determining the issue of severance by applying the factors that would be considered in severing a multiple count indictment in a criminal trial.
3. The two-part common law test for joinder of charges as set out by the Supreme Court of Canada in *Clunas* and considered by the Court in *R. v. Sciascia*, 2017 SCC 57, is applicable to the consideration of this Motion to Combine Proceedings.
4. The proceeding pertaining to the Notice of Hearing dated February 28, 2019 should be stayed until after the determination of the ongoing proceeding pertaining to the Notice of Hearing dated March 15, 2018.
5. The Panel should order that the Notice of Hearing dated February 28, 2019 be put before a new Hearing Panel of the Justices of the Peace Review Council.
6. In the course of his oral argument on the motion, Counsel for His Worship Welsh:
7. relied on the materials he filed;
8. observed that the mere fact that the two Notices of Hearing contain the same language is of no consequence in the determination as to whether the facts, the law, or the policy are similar;
9. posited that it is a live issue in the current hearing whether the Panel can be satisfied *on the evidence before it* that in fact His Worship Welsh failed to follow proper practices and procedures, either because they were not communicated to His Worship or because there were none or because it an issue as to what those practices and procedures were;
10. observed that there are significant differences between the allegations contained in the two notices, namely:
11. the conduct referred to in the Second Notice focusses on the length of time His Worship spent reviewing documents, whereas time was not a factor in the conduct referred to in the First Notice;
12. the conduct referred to in the First Notice is with regard to POA matters only, whereas some of the conduct referred to in the Second Notice is with regard to *Criminal Code* matters as well;
13. the conduct referred to in the Second Notice does not have the same specificity in respect to the dates, times, and circumstances of the occurrences as the conduct referred to in the First Notice;
14. submitted that:
* it would be adverse to the appearance of a fair hearing if this Panel were not to make a final determination on the matters before it before engaging in a new hearing involving these new allegations;
* it would be far more advantageous for the appearance of a fair hearing if the new allegations were dealt with by a different panel, as opposed to this Panel; and,
* it would be bringing the appearance of justice into question if this Panel were to do a consecutive hearing on the new allegations.
1. Counsel for His Worship Welsh stated that he “took no issue with the fact that this Panel is dealing with this matter in an impartial manner and in a fair manner, but the appearance of justice, in my view, bespeaks the option of making sure that nobody can criticize these proceedings in terms of fairness. And the easiest course of conduct would simply be to refer this to a separate panel to deal with.”
2. Counsel for His Worship Welsh added that we are close to finishing this hearing, which “works against the idea that these other proceedings should then be pursued, because it sets up an entirely different, in my view, time frame, circumstances of evidence, and even legal issues.”
3. Counsel for His Worship Welsh made the following closing submission:

The mere fact that this Panel has now been given some information relating to other allegations that, in my submission, are far more egregious in their commentary than that which is before you, on an ongoing basis, does set up the appearance that perhaps considerations and factors that this Panel has to make have been tainted, because you have got this additional information that is, at this point, allegations not subject to proof, and it is that that creates the apprehension of an unfair hearing in the proceedings that are before you. And that is essentially why the easiest and, in my view, fairest remedy that could have been exercised by the complaints committee would have been to simply – to refer the new allegations to a new Panel for a new hearing.

And if that Panel had decided that the better circumstance of processing would be to allow this Panel to complete their hearing in the ongoing matter, and then refer it for a consecutive hearing, it would have removed any allegations of tainting, or an appearance of justice that puts this Panel in the position of having to adjudicate a matter that is ongoing before it, and have, as a consideration, new allegations that they have not heard any evidence about.

1. Asked what his position would be – in the event that this Panel determines that there should be a consecutive hearing – regarding whether or not this Panel should make its findings and if appropriate, recommendations in the First Hearing prior to the commencement of the Second Hearing, Counsel for His Worship Welsh responded with the submission that:

… if this Panel is going to complete the hearing before you, that would include both any findings, if there is a finding of misconduct or not. And, if there is a finding of misconduct, recommendations regarding disposition.

**APPLICABLE LAW**

**Relevant Statutory Provisions**

1. The relevant provisions of section 8 of the *Act* are:

(2) The functions of the Review Council are,

(b) to establish complaints committees from among its members to review and investigate complaints under section 11;

(18) A Review Council, a complaints committee or a hearing panel may order that any information or documents relating to a meeting, investigation or hearing that was not held in public are confidential and shall not be disclosed or made public.

(20) Subsection (18) does not apply to information or documents,

(a) that this *Act* requires the Review Council to disclose;

1. Subsection 10 (1) of the *Act* provides:

(1) The Review Council may establish rules of procedure for complaints committees and for hearing panels and the Review Council shall make the rules available to the public.

1. The relevant provisions of section 10.2 of the *Act* are:

(1) Any person may make a complaint to the Review Council about the conduct of a justice of the peace.

(2) A complaint to the Review Council must be made in writing.

1. The relevant provisions of section 11 of the *Act* are:

(1) As soon as possible after receiving a complaint about the conduct of a justice of the peace, the Review Council shall establish a complaints committee and the complaints committee shall investigate the complaint and dispose of the matter as provided in subsection (15).

(7) The complaints committee shall conduct such investigation as it considers appropriate.

(8) The investigation shall be conducted in private.

(10) The rules of procedure established under subsection 10(1) apply to the activities of a complaints committee.

(11) The complaints committee may recommend to a regional senior judge that, until the final disposition of a complaint,

(a) the justice of the peace who is the subject of a complaint not be assigned work.

(12) The recommendation shall be made to the regional senior judge appointed for the region to which the justice of the peace is assigned and the regional senior judge may,

(a) decide to not assign work to the justice of the peace until the final disposition of the complaint but he or she shall continue to be paid.

(15) When its investigation is complete, the complaints committee shall,

(a) dismiss the complaint if it is frivolous, an abuse of process or outside the jurisdiction of the complaints committee;

(b) invite the justice of the peace to attend before the complaints committee to receive advice concerning the issues raised in the complaint or send the justice of the peace a letter of advice concerning the issues raised in the complaint, or both;

(c) order that a formal hearing into the complaint be held by a hearing panel; or

(d) refer the complaint to the Chief Justice of the Ontario Court of Justice.

1. The relevant provisions of section 11.1 of the *Act* are:

(1) When a hearing is ordered under subsection 11(15), the Chair of the Review Council shall establish a hearing panel from among the members of the Review Council to hold a hearing in accordance with this section.

(4) The *Statutory Powers Procedure Act*, except sections 4 and 28, applies to the hearing.

(5) The rules of procedure established under subsection 10 (1) apply to the hearing.

(10) After completing the hearing, the panel may dismiss the complaint, with or without a finding that it is unfounded, or, if it upholds the complaint, it may.

(a) warn the justice of the peace;

(b) reprimand the justice of the peace;

(c) order the justice of the peace to apologize to the complainant or to any person;

(d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;

(e) suspend the justice of the peace with pay, for any period;

(f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or

(g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2.

(11) The panel may adopt any combination of the dispositions set out in clauses 10 (a) to (f).

1. Section 9.1 (1) of the *SPPA* provides:

s. 9.1 (1) If two or more proceedings before a tribunal involve the same or similar questions of fact, law, or policy, the tribunal may,

 (a) combine the proceedings or any part of them, with the consent of the parties;

 (b) hear the proceedings at the same time, with the consent of the parties;

 (c) hear the proceedings one immediately after the other; or

(d) stay one or more of the proceedings until after the determination of another one of them.

**Justices of the Peace Review Council Procedures Document**

1. This document is 34 pages in length (not including an appendix). It contains numerous references to, and often mirrors or replicates the provisions of the *Act*.
2. More particularly, various provisions of the *Act* are referred to in connection with the functioning of Complaints Committees (at pp. 5-12) and in connection with the functioning of Hearing Panels (at pp. 12-15).
3. Under the heading Complaints Committees, sub-heading Assignment of Multiple Complaints (at p. 6 of the Procedures Document) the following is provided:

The Registrar shall assign any new complaints against a justice of the peace who already has an open complaint file, or files, to the same complaints committee that is/are investigating the outstanding complaint(s).

We take this to apply to circumstances where the complaints committee has not yet completed its investigation of the complaint(s) in the open complaint file(s).

1. Under the heading Hearing Panels, sub-heading New Complaint (at p. 15 of the Procedures Document) the following is provided:

If, during the course of the hearing, additional facts are disclosed which, if communicated to a member of the Review Council, would constitute an allegation of misconduct against a justice of the peace outside the ambit of the complaint which is the subject of the hearing, the complaint will be assigned to a complaints committee of the Review Council to be investigated as an original complaint. The complaints committee shall be composed of members of the Review Council other than those who compose the panel hearing the complaint.

We take this to apply to circumstances where the new complaint is disclosed during the course of the evidence of a witness that is being tendered during the hearing.

1. A Procedural Code for Hearings – referred to as Rules of Procedure in its Preamble – is set out at pp. 15-20 of the Procedures Document.
2. The Procedures Document does not specifically address or refer to applications – such as this one – brought pursuant to section 9.1(1) of the *SPPA*.

**Case Law**

1. No case has been provided to the Panel that directly addresses the application of section 9.1 of the *SPPA*, whether specifically to proceedings of a Hearing Panel under the *Act* or otherwise.
2. Counsel for His Worship Welsh cites a number of cases – among them *R. v. Clunas*, [1992] 1 S.C.R. 595, *R. v. Sciascia*, 2017 SCC 57, and *R. v. Last* 2009 SCC 45, (2009), 247 C.C.C. (3d) 449 (S.C.C.) – in support of his position that the motion brought by Presenting Counsel should be dismissed and that the proceedings in connection with the Notice of Hearing dated February 28, 2019 should be referred to a new hearing panel.
3. *Clunas* dealt with the joinder at trial of separate *Criminal Code* Informations alleging offences two days apart by the same accused on the same complainant. One of Informations alleged the offence of assault on which the Crown elected to proceed summarily, and the other information alleged the offence of assault bodily harm on which the Crown elected to proceed by indictment and the accused elected trial in provincial court. Hearing them “both at once” was at the suggestion of defence counsel. The accused was convicted on both.
4. In upholding the convictions, the Supreme Court of Canada “set out a two-part test which governs joinder at common law, requiring that: (1) “the offences … could have been jointly charged”, and (2) “It is in the interests of justice” (p.610). This test was reaffirmed in *L.(S.J.),* at para. 60.”

*Sciascia,* at para. 35

1. In *Sciascia,* MoldaverJ. writing on behalf of the Court cites *Clunas* as authority for upholding the jurisdiction of a judge of the Ontario Court of Justice to try provincial charges and *Criminal Code* summary conviction charges together in a single proceeding.
2. Of note, section 591(1) of the *Criminal Code* provides that subject to section 589 (which deals with joinder of offences in indictments charging murder) and to the requirement that they be distinguished in the manner shown in Form 4 (i.e. by count number), any number of counts for any number of offences may be joined in the same indictment.
3. Section 591(3) provides that the court may where it is satisfied that the interests of justice so require, order that an accused be tried separately on or more of the counts.
4. *Last* is the leading case on severance.
5. In the final case cited by counsel for His Worship Welsh – *Barriolhet v. Justices of the Peace Review Council*, 2011 ONSC – the applicant – former Justice of the Peace Barriolhet – brought an application for judicial review seeking an order quashing the revocation of his appointment. He argued *inter alia* that the Hearing Panel erred in denying his application for severance.
6. The Hearing Panel in that case had stated that it would consider and apply the factors considered in severing a multiple count indictment in a criminal trial, and had found that there was a sufficient nexus of fact and law between the allegations to justify them being heard together.
7. The applicant argued that the Hearing Panel should have taken into consideration the factors set out in *Last*, a judgment released after the ruling of the Hearing Panel.
8. In dismissing the application for judicial review, the Divisional Court of the Ontario Superior Court of Justice held that the Hearing Panel applied the correct test to determine whether to sever the allegations:

26. The concern in a criminal trial is whether the interests of justice require severance. In *Last,* the Court set out a list of factors to be considered when balancing the interests of the accused against the public interest of a single trial (at para. 18). They include:

\* the general prejudice to the accused

\* the legal and factual nexus between the counts

\* the complexity of the evidence

\* whether the accused intends to testify on one count but not the other

\* the possibility of inconsistent verdicts

\* the desire to avoid a multiplicity of proceedings

\* the use of similar fact evidence at trial

\* the length of the trial having regard to the evidence called

\* the potential prejudice to the accused with respect to the right to be tried within a reasonable time and

\* the existence of antagonistic defences as between co-accused

28. The Hearing Panel applied the correct test to determine whether to sever the allegations. While nexus and prejudice were the main focus in its reasons, the Panel stated that it had considered a number of factors: the legal nexus between the allegations, the complexity of the issues, the possibility of inconsistent findings, the desire to avoid a multiplicity of proceedings and the possibility of general prejudice to the applicant.

1. Writing for the Court, Swinton J. makes the following salient observations:

31. The Hearing Panel had to determine whether it was in the interests of justice to order severance. In coming to its decision, it could reasonably have regard to the nature of judicial misconduct proceedings and, in particular, their remedial nature. (see *Ruffo c. Quebec (Conseil de la Magistrature)*, [1995] 4 S.C.R. 267 (S.C.C.) at para. 68.) In the present case, the allegations are not like counts in an indictment that allege separate offences. Rather, there was one allegation in the Notice of Hearing: that the applicant had conducted himself in a manner incompatible with the due exercise of his office. The particulars were reasonably considered together, so that a determination could be made whether his conduct, taken as whole, warranted a recommendation that he be removed from office.

32. The Hearing Panel weighed against that consideration the question whether there would be serious prejudice to the applicant were severance refused. The Panel correctly observed that there is a greater risk of prejudice where there is a trial of an accused on multiple counts before a jury than a hearing by judge alone. In the present case, the Panel was composed of a judge, a justice of the peace and a lawyer.

**ANALYSIS**

**The Written Complaint Requirement**

1. During the course of oral submissions, Presenting Counsel posited that if the Panel determined – pursuant to section 9.1(1)(c) of the *SPPA* – that there should be a consecutive hearing, the safest course would be to conclude hearing number 1 (the “current hearing”) and then turn to hearing number 2 (the “new hearing”).
2. Counsel for His Worship Welsh maintained that if this Panel decided to “accept the task of a consecutive hearing”, the appropriate time to deal with this issue – pertaining as it does to the jurisdiction of the Panel in relation to the Notice of Hearing dated February 28, 2019 – would be at the commencement of the new hearing.
3. In the result, this issue is deferred until the completion of the current hearing, including any disposition pursuant to section 11.1(10) of the *Act*.

**Improper Delegation by the Complaints Committee**

1. It is the position of Counsel for His Worship Welsh that:
2. in “ordering” Presenting Counsel to bring the Motion to Combine Proceedings, the Complaints Committee – having completed its investigation into the new complaints – improperly delegated and/or acted *ultra vires* and/or acted outside the scope of its authority which is circumscribed by section 11(15) of the *Act*; and
3. in purporting to act pursuant to subsection 8(18) of the *Act*, the Complaints Committee’s interpretation of the legislation is incomplete and flawed, and, conflicts with the legislative intent of the *Act* and of the proceedings before the Review Council.
4. It is the view of the Panel that this argument:
5. fails to consider the potential for interconnection between subsections 11(15)(c) and 11.1(4) of the Act and section 9.1 of the *SPPA*;
6. ignores both the relationship between Presenting Counsel and the Review Council and the precise language of the Disclosure Order; and
7. misconceives the purpose and intent of the Disclosure Order and, in particular, the reason for the reference in the opening paragraph of the order to section 8(18) of the *Act*.

**The potential for interconnection between subsections 11 (15) (c) and 11.1 (4) of the *Act* and section 9.1 of the SPPA**

1. Subsection 11(15) (c) of the *Act* provides that when its investigation is complete, the complaints committee shall order that a formal hearing into the complaint be heard by a Hearing Panel.
2. Subsection 11.1(4) of the *Act* provides that the *SPPA* applies to the hearing.
3. Section 9.1 of the *SPPA* provides that where two or more proceedings before a tribunal involve the same or similar questions of fact, law, or policy, the tribunal may either (a) combine the proceedings or any part of them, with the consent of the parties; (b) hear the proceedings at the same time, with the consent of the parties; (c) hear the proceedings one immediately after the other; or, (d) stay one or more of the proceedings until after the determination of another one of them.
4. The Preamble to the Procedural Code for Hearings in the procedures Document reads as follows:

Preamble

These Rules of Procedure apply to all hearings of the Review Council convened pursuant to subsection 11(10) of the *Justices of the Peace Act* and are established and made public pursuant to subsection 10(1) of the *Justices of the Peace Act*.

These Rules of Procedure shall be liberally construed so as to ensure the just determination of every hearing on its merits. Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

1. The relevant provisions of Rule 6, under the sub-heading Notice of Hearing, provide:

6. (1) A hearing shall be commenced by a Notice of Hearing in accordance with this part.

(2) Recognizing the role that the complaints process has in maintaining and restoring public confidence, and that the legislative requirements for maintaining privacy no longer apply for formal hearings under section 11.1 of the *Act*, once Presenting Counsel files the Notice of Hearing as an exhibit in the initial set-date proceeding presided over by the hearing panel, the complaints process will become public, subject to any order of the hearing panel.

1. The contents of the Disclosure Order make it apparent that, no later than January 25, 2019, the Complaints Committee:
2. had completed its investigation into the new complaints,
3. had disclosed the new complaints to His Worship Welsh and accorded him an opportunity to respond,
4. had determined that these complaints should be ordered to a formal hearing, and
5. had found that there was evidence upon which a finder of fact could find “a pattern of misconduct whereby His Worship appears to disregard proper court processes and the law, fails to remain independent of the police, and shows disrespect for the important role of the judicial discipline process in preserving public confidence in the judiciary.”
6. Having determined that these complaints should be ordered to a formal hearing, the next procedural steps for the Complaints Committee were to order that the complaints be referred to a Hearing Panel of the Review Council for a formal hearing under section 11.1 of the *Act*, and, to inform His Worship that the complaints had been ordered to a hearing.
7. Having found that there was evidence underlying the new complaints upon which a finder of fact could find such a pattern of misconduct, and, with the belief that there was evidence in the ongoing hearing upon which this Panel could find a similar pattern of misconduct, the Complaints Committee came to the view that the new complaints should be referred to this Panel (by Presenting Counsel if he thought it was appropriate to do so) by way of “a motion to consolidate the additional allegations…into the ongoing hearing…and/or a motion to have the Hearing Panel consecutively hear the evidence…”
8. The reasons why the suggested motion is framed in the alternative - i.e. “a motion to consolidate the additional allegations … into the ongoing hearing, and/or a motion to have the Panel consecutively hear the evidence … - are obvious:
9. The Complaints Committee was contemplating proceedings under section 9.1 of the *SPPA*.
10. Section 9.1 provides for (both) consolidation of two or more proceedings with the consent of the parties, and, hearing the proceedings one immediately after the other (i.e. consecutively) which does not require the consent of the parties.
11. As of January 25, 2019 (the date of the Disclosure Order) His Worship Welsh had not yet been informed that the new complaints were going to be ordered to a hearing, nor had he been informed that some form of combination of the proceedings (of which two of the three alternatives would require his consent) was being contemplated by the Complaints Committee i.e. for consideration by Presenting Counsel.
12. Accordingly the Complaints Committee was not (and could not yet be) aware of which option(s) might be available (for consideration by Presenting Counsel).
13. We disagree with the submission that in authorizing Presenting Counsel to bring the Notice of Hearing dated February 28, 2019 before the Panel charged with hearing evidence on the Notice of Hearing dated March 15, 2018, the Complaints Committee engaged in an improper delegation of its responsibilities and/or acted *ultra vires* in that the said action was outside its legislated purpose and scope as set out in section 11 of the *Act* and the Rules of Procedure.
14. In our view, a fair reading of sections 11(15)(c) and 11.1(4) of the *Act*, together with section 9.1 of the *SPPA*, considered in the context of the Preamble to and Rule 6 (2) of the Procedural Code for Hearings, both permits and contemplates a Complaints Committee doing precisely what the Complaints Committee did in this case.

**The relationship between Presenting Counsel and the Review Council and the precise language of the Disclosure Order**

1. The relationship between Presenting Counsel and the Review Council is set out (at p. 16) of the Procedures Document, under Procedural Code for Hearings, Rule 1:
2. (1) In this code,
3. “presenting counsel” means counsel engaged on behalf of the Review Council to prepare and present the case against a respondent.
4. The Review Council shall, on the making of an order for a hearing in respect of a complaint against a justice of the peace, engage legal counsel for the purposes of preparing and presenting the case against the respondent.
5. Legal counsel engaged by the Review Council shall operate *independently* of the Review Council. (Emphasis added)
6. The duty of legal counsel engaged under this Part shall not be to seek a particular order against a respondent, but to see that the complaint against the justice of the peace is evaluated fairly and dispassionately to the end of achieving a just result.
7. For greater certainty, presenting counsel are not to advise the Review Council on any specific matter set for a public hearing in which he or she has been retained as presenting counsel. All communications between presenting counsel and the Review Council shall, where communications are personal, be made in the presence of the respondent and/or counsel for the respondent, and in the case of written communications, such communications shall be copied to the respondents.
8. As is apparent from paragraph 1 of the Disclosure Order, the Complaints Committee (by use of the words “shall disclose”) is *directing* the Registrar to disclose information regarding the new complaints to Presenting Counsel in the on-going hearing, which Presenting Counsel *may* then disclose in the proceedings of this hearing. (Emphasis added)
9. As is apparent from paragraph 2 of the Disclosure Order, the Complaints Committee – having expressed its view that public confidence in the judiciary and in the administration of justice would best be served by a motion to consolidate the new allegations into the on-going hearing and/or a motion to have the Panel consecutively hear the evidence in relation to the original allegations and the evidence in relation to the new allegations – is proposing or recommending that (*after* His Worship Welsh has been informed that the new complaints are ordered to a hearing) Presenting Counsel *should have the opportunity* (Emphasis added) to:
10. inform the Panel that a set-date will be scheduled for a Notice of Hearing to be filed containing the new allegations, and
11. bring a motion either to consolidate or consecutively hear the evidence.
12. In our view, the language of the Disclosure Order appropriately recognizes the relationship between Presenting Counsel and the Review Council (by which the Complaints Committee is established pursuant to section 8 (2) (b) of the *Act*).
13. It is the Registrar who is being ordered by the Complaints Committee to disclose the information to Presenting Counsel.
14. The decisions regarding what will be done with that information i.e. whether or not Presenting Counsel will disclose it to the Panel, whether or not Presenting Counsel will inform the Panel that a set-date will be scheduled for a Notice of Hearing to be filed containing the new allegations, and whether to bring a motion to consolidate/consecutively hear the evidence, are left to Presenting Counsel.

**The purpose and intent of the Complaints Committee’s Order of Disclosure and, in particular, the reason for the reference in the opening paragraph of the Order of Disclosure to subsection 8(18) of the *Act***

1. Subsection 8(18) of the *Act* provides that a Complaints Committee *may* order that any information or documents relating to an investigation that was not held in public are confidential and cannot be disclosed or made public. (Emphasis added)
2. Subsection 11(8) of the *Act* requires a Complaints Committee to conduct its investigation in private.
3. The Review Council’s Procedures Document (under general heading Complaints Committees, sub-heading Investigation, section Conducting investigation” (at p. 7), and under sub-heading Investigation, section In camera “preliminary” hearing (at p. 8) provide – pursuant to subsection 11(8) of the *Act* – that the investigation shall be conducted in private.
4. At the time the Disclosure Order was made, the Complaints Committee had completed its investigation and determined that these complaints should be ordered to a formal hearing pursuant to section 11(15) (c) of the *Act*, but, it had not yet ordered them to a public hearing. Nor for that matter had His Worship Welsh been informed as yet of their decision to order a formal hearing.
5. The institution of proceedings by way of Notice of Hearing is governed by Rules 6, 7, and 8 of the Procedural Code for Hearings in the Procedures Document, at pp.16-17, the relevant portions of which are set out below:

Notice of Hearing

(1) A hearing shall be commenced by a Notice of Hearing in accordance with this Part.

(2) Recognizing the role that the complaints process has in maintaining and restoring public confidence, and that the legislative requirements for privacy no longer apply for formal hearings under section 11.1 of the Act, *once presenting counsel files the Notice of Hearing as an exhibit in the initial set-date proceeding presided over by the hearing panel, the complaints process will become public*, subject to any orders of the hearing panel. (Emphasis added)

1. Presenting Counsel shall prepare the Notice of Hearing.
2. In our view, the Complaints Committee was required to make the Disclosure Order so that the information set out in paragraph 1 of that order could be disclosed by the Registrar to Presenting Counsel in the ongoing hearing and (if he chose to) by Presenting Counsel to the Panel, both of which were necessary steps to consolidate the additional allegations into the ongoing hearing and/or to have this Hearing Panel consecutively hear the evidence pursuant to sections 11(15) (c) and 11.1(4) of the *Act* together with section 9.1 of the *SPPA*.

**The Reasonable Apprehension of Bias or Prejudice**

1. It is the position of Counsel for His Worship Welsh that:
2. The remedial and public interest nature of these proceedings requires that the complaint against the justice of the peace be evaluated fairly and dispassionately to achieve a just result and to preserve or restore confidence in the judiciary;
3. Bringing the Notice of Hearing dated February 28, 2019 before the same Panel charged with hearing evidence on the Notice of Hearing dated March 15, 2018 directly conflicts with the purpose of the Justice of the Peace Review Council proceedings, infringes upon His Worship Welsh’s procedural rights to a fair and dispassionate presentation of the complaints against him, and creates an appearance of unfairness in and even tainting of the Panel’s deliberations.
4. Judges routinely hear applications during trials over which they are presiding – including but not limited to joinder, severance, similar fact evidence, *Charter* relief, and the voluntariness of inculpatory statements by accused – during which they hear evidence containing all manner of allegations in substantial detail.
5. In many of those applications, during the course of which evidence (or information about proposed evidence) has been placed before the judge, joinder is refused, or severance is granted, or the similar fact evidence does not meet the test for admissibility, or the *Charter* relief is granted and evidence is excluded, or the confession is found to be involuntary and inadmissible.
6. Having heard the impugned evidence, and having disposed of the application, the expectation is that the judge can and will go on to deal with the matter and make his or her findings solely on the *admissible evidence* i.e. by disabusing his or her mind of the now excluded evidence. (Emphasis added)
7. By way of analogy and contrast, what is before the Panel are the bare bones of the new allegations, as set out in Appendix “A” to the Notice of Hearing dated February 28, 2019.
8. Appendix “A” to the Notice of Hearing dated February 28, 2019 is currently before us for the sole purpose of addressing the criteria for a ruling under s. 9.1 of the *SPPA*.
9. In our view, there is no reasonable apprehension of bias or prejudice occasioned by the bringing of this motion in the current hearing.

**Do the complaints in the respective Notices of Hearing share a sufficient factual nexus to justify the joinder of proceedings?**

1. The test for *inter alia* hearing the proceedings one immediately after the other is set out in s. 9.1 0f the *SPPA*: Do the two proceedings involve the same or similar questions of fact, law, or policy?
2. We are satisfied that the two proceedings involve the same or similar questions of fact, law or policy.
3. Certain (but not all) of the allegations of misconduct contained in both notices are factually quite similar.
4. Moreover, both notices allege conduct that *may* *ultimately support, or not support,* findings that His Worship failed to follow established court procedures, that His Worship executed judicial acts outside of court, that His Worship executed judicial acts in the absence of proper documentation,that His Worship demonstrated preferential treatment or favouritism to particular individuals, that His Worship engaged in conduct that could give rise to a perception of preferential treatment or favouritism towards certain individuals and/or litigants, and that His Worship demonstrated a pattern of disregard for the administration of justice, negatively impacting the public’s confidence in the integrity, independence, and impartiality of his judicial office. (Emphasis added)
5. While it may be that some of the conduct referred to in the Second Notice focusses on the length of time His Worship spent reviewing documents whereas time was not a factor in the conduct referred to in the First Notice, and/or thatthe conduct referred to in the First Notice is with regard to POA matters only whereas some of the conduct referred to in the Second Notice is with regard to *Criminal Code* matters as well, and/or that the conduct referred to in the Second Notice does not have the same specificity in respect to the dates, times, and/or circumstances of the occurrences as the conduct referred to in the First Notice, we note that the language of section 9.1 of the *SPPA* speaks of the same *or similar* questions of fact, law, or policy. (Emphasis added)
6. We observe that had the new complaints arisen prior to the completion of the investigation of the complaint before this Panel, they would have been assigned to the same Complaints Committee doing that investigation, and could have been added to these proceedings.
7. We are also inclined to the view that, had a severance application been brought before us under those hypothetical circumstances, it would likely have been unsuccessful based upon due consideration of the principles enunciated and observations made by Swinton J. in *Barriolhet v. Justices of the Peace Review Council*.

**Is it in the interests of justice that this Panel hear the proceedings in connection with the Notice of Hearing dated February 28, 2019 consecutively upon completing the proceedings in connection with the Notice of Hearing dated March 15, 2018?**

1. We are satisfied that it is in the interests of justice that we hear the proceedings in connection with the Notice of Hearing dated February 28, 2019 consecutively – which is to say that we “hear the proceedings one immediately after the other” pursuant to subsection 9.1 (c) of the *SPPA*.
2. As noted, we are persuaded that by concluding the current hearing pertaining to the Notice of Hearing dated March 15, 2018 in its entirety, no prejudice will be occasioned to His Worship Welsh in the current hearing
3. Moreover, we believe that, regardless of the finding(s) or disposition(s) that we make in the current hearing pursuant to subsection 11.1 (10) of the *Act*, we will be uniquely well-situated to make the best determination of the appropriate finding(s) and disposition(s) in the hearing that immediately follows.

**RESULT**

1. The motion brought by the Applicant, Presenting Counsel in the hearing pertaining to the Notice of Hearing dated March 15, 2018, is granted.
2. The Hearing Panel orders that:
3. the proceeding pertaining to the Notice of Hearing dated March 15, 2018 and the proceeding pertaining to the Notice of Hearing dated February 28, 2019 will be heard consecutively; and
4. the proceeding pertaining to the Notice of Hearing dated March 15, 2018 will be concluded in its entirety, including any and all finding(s) and disposition(s), before the commencement of the proceeding pertaining to the Notice of Hearing dated February 28, 2019.
5. The cross-motion brought by the Respondent, His Worship Justice of the Peace Paul Welsh, for an Order staying the proceedings relating to the Notice of Hearing dated February 28, 2019 until the completion of the proceedings relating to Notice of Hearing dated March 15, 2018, and for an Order that the Notice of Hearing dated February 28, 2019 be put before a new Panel of the Justices of the Peace Review Council, is dismissed.
6. The cross-motion brought by the Respondent, His Worship Justice of the Peace Paul Welsh, in relation to an alleged absence of jurisdiction based upon the purported absence of a formal written complaint to support allegations of misconduct set out in Appendix “A” to the Notice of Hearing dated February 28, 2019, is adjourned until the completion of the proceeding pertaining to the Notice of Hearing dated March 15, 2018 and commencement of the proceeding pertaining to the Notice of Hearing dated February 28, 2019.

Dated at the City of Toronto in the Province of Ontario, this 10th day of May, 2019.

HEARING PANEL:

The Honourable Justice Neil Kozloff, Chair

Her Worship Kristine Diaz

Ms. Jenny Gumbs, Community Member

1. The Review Council updated and reformatted its Procedures on April 29, 2019. As the Reasons reflect the decision given orally on April 9, 2019, the references contained in the decision reflect the Procedures as they were on April 9, 2019. The substance of the procedural rules remains the same; however, rule and page numbering may be different in the updated version of the Procedures. [↑](#footnote-ref-1)