

Justices of the Peace Review Council

**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 Dianne Ballam**

Before: The Honourable Justice Joseph A. De Filippis, Chair
Her Worship Liisa Ritchie, Justice of the Peace Member
Ms. Lauren Rakowski, Community Member

REASONS FOR DECISION

Counsel:

Marie Henein & Maya Borooah
Presenting Counsel

Her Worship Dianne Ballam
Self-Represented

TABLE OF CONTENTS

PART I – INTRODUCTION	2
PART II – FRAMEWORK FOR THESE PROCEEDINGS	2
Legislation	2
Standard of Proof.....	3
Remedial Purpose	4
PART III – STANDARD FOR JUDICIAL MISCONDUCT	5
Principles of Judicial Office for Justices of the Peace.....	5
Test.....	6
Extra-Judicial Conduct.....	8
PART IV – HISTORY OF THE PROCEEDINGS	9
PART V – THE HEARING	11
PART VI – JURISDICTION	11
PART VII – PROVISION OF LEGAL SERVICES	13
PART VIII – HER WORSHIP’S STATUS WITH THE LAW SOCIETY AND LAWPRO..	15
PART IX – ALLEGATIONS RELATED TO NGOC-THU TRAN	18
Evidence	19
Submissions	28
Conclusion.....	30
PART X – ALLEGATIONS RELATED TO TONY BOUBASH.....	32
Evidence	32
Submissions	37
Conclusion.....	39
PART XI – ALLEGATIONS RELATED TO CYRUS ABHAR	41
Evidence	42
Submissions	51
Conclusion.....	53
PART XII – FINDINGS OF JUDICIAL MISCONDUCT	55
Appendix A: PARTICULARS OF THE COMPLAINT	59

PART I – INTRODUCTION

- [1] A Complaints Committee of the Justices of the Peace Review Council (the “**Review Council**” or the “**JPRC**”), ordered that the complaint regarding the conduct of Justice of the Peace Dianne Ballam be referred to a Hearing Panel of the Review Council for a formal hearing pursuant to subsection 11(15)(c) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (the “**Act**”),
- [2] Pursuant to section 11.1 of the *Act*, a Hearing Panel of the Review Council held a formal hearing into the complaint. The Hearing Panel considered the allegations found in the particulars of the complaint appended to the Notice of Hearing (see Appendix A to these Reasons).
- [3] The essence of the allegations is that Her Worship Ballam – who had been a lawyer prior to her appointment as a justice of the peace of the Ontario Court of Justice – engaged in judicial misconduct by providing legal services to three individuals while she was a justice of the peace - Ngoc-Thu Tran, Tony Boubash, and Cyrus Abhar. It is further alleged that Her Worship engaged in judicial misconduct by appearing on behalf of these individuals in proceedings in the Ontario Court of Justice, the Superior Court of Justice and the Human Rights Tribunal of Ontario. Based on these actions, Her Worship is alleged to have engaged in a pattern of conduct that she knew or ought to have known could give rise to a real or perceived conflict of interest. In addition, she is alleged to have failed to comply with and respect the legal, ethical and professional obligations required of a member of the judiciary and a member of the Law Society of Ontario. Considered cumulatively and/or individually, it is alleged that Her Worship’s conduct leads to the conclusion that she failed to uphold the high standards of personal conduct and professionalism required to preserve the independence and integrity of the judiciary.
- [4] For the reasons that follow, the Hearing Panel is unanimous in concluding that the test for judicial misconduct has been met and a disposition under section 11.1(10) of the *JPRC* is required to restore confidence in the administration of justice.

PART II – FRAMEWORK FOR THESE PROCEEDINGS

Legislation

- [5] The role of the Hearing Panel is to determine whether the evidence presented in the hearing does or does not result in a finding of judicial misconduct and, if judicial

misconduct is found, to determine the appropriate disposition(s) to preserve or restore public confidence in the judiciary.¹

[6] Pursuant to section 11.1(10) of the *Act*, after completing a hearing, the Hearing Panel may dismiss the complaint, with or without a finding that it is unfounded, or if it upholds the complaint, it may decide upon any of the following sanctions, singly or in combination:

- (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.

[7] The Council may also make a recommendation to the Attorney General that the justice of the peace be removed from office under section 11.1(10)(g) of the *Act*. This sanction cannot be combined with any other sanction. Under section 11.2(1) of the *Act*, a justice of the peace may be removed from office only by order of the Lieutenant Governor in Council.

Standard of Proof

[8] The standard of proof in judicial conduct proceedings is the balance of probabilities.

[9] Earlier suggestions that there is some higher standard of proof between balance of probabilities and beyond a reasonable doubt applicable to professional discipline proceedings are no longer correct in law.²

[10] The Supreme Court of Canada in *F.H. v. McDougall*, [2008] 3 S.C.R. 41 clarifies the standard at paragraphs 45 and 46 as follows:

¹ *Re Massiah*, March 1, 2021, at para. 171; See also Justices of the Peace Review Council Procedures, at s. 10.1

² *F.H. v. McDougall*, 2008 SCC 53, at paras. 40, 45-46; *Law Society of Upper Canada v. Neinstein*, 2010 ONCA 193, at paras. 20-21; *Re Massiah*, JPRC, March 1, 2012, at paras. 172-173

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

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

Remedial Purpose

- [11] As set out in *Re McLeod*, the purpose of judicial misconduct proceedings is remedial. The Hearing Panel is to focus on what is necessary to restore a loss of public confidence arising from the judicial conduct in issue. The objective is not to punish the judicial officer, but rather to repair any damage to the integrity and repute of the administration of justice.³
- [12] In *Re Barroilhet*, adopting principles from the Supreme Court of Canada in *Ruffo v. Conseil de la magistrature* [1995], 4 S.C.R. 267 (S.C.C.), the Hearing Panel confirmed that this remedial objective relates to the judiciary, rather than to the specific justice of the peace affected by the sanction. The role of the Hearing Panel is not to punish the justice of the peace whose conduct is deemed unacceptable, but rather to preserve the integrity of the judiciary as a whole.⁴
- [13] In accordance with the remedial role of the Panel, and the principle of proportionality, if a finding of judicial misconduct is made, the Council should first consider the least serious disposition – a warning – and move sequentially to the most serious – a recommendation for removal, and order only what is necessary

³ *Re McLeod*, OJC, December 20, 2018, at para. 70, citing *Re Baldwin*, OJC, May 10, 2002 as applied in *Re Douglas*, OJC, March 6, 2006

⁴ *Re Barroilhet*, JPRC, October 15, 2009, at paras. 9-10

to restore public confidence in the judicial officer and in the administration of justice generally.⁵

PART III – STANDARD FOR JUDICIAL MISCONDUCT

Principles of Judicial Office for Justices of the Peace

[14] The *Principles of Judicial Office for Justices of the Peace* (the “**Principles**”) have been established pursuant to subsection 13(1) of the *Act* in order to provide guidance on the conduct expected of justices of the peace. The Preamble to the *Principles* provides that:

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

[15] The *Principles* also include the following:

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

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

Commentaries:

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

3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public’s trust and confidence.

3.2 Justices of the peace must avoid any conflict of interest, or the appearance of any conflict of interest, in the performance of their judicial duties.

[16] The *Principles* make clear that justices of the peace are expected to act in a manner that promotes public confidence in the impartiality and integrity of the

⁵ *Re Baldwin*, OJC, May 10, 2002 at pp. 6-7

judiciary, and are expected to refrain from personal and extrajudicial activities that could give rise to a real or perceived conflict of interest.

Test

[17] Preserving and restoring public confidence in the justice system is the guiding principle of judicial conduct proceedings. In determining whether judicial misconduct has been proven, the Hearing Panel's role is to determine whether the conduct of the judicial officer has undermined the *impartiality, integrity and independence* of the judiciary such that the confidence of individuals appearing before the justice, or of the public in its justice system, would be undermined.⁶

[18] The test for judicial misconduct is set out in *Re McLeod* at paragraph 70, citing the decision in *Re Baldwin*, as follows:

“...it is only where the conduct at issue “crosses [the] threshold” of being “so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public’s confidence in the ability of the judge to perform the duties of office or in the administration of justice generally” that the Hearing Panel may make a finding of judicial misconduct and impose one of the sanctions provided for by s. 51.6(11) of the *Courts of Justice Act*.⁷

[19] In *Re Therrien*⁸, the Supreme Court of Canada highlighted that the personal qualities, conduct and image that a judicial officer projects affects the judicial system as a whole, the maintenance of which ensures its effective and proper functioning. As a result, the public will demand virtually irreproachable conduct, or the appearance of same, a standard far above what is demanded of regular citizens. This high standard necessarily involves “a certain loss of freedom” on the part of members of the judiciary to pursue goals and objectives open to individuals who are not judicial officers.

[20] The Supreme Court in *Re Therrien* outlines as follows at paragraphs 110 and 111:

110 ... the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law.

⁶ *Re Therrien*, [2001] 2 S.C.R. 3, at para. 147

⁷ *Re McLeod*, OJC, December 20, 2018, at para. 70, citing *Re Baldwin*, OJC, May 10, 2002, at p.7

⁸ *Supra*, at note 6.

In a paper written for its members, the Canadian Judicial Council explains:

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

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

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

[21] Justices of the peace are judicial officers and are subject to the same high standards of conduct as judges.⁹

[22] In *Re Douglas*, the Hearing Panel noted, citing *Re Therrien*, that a lack of integrity on the part of judges is capable of undermining public respect and confidence and, therefore, judges should strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality and good judgment. Further, judges must be and must give the appearance of being an example of impartiality, independence and integrity. The Hearing Panel in *Re Douglas* outlined at paragraphs 8 and 9:

[8] Based on *Re: Baldwin* and *Re: Evans*, the test for judicial misconduct combines two related concerns: (1) public confidence; and (2) the integrity, impartiality and independence of the judge or the administration of justice. The first concern requires that the Hearing Panel be mindful not only of the conduct in question, but also of the appearance of that conduct in the eyes of the public. As noted

⁹ *Re Massiah*, March 1, 2021, at paras. 195-196

in *Therrien*, the public will at least demand that a judge give the appearance of integrity, impartiality and independence. Thus, maintenance of public confidence in the judge personally, and in the administration of justice generally, are central considerations in evaluating impugned conduct. In addition, the conduct must be such that it implicates the integrity, impartiality or independence of the judiciary or the administration of justice.

[9] Accordingly, a judge must be, and appear to be, impartial and independent. He or she must have, and appear to have, personal integrity. If a judge conducts himself, or herself, in a manner that displays a lack of any of these attributes, he or she may be found to have engaged in judicial misconduct.¹⁰

Extra-Judicial Conduct

- [23] Conduct that does not occur while the justice of the peace is engaged in her official function may also give rise to a finding of judicial misconduct.
- [24] In *Re Phillips*, the Panel found that the justice of the peace had engaged in misconduct when she assisted her daughter in misleading a police officer about her daughter's identity after being pulled over for a traffic stop in which the justice of the peace was a passenger and her daughter was the driver. In particular, the Panel found that the justice of the peace engaged in misconduct when she misled the officer about her relationship with the driver and initially confirmed her daughter's false identity during the stop.¹¹
- [25] Similarly, in *Re Foulds*, the Panel found that the justice of the peace engaged in misconduct by attempting to influence the course of a public health investigation into a local restaurant owned by his friend.¹²
- [26] Finally, in *Re Barroilhet*, the Panel found that the justice of the peace engaged in misconduct by demonstrating that "he was prepared to assist a family friend in a court in another jurisdiction, by using his influence as a justice of the peace, and with the assistance of an employee at a paralegal firm with which he had inappropriate ties."¹³ Justice of the Peace Barroilhet had engaged in further misconduct by failing to make a clear and unequivocal break from his former paralegal firm, which was managed by his wife, after his appointment to the bench.¹⁴

¹⁰ *Re Douglas*, OJC, March 6, 2006 at paras. 8-9, citing *Re Therrien*, [2001] 2 S.C.R. 3, at paras. 110-111

¹¹ *Re Phillips*, JPRC, July 20, 2013, at paras. 26-31

¹² *Re Foulds*, JPRC, July 24, 2013, at paras. 5, 8-11, and 32

¹³ *Re Barroilhet*, JPRC, Oct 15, 2009, at para. 20

¹⁴ *Ibid.*, at para. 25

[27] Judicial misconduct was established in each of these cases for extra-judicial activities involving the provision of legal services or assistance to friends or relatives in their regulatory matters. These cases make clear that a justice of the peace's extra-judicial involvement in legal matters on behalf of other people, regardless of whether it was remunerated, was considered to have undermined the impartiality, integrity and independence of the judiciary, as well as the public's confidence in the administration of justice.

PART IV – HISTORY OF THE PROCEEDINGS

[28] On March 14, 2019, Her Worship was informed that the JPRC received a complaint about her conduct from Andrew Locke, the Director of Crown Operations – Toronto Region, of the Ministry of the Attorney General. She was given an opportunity to respond to the Complaints Committee by March 25, 2019. This deadline was extended to April 4, 2019. Her Worship did not respond.

[29] On April 8, 2019, Her Worship emailed the Registrar and offered several explanations for not responding to the Committee by the due date. The Registrar sent various correspondence to Her Worship in the months thereafter, but she provided various explanations as to why she could not respond.

[30] On October 31, 2019, the Registrar again wrote to Her Worship on behalf of the Complaints Committee to invite her to provide a response to the allegations by December 2, 2019. This was extended to December 16, 2019. Her Worship did not respond. Over the next several days, the Registrar and Her Worship continued their email conversation during which the latter advised that she would be retaining the firm of Heller Rubel as soon as possible.

[31] On January 10, 2020, the Registrar, not having heard from Her Worship, wrote to her to advise that the Complaints Committee had granted an extension to January 31, 2020.

[32] On January 13, 2020, the Registrar wrote to Mr. Brian Heller, following receipt of an e-mail from Her Worship advising that he had just been retained. Mr. Heller responded on January 17, 2020, requesting a 60-day extension to March 31 to respond to the complaint. On January 20, 2020, the Registrar told Mr. Heller that the Complaints Committee had granted an extension to February 28, 2020 for Her Worship's reply.

[33] On June 17, 2020, the Registrar advised Her Worship and Mr. Heller that the Complaints Committee would be referring the matter to a hearing.

[34] On August 17, 2020, the Notice of Hearing was served on Mr. Heller and Her Worship advising that a set-date had been scheduled for September 9, 2020. In response, Mr. Heller reported he had just been discharged as counsel. The same

day, Her Worship also advised the Registrar of this fact. The Registrar provided Her Worship with the teleconference information for the September 9 set-date hearing. Her Worship replied that she could not participate and needed at least one month to recover from a medical procedure.

- [35] At the request of the Registrar, on August 25, 2020, the Hearing Panel made an Order to provide reasonable accommodation of needs arising from Her Worship's medical condition by permitting Her Worship to inform a friend or other person that a hearing had been ordered and have that person assist in the hearing process, if needed.
- [36] On September 2, 2020, Presenting Counsel filed a motion seeking an adjournment of the set-date for two months to reasonably accommodate Her Worship's medical conditions, as well as an order for substituted service of the Notice of Hearing by e-mail.
- [37] On September 9, 2020, Presenting Counsel argued the motion before the Panel. The Panel granted both motions and adjourned the set-date to October 15, 2020. Neither Her Worship nor a support person participated in the motion.
- [38] On October 15, 2020, an initial set-date appearance was conducted by teleconference with the Panel and Presenting Counsel. Her Worship did not participate in the teleconference. For the reasons set out in its decision dated October 16, 2020, the Panel ordered that hearing dates should be scheduled without further delay.
- [39] The hearing was scheduled to proceed virtually through Zoom on March 2-5, 2021.
- [40] On October 19, 2020, Presenting Counsel wrote to Her Worship to advise her of the outcome of the October 15 set-date appearance. On January 7, 2021, the Registrar wrote to Her Worship to remind her that the hearing would proceed remotely on March 2-5, 2021 with technical support from Arbitration Place and to inquire what accommodation, if any, Her Worship required to participate.
- [41] On January 29, 2021, Mr. Justin Khorana-Medeiros wrote to the Registrar and Presenting Counsel to advise that he had recently been retained by Her Worship.
- [42] On February 19, 2021, Her Worship filed a motion to adjourn the hearing due to her medical condition and the fact that she had recently retained counsel. The Hearing Panel heard Her Worship's motion, which included testimony from her doctor, on February 24, 2021. The Panel granted the motion on the basis that new counsel had recently been retained for Her Worship.
- [43] On March 1, 2021, Her Worship discharged her counsel and is currently self-represented.

PART V – THE HEARING

[44] Evidence at the hearing commenced on March 23, 2021 and continued on March 26, April 19 and 23, May 11 and June 8, 2021. Presenting Counsel called four witnesses. Her Worship called three witnesses and also testified. The Panel received written submissions from Presenting Counsel on July 30, 2021 and from Her Worship on September 3, 2021. Supplementary oral submissions were made on September 10, 2021.

PART VI – JURISDICTION

[45] In closing argument, Her Worship Ballam advanced for the first time the argument that the JPRC has no jurisdiction over her because at the time of the impugned conduct, she was on Long Term Insurance Protection (“**LTIP**”) and was not sitting as a justice of the peace. Her Worship submitted that Great West Life (“**GWL**”) and Canada Pension Plan (disability) (“**CPP (disability)**”) have jurisdiction over her as she was in receipt of benefits from them. Her Worship also submitted that the Law Society of Ontario (the “**Law Society**” or “**LSO**”) has jurisdiction over her as she is a lawyer. Her Worship stated that at no time did any of the representatives that she spoke with at GWL, the LSO or CPP (disability) suggest she should contact the JPRC.

[46] Her Worship argued that further evidence in support of her submission that the JPRC has no jurisdiction in the matter is that the Complaints Committee made an interim recommendation to the Regional Senior Judge that she be “unassigned from judicial duties pending final disposition of the complaint” pursuant to section 11(11)(a) of the *Act*. Her Worship argued that this was a “meaningless, nonsensical recommendation as she had not been assigned judicial duties since she went off on sick leave in September 2015...”.

[47] Her Worship also argued that she was not being paid her judicial salary while on LTIP, and that if the Ontario Court of Justice was still “in control” of her and responsible for her actions, the Court should have been including her on communications sent to the bench, inviting her to training sessions, and permitting her to submit judicial allowance expenses.

[48] In response to this issue, Presenting Counsel submitted that section 4(1) of the *Justices of the Peace Act* provides the hearing panel with exclusive jurisdiction over complaints about the conduct of justices of the peace. Section 4(1) of the *Act* states, “Every justice of the peace is a presiding justice of the peace.”

[49] The *Act* contains a few exceptions to section 4(1), which Presenting Counsel argued do not apply in the present case. These exceptions arise where a justice of the peace retires from judicial office at the age of 65 (s. 6), resigns from office

(s. 7), or where an order is made by the Lieutenant Governor to remove the justice of the peace from office (11.2)(1). The relevant sections are reproduced below:

Retirement at 65 years

6 (1) Subject to subsections (2) and (3), every full-time or part-time justice of the peace shall retire when he or she reaches 65 years of age.

Continuation in office

(2) A full-time or part-time justice of the peace who is 65 years of age or older may, subject to the annual approval of the Chief Justice of the Ontario Court of Justice, continue in office until he or she reaches 75 years of age.

Resignation

7 (1) A justice of the peace may resign from his or her office by delivering a signed letter of resignation to the Chief Justice of the Ontario Court of Justice.

Removal from Office

11.2 (1) A justice of the peace may be removed from office only by order of the Lieutenant Governor in Council.

- [50] The Panel observes that Her Worship has not resigned from office nor could she be considered to have retired under section 6. Her Worship confirmed in the course of this hearing that she received approval from the Chief Justice of the Ontario Court of Justice to continue in office after she turned 65.
- [51] Presenting Counsel submitted that the fact that Her Worship was receiving LTIP does not mean she no longer holds judicial office; it simply means she was receiving insurance coverage as a justice of the peace.

Decision on Jurisdiction

- [52] As noted, Her Worship raised the issue of jurisdiction for the first time at this hearing. Section 16.11(3) of the JPRC Procedures states that a motion regarding jurisdiction should be brought as a prehearing motion. Exhibit 6, 7 and 10 filed by Presenting Counsel on the adjournment motion clearly show that Her Worship had concerns about jurisdiction back in 2019, yet she did not bring a prehearing motion as required by the Rules. Although the jurisdiction issue could be dismissed on the basis that it was not properly raised, we have concluded that the issue cannot

succeed on the merits as the Review Council has jurisdiction over the complaint against Her Worship Ballam as a matter of statute.

- [53] The *Justices of the Peace Act* makes it clear that the Review Council has jurisdiction over complaints made against justices of the peace who have not resigned, retired, or been removed from office. The fact that Her Worship was receiving LTIP when the events underlying the allegations took place, as well as during the judicial complaints process, does not mean that she ceased to hold judicial office.
- [54] The evidence adduced at the hearing suggests that Her Worship Ballam held the belief that she still was a justice of the peace while she was on LTIP and non-presiding. Her Worship Ballam testified that it was always her intention to return to work as a justice of the peace once she was medically able to do so. She identifies herself in her *curriculum vitae* as a justice of the peace from 2002 to present.
- [55] As well, the Court considered Her Worship to be a justice of the peace while she was on LTIP and non-presiding. Her name continues to be listed on the Ontario Court of Justice's list of justices of the peace and her application for approval to continue as a justice of the peace was approved by the Chief Justice after she turned 65 years of age in June of 2021.

PART VII – PROVISION OF LEGAL SERVICES

- [56] The *Law Society Act*, R.S.O. 1990, c. L.8 ("**Law Society Act**") defines legal services at section 1(5)-(7):

(5) For the purposes of this Act, a person provides legal services if the person engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person.

(6) Without limiting the generality of subsection (5), a person provides legal services if the person does any of the following:

1. Gives a person advice with respect to the legal interests, rights or responsibilities of the person or of another person.
2. Selects, drafts, completes or revises, on behalf of a person,
 - i. a document that affects a person's interests in or rights to or in real or personal property,
 - ii. a testamentary document, trust document, power of attorney or other document that relates to the estate of a person or the guardianship of a person,

iii. a document that relates to the structure of a sole proprietorship, corporation, partnership or other entity, such as a document that relates to the formation, organization, reorganization, registration, dissolution or winding-up of the entity,

iv. a document that relates to a matter under the *Bankruptcy and Insolvency Act* (Canada),

v. a document that relates to the custody of or access to children,

vi. a document that affects the legal interests, rights or responsibilities of a person, other than the legal interests, rights or responsibilities referred to in subparagraphs i to v, or

vii. a document for use in a proceeding before an adjudicative body.

3. Represents a person in a proceeding before an adjudicative body.

4. Negotiates the legal interests, rights or responsibilities of a person.

(7) Without limiting the generality of paragraph 3 of subsection (6), doing any of the following shall be considered to be representing a person in a proceeding:

1. Determining what documents to serve or file in relation to the proceeding, determining on or with whom to serve or file a document, or determining when, where or how to serve or file a document.

2. Conducting an examination for discovery.

3. Engaging in any other conduct necessary to the conduct of the proceeding.

[57] The Law Society Tribunal Hearing Division in *Law Society of Upper Canada v. Fitz Gibbon*, 2015 ONLSTH 130 made the following observations about legal services:

[30] A person provides legal services if he or she “engages in conduct that involves the application of legal principles and legal judgment with regard to the circumstances or objectives of a person”: *Law Society Act*, R.S.O. 1990, c. L.8, as amended, s. 1(5). This includes giving “advice with respect to the legal interests, rights or responsibilities of the person or of another person” (*Act*, s. 1(6)). A suspended lawyer cannot provide legal services, even if such services can be provided by a paralegal or by a non-licensee under

the by-laws: see generally *Law Society of Upper Canada v. Lambert*, 2014 ONLSTH 65.

PART VIII – HER WORSHIP’S STATUS WITH THE LAW SOCIETY AND LAWPRO

- [58] Her Worship was appointed as a justice of the peace in December of 2002. She presided in the Central East Region of Ontario. Prior to her appointment, she was a lawyer in private practice, primarily in the areas of criminal law and real estate from 1991 to 1997, when she was appointed as a Vice Chair of the Workplace Safety and Insurance Appeals Tribunal. She became a licensed lawyer in 1991 when she was called to the bar. She received a Master of Laws in 2001.
- [59] In 2015, Her Worship went on long-term disability leave and ceased to sit as a justice of the peace. She has not sat as a justice of the peace since that time.
- [60] With respect to Her Worship’s Law Society licensee status in 2018-2019, which was during the timeframe that Her Worship appeared in the proceedings that are the subject of the complaints before us, Ms. Allison Cheron testified on behalf of the Law Society. She is the Director of Client Services. Ms. Cheron explained that the Law Society places judicial officers’ law licences in abeyance upon their appointment to the bench, including the law licences of justices of the peace. Ms. Cheron explained that while the *Law Society Act* directs that judges’ licences be placed in abeyance, until recently the *Law Society Act* was silent on whether lawyers who were appointed as justices of the peace would also have their licences held in abeyance. Despite this gap in the legislation, since 2007, as a matter of policy, the Law Society has also placed the licences of justices of the peace in abeyance in the same manner as judges. On January 1, 2007 (the date when the Law Society enacted this policy), Her Worship’s licence was placed in abeyance.
- [61] Ms. Cheron testified that judicial officers may bring an application to restore their law licence. The information about such applications is publicly available on the LSO website. Ms. Cheron noted that Her Worship had not brought any such application. Accordingly, between 2007 to present, Her Worship was without an active licence to practise law.
- [62] Her Worship questioned Ms. Cheron regarding the lack of clarity with respect to her licence status in 2018-2019. Ms. Cheron replied that her limited search revealed no record of Her Worship calling the Law Society to inquire about her licence status or about applying to restore her licence.
- [63] Ms. Victoria Crewe-Nelson testified on behalf of LawPRO. She is the Vice-President of Underwriting and Customer Service. She explained that the requirement to have professional liability insurance is triggered by having an active licence to practise law in good standing in Ontario. A person with a licence in

suspension or abeyance is not able to obtain insurance until their licence has been restored. A person who provides legal services while their licence is in abeyance does so without insurance coverage from LawPRO.

- [64] Ms. Crewe-Nelson advised that Her Worship has not held professional liability insurance since 1998. On April 1, 2007, Her Worship faxed an exemption renewal to LawPRO to maintain her exemption from the requirement to pay insurance levies on the basis that she is a justice of the peace and not practising law. Her Worship did not pay levies in 2018 and 2019. Ms. Crewe-Nelson added that LawPRO has no records of any application by Her Worship to re-acquire such insurance. Accordingly, Her Worship has been without professional liability insurance since 1998.
- [65] Her Worship acknowledged that she knew her Law Society membership had been suspended by virtue of her appointment to the bench. She also testified that she went on long-term disability in 2015 due to suffering a serious motor vehicle accident that caused a concussion, ongoing cognitive challenges and physical pain.
- [66] Sometime prior to the fall of 2018, Her Worship believed she was well enough to do some limited things, although she remained concerned about her cognitive abilities. She asked her insurers about the possibility of attempting some legal-related work on a limited basis to assist her rehabilitation and assess her capability. The CPP (disability) and GWL advised she would be able to engage in limited work for rehabilitation purposes without affecting her long-term disability coverage as long as she reported any earnings.
- [67] Around this time Her Worship also contacted the Law Society to ascertain if she could engage in limited, non-contentious work as a justice of the peace on long term disability. She testified that she spoke to Mr. Don Kwon, the manager of Membership Services at the Law Society, over the phone. She said that he advised that she could pay prorated fees for the portions of the year in which she required a licence. According to Her Worship, Mr. Kwon said that whether she required an active licence for non-controversial matters was determined on a case-by-case assessment, and that the status of justices of the peace licences was a gray area.
- [68] Her Worship agreed, in cross-examination, that at no time did she write to the Review Council to ask for any direction on the propriety of appearing in court while she held the designation of justice of the peace. She also conceded that, in late summer or early fall of 2018, she made inquiries at the office of the Regional Senior Judge about her ability to officiate a wedding and to engage in limited non-contentious, non-remunerative matters. When Her Worship did not receive a response from the Regional Senior Justice, she did not officiate the wedding. Her Worship did not follow up on her inquiries.

- [69] Her Worship agreed that the assessment of what constitutes a “non-contentious” matter is a subjective assessment.
- [70] Her Worship asserted that the information provided to her by Mr. Kwon is supported by a letter from Diana Miles, Chief Executive Officer of the LSO. The letter was provided to investigating counsel retained on behalf of the complaints committee on May 10, 2019. In her letter, Ms. Miles advised that justices of the peace are not listed in section 31 of the *Law Society Act* so their licences are not in abeyance by operation of legislation. For practical purposes, the Law Society considers the licences of justices of the peace who are also lawyers to be in abeyance, so that they are not required to pay annual fees and file annual reports. She went on to state: “The suspension of regulatory obligations, however, has no direct bearing on entitlement to practise law, unlike abeyance by operation of legislation.”
- [71] It is clear that Her Worship did not have an active licence to provide legal services at the time she assisted and appeared on behalf of three individuals (Ms. Tran, Mr. Boubash and Mr. Abhar) as set out in the Notice of Hearing.
- [72] Her Worship testified that she was not specifically notified that her licence was placed in abeyance and was uncertain about the extent to which she could engage in legal services without a licence. In this regard, Her Worship relied upon her conversation with Mr. Kwon and the letter from Ms. Miles. Presenting Counsel submitted that Mr. Kwon was not called to testify and argued that the letter from Ms. Miles was not admissible. Quite apart from the objections raised by Presenting Counsel, and accepting the evidence given by Her Worship that she did not receive a clear response from the Law Society about her ability to act on “non-contentious” matters, the fact remains that Her Worship proceeded, even in the face of her own admitted uncertainty, to assist the three individuals in question. We will assess below the nature of the assistance provided to each individual, and whether that assistance qualifies as providing legal services without a licence and without insurance.
- [73] In testimony and submissions, Her Worship referenced section 30(4) of the Law Society of Ontario’s By-Law 4 to justify her conduct, which states as follows:

30. The following may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence is authorized to provide:

4. An individual,
 - i. whose profession or occupation is not and does not include the provision of legal services or the practice of law,
 - ii. who provides the legal services only for and on behalf of a

- friend or a neighbour,
- iii. who provides the legal services in respect of not more than three matters per year, and
- iv. who does not expect and does not receive any compensation, including a fee, gain or reward, direct or indirect, for the provision of the legal services.

[74] That provision, however, does not apply to licensees whose licences have been suspended. Section 1(4) of the *Law Society Act* places licences in abeyance in the same category as licences in suspension for the purpose of defining licensees. In both cases, a licensee remains licensed but their licence is not active.

[75] Assuming that Her Worship did not know that her licence was in abeyance, the Panel finds that she knew or ought to have known that she was a licensee without an active licence. That she called the Law Society to understand the scope of what she was allowed to do confirms that Her Worship understood she was governed by the Law Society as a licensee, notwithstanding that she had not practised for many years.

[76] It is also clear that, at the time of these events, Her Worship did not have insurance coverage. Indeed, Her Worship conceded in her evidence before us that she only turned her mind to the question of insurance after she learned about the JPRC complaint in this matter.

PART IX – ALLEGATIONS RELATED TO NGOC-THU TRAN

[77] With respect to Ngoc-Thu Tran, the Notice of Hearing filed by Presenting Counsel alleges as follows:

i. Ngoc-Thu Tran was charged with the indictable offence of possession of property obtained by crime over \$5,000.

ii. On December 6, 2018, January 3, 2019, and February 14, 2019, Her Worship appeared in the Ontario Court of Justice as Ms. Tran's counsel with respect to her criminal charge. On January 3, 2019, Her Worship filed a Designation of Counsel with the Court authorizing her to act on Ms. Tran's behalf.

iii. As a result of Her Worship's advocacy, the charge against Ms. Tran was withdrawn on February 14, 2019.

iv. At these court appearances, Her Worship appeared before two judicial colleagues, Justices of the Peace Mankovsky and Premji, and did not identify herself as a member of the judiciary on the record.

v. Her Worship represented herself as legal counsel to the Assistant Crown Attorney, Mr. Peter Van Den Bergh, with whom she engaged in negotiations on Ms. Tran's behalf.

vi. Her Worship did not receive any retainer funds directly from Ms. Tran for her legal services. Rather, she provided legal services on behalf of Ms. Tran as part of an arrangement she reached with Mr. Tony Boubash as partial payment for his work as a contractor renovating a condominium Her Worship owns. Mr. Boubash is a close friend of Ms. Tran's boyfriend.

Evidence

- [78] Mr. Van Den Bergh testified that he has been a Crown Attorney for 20 years working out of the North York office. Mr. Van Den Bergh indicated that he was the Crown Attorney who dealt with the case where Her Worship Ballam appeared on behalf of Ms. Tran in a criminal proceeding in the Ontario Court of Justice.
- [79] Mr. Van Den Bergh testified that on December 6, 2018, he was the Crown Attorney in set-date court. Her Worship Ballam approached him outside the courtroom and informed him that she was representing Ms. Tran and that she was her lawyer. Her Worship tried to convince him that the charge should be withdrawn as Ms. Tran had no knowledge that the motor vehicle was stolen. Her Worship Ballam advised Mr. Van Den Bergh that she believed in Ms. Tran's innocence so deeply that she was acting on her behalf without being paid.
- [80] Mr. Van Den Bergh stated that after their discussions, he knew he needed to do some homework on the issue of intent in relation to Ms. Tran. Her Worship Ballam provided Mr. Van Den Bergh with a handwritten note setting out her contact information.
- [81] Mr. Van Den Bergh testified that after their discussions on that date, Her Worship Ballam appeared in criminal court on Ms. Tran's behalf. At that time, Her Worship did not identify herself as a justice of the peace on long-term disability, and did not alert the presiding justice of the peace, a colleague, to a potential conflict of interest. Rather, Her Worship Ballam spoke on the record for Ms. Tran, advising that she was "appearing on behalf of Ms. Tran", that she asked to be "noted on the record", and that she "meant to obtain a Designation of Counsel".
- [82] Mr. Van Den Bergh testified that he found Her Worship Ballam's highly personalized advocacy unusual. As a result, after the court appearance, he searched her name on the Law Society website to confirm that Her Worship Ballam was in fact licensed counsel. Mr. Van Den Bergh could not find her name and thought he may have noted her name incorrectly.

[83] The transcript from the set date proceedings on December 6, 2018 in relation to Ngoc-Thu Tran before Her Worship Justice of the Peace S. Mankovsky, in part, states:

MS. BALLAM: Your Worship, good morning, Ballam, initial D,' appearing on behalf of Ms. Tran. My apologies, I was to - I meant to obtain a Designation of Counsel, and I had surgery a couple of days ago, and I was running a bit slow, so I would ask to be noted on the record, and ask for a bench warrant with discretion, returnable on the next date for Ms. Tran.

MR. VAN DEN BERGH: So I think the request is for four weeks, and if that's what it is, I'm agreeable, Your Worship.

MS. BALLAM: Yes.

THE COURT: Four weeks to the 3rd of January?

MR. VAN DEN BERGH: Please.

...

CLERK REGISTRAR: Counsel, can I have your name, please?

MS. BALLAM: Certainly. Ballam B-A-L-L-A-M, initial D.

[Emphasis added]

[84] Mr. Van Den Bergh testified that on January 3, 2019, Her Worship Ballam spoke to him outside court a second time, trying again to convince him to withdraw Ms. Tran's charge. Mr. Van Den Bergh indicated that one of the things that occurred to him was whether there was any information that might tell him about Ms. Tran's control of the vehicle. As such, he asked Her Worship if she could get any information about the insurance on the vehicle. Mr. Van Den Bergh testified that by the end of the conversation, he realized that he needed more information about the strength of the Crown's case. As well, Her Worship was going to see if there was any evidence she could provide to convince him that her client was innocent. Mr. Van Den Bergh testified that much of the discussions he had with Her Worship on December 6 and January 3rd were negotiations that counsel would normally engage in when discussing whether there was a reasonable prospect of conviction.

[85] Mr. Van Den Bergh testified that following their discussion on January 3, 2019, Her Worship again appeared in criminal court and filed a Designation of Counsel. The Designation of Counsel is signed by both Ms. Tran and Her Worship and appoints Her Worship as counsel of record to Ms. Tran without restrictions or limitations. In the Designation of Counsel, Ms. Tran identifies Her Worship Ballam as "my retained counsel of record" and Her Worship Ballam indicates that she "hereby

accept[s] the appointment... as her counsel of record.” Mr. Van Den Bergh also advised that Her Worship Ballam spoke on the record for Ms. Tran and specifically noted that she was appearing as counsel for her.

[86] The set date proceedings before Her Worship Justice of the Peace Mankovsky on January 3, 2019, in part, state:

MR. VAN DEN BERGH: Morning, Your Worship, Peter Van den Bergh, for the Crown. I can deal with the Tran matter.

THE COURT: Line number 3?

MR. VAN DEN BERGH: I'm sorry, I'm just looking, Your Worship. I'm told number 50. Two o'clock.

MS. BALLAM: Good morning, Your Worship, Ballam, initial D., appearing as counsel for Ms. Tran. I - on last occasion didn't have a Designation of Counsel to file. I have that now, so I can file that with the Court.

CLERK REGISTRAR: There's a discretionary bench warrant returnable for today's date, on this matter.

MS. BALLAM: I'd ask that that be rescinded.

...

MR. VAN DEN BERGH: I'm just providing counsel with some further disclosure. It's my understanding, Your Worship, that there is still outstanding disclosure. I've also had some discussions with counsel, and there's some questions that I have with regards to reasonable prospect of conviction that if the Defence chooses to provide information, may assist in making a decision. But essentially it's a matter - it's going over for disclosure. So, I'm content that the matter come back on a date that's convenient to counsel Ballam, I'd suggest somewhere between four and six weeks on a Thursday that's convenient.

MS. BALLAM: Yes, that's fine.

THE COURT: What would you like?

MS. BALLAM: I'm in the Court's hands, six weeks probably would give us plenty of time to make sure we get the right information.

MR. VAN DEN BERGH: Sure.

THE COURT: February the 14th?

MS. BALLAM: Okay, sure.

THE COURT: Pardon?

MS. BALLAM: That's fine, I'm just laughing at the date.

MR. VAN DEN BERGH: Okay. Thanks very much, and that -
would counsel like nine o'clock or two o'clock?

MS. BALLAM: Two o'clock if you don't mind...

...

MR. VAN DEN BERG: Thanks, Your Worship. **Thank you to
counsel.**

MS. BALLAM: Thank you very much.

[Emphasis added]

- [87] The Designation of Counsel signed by Ms. Tran and Her Worship Ballam that is filed in court on January 3, 2019, states, in part:

**I, Ngoc Thu Tran, appoint Dianne Ballam, as my retained
counsel of record to represent me and to take all necessary
steps before the Ontario Court of Justice in my absences
relating to charges of possession of property obtained by crime
over \$5000.00.**

...

**I, Dianne J. Ballam, a barrister and solicitor, hereby accept the
appointment of Thu Ngoc Tran as her counsel of record, to fully
represent the accused's interests, in the absence of the
accused, in relation to charges of possession of property
obtained by crime over \$5000.00.**

[Emphasis added]

- [88] The document is signed by Ngoc-Thu Tran and Dianne J. Ballam on January 2, 2019.

- [89] Mr. Van Den Bergh indicated that after he received confirmation of Her Worship Ballam's name through her Designation of Counsel, he once again searched for Her Worship's name on the Law Society's website and did not find her listed as licensed counsel. Mr. Van Den Bergh then called the Law Society records department and was advised that Her Worship Ballam is a lawyer, but her licence is in abeyance and that she is a justice of the peace. Mr. Van Den Bergh testified that he was tremendously surprised by this information and went to a listing of

justices of the peace for Ontario and found Her Worship Ballam listed. Mr. Van Den Bergh shortly thereafter reported this information to his superiors.

- [90] Mr. Van Den Bergh testified that on February 14, 2019 he spoke to Her Worship Ballam outside of court and advised her that he would be withdrawing Ms. Tran's charge for lack of any reasonable prospect of conviction. Mr. Van Den Bergh stated he was not the Crown in the case management court that day, but he understood from the transcript of the February 14 proceeding that Her Worship Ballam appeared on behalf of Ms. Tran by way of Designation.
- [91] Mr. Van Den Bergh testified that throughout his interactions with Her Worship Ballam, he understood her to be representing herself as counsel for Ms. Tran. Her Worship Ballam did not at any point identify herself as a justice of the peace or state that there may be a conflict of interest as she was appearing in court before other justices of the peace. As well, Her Worship did not identify herself as someone on long-term disability, nor as someone lacking an active licence to practise law.
- [92] In cross-examination, Mr. Van Den Bergh agreed that one of the things he was looking into was if the motor vehicle had ever been reported as stolen. When Her Worship Ballam suggested that there was nothing for her to do in respect of Ms. Tran's case, Mr. Van Den Bergh replied that this may be correct and the only time he remembered Her Worship saying she was going to be looking into something was after the January appearance. Her Worship then said, "I believe you asked me to inquire if there was any insurance on the motor vehicle -- Is that correct?" Mr. Van Den Bergh responded, "yes". Mr. Van Den Bergh testified later in cross-examination that in theory there was a lot more Her Worship might have done to convince him of a lack of intent.
- [93] In cross-examination, Mr. Van Den Bergh denied that Her Worship told him she was a non-practising lawyer and on long-term disability.
- [94] The set date proceedings before His Worship Justice of the Peace Premji on February 14, 2019, in part, states:

MS. GAGANIARAS: Line 569, Tran.

MS. BALLAM: Thank you. **Good morning – or good afternoon, Your Worship. Ballam, initial D, appearing on behalf of Ms. Tran, by way of Designation.** I believe that – this is, I believe, the third appearance, **I've had several discussions and meetings with Mr. Van den Bergh, and they've proved fruitful.** Mr. Van den Bergh advised me earlier that he would be withdrawing the charge against Ms. Tran, as there's no reasonable prospect of conviction.

MS. GAGANIARAS: Just a moment, please. Yes, I understand Mr. Van den Bergh has taken a look at the file and there's no reasonable prospect of proving intent, and as a result we will withdraw the charges, please.

...

COURT REPORTER: Sorry, Counsel, can you say your name again, please?

MS. BALLAM: Sorry?

COURT REPORTER: Just your name again?

MS. BALLAM: Ballam, B-A-L-L-A-M, initial D.

[Emphasis added]

[95] Her Worship testified that it was always her intention to return to work and that she had reached a point where she felt she could do some limited things. Her main concern was her cognitive abilities and she decided to do something non-contentious, very simple and straightforward to test herself. As stated, Her Worship admitted that she is the one who ultimately determined what was contentious or non-contentious.

[96] Her Worship Ballam testified that Tony Boubash asked her to speak with Ms. Tran and initially she said "no", that she could not be her lawyer. Mr. Boubash, however, kept badgering Her Worship and she finally agreed to speak to Ms. Tran. After Her Worship met with Ms. Tran, she believed Ms. Tran may have been wrongly charged with possession of a stolen motor vehicle. Her Worship testified that she was leery of getting involved and stressed to Ms. Tran that if she was not telling her the full story, or if there was more information, then she could not help her. Her Worship stated that she had Ms. Tran sign an acknowledgement setting out that she would get the disclosure and read it, but if it said something different, that she was not committed to anything and the most she could do was have some discussions with the Crown Attorney. Her Worship stated that she told Ms. Tran that if the Crown did not agree to withdraw the case and it was proceeding, she could not represent Ms. Tran and she would have to hire counsel, as Her Worship could not be her lawyer as she was not allowed to take on cases.

[97] The Acknowledgement signed by Ngoc-Thu Tran on October 29, 2018, states:

I, Thu Tran, acknowledge and accept that Dianne Ballam is going to try to help me with my criminal charges because she believes I have been wrongly charged and believes if she can discuss it with a Crown Attorney the charges will be dropped. If there is something in my disclosure or she learns something from the Crown that contradicts

what I have told her she will not be able to help me. If the Crown does not agree to drop the charges then I know I will have to hire a lawyer to represent me as Dianne has told me she cannot be my lawyer if the matter cannot be dealt with by her having discussions with the Crown. She is not allowed to take on cases. I understand that. I have told her the truth and am sure the matter will be resolved as I have done nothing wrong.

- [98] In cross-examination, Her Worship testified that she conducted an extensive client interview with Ms. Tran on the first day she met her – although she did not believe she kept notes. Her Worship also stated it was more of an informal meeting as she was deciding whether to help her or not, or if she was even capable of helping her. As well, Her Worship stated that it wasn't an interview; that Ms. Tran just told her what happened. Her Worship testified in cross-examination that she did not have any concerns as a “professional and experienced lawyer and an experienced justice of the peace” that Ms. Tran was not being properly and fully interviewed because she wasn't acting as her lawyer.
- [99] Her Worship also stated that at no time did she advise Ms. Tran that she should be seeking a lawyer immediately to prepare her defence and preserve any potential evidence. As well, Her Worship indicated that she did not contact or interview Ms. Tran's friend or boyfriend who allegedly loaned her the motor vehicle and had never reported it stolen. Her Worship denied that she ever gave Ms. Tran any legal advice.
- [100] Her Worship said that she was not assisting Ms. Tran simply to be a good Samaritan, as it was also a “test” to assess her cognitive and physical abilities considering her disability. Her Worship said she was not sure if she could even read the disclosure, but was happy that she was able to pick out the missing bits and it was a big help to her. At the time, Her Worship was unaware that she had any impairments and believed she was well enough to continue. Her Worship testified, “I knew that I wasn't as well - I wasn't as recovered as I needed to be, but I was far better than I had been. So it was a useful exercise for myself as well, and it gave me a sort of a base knowledge of where I was at and what things need to improve”.
- [101] Her Worship Ballam testified that she advised Ms. Tran that she would alert her to any concerns about her cognitive and physical limitations. Her Worship advised Ms. Tran that she may find that she is unable to continue and that she would advise Ms. Tran if that were the case.
- [102] In cross-examination, Her Worship testified that she told Ms. Tran that she was disabled and on disability, was not a lawyer and not practising law. Her Worship stated that she made Ms. Tran aware of the things that she felt she needed to know about her possible lack of ability or impairment, but Ms. Tran still wished for her to continue. Her Worship indicated that Ms. Tran was aware that if she had

any qualms whatsoever, she should get a lawyer. Her Worship also said that Ms. Tran knew she could only do these very simple things.

- [103] In cross-examination, Her Worship also testified that she made it clear to Ms. Tran that she had no intention of continuing on the matter if it became contentious as she believed, at that point, she would be practising law and that she would also be physically unable to do so. She also told Ms. Tran that if she felt physically or cognitively unable to continue, that Ms. Tran would have to get somebody else and that she invited Ms. Tran, at any time, to hire a lawyer. Her Worship never really answered **how** Ms. Tran would have been able to assess if Her Worship was cognitively impaired or not.
- [104] Her Worship also testified that she believed it was ethical and appropriate to use Ms. Tran's criminal charge as a way for her to test her recovery and her rehabilitation as there was no evidence against Ms. Tran.
- [105] Her Worship initially testified that she told Mr. Van Den Bergh that she was a lawyer and was fairly certain that she told him she was a justice of the peace on long-term disability. Her Worship then amended her testimony and advised that she did not tell Crown Counsel that she was a justice of the peace, as she did not want to appear that she was currying favour or seeking special treatment which, she believed, would have brought the administration of justice into disrepute. Rather, Her Worship simply advised the Crown that she was not working and was on long-term disability. Her Worship stated that Mr. Van Den Bergh asked her twice for a business card and she replied to him twice that she did not have a business card as she was not practising. Her Worship wrote down her personal contact information on a piece of paper and provided it to the Crown.
- [106] Her Worship indicated that she spoke to Mr. Van Den Bergh on December 6, 2018 and on January 3, 2019 and pointed out to him that there was no evidence that the motor vehicle was reported as stolen. Her Worship testified that she was simply there to direct the Crown's attention to the fact that there appeared to be no evidence to support the charge. Mr. Van Den Bergh said he wanted to speak to the police officer and see if there was any more disclosure.
- [107] In cross-examination, Her Worship denied that she engaged in communications and discussions with the Crown Attorney. Her Worship did not agree that she negotiated with Mr. Van Den Bergh because there was no evidence and therefore nothing to negotiate. Her Worship, however, conceded that she had conversations with Mr. Van Den Bergh about the details of the case such as whether the Crown had any evidence that the motor vehicle was stolen or whether Ms. Tran would have known that the vehicle was stolen. Her Worship reiterated that it was up to the Crown Attorney to show her that Ms. Tran had committed an offence as they had no evidence; that she just wanted to get the Crown Attorney to read the file.

- [108] In cross-examination, Her Worship also denied that she made a legal determination on the merits of the case after reviewing the disclosure. Contrary to this evidence, in her response to the Complaints Committee of the JPRC, she stated that “I reviewed the disclosure and it was obvious that there was no merit to the allegations against Ms. Tran”. Her Worship testified that you would not have to be a lawyer to know if something had never been stolen. Her Worship testified that she did not really think it became a legal matter if it were something “that obvious”. Her Worship denied having analyzed the disclosure because it was so obvious that one cannot be guilty of possession of stolen property if it has never been reported stolen.
- [109] Her Worship Ballam acknowledged that she spoke to the Tran matter on December 6, 2018. Her Worship stated that this court appearance was two days after she had a radio frequency treatment which was quite painful. Her Worship indicated she was in pain, on pain medication and was not thinking as clearly as she should have been and that she wasn’t as recovered as she needed to be. In cross-examination, Her Worship agreed that the pain medication has an impact on her cognitive abilities, but that on December 6, 2018 it did not impact her cognitive ability, that she was not impaired or incompetent, just probably short-tempered and in pain.
- [110] In cross-examination, Her Worship also testified that none of the adjournments were at her request; that it was the Crown who requested the adjournments and that she didn’t agree or disagree to the adjournments as that would be acting like Ms. Tran’s lawyer. Her Worship did, however, later state that she acquiesced to the adjournments.
- [111] In examination-in-chief, Her Worship indicated that there was no reason to identify herself as a justice of the peace as she had never appeared at the Finch Court, no one there had ever appeared in front of her and she did not want to appear as if she were currying favour. In cross-examination, Her Worship admitted that she knew that sitting or non-sitting judges do not appear in court while they hold the office of judge. Her Worship agreed that if a judge was appearing in court and advocating, there is a potential appearance of a conflict of interest. Her Worship also agreed that the same concern would apply to a justice of the peace.
- [112] In cross-examination, Her Worship admitted that she wrongly led the court to believe that she was counsel on the three dates she appeared in the Ontario Court of Justice for Ms. Tran. Her Worship testified that she was not thinking straight or clearly at the time due to the medication she was taking. Her Worship could not think of any other explanation that would explain her actions. Her Worship indicated that there is no excuse; that she should not have done it; it is wrong and had she been thinking clearly she would not have done it. Even though Her Worship indicated she may not have been thinking clearly, she still had no concerns about her ability to properly assist Ms. Tran.

- [113] Her Worship Ballam acknowledged that there is no disputing the fact that on January 3, 2019, she filed the Designation of Counsel. Her Worship said that Mr. Van Den Bergh or someone said she needed to file a Designation of Counsel and that if she had been thinking correctly, in her right mind, a bench warrant with discretion would have been fine.
- [114] In cross-examination, Her Worship testified that she was on fairly heavy medication and was not thinking straight when she filed the Designation and that it was stupid and wrong. Her Worship indicated that she had no idea why she filed a Designation of Counsel as she made it clear to Ms. Tran that she could not be her lawyer and was not representing her as her lawyer. Her Worship also agreed with her doctor's assessment in a letter dated February 19, 2021 that in the last two years, pain treatment changed Her Worship's ability to concentrate as well as the quality of her memory.
- [115] Her Worship testified that she did not receive any payment or disbursements for assisting Ms. Tran. Ms. Tran simply gave her a small jar of honey in thanks. Her Worship reiterated that anything she did was primarily for the purpose of rehabilitation, for her to see what she could do with matters that she felt were non-contentious.
- [116] Her Worship further stated that the Tran matter took the least effort as there was nothing for her to do but have the Crown read the file and show her where there was an offence. Her Worship denied that she was representing Ms. Tran as her lawyer, and at no time did she intend to practise law as she wasn't capable of practising law, but she did need to "test" herself and she did not know any other way to do that.

Submissions

- [117] Presenting Counsel submitted that Her Worship provided legal services to Ngoc-Thu Tran, within the definition of that term in the *Law Society Act*, R.S.O. 1990, c. L.8.
- [118] As stated, the provision of legal services in the *Law Society Act* includes the "application of legal principles and legal judgment with regard to the circumstances or objectives of a person". The provision of legal services is further defined to include giving a person advice about their legal interests, rights or responsibilities, representing a person in a proceeding before an adjudicative body, and negotiating the legal interests, rights or responsibilities of another person. The provision of legal services also includes representing someone in a proceeding by engaging in any conduct necessary to the conduct of a proceeding (*Law Society Act*, at s. 1(5) to 1(7)).
- [119] Presenting Counsel submitted that Her Worship Ballam's conduct includes several acts that meet the definition of legal services. Her Worship appeared in the Ontario

Court of Justice before two judicial colleagues on Ms. Tran's behalf on three occasions. On two of those occasions, Her Worship did so pursuant to a Designation of Counsel. In addition, Her Worship reviewed disclosure and applied her professional judgment to assess whether there was sufficient evidence on multiple elements of the offence. Finally, Her Worship engaged in negotiations with the Crown Attorney, Mr. Van Den Bergh, to convince him to withdraw the charge on the basis that there was insufficient evidence to prove the elements of the offence.

- [120] Her Worship denied that she intended to act as legal counsel and pointed to the acknowledgment signed between herself and Ms. Tran to substantiate that position. Presenting Counsel submitted that it is open to the Panel to reject Her Worship's evidence about what is to be taken from her conduct and to prefer the express language of the contemporaneous documents.
- [121] Presenting Counsel pointed out that in the Designation of Counsel, Her Worship and Ms. Tran expressly reject the option of imposing a time limit or date restriction on Her Worship's appearance on behalf of Ms. Tran's. With respect to the Acknowledgement, Presenting Counsel also pointed out that Her Worship says she could not be Ms. Tran's lawyer "if the matter becomes contentious" and that this conditional language suggests that Her Worship intended to be Ms. Tran's lawyer until the matter became contentious, as defined by Her Worship alone.
- [122] Presenting Counsel submitted that Her Worship is an experienced criminal lawyer, and an even more experienced justice of the peace, and that it defies reason and common sense that Her Worship would not understand the implications of filing a Designation of Counsel or that she did so in an unintentional way. Her Worship was clear on the record that she intended to file a Designation of Counsel, and that is what she did.
- [123] Her Worship submitted that her involvement in the Tran matter was in accordance with her inquiries with the various agencies as to her ability to try to do simple things as part of her rehabilitation and quest to return to work. Her Worship stated that her involvement was very simple, and the matter was non-contentious. Her Worship further submitted that she was helping Ms. Tran because she felt an injustice was being done and that she was doing it for her benefit as much as Ms. Tran's. As well, Her Worship submitted that this was the first time she was testing herself to see what she could and couldn't do and that her limited involvement convinced her that she was not yet ready to return to work.
- [124] Her Worship submitted that despite what Mr. Van Den Bergh testified to, Her Worship told him, more than once, that she was off on sick leave, and had been for a few years. Her Worship stated that she found it sad that the Crown thought her demeanor was strange and that he felt she was not acting like a lawyer. Her Worship submitted that is because she was not there as a lawyer. Her Worship further submitted that if she had been Ms. Tran's lawyer, and had she been feeling

much better, she would have brought a successful claim against the Toronto Police Service for false arrest.

- [125] Her Worship submitted that at no time was she attempting to provide legal services. Furthermore, Her Worship pointed out that the Law Society is aware of this hearing and they have never accused her of practising law without a licence.
- [126] Her Worship stated that she deliberately did not say she was a justice of the peace as she did not want there to be even an appearance that she was seeking some benefit from being a justice of the peace, albeit a non-sitting one who had been on LTIP for several years. Her Worship submitted that her being a non-sitting justice of the peace had nothing to do with what she was doing; as she was appearing in a court she had never been in, before justices of the peace she had never seen, and having discussions with an Assistant Crown she did not know. Her Worship submitted that there was no benefit extended to her, she never asked for any special treatment, nor did she receive any. Her Worship stated that she finds it difficult to understand why she is being chastised for not stating she is a justice of the peace and that she would find the complaint more credible if she had said she was a justice of the peace.
- [127] Her Worship admitted in her submissions that the thing she did wrong was file a Designation of Counsel. Her Worship stated that she has no idea why she did, as she only had to ask for a bench warrant with discretion, and had she been operating with all her faculties, that is what she would have done.
- [128] Her Worship submitted that there was no conflict of interest, no unprofessional behaviour, no embarrassment caused to the court and that no court complained about her conduct. On the contrary, Her Worship submitted that she conducted herself in a way that would bring honour to the court, that there is nothing that she did that would destroy public confidence as she helped a relatively new immigrant, single mother, defend herself against a baseless charge that should not have been laid and was eventually withdrawn, and she did it *pro bono*.

Conclusion

- [129] The Panel finds that Her Worship engaged in judicial misconduct by providing legal services while she was a justice of the peace, when she appeared in the Ontario Court of Justice as counsel for Ms. Tran on December 6, 2018, January 3, 2019, and February 14, 2019. In particular, Her Worship was practising law when she filed the Designation of Counsel authorizing her to act on Ms. Tran's behalf and appeared by way of Designation on both January 3 and February 14, 2019. Her Worship was clearly practising law as she was "representing a person in a proceeding before an adjudicative body".
- [130] The Panel finds that the filing of a Designation was not an afterthought. Her Worship stated in the December 6, 2018 court appearance that she "meant to

obtain a Designation of Counsel”. The Panel does not accept Her Worship’s evidence that she told Ms. Tran that she could not be her lawyer and that she did not hold herself out to be a lawyer. This evidence is not credible given all the legal steps Her Worship took on Ms. Tran’s behalf.

- [131] The Panel finds that Her Worship Ballam was practising law when she reviewed the disclosure and applied her professional judgement to assess whether there was sufficient evidence for a conviction. The Panel finds that Her Worship’s actions fit within the definition of legal services as she was using “the application of legal principles and legal judgment with regard to the circumstances or objectives of a person”.
- [132] The Panel finds that Her Worship Ballam was practising law when she engaged in conversations with Mr. Van Den Bergh about the reasonable prospect of conviction. Her Worship, in essence, was making submissions to the Crown Attorney that certain evidence in respect of the elements of the offence were missing from the disclosure. The Panel finds that Her Worship’s actions fit within the definition of legal services as she was “negotiating the legal interests, rights or responsibilities of another person” and “representing someone in a proceeding by engaging in any conduct necessary to the conduct of a proceeding.”
- [133] The Panel finds that the Acknowledgement signed by Ms. Tran does not negate the finding that Her Worship Ballam provided legal services to Ms. Tran. Nor is it relevant that Her Worship Ballam believed the Tran matter was non-contentious. What is critical is that Her Worship Ballam was providing legal services to Ms. Tran. Indeed, even on her own submissions, Her Worship appears to concede that she had agreed to serve as counsel for Ms. Tran provided that the Crown agreed to withdraw the charge. Her Worship stated that she explained to Ms. Tran that if the Crown did not agree to withdraw the charge she could not assist, and Ms. Tran would have to get “other” counsel.
- [134] The Panel notes that Her Worship testified that she should have just asked for a bench warrant with discretion rather than filing a Designation. Her Worship appears to be missing the point – that she should not have appeared as counsel in the very court in which she holds office as a justice of the peace, or at all, whether she had filed a Designation of Counsel or not.
- [135] The Panel finds that it is aggravating and defies reason and common sense that Her Worship, an experienced criminal lawyer, and justice of the peace, would not understand the implications of appearing as counsel of record and filing a Designation of Counsel. Her Worship’s actions demonstrate a lack of acknowledgment and understanding of the gravity of her conduct in the Tran matter and a refusal to acknowledge that what she was doing was providing legal services to Ms. Tran.

PART X – ALLEGATIONS RELATED TO TONY BOUBASH

[136] With respect to Mr. Tony Boubash, the Notice of Hearing alleges as follows:

- i. In or around August 2018, Mr. Boubash performed extensive renovations on a condominium Her Worship owns. As part of her payment agreement with Mr. Boubash, Her Worship agreed to provide legal services in a legal matter he was dealing with, as well as representing Ms. Tran in a criminal proceeding, as described above.
- ii. Her Worship provided legal services to Mr. Boubash with respect to a dispute arising from a private lender mortgage, in which, among other services, she appeared in the Superior Court of Justice on Mr. Boubash's behalf.
- iii. On November 15, 2018, Her Worship appeared before Master Sugunasiri of the Superior Court of Justice in Newmarket. At that appearance, Her Worship identified herself as a justice of the peace and indicated that she was prepared to continue to act for Mr. Boubash pending approval or authorization from the Regional Senior Justice, the Associate Chief Justice and/or the Law Society. In addition, Her Worship made submissions as an "officer of the court" and referred to substantive steps she had engaged in with opposing counsel with respect to a contested motion the previous week. No authorization was given for Her Worship to act as counsel in the matter by the Regional Senior Justice, the Associate Chief Justice or the Law Society.
- iv. Her Worship ultimately ended the legal relationship with Mr. Boubash before the conclusion of Mr. Boubash's legal matter. Her Worship sent a series of text messages to Mr. Boubash between February 4 and 21, 2019, in which she stated that she needed to end her legal relationship for health reasons. In those messages, Her Worship continued to provide Mr. Boubash legal advice on how to proceed with his matter.

Evidence

[137] On November 15, 2018, Her Worship Ballam appeared on Mr. Boubash's behalf in the Superior Court of Justice in Newmarket before Master Sugunasiri (as she then was). Her Worship Ballam spoke on the record to seek an adjournment in response to a motion to strike Mr. Boubash's defence.

[138] With respect to her role, Her Worship identified herself to the court as a justice of the peace on long-term disability and advised that she was in the process of seeking permission to act as counsel from the Law Society, the Regional Senior Justice of the Peace, and the Associate Chief Justice.

- [139] Her Worship Ballam told the Court that she had obtained and familiarized herself with the file. She also advised the Court that she had spoken at length with another senior lawyer about the file who was prepared to step in if she was not permitted to proceed as counsel.
- [140] During the November 15, 2018, appearance, Her Worship made submissions regarding the basis for the adjournment request. Her Worship Ballam told the Court about a medical issue of one of the defendants that prevented her (the defendant) from attending. Her Worship indicated an intention to file a letter from the defendant's doctor in support of same.
- [141] Her Worship advised the Court that she had had conversations with opposing counsel the prior week about the anticipated adjournment request, including canvassing each other's respective positions and the required evidentiary foundation. Her Worship's submissions to the Court make clear that Her Worship was aware of potential cost consequences to Mr. Boubash if opposing counsel continued to oppose the adjournment request, and that she was prepared to argue the issue of costs on Mr. Boubash's behalf on November 15, 2018.
- [142] When opposing counsel raised concerns about the lack of notice for the adjournment request, Her Worship made submissions as an "officer of the court" about the notice she had given to opposing counsel's colleague, and about the nature of the conversation they had the previous week regarding the adjournment.
- [143] The transcript from the appearance on November 15, 2018 before Master Sugunasiri, in part, states:

THE COURT: So did you say with respect to the adjournment that you spoke with Mr. Bonavinci?

MS. BALLAM: I did.

THE COURT: Okay.

MS. BALLAM: And his indication to me, although we had a brief conversation, was that he wasn't adjourning it. He knew that I would be doing that because of the medical and that Ms. Torabi was going to see the specialist. **He said he would be seeking costs. I said, of course I'd be opposing costs.** So I think that's...

THE COURT: Is that the issue?

MS. BALLAM: ...where we're at.

THE COURT: Okay.

...

MS. BALLAM: Can I just correct something. When counsel said that no notice was given – given of the adjournment. It certainly was. I stand here as an **officer of the court** saying that I spoke directly with Mr. Bonavinci. It was either, I can't remember if it was the end of last week or Monday or Tuesday of this week, and advised him. And at that point he said – he had no objection to that, to just bring the letter from the surgeon or the obstetrician and – but that **he would be seeking costs and I said I'll be opposing. At that point he got a little agitated but said, fine, bring your stuff, we'll argue it then.**

[Emphasis added]

[144] Her Worship also made submissions about the proposed order of examinations and commented on the merits of the allegations in the claim. The transcript continues as follows:

MS. BALLAM: Well, Your Honour, if I may, I would suggest that this is a case where the plaintiff should be examined first. **There is no actual evidence in my submissions, of any loan agreement. There's no written contract, there's nothing setting out this. It's, from what I can see, sort of a baseless allegation** that this amount of money, and it changes at different times, is owed.

THE COURT: Mm-hmm.

MS. BALLAM: **So I think the plaintiff should be examined first to establish that there's even a basis for moving on.**

[Emphasis added]

[145] The transcript indicates that at the end of the appearance on November 15, 2018, counsel for the plaintiff returned to court to raise a concern about the accuracy of the submissions Her Worship made regarding her conversations with counsel the previous week. However, since Her Worship Ballam had left the courtroom, the Master did not allow further substantive submissions.

[146] James Robert Webster was called by Her Worship as a witness. Mr. Webster is the senior lawyer Her Worship contacted in respect of Mr. Boubash's matter. He recalled Her Worship Ballam calling him in the fall of 2018 with respect to Mr. Boubash, after which she attended at his office to discuss the matter. Mr. Webster recollected that Her Worship Ballam had been involved in a car accident and was not currently sitting as a justice of the peace.

[147] Upon meeting with Her Worship Ballam, Mr. Webster testified that she provided him with enough information to determine whether he might be able to assist Mr.

Boubash. He did not recall the nature of the legal matter, other than it being relatively “minor” and that there was some question about getting the matter adjourned.

- [148] Mr. Webster indicated that he was willing to have a discussion with Mr. Boubash with respect to the merits of his case and that he might offer to represent Mr. Boubash if they had a rapport and if the representation might be productive. Mr. Webster testified that he had not committed to represent Mr. Boubash. Rather, he only agreed to have a discussion with Mr. Boubash if contacted. Mr. Webster never heard from Mr. Boubash and had no further involvement.
- [149] Ms. Chunyan Li also testified in Her Worship Ballam’s defence. Ms. Li advised that she is a realtor and had represented Her Worship Ballam in several real estate transactions. Ms. Li further testified that she heard Mr. Boubash make threatening comments against Her Worship Ballam and that she warned Her Worship Ballam against him. Ms. Li testified that she advised Her Worship to hire someone “proper” for the renovation rather than Mr. Boubash.
- [150] Mr. Boubash was expected to testify at the hearing but did not appear despite being properly served with a summons by Presenting Counsel. As such, his evidence was not before this Panel.
- [151] Her Worship Ballam testified that Mr. Boubash approached her to assist with a civil real estate matter involving a mortgage. Her Worship said she advised Mr. Boubash that she knows nothing about mortgage foreclosures or repossessions, and that she has never practised civil law. She said that after Mr. Boubash kept ‘pestering’ her, she agreed to look at the file, which she described as “huge”. Her Worship recalled that Mr. Boubash asked if he could represent himself, to which she responded that she did not recommend that.
- [152] Her Worship is aware that in order to practise law in Ontario, a person needs to have an active, current licence and insurance. She is also aware that at the time of assisting Mr. Boubash she did not have any insurance coverage.
- [153] Her Worship admitted that she appeared for Mr. Boubash in the Ontario Superior Court on two occasions, but gave evidence that she was not there as counsel. Her Worship Ballam also testified that she expressly told Mr. Boubash that she could not represent him. Instead, she explained that she merely agreed to sit in the body of the court as a resource to Mr. Boubash.
- [154] Prior to the November 15, 2018 court appearance, Her Worship Ballam stated that she had a conversation with opposing counsel, Mr. Bonavinci, about an adjournment of the plaintiff’s motion to strike Mr. Boubash’s defence. They also discussed certain medical evidence that the plaintiff required to explain Mr. Boubash’s wife’s non-attendance.

- [155] Prior to attending court, Her Worship also spoke to Mr. Boubash and his wife, Ms. Torabi, about the matter, including the adjournment request, and about obtaining medical records to support the adjournment request.
- [156] On November 15, 2018, Mr. Boubash failed to attend pursuant to their agreement, and advised Her Worship that he, his wife and daughter were ill. Her Worship appeared on behalf of Mr. Boubash before Master Sugunasiri.
- [157] Her Worship testified that the reason she identified herself as a justice of the peace on November 15, 2018, is because the matter was in the Central East Region, the same region in which Her Worship sits as a justice of the peace. Her Worship was concerned that someone would recognize her and wanted to ensure she did not deceive the court with respect to her role as a non-sitting justice of the peace. She explained to the court that she was on long-term disability and had not sat for several years.
- [158] In spite of the foregoing, Her Worship Ballam testified that she is aware that judicial officers do not appear in court as advocates because there is a potential appearance of a conflict of interest.
- [159] Her Worship did not agree that her representation of Mr. Boubash qualified as legal services, and initially did not agree that her comments on the record qualified as submissions. However, Her Worship later agreed that she made submissions regarding the lack of evidence in the plaintiff's case and the proposed order of examinations.
- [160] Her Worship testified that she repeatedly encouraged Mr. Boubash to hire a lawyer and that he was insistent that she assist him with the matter. Her Worship denied providing any legal services to Mr. Boubash or that she acted as his counsel, stating that she tried to assist Mr. Boubash by finding counsel who may be able to assist.
- [161] With respect to Mr. Webster's role in the Boubash matter, Her Worship testified that when she spoke with Mr. Webster, he indicated that if Mr. Boubash impressed him the same way he impressed her, that he would try to help. However, Mr. Boubash would have to call him and then Mr. Webster would make up his mind as to whether to represent him. It is on the basis of this conversation that Her Worship Ballam advised the Court that she had arranged for senior counsel to take on this matter, as she was confident that if Mr. Boubash spoke with Mr. Webster, he would agree to assist.
- [162] Her Worship Ballam testified that she attended before the Court on a second occasion on behalf of Mr. Boubash because the court requested information from Mr. Boubash's wife verifying that she was in a high-risk pregnancy. In Her Worship Ballam's view she, "attended the second time really just to fulfill that obligation." She noted that Mr. Boubash did not show up that day either.

[163] Her Worship Ballam testified that she did not receive any compensation in exchange for assisting Mr. Boubash. Her Worship Ballam denied the allegation that she assisted Mr. Boubash as repayment for his renovation work to her condominium. Rather, her evidence was that Mr. Boubash owed her money for cattle and farm-related items that he purchased from her, and that the renovations were partially a repayment for same.

[164] Her Worship was presented with a receipt for an e-transfer of \$2,000.00 from herself to Mr. Boubash dated December 2, 2018. In respect of that e-transfer, Her Worship testified that despite Mr. Boubash owing her money, he continued to demand payments to continue the work and that she sent \$2,000 among other payments in order to ensure the work at her condominium was done. She further testified that she paid Mr. Boubash significant funds for the condo renovations and associated materials. Her Worship denied that she owed Mr. Boubash any money or that she provided him with assistance on his legal matter in exchange for payment for her condo renovation.

Submissions

[165] Presenting Counsel submitted that Her Worship's conduct in respect of Mr. Boubash constitutes legal services. Her Worship Ballam made substantive submissions before a court and negotiated with opposing counsel on behalf of Mr. Boubash. She also reviewed the file and assessed the legal issues in the matter.

[166] Presenting counsel argued that Her Worship appeared on November 15, 2018, on Mr. Boubash's behalf, to seek an adjournment of the proceedings. Prior to the court appearance, she reviewed the file and assessed the merits of the claim, whether there was sufficient evidence, and developed a position on the proposed order of examinations on that basis. The record of the November 15, 2018 appearance further indicates that Her Worship had conversations with opposing counsel the week before regarding the adjournment and costs related to the adjournment application. It is submitted that Her Worship was prepared to argue the adjournment application knowing there were potential cost consequences to Mr. Boubash should it not succeed. Counsel submitted that the record also shows that Her Worship lied about the extent of the conversations she had with opposing counsel prior to attending court and that they had reached an agreement with respect to the adjournment.

[167] It is submitted that Her Worship provided legal services while she did not have an active licence to provide legal services, and did so without any insurance coverage.

[168] Presenting Counsel argued that while a finding of misconduct does not require extra-judicial work to be remunerative, it remains open to the Panel to find that Her Worship was assisting Mr. Boubash as partial compensation for her condo renovation. This is based on Her Worship's evidence that Mr. Boubash owed her money at a time when her Interac receipts show she continued to send him money.

Her Worship explained that she was frustrated he failed to complete the renovation job but wanted it to be finished. Ms. Li, Her Worship's real estate agent, testified that Her Worship proceeded to retain Mr. Boubash against her advice. Taken together, Presenting Counsel argues that this arrangement does not make sense.

[169] Presenting Counsel submitted that the record would permit this Panel to reject Her Worship's evidence regarding her arrangements with Mr. Boubash and prefer the inference that Her Worship paid Mr. Boubash \$2,000 two weeks after she appeared on his behalf as part of her ongoing obligation to pay for the renovation work. If the Panel accepts this version of the evidence, it would be open to the Panel to find that Her Worship assisted Mr. Boubash and Ms. Tran, at Mr. Boubash's behest, as part of an arrangement for payment for the condo renovation.

[170] If the Panel finds Her Worship has received some form of remuneration, Presenting Counsel submits that would qualify as an additional basis of judicial misconduct. The JPRC policy regarding Extra-Remunerative Work requires justices of the peace to seek express permission from the Review Council before undertaking any form of remunerative work outside of their judicial office. Her Worship concedes she had not sought nor received any such permission from the Review Council.

[171] Her Worship Ballam made the following written submissions with respect to her involvement with Mr. Boubash:

Mr. Boubash approached me to assist him with a civil matter involving repossession of his house for alleged non-payment of his mortgage and other fees. I repeatedly told him I was not competent to do that area of law, that I had never practised it, I had none of the necessary resources i.e. secretary, office, access to forms, caselaw, etc. I do not even have access to internet at my home. He decided to discharge his lawyer, and deal with it himself, against my advice. He asked me to read the file and tell him if I thought he needed a lawyer. The file was quite large, and complicated. I skimmed the file and then I strongly advised him to get a lawyer. He asked me if I could at least do his Discoveries. He pestered me incessantly. I told him I would consider it but on top of my other concerns, I had to get clearance before I would commit. I preferred to not be involved. He asked me to go to Newmarket court to be in the audience to assist him if he had questions at an adjournment if I would not take on his case. He was to be there to speak on his and his wife's behalf.

He called me that morning when I was at the Newmarket courthouse to advise he would not be there. He claimed to be ill, along with his very pregnant wife, and young child. I was put in a very bad spot as

Newmarket is part of the Central East Region, where I was assigned when working. I felt that there might be persons there who would know me or know of me. As a result I stated my position very clearly on the record. I told the Master I was a justice of the peace who was on LTIP and had been for several years. I stated how I came to be there that day, the two Defendant's inability to be there, as per the telephone call, the fact I had been told it was a gray area of law and I was waiting on a reply from the Court as to whether or not I could assist Mr. Boubash. In the event I could not, I had spoken to a competent senior counsel on behalf of Mr. Boubash. I did not know the Master, any counsel, or any persons sitting in the body of the court.

As it was a Masters Court, there were very few people present. I was given a next date and told to have a medical report filed regarding Mrs. Boubash's pregnancy. I informed Mr. and Mrs. Boubash of the next date. I attended the next date to file the doctor's note with the court as I had undertaken to do so. I had no other involvement in the court, and my further involvement with Mr. Boubash was by email, text, what's App, to repeatedly tell him I could not and would not assist him in any other way. On top of everything there had been several deaths in my family. Even though I had not heard back from the Court, I decided doing Discovery could be contentious and I did not feel capable. I was also not well health wise. I strongly encouraged him to contact Mr. Webster and retain him. He never did.

He is lying when he claims I was trading my services for him doing renovations at my condo. He was given the job because he owed me several thousand dollars and I felt it was possibly the only way I was going to recover the money. I went to court to try to help him as I had compassion for him and his pregnant wife. This was how he repaid my concern. He still owes me money. The way he treated the JPRC, and his blatant refusal to comply with the Summons, surely gives the Panel a clear idea of what sort of person he is. He is not credible.

Conclusion

- [172] The Panel finds that Her Worship Ballam provided legal services to Mr. Boubash with respect to a dispute arising from a mortgage, in which, among other services, she appeared in the Superior Court of Justice on Mr. Boubash's behalf.
- [173] Consistent with the decision in *Fitz Gibbon* and section 1(5) of the *Law Society Act*, the Panel finds that Her Worship provided legal services by engaging in conduct that involves the application of legal principles and legal judgment with respect to the circumstances or objectives of a person.

- [174] In addition, pursuant to sections 1(6) and 1(7) of the *Law Society Act*, the Panel finds that Her Worship Ballam provided legal services in that she: (1) gave advice to a person with respect to legal interests, rights or responsibilities of the person; (2) represented a person in a proceeding before an adjudicative body; (3) negotiated the legal interests, rights or responsibilities of a person; and (4) determined what documents to serve or file and the method of doing so.
- [175] Her Worship provided such legal services while she did not have an active licence to do so, and while she knowingly did not have professional liability insurance.
- [176] Specifically, on November 15, 2018, Her Worship appeared before Master Sugunasiri in Newmarket, in the Central East Region. She identified herself as a justice of the peace, and indicated that she was prepared to continue to act, pending authorization from the Regional Senior Justice, the Associate Chief Justice and/or the Law Society.
- [177] The Panel finds it concerning that Her Worship Ballam appeared in court in the very region in which she sat as a justice of the peace, despite testifying that she was aware that a judicial officer advocating in court could create the appearance of a conflict of interest.
- [178] Although she advised the court that she was a justice of the peace, she represented to the court that she had sought approval to act from the Regional Senior Justice, the Associate Chief Justice and the Law Society. However, despite having received no such authorization to act, Her Worship made substantive submissions as an “officer of the court”. These included submissions regarding the medical issues of Mr. Boubash’s wife, the evidence she intended to file in support of same, the lack of evidence or merit of the plaintiff’s case, the proposed order of examinations, and the nature of discussions she had with opposing counsel.
- [179] Prior to making submissions in court, Her Worship obtained and reviewed portions of the file and analyzed the legal issues. Her submissions to the Court were clearly based on her assessment of the merits of the claim, the adequacy of the evidence, and the issues in dispute.
- [180] Furthermore, Her Worship Ballam negotiated with opposing counsel the week prior to the motion about Mr. Boubash’s legal interests, rights and responsibilities. This included canvassing each other’s respective positions on the adjournment request, the required evidentiary foundation, and advising that she would oppose a request for costs.
- [181] The Panel finds that Her Worship’s submissions indicate that she was aware of potential cost consequences to Mr. Boubash if opposing counsel continued to oppose the adjournment, and that she was intending to argue the issue of costs at the hearing on November 15, 2018.

[182] The Panel has some concern that Her Worship may have overstated to the court the status of her agreement for senior counsel to step in should Her Worship be unable to act as counsel. The testimony of both Mr. Webster and Her Worship Ballam indicate that while Mr. Webster was open to the idea of representing Mr. Boubash, he had in no way committed to doing so, nor had he ever communicated with Mr. Boubash directly.

[183] In addition, Her Worship Ballam provided legal services pursuant to section 1(7) of the *Law Society Act* by determining what documents to serve or file in relation to a proceeding, and determining with whom, when, where or how to do so. Her Worship assessed opposing counsel's suggestion that she obtain medical evidence in support of the adjournment request on behalf of Ms. Boubash's wife. Her Worship Ballam thereafter attended the court on a second occasion to provide that information.

[184] The evidence before the Panel does not support a finding that Her Worship Ballam sought or obtained any compensation or payment from Mr. Boubash with respect to her provision of services. The allegation that Her Worship agreed to assist Mr. Boubash and/or Ms. Tran as partial compensation for her condo renovation is therefore rejected.

PART XI – ALLEGATIONS RELATED TO CYRUS ABHAR

[185] With Respect to Mr. Cyrus Abhar, the Notice of Hearing alleges as follows:

- i. On February 1, 2019, Her Worship appeared before the Human Rights Tribunal of Ontario on Mr. Abhar's behalf in his human rights claim against his former employer, the Ministry of the Attorney General.
- ii. Her Worship failed to identify herself as a justice of the peace before the Human Rights Tribunal. Instead, Her Worship only identified herself in the proceedings as a support person for Mr. Abhar with experience before tribunals.
- iii. Her Worship provided legal services to Mr. Abhar including advising about the ability to file a complaint before the Human Rights Tribunal. In addition, during the tribunal proceedings, she made substantive submissions on Mr. Abhar's behalf, thereby assuming the role of counsel.
- iv. Mr. Abhar was aware of Her Worship's status as a justice of the peace at the time he accepted assistance from her in his dispute.

- v. Her Worship also met with Mr. Abhar after he was notified of the JPRC investigation into her conduct but before his interview. It appears Her Worship and Mr. Abhar shared information about the investigation.

Evidence

- [186] On two occasions in 2019, Her Worship appeared before the Human Rights Tribunal of Ontario to assist Mr. Cyrus Abhar. The first teleconference hearing, on February 1, 2019, did not result in a decision as the adjudicator left the Tribunal before providing a decision. Moreover, a record of the proceedings was not preserved. Consequently, the hearing resumed before another adjudicator on August 6, 2019.
- [187] Mr. Abhar testified that he met Her Worship at a Costco food court in 2017 or 2018. He told her about his termination from the Ministry of the Attorney General and she pointed out that he could pursue a claim with the Human Rights Tribunal. As a result, he did so.
- [188] The hearing on February 1, 2019 was a motion by the Ministry to dismiss Mr. Abhar's claim because it was filed outside the limitation period, and because his termination was covered by a settlement agreement. Her Worship testified that Mr. Abhar came to her in a panic the eve before the appearance. He attended at her condo unit with a stack of papers related to the matter and he left them with her. She noted that he suffers from anxiety and depression, amongst other things. Mr. Abhar pleaded with Her Worship to help him. Her Worship added that Mr. Abhar did not initially understand the seriousness of the motion. After reviewing some of the materials on January 31, 2019, Her Worship told Mr. Abhar that if the motion was successful, he would lose his claim.
- [189] Mr. Abhar testified that when he becomes over-exerted, he shuts down and loses the ability to speak. Accordingly, he asked Her Worship to assist him with his claim, simply to "be [his] voice because [he] cannot speak". Her Worship agreed and told him she could not represent him or give him legal advice.
- [190] On February 1, 2019, Mr. Abhar and Her Worship participated in the teleconference. Mr. Abhar testified that when prompted by the Tribunal, he wrote his comments down for Her Worship, who expressed them verbally to the adjudicator. Mr. Abhar added that Her Worship only said things that he had written down for her, and that he was the one directing the proceeding even if he was not speaking.
- [191] Counsel for the Attorney General who appeared in the proceeding, Mr. Andrew Lynes, testified that Her Worship identified herself to the Tribunal as a "friend... and support person". He added that Mr. Abhar asked that Her Worship be permitted to represent him in his proceedings. Mr. Abhar did not identify her as a justice of the peace and Her Worship said nothing about her judicial role. In cross-

examination, Mr. Lynes agreed that Her Worship said she was assisting Mr. Abhar as a support worker and friend.

[192] According to Mr. Lynes, Her Worship provided facts about Mr. Abhar's health and disability and referred to evidence previously filed with the Tribunal. She stated that Mr. Abhar's claim should not be dismissed for delay. Mr. Lynes testified that he understood Her Worship to be the equivalent of Mr. Abhar's lawyer or advocate. After the teleconference, Mr. Lynes reported to his client (the Ministry of the Attorney General) and, soon after, was advised by someone in the Ministry that Her Worship is a justice of the peace and subject to an ongoing JPRC investigation.

[193] Her Worship testified that after the hearing was adjourned for the adjudicator to release her decision, she became aware that Mr. Andrew Locke had filed a complaint with the JPRC in respect of her involvement in Mr. Abhar's legal matter. Her Worship denied having acted as legal counsel. She testified that she merely conveyed to the Tribunal what Mr. Abhar was writing on a pad of paper.

[194] Several months later, Mr. Abhar was told that no recording was made of the first hearing and the adjudicator had departed. Her Worship testified she was shocked to learn this and became concerned that there would be no record of what she had said about her role at the hearing. Consequently, she agreed to participate in the re-hearing on August 6, 2019 so that she could record it herself.

[195] On August 6, 2019, Mr. Abhar's case was heard by the Tribunal a second time. The transcript of that hearing includes the following:

THE ADJUDICATOR: (inaudible) that you have on this call so you mentioned being an interpreter are you meaning that in some sort of informal sense because if you're a language interpreter there may be some other issues involved with that so can you explain your status please.

MS. BALLAM: Certainly I'm not legal counsel I didn't file Mr. Abhar's claim or be involved but I, he, insist his problem that he has anxiety disorder so severe that when he's under stress he shuts down, he can't talk and he can't think and so he has written down things for me and we, you know he's discussed with me what he wants to say but I'm really just relaying or you know helping to explain it through. I'm glad you brought that up Mr. Bahdie?? Because one of the things I need to bring up is that following the last occasion when, I was, you weren't involved but I brought in at the very last minute the night before the thing that next day Mr. Abhar came to my house and told me about it for the first time and really didn't grasp the seriousness of it so I had very little time to familiarize myself with it but he said it would be better than nothing and he was really distressed and in a lot of anxiety so I went on

that basis but following that Mr. Andrew Lock who I now know as the Director of Crown Operations for the Crown Toronto region took it upon himself to file a complaint–

THE ADJUDICATOR: Mr. – Ms. Ballam I'm going to ask you to stop there for a second 'cause I just got a couple of basic questions

...

MS. BALLAM: Ok but I have to clarify my status sir, that's really important that I put this on the record

THE ADJUDICATOR: No. You're going to listen to me first please Ms. Ballam ok

MS. BALLAM: I will put you had asked me to clarify my status that's what I was trying to do

THE ADJUDICATOR: Ms. Ballam I am going to ask you to let me finish please.... is I do have a couple of other specific questions for you Ms. Ballam. Are you a lawyer?

MS. BALLAM: Yes I am

THE ADJUDICATOR: Ok so you're a lawyer but you are not representing Mr. Abhar, is that right?

MS. BALLAM: That's correct

THE ADJUDICATOR: Could you explain to me how that works that you're representing him but you're not acting as his counsel

MS. BALLAM: I'm not representing him, he's here, I'm simply helping him to communicate what he wants to say on these things because he's unable to do that due to his anxiety disorder, he cannot do that, he just shuts down, Mr. Abhar's not a stupid person but he is very handicapped by his disability

THE ADJUDICATOR: Ok are you making legal submissions on his behalf?

MS. BALLAM: I'm just telling- he will tell me what to say, he's written down things, I will repeat those but put those into some sort of coherent form but he's developing all of this on his own, I am not involved a legal capacity that's what I keep saying

THE ADJUDICATOR: Have you previously identified yourself on this file to the Ministry of the Attorney General or Mr. Lynes?

MS. BALLAM: I believe I did and I believe it was the same thing that I said I am not his counsel and not acting as his lawyer, that I'm there to assist him as a friend and out of compassion and that was made clear on the last occasion to the best of my recollection. As I said I only learnt of it the night before-

THE ADJUDICATOR: And that was on February 1st is that right?

MS. BALLAM: I'm not sure the exact date I don't have a file on this but I believe that was approximately- it was the only time that I ever spoke on his behalf

THE ADJUDICATOR: Ok. So let's proceed....

THE ADJUDICATOR: Ok. So I have reviewed the file and I see that there was a summary hearing, a preliminary hearing date on February 1st, 2019, I understand there was no transcript, is that correct?

MS. BALLAM: I don't know

MR. LYNES: That's my understanding I did not receive a transcript.

...

THE ADJUDICATOR: Ok, could you tell me how that day proceeded on February 1st Mr. Lynes

MR. LYNES: I'd be happy to. So this matter was a teleconferenced motion to dismiss the tribunal had initially on its own accord case managed the matter by indicating that there may be a timeliness (inaudible) objection and invited submission by the parties on that matter and set the conference call for February 1st, when I received the file and reviewed it I also noted that there was a memorandum of settlement but the for the whole release between the Ministry and the applicant and I wrote the tribunal notifying the applicant requesting that the matter be dismissed on that basis as well and asking the tribunal to hear submissions on both matters on February 1st and on February 1st legal argument was made on the teleconference. I presented both of the ministries' preliminary objection, Ms. Ballam spoke on behalf on the applicant in reply and then the Vice-Chair reserved on her decision

THE ADJUDICATOR: Were there any evidence heard on that day?

MR. LYNES: There was evidence there were several- one of the issues identified in full motions was the medical status of the applicant so documentation- medical documentation submitted by both the applicant and the ministry were reviewed, I had also submitted the memorandum of settlement of course in as evidence and I believe, I could be mistaken, I believe as well perhaps the letter of termination establishing when the applicant was terminated was also presented as evidence, I can't recall if there was any other evidence presented

THE ADJUDICATOR: And was there any oral evidence presented?

MR. LYNES: Not to my knowledge

THE ADJUDICATOR: And how long was the call with the telephone conference?

MR. LYNES: It was approximately an hour and a half
somebody whispers 2 hours (sounds like Mr. Abhar)

THE ADJUDICATOR: Ok, Ms. Ballam does that accord with your recollection?

MS. BALLAM: As far as I can recall, though Mr. Abhar is telling me that he thinks it was 2 hours in length

THE ADJUDICATOR: Ok, so we are in the position where Ms. Muhammed has had heard the summary hearing and preliminary hearing arguments and received the evidence that you both described, I do not have a recording on the proceeding and on that end Ms. Muhammed was at the point of writing the decision in this matter and she is not able to proceed further and won't be writing a decision on this matter so what it does mean is that we are going to have to start things from scratch with respect to the summary hearing and the preliminary hearing so – and I believe that will be on the basis of the case assessment direction that was issued in December of 2018 so for the Tribunal to proceed it would make sense to me that we scheduled another summary hearing and preliminary hearing date, we can go on the basis of the existing documents that the parties have filed and whoever hears this matter, not me, I'm not seized of the matter is going to have to hear this matter fresh, receive the evidence and hear the submissions of the parties as well so I want to, that would seem to me how we are going to have to proceed if I can hear from you Ms. Ballam, whether Mr. Abhar has any questions or any comments.

MS. BALLAM: He's holding a paper for me, thinks that he filed a medical report from Dr. Kurst that was dated I think January 9, January of 2019 was it?

MR. ABHAR: Yup

MS. BALLAM: January of 2019

THE ADJUDICATOR: And what am I to take from that?

MS. BALLAM: Well just can you confirm if there has been one or not or perhaps Mr. Lynes knows if he had done that

THE ADJUDICATOR: Mr. Lynes do you see that in the file?

MR. LYNES: I'm sorry what was referred to specifically I couldn't hear all of it

MS. BALLAM: Medical report from Dr. Kurst who's the psychiatrist, was sent to the tribunal January, in January of 2019

MR. LYNES: I do recall that note I'm trying to confirm by reviewing my file if it's indeed in the file but I do recall such a note

MS. BALLAM: So-

THE ADJUDICATOR: I will take a look to see if this in the tribunal file

MS. BALLAM: Yes thank you Mr. Bahdie

MR. LYNES: Yes Mr. Chair I've located in my file a letter from Dr. Brian Kurst dated January 16, 2019 speaking of the medical status of the applicant

THE ADJUDICATOR: Yeah I'm just trying to locate that I'm sure I've read that this morning I just want to make sure that I can locate it again, hold on. And what date is that?

MR. LYNES: January 16, 2019

MR. ABHAR: yes

THE ADJUDICATOR: Ok and is there any – and that Mr. Abhar has mentioned that to make sure it's before the tribunal. Mr. Abhar was that one of the documents that was entered on February 1st as evidence?

MS. BALLAM: (Directed to Mr. Abhar) You sent it before then didn't you? (Directed to AD) I think it was sent prior to that when he did his application I believe

MR. ABHAR: I guess

THE ADJUDICATOR: No but it's a different question right, it's not whether – there's no question it was sent, it's whether it was relied on at the hearing

MS. BALLAM: My recollection is it was Mr. Bahdie because that obviously is one the key documents in regards to the delay argument

THE ADJUDICATOR: Ok I just wanna check because you just faded out for a second – you're saying it was before the tribunal on the 1st?

MS. BALLAM: That's my recollection. I know it was certainly referred to because it's one of the key documents obviously in regards to the submission regarding the late filing

THE ADJUDICATOR: Ok and Mr. Lynes do you remember this being before the tribunal on the 1st?

MR. LYNES: Yes I do and I recall referring to it

THE ADJUDICATOR: Ok well there will be – I would presume that this would be put before one or both of the parties on the new hearing so there's no issue with respect to that so I think we would, - it would make sense to me that we go with the same documentary record everyone sent in their material as Mr. Abhar has noted there's this key report that he's noted that should be put before the tribunal Mr. Abhar do you have any other questions?

MR. ABHAR: I-

MS. BALLAM: He would like you to contact Ms. Muhammad to confirm that she did not make a recording because both of recall that she said it was being recorded

THE ADJUDICATOR: Yes I mean I don't have a recording in the file and even if we do locate a recording I don't know the quality of the recording and it may well be that a new adjudicator would have other questions that were not perhaps asked by Ms. Muhammed and given that this is an important matter – sorry I don't want to minimize the

importance of this but also that it was a matter that was heard within the space of half a day it would strike me that it would be important to redo this hearing Mr. Lyon do you have questions?

MR. LYNES: I do not and I'm fully in support of the tribunals approach

THE ADJUDICATOR: Okay Mr. Abhar do you have any further questions

MS. BALLAM: He would really like the tribunal to contact Ms. Muhammed to see did she see or did she not record it and if so give a transcript of that because that would be of assistance to him

THE ADJUDICATOR: Yeah I've addressed that question

...

MS. BALLAM: OK but he's just saying if there is one a simple letter for her to say yes or no she did or didn't record it is what he's asking

THE ADJUDICATOR: And I've addressed that thanks very much

MS. BALLAM: Okay so that won't happen Mr. Abhar

THE ADJUDICATOR: Okay so did the parties have any other questions Mr. Abhar do you have any other questions?

MS. BALLAM: He's concerned if his medical report from Dr. Kurst wasn't noted that you didn't have it down, was there other things not noted, he's saying

THE ADJUDICATOR: No its noted, everything that Mr. Abhar previously submitted that he wants to be put before the vice chair can be put before the member who's hearing this....Okay Mr. Abhar did you have any new questions?

MR. ABHAR: Yes regarding the Andrew Lock that is obstructing the justice and –

THE ADJUDICATOR: I'm sorry I can't hear you

MS. BALLAM: He feels that Mr. Andrew Lock is obstructing justice and his ability to represent himself

THE ADJUDICATOR: Yeah I'm not going to address that on the call if you have a submission to make in respect of the summary or

preliminary hearing issue and how that relates to that, that would have to be done before the adjudicator whose hearing

MR. ABHAR: I did send an email in that regard

MS. BALLAM: He's saying he sent communication to the tribunal about this

THE ADJUDICATOR: Okay and as I said that will be a matter that can be raised when the summary hearing or preliminary hearing issue is addressed by the tribunal

MS. BALLAM: So alright, and his other concern was that he's saying because the human rights tribunal is under ministry of the attorney general and that Mr. Lock is senior management he has concerns about that

THE ADJUDICATOR: Well the tribunal is separate and apart from the criminal law division so senior managers, directors, managers, assistant deputy ministers don't have any involvement with the adjudication of matters before the tribunal

MS. BALLAM: Ok those were his concerns, do you have anything else Mr. Abhar

THE ADJUDICATOR: Well I appreciate that so I'd like to thank everyone for their participation this morning, I will be issuing a case assessment direction indicating that this will proceed as a summary hearing, preliminary hearing based on the same records that have previously been submitted to the tribunal and the registrar with canvas the parties for their availability as to the date of the hearing, so thank you very much all this morning

MS. BALLAM: Thank you

[196] Her Worship testified that she did not make legal submissions for Mr. Abhar; rather, she simply read out his written comments when he lost the ability to speak. She added that after being notified of the complaints against her, she sought advice from LawPRO regarding her obligation to obtain professional liability insurance and was advised that the rules for justices of the peace are not clear, and that LawPRO did not view her actions as constituting the practice of law.

[197] Her Worship acknowledged that at the time of the August 6, 2019 proceeding, she had already learned about the JPRC complaint regarding her representation of Mr.

Abhar at the Human Rights Tribunal proceeding. She also agreed to stop assisting Mr. Abhar when she was advised not to continue by her first counsel in these proceedings.

Submissions

- [198] Presenting Counsel submits that Her Worship's conduct on behalf of Mr. Abhar before the Human Rights Tribunal meets the high standard for finding judicial misconduct.
- [199] In taking this position, Presenting Counsel first contends that the nature of the assistance that Her Worship provided to Mr. Abhar qualifies as legal services. Her Worship reviewed Mr. Abhar's file before the first hearing date and assessed that the motion was to dismiss his complaint. Her Worship then advised Mr. Abhar that his claim would be dismissed if the motion were to succeed and agreed to assist him knowing those severe potential consequences. Her Worship attended before the Human Rights Tribunal on two occasions and made the majority of the submissions on Mr. Abhar's behalf on both occasions. Her Worship's submissions were substantive, she referred to medical evidence that had been filed and which she identified as a "key document" to show that Mr. Abhar's disability should excuse the late filing of his complaint.
- [200] Presenting Counsel takes the position that, while it is common at tribunals for a claimant to have a support person to assist with the process, an LSO licensee is not permitted to assist as a support person unless they comply with any limitations on their licence.
- [201] Section 30 of the Law Society's By-Law 4, which Her Worship relied on as authorizing her appearance, applies to non-licensees. Her Worship remains a licensee even if her licence is in abeyance. As such, By-Law 4 did not permit Her Worship to attend at the Human Rights Tribunal as a support person given her status as a licensee.
- [202] Presenting Counsel submits that Her Worship misrepresented her status to the Tribunal. On both occasions, Her Worship failed to voluntarily disclose her status as a justice of the peace. On the first occasion of February 1, Her Worship advised she was a support person and friend. At the second appearance of August 6, 2019, when questioned directly about her status, Her Worship stated she was a lawyer and said nothing about being a justice of the peace. In addition, Her Worship said nothing on either occasion about being on long term disability, or about the fact that her licence to practice law was not active. As a result, it is open to this Panel to find that Her Worship's statements to the Tribunal regarding her status on both February 1 and August 6, 2019 were misleading.
- [203] Presenting Counsel contends that it is anathema to the proper administration of justice, to the integrity of the judiciary and to the public's confidence in the judiciary

that a judicial officer act as an advocate in court, let alone doing so without a licence or insurance or while making misleading statements on the record. Her Worship's conduct taken together meets the high threshold of judicial misconduct.

[204] The written submissions by Her Worship Ballam include the following:

I quit assisting Mr. Abhar after the second phone call from the HRT. Mr. Heller had recommended it before the second phone call, but I wanted proof of what my role had been. If I did not obtain the proof that my role was being grossly misrepresented it would have been believed because of the person misrepresenting it.

I wanted to have a recording of me stating again what my role was, so agreed to participate so that I could record it myself. By this time, I was aware of Mr. Locke's complaint to the JPRC, and I could see that I had been left in a very vulnerable position. I thank God that I did. Mr. Lynes was conveying a very different message to the Panel in this Hearing, stating that I was acting as his lawyer and making legal submissions.

After a break, Ms. Borooh, on re-direct, pointed Mr. Lynes to pp.5-6 of the tape transcript from the HRT telephone call (Exhibit 15). The Adjudicator, Mr. Bahdie, is questioning whether a medical report was relied on at the hearing. I make the following reply: "That's my recollection. I know it was certainly referred to because it's one of the key documents obviously in regards to the submission regarding the late filing."

Mr. Lynes categorized my statement as a legal submission. It is not. I was stating a fact as I was a participant at the Hearing, helping Mr. Abhar. I had heard it referred to at the actual Hearing, so was able to answer Mr. Bahdie's question.

My assisting Mr. Abhar would not bring the Administration of Justice into disrepute. On the contrary, I believe the public would find my actions commendable. At NO time did I act in any Judicial capacity.

I was required by the LTIP program, as well as CPP (disability) to try to rehabilitate myself to return to work if I could. It had always been my stated intention to return to work.

I performed due diligence before I attempted any matters, by contacting all of the bodies I believed, and still believe, had authority over my actions. The Statutes and Regulations of the JPA support my actions.

I did not misrepresent my status before “multiple adjudicators”. I stated my role clearly in Mr. Abhar’s case. I deliberately did not say I was a justice of the peace as it had nothing to do with the matter, and that, in my opinion, would look like I was seeking some special treatment from the Court because of it. I don’t see how me NOT telling people I was a justice of the peace was in any way detrimental.

My statements to the HRT tribunal could not have been more accurate or true. There was absolutely no reason to state I was a non-sitting justice of the peace on LTIP. Why would I do that? Then I would be accused of seeking some special treatment. This way there could not even be the perception of a conflict of interest. Had I stated I was a justice of the peace, I am certain Presenting Counsel would be extremely critical of me because I stated it.

Conclusion

- [205] The Law Society Tribunal Hearing Division has found that providing legal services as a licensee with a suspended licence is professional misconduct, even if those services could be provided by a paralegal or non-licensee under the by-laws. In *Law Society of Upper Canada v. Lambert*, 2014 ONLSTH 65, a suspended lawyer appeared before the Landlord and Tenant Board with his brother’s girlfriend. He acknowledged that he was a suspended lawyer but claimed he was there as a “friend”. He also appeared before the Small Claims Court as an “agent”. In both cases, the Tribunal found that the lawyer engaged in professional misconduct.
- [206] A suspended lawyer sending messages to the Court through duty counsel was found to have been providing legal services, as she was applying legal judgment with respect to her client’s circumstances. The Tribunal in *Fitz Gibbon* concluding that “[a] suspended lawyer cannot provide legal services, even if such services can be provided by a paralegal or by a non-licensee under the by-laws”.
- [207] In *Law Society of Upper Canada v. Isaac*, 2017 ONLSTH 161, the Tribunal confirmed that a suspended lawyer remains a licensee whose profession includes the provision of legal services, which brings them outside the scope of By-Law 4.
- [208] It is clear that Her Worship remains a licensee, notwithstanding that her licence is in abeyance. As such, she is prohibited from acting as a friend or support person in the provision of legal services. The question remains as to whether Her Worship provided legal services to Mr. Abhar.
- [209] The provision of legal services in the *Law Society Act* includes the application of legal principles and legal judgment with regard to the circumstances or objectives of a person. The provision of legal services is further defined to include giving a person advice about their legal interests, rights or responsibilities, representing a

person in a proceeding before an adjudicative body, and negotiating the legal interests, rights or responsibilities of another person. The provision of legal services also includes representing someone in a proceeding by engaging in any conduct necessary to the conduct of a proceeding.

- [210] Her Worship insists that her participation at both hearings of the Human Rights Tribunal was limited to acting as the voice of Mr. Abhar, which was necessary because his acute anxiety attacks can prevent him from talking. This evidence was confirmed by Mr. Abhar.
- [211] Mr. Lynes testified that Her Worship's role at both tribunal hearings was similar and that he perceived it to be that of an advocate.
- [212] We are not prepared to find that the nature of assistance that Her Worship provided to Mr. Abhar at the Tribunal constituted legal services. We accept her position at the Tribunal and at this hearing, that she acted as Mr. Abhar's voice and support person – she did not make substantive submissions or provide legal advice.
- [213] The transcript of the hearing on August 6, 2019 supports the testimony of Her Worship and Mr. Abhar. It is clear that Her Worship relayed what Mr. Abhar was telling her. On occasion, Mr. Abhar's voice is captured and Her Worship repeated his words. On other occasions, Her Worship asked Mr. Abhar if he had anything else to say; that is, what he wanted her to say for him. It cannot be said, as was the case in *Fitz Gibbon*, that acting as a verbal conduit between Mr. Abhar and the adjudicator constituted the application of legal judgement to Mr. Abhar's circumstances.
- [214] This conclusion is not affected by the fact that Her Worship initially told Mr. Abhar that he could file a human rights complaint and that the responding motion by the Ministry, if accepted, would be fatal to that claim. It would be an overreach to characterize the communication of such basic information as the practise of law.
- [215] However, this does not end the matter. Accepting that Her Worship did not provide legal services, was it appropriate for her, as a judicial officer, to appear as a support person before an adjudicative body? This question is complicated by the fact that Her Worship did not disclose her status as a judicial officer. Her explanation for this – that such disclosure might be seen as an improper use of her office, as an attempt to curry favour with the adjudicator - merely serves to highlight the difficulty in performing such a role before a court or tribunal.
- [216] There is a further difficulty. Her Worship failed to disclose that she did not have an active licence to practise. Indeed, in saying she was a lawyer, without that qualification, Her Worship's statement implied that she was entitled to practise law. In this regard, it is understandable that the adjudicator was puzzled by the fact that Her Worship identified herself as a lawyer while at the same time making it clear that she was merely a friend and support person present to be his voice.

[217] Presenting Counsel is correct in describing Her Worship's failure to disclose that she was a justice of the peace (on long term disability) and that she did not have an active licence to practise law as "misleading".

PART XII – FINDINGS OF JUDICIAL MISCONDUCT

[218] As stated at the outset of these reasons, the standard of proof in judicial conduct proceedings is clear, convincing, and cogent evidence to satisfy the balance of probabilities test. The Principles of Judicial Office for Justices of the Peace make clear that Her Worship is expected to act in a manner that promotes public confidence in the impartiality and integrity of the judiciary, and is to refrain from personal and extrajudicial activities that could give rise to a real or perceived conflict of interest. The guiding principle in judicial conduct proceedings is the preservation and restoration of public confidence in the justice system.

[219] Confidence in the judiciary and in the administration of justice requires not only that justices of the peace are impartial and objective in carrying out their duties, but that they are seen to be impartial and objective.

[220] The appearance of a justice of the peace acting in the role of counsel before two judicial colleagues in the Ontario Court of Justice in the Tran matter could be expected to give rise to a perception of partiality or unfairness in the minds of a reasonable member of the public.

[221] So too, the appearance of a justice of the peace acting in the role of counsel in the Superior Court of Justice, in the same region where the justice of the peace presides, could be expected to give rise to a perception of partiality or unfairness in the minds of a reasonable member of the public. Although Her Worship indicated to the presiding Master that she was a justice of the peace and was seeking authorization from the Associate Chief Justice, her Regional Senior Justice, the Law Society to act, she nevertheless proceeded to act without having ever received such authorization.

[222] In addition to the ethical lapses shown by Her Worship in acting as counsel while she was a justice of the peace, Her Worship did not have an active licence to provide legal services to Ms. Tran or Mr. Boubash, nor was she covered by professional liability insurance. Her Worship admitted that she did not turn her mind to the question of insurance until after she received the JPRC complaints that led to this hearing. Her Worship's failure to even consider whether she was complying with all the requirements of her licence and her office, gives rise to serious concerns about her integrity and judgment, as well as the impact of her conduct on the administration of justice. In coming to this conclusion, the Panel notes that it is not necessary that the impugned extra-judicial work be remunerative to justify a finding of misconduct. See: *Re Foulds* (JPRC, July 24, 2013), *Re Phillips* (JPRC, July 20, 2013) and *Re Barroilhet*, (JPRC, Oct. 15, 2009).

- [223] Her Worship also failed to disclose that she is a justice of the peace in the proceedings involving Ms. Tran and Mr. Abhar. In addition, in both cases, she misrepresented her status as a lawyer with an active licence. With respect to the Tran matter, the misrepresentation included filing a Designation of Counsel. While Her Worship did not explicitly state that she had an active licence to practice, identifying herself as a lawyer clearly implies that she was licensed to practise law and was in good standing with the Law Society.
- [224] Her Worship alarmingly acknowledged appearing on behalf of Ms. Tran, in a criminal case, as a means of evaluating her cognitive capacity after being unable to work for several years. Her Worship conceded that at the time of these appearances, she was taking strong pain medication that could affect her clarity of thought. This is particularly troubling as Ms. Tran had no ability to assess Her Worship's competence to assist her in her criminal matter, nor to assess the level of impairment Her Worship may have been experiencing.
- [225] The Panel finds that Her Worship provided legal services to two individuals while she held judicial office, without an active licence or insurance. In addition, she misled two courts and a tribunal about her status.
- [226] Her Worship's final submissions demonstrate that she does not understand or have any insight into the extent and nature of her misconduct. Among Her Worship's assertions are these:

None of the three matters I provided assistance with would bring the Administration of Justice into disrepute. On the contrary, I believe the public would find my actions commendable. I assisted a relatively new immigrant, single mother of a seven year old child, a person with mental health and physical disabilities who was also not born in Canada and had no money to hire someone to help him, and a person who said he had no money and his wife was in a high risk pregnancy. I received no personal benefit as there was no benefit possible to be extended in any of the situations.

...

I was required by the LTIP program, as well as CPP (disability) to try to rehabilitate myself to return to work if I could. It had always been my stated intention to return to work.

I performed due diligence before I attempted any matters, by contacting all of the bodies I believed, and still believe, had authority over my actions. The Statutes and Regulations of the JPA support my actions.

...

At all times I conducted myself in what I believed to be a respectful, professional manner both with the courts, tribunal and the persons I dealt with. I believed I was doing what I was required to do, by trying to rehabilitate myself so I could return to work.

I did not misrepresent my status before “multiple adjudicators”. I stated my role clearly in both Mr. Abhar and Mr. Boubash’s matters. I explained I don’t know why I said I was Ms. Tran’s counsel, other than my judgment and actions were being affected by the medication I was on and the pain I was in. I should have said I am a lawyer, but only appearing pro bono as I felt an injustice was being perpetrated. If the Crown did not agree to withdraw the charge, counsel would have to be retained. I deliberately did not say I was a Justice of the Peace, as it had nothing to do with the matter, and that, in my opinion, would look like I was seeking some special treatment from the Court because of it. I don’t see how me NOT telling people I was a Justice of the Peace was in any way detrimental.

- [227] It is offensive to the proper administration of justice, to the integrity of the judiciary and to the public’s confidence in the judiciary that a judicial officer would act as an advocate in court. It is aggravating that a judicial officer would do so without a licence or insurance, and while making misleading statements on the record. These actions raise serious concerns about Her Worship’s integrity and judgment.
- [228] The Panel finds that Her Worship failed to uphold the standards of personal conduct and professionalism expected of judicial officers and undermined public confidence in her judicial office and the administration of justice. Her behaviour meets the high threshold required to establish judicial misconduct and warrants the imposition of a disposition under section 11.1(10) of the *Justices of the Peace Act*.
- [229] The Panel will receive written submissions from the parties on the appropriate disposition to address the judicial misconduct. The Panel will then reconvene to hear submissions from Presenting Counsel and Her Worship at a date and time to be determined.

Dated at the City of Toronto in the Province of Ontario, December 14, 2021

HEARING PANEL:

The Honourable Justice Joseph A. De Filippis, Chair

Her Worship Liisa Ritchie, Justice of the Peace Member

Ms. Lauren Rakowski, Community Member

Appendix A:

Particulars of the Complaint in the Notice of Hearing dated September 9, 2020

PARTICULARS OF THE COMPLAINT

The particulars of the complaint regarding the conduct of Your Worship Dianne Ballam are set out below:

2. You engaged in a pattern of conduct that was inappropriate and which, considered cumulatively and/or individually, leads to the conclusion that your conduct failed to uphold the high standards of personal conduct and professionalism that is required to preserve the independence and integrity of your judicial office.
3. Specifically, while a justice of the peace of the Ontario Court of Justice, you provided legal services to three individuals: Ms. Ngoc-Thu Tran, Mr. Tony Boubash, and Mr. Cyrus Abhar. You provided these legal services while receiving disability benefits through the Long Term Income Protection Plan (LTIP). You acted as a legal advocate while holding the position of a judicial officer, while you knew or ought to have known that doing so could give rise to a real or perceived conflict of interest.
4. In particular:
 - A. With Respect to Ms. Ngoc-Thu Tran:
 - i. Ms. Tran was charged with the indictable offence of possession of property obtained by crime over \$5,000.
 - ii. On December 6, 2018, January 3, 2019, and February 14, 2019, you appeared in the Ontario Court of Justice as Ms. Tran's counsel with respect to her criminal charge. On January 3, 2019, you filed a Designation of Counsel authorizing you to act on Ms. Tran's behalf with the Court.
 - iii. As a result of Your Worship's advocacy, the charge against Ms. Tran was withdrawn on February 14, 2019.
 - iv. At those court appearances, Your Worship appeared before two judicial colleagues, Justices of the Peace Mankovsky and Premji. Your Worship did not identify yourself as a member of the judiciary on the record in any of these appearances.

- v. Instead, Your Worship represented yourself as legal counsel to the Assistant Crown Attorney, Mr. Peter Van den Bergh, with whom you engaged in negotiations on Ms. Tran's behalf.
- vi. Your Worship did not receive any retainer funds directly from Ms. Tran for your legal services. Rather, you provided legal services on behalf of Ms. Tran as part of an arrangement you reached with Mr. Boubash as partial payment for his work as a contractor renovating a condominium you own. Mr. Boubash is a close friend of Ms. Tran's boyfriend.

B. With Respect to Mr. Boubash:

- i. In or around August 2018, Mr. Boubash performed extensive renovations on a condominium Your Worship owns. As part of your payment agreement with Mr. Boubash, you agreed to provide legal services in a legal matter he was dealing with, as well as representing Ms. Tran in a criminal proceeding, as described above.
- ii. Your Worship provided legal services to Mr. Boubash with respect to a dispute arising from a private lender mortgage, in which, among other services, you appeared in the Superior Court of Justice on Mr. Boubash's behalf.
- iii. On November 15, 2018, Your Worship appeared before Master Sugunasiri of the Superior Court of Justice in Newmarket. At that appearance, Your Worship identified yourself as a justice of the peace and indicated that you were prepared to continue to act for Mr. Boubash pending approval or authorization from the Regional Senior Justice, the Associate Chief Justice and/or the Law Society of Ontario. In addition, Your Worship made submissions as an "officer of the court" and referred to substantive steps you had engaged in with opposing counsel with respect to a contested motion the previous week. No authorization was given for Your Worship to act as counsel in the matter by the Regional Senior Justice, the Associate Chief Justice or the Law Society of Ontario.
- iv. Your Worship ultimately ended the legal relationship with Mr. Boubash before the conclusion of Mr. Boubash's legal matter. You sent a series of text messages to Mr. Boubash between February 4 and 21, 2019, in which you stated that you needed to end your legal relationship for health reasons. In those messages, you continued to provide Mr. Boubash legal advice on how to proceed with his matter.

C. With Respect to Mr. Cyrus Abhar:

- i. On February 1, 2019, Your Worship appeared before the Human Rights Tribunal of Ontario on Mr. Abhar's behalf in his human rights claim against his former employer, the Ministry of the Attorney General.
 - ii. Your Worship failed to identify yourself as a justice of the peace before the Human Rights Tribunal. Instead, Your Worship only identified yourself in the proceedings as a support person for Mr. Abhar with experience before tribunals.
 - iii. You provided legal services to Mr. Abhar including advising about the ability to file a complaint before the Human Rights Tribunal. In addition, during the tribunal proceedings, you made substantive submissions on Mr. Abhar's behalf, thereby assuming the role of counsel.
 - iv. Mr. Abhar was aware of your status as a justice of the peace at the time he accepted assistance from you in his dispute.
 - v. Your Worship also met with Mr. Abhar after he was notified of the JPRC investigation into your conduct but before his interview. It appears you and he shared information about the investigation.
5. Your Worship did not have an active licence to practise law at any time while providing legal services for these three individuals. The Law Society of Ontario registry indicates that Your Worship's licence has been in abeyance since 2007 when you were appointed as a justice of the peace.
6. Your Worship also did not have liability insurance at the time you provided legal services to these three individuals. Your conduct failed to comply with and respect the legal, ethical and professional obligations required of a licensed professional and a member of the judiciary.
7. Further, Your Worship's inappropriate extrajudicial activity occurred while receiving payments under the LTIP. To be eligible to receive payments under this plan, you must represent to the insurer that you are unable to perform the essential duties of any gainful occupation for which you are reasonably fitted by education, training or experience. Your acting as legal advocate for three individuals while claiming to be totally disabled undermines your previous claims to be totally disabled as required by the LTIP. Your conduct with respect to the LTIP may constitute fraud or give rise to the appearance of defrauding the plan.
8. Your Worship received remuneration for your legal representation of Ms. Tran and Mr. Boubash through Mr. Boubash's renovation work on your condominium. A justice of the peace may not engage in any remunerative work other than judicial duties without the approval of the Justices of the Peace Review Council. You did not have approval of the Review Council to engage in the extra-remunerative work

set out above at any time, including when you received Mr. Boubash's renovation services in exchange for your legal services.

9. Your conduct, as set out above, is unbecoming of a justice of the peace and contrary to the integrity of the judiciary. The conduct undermines the public's confidence in the integrity of the justice of the peace bench and the administration of justice.
10. Your actions as set out above, individually and collectively, constitute judicial misconduct that warrant a disposition under section 11.1(10) of the *Justices of the Peace Act*.