

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

Hearing Panel of the Justices of the Peace Review Council

DECISION ON DISPOSITION FOLLOWING A FINDING OF JUDICIAL MISCONDUCT

Marie Henein and Maya Borooh.....Presenting Counsel
Her Worship Dianne Ballam.....Self-represented

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PART I – INTRODUCTION

- [1] A complaint to the Justices of the Peace Review Council (“JPRC”) resulted in the Complaints Committee directing that a formal hearing be held, pursuant to s. 11.1 of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4 (the “Act”), concerning the actions of Justice of the Peace Dianne Ballam.
- [2] Evidence in relation to the complaint was heard by the Hearing Panel of the Review Council on March 23, March 26, April 19, April 23, May 11 and June 8, 2021. 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.
- [3] On December 14, 2021, the Hearing Panel concluded that certain actions of Justice of the Peace Ballam constituted judicial misconduct.
- [4] In our Reasons for Decision, the Hearing Panel made the following findings:
- (i) 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.
 - (ii) 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.
 - (iii) 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.
 - (iv) Her Worship also failed to disclose that she was 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, where Her Worship appeared as counsel three times, 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.

- (v) 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.
 - (vi) The Panel found 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.
 - (vii) Her Worship's submissions, with respect to the complaints, demonstrated that she does not understand or have any insight into the extent and nature of her misconduct.
 - (viii) 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.
 - (ix) The Panel found 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.
- [5] After the Panel made these findings, on March 21, 2022, Her Worship called seven witnesses to provide character evidence with respect to disposition. Her Worship later submitted three additional letters of support.
- [6] The Hearing Panel received written submissions as to disposition.

PART II – LEGISLATIVE FRAMEWORK AND GENERAL PRINCIPLES

- [7] Public confidence in the justice system is at the heart of a hearing into judicial misconduct.¹ At the first stage, the Hearing Panel’s role is to determine whether the conduct of the justice of the peace failed to uphold the impartiality, integrity and independence of the judiciary such that the confidence of individuals appearing before the justice of the peace, or of the public in the judiciary in general and in its justice system, has been undermined. That part of the hearing is now concluded. Having made findings of misconduct, the Panel’s task is now to impose a disposition that can be expected to restore the public confidence that was compromised by Her Worship’s misconduct.² The Panel’s task is not punitive; it is “essentially remedial.”³
- [8] Accordingly, the Panel must decide which of the dispositions, or combination of dispositions, as set out in s. 11.1(10) of the *Justices of the Peace Act* is required to restore public confidence in Her Worship and the judiciary more broadly. Pursuant to s. 11.1(10), the Panel may:
- (a) warn the justice of the peace;
 - (b) reprimand the justice of the peace;
 - (c) order the justice of the peace to apologize to the complainant or to any other person;
 - (d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
 - (e) suspend the justice of the peace with pay, for any period;
 - (f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or
 - (g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2.
- [9] A recommendation to the Attorney General that the justice of the peace be removed from office cannot be combined with any other sanction.⁴
- [10] Under s. 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.

¹ *Re Therrien*, [2001] 2 S.C.R. 3, at para. 147

² *Re Therrien* at para. 147; *Re Ruffo*, [2005] Q.J. No. 17953 (C.A.), at para. 18; *Re Douglas*, (OJC, March 6, 2006), at paras. 7-9

³ *Re Baldwin*, (OJC, May 10, 2002), at p. 8; *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267, at para. 68

⁴ *Justices of the Peace Act*, R.S.O. 1990, c. J.4, s. 11.1(11)

- [11] A recommendation for removal from office should only be made if the Hearing Panel is satisfied that one of, or a combination of, the dispositions available in section 11.1(10)(a) to (f) is insufficient to “restore public confidence in the [judicial officer] and in the administration of justice generally”.⁵
- [12] Caselaw establishes that a recommendation for removal from office is the most serious disposition and should only be imposed in circumstances where the judicial officer’s ability to discharge the duties of office is irreparably compromised such that they are incapable of executing judicial office.⁶ The Supreme Court of Canada in *Valente* insisted the security of tenure for judicial officers is “the first of the essential conditions of judicial independence”.⁷ Removal because of judicial misconduct or incapacity is the one necessary qualification on security of tenure. It follows that removal from the bench must be reserved for those cases in which public confidence in the system requires it.⁸
- [13] Consistent with the remedial purpose of these proceedings, the Panel should consider each available disposition in ascending order of seriousness, beginning with a warning. If the least serious disposition is not sufficient to restore public confidence, the Panel should move on to consider the next most serious disposition. Ultimately, the Panel should impose the disposition (or combination of dispositions) that is necessary to restore public confidence without going any further than is necessary to accomplish that objective.⁹ In other words, the disposition chosen should be proportionate to the misconduct and to the damage to the administration of justice caused by it.¹⁰
- [14] In determining the appropriate disposition, both aggravating and mitigating factors should be considered.¹¹ Such factors can relate to the personal characteristics of the justice of the peace and the nature and impact of the misconduct. In particular, the Panel should consider the following factors, which may either be aggravating or mitigating depending on the evidence and the Panel’s findings:¹²
- (i) Whether the misconduct was an isolated incident or evidences a pattern of misconduct;

⁵ *Re Baldwin* (OJC, May 10, 2002), at p. 8

⁶ *Re Therrien*, at para. 147

⁷ *Valente v. The Queen*, [1985] 2 S.C.R. 693, at p. 694

⁸ *Re Keast* (OJC, December 15, 2017), at para. 49; *Re Therrien*, 2001 SCC 35, [2001] 2 S.C.R. 3, at para. 147

⁹ *Re Baldwin*, (OJC, May 10, 2002), at p. 6; *Re Zabel* (OJC, September 11, 2017), at para. 44. This principle is now reflected in JPRC Procedural Rule 17.2.

¹⁰ *Re Zabel* (OJC, September 11, 2017), at para. 44

¹¹ *Re Zabel* (OJC, September 11, 2017), at para. 45

¹² These factors were identified in *Re Chisvin*, (OJC, November 26, 2012), at para. 38. They are now codified in JPRC Procedural Rule 17.3.

- (ii) The nature, extent and frequency of occurrence of the act(s) of misconduct;
- (iii) Whether the misconduct occurred in or out of the courtroom;
- (iv) Whether the misconduct occurred in the justice of the peace's official capacity or in their private life;
- (v) Whether the justice of the peace has acknowledged or recognized that the acts occurred;
- (vi) Whether the justice of the peace has evidenced an effort to change or modify their conduct;
- (vii) The length of service on the bench;
- (viii) Whether there have been prior findings of misconduct about this justice of the peace;
- (ix) The effect the misconduct has on the integrity of and respect for the judiciary; and,
- (x) The extent to which the justice of the peace exploited their position to satisfy their personal desires.

[15] These factors are not in any hierarchical order,¹³ and weighing them is not a mathematical exercise.

[16] The central issue before this Panel is whether any disposition, or combination of dispositions, other than a recommendation for removal is sufficient to restore public confidence in the administration of justice and Justice of the Peace Ballam.

[17] In the Canadian Judicial Council's report to the Minister of Justice in respect of the conduct of the Honourable Paul Cosgrove, the Canadian Judicial Council adopted the following standard for assessing whether a recommendation for a judge's removal from office is warranted:

Accordingly, it remains for Council to proceed to the second stage and determine if public confidence in the judge's ability to discharge the duties of his office has been undermined to such an extent that a recommendation for removal is warranted. In this regard, we adopt the standard identified by the Council in the *Marshall* matter and widely applied in other cases since then:

¹³ *Re Phillips* (October 24, 2013), at para. 18

Is the conduct alleged so manifestly and profoundly destructive of the concept of the impartiality, integrity, and independence of the judicial role, that public confidence would be sufficiently undermined to render the judge incapable of executing the judicial office.¹⁴

PART III – EVIDENCE

- [18] Her Worship called oral and written evidence about her character. The Panel heard from the following individuals: Mr. David E. Burns, friend and business associate; Mr. Robert Lowe, retired By-law officer, City of Kawartha Lakes, and former police officer, Toronto, Ontario; Mr. Randy Johnston, retired Lindsay Police Service officer; Ms. Sharon Stewart, Real Estate Professional and friend; (Acting) Chief T. Farquharson, Peterborough City Police; Mr. Patrick O'Reilly, Deputy Mayor, City of Kawartha Lakes; Pastor David Porter, Pastor, Community Pentecostal Church; The Honourable Lorne E. Chester, Judge, Ontario Court of Justice, Lindsay (retired January 21, 2022); Jennifer Xia, NewComers Club, Hamilton, Ontario; and, Layla Wu, friend, East Gwillimbury, Ontario.
- [19] These witnesses attested to Her Worship's good character. For example, Mr. Johnston described her as honest and helpful to all; Mr. Lowe said she treated all litigants with fairness and respect; Mr. Burns and Mr. Farquharson both testified that Her Worship is honest and sincere; Mr. O'Reilly noted her community involvement and said Her Worship has a good heart. These statements reflect the views of all the witnesses.

PART IV – PRESENTING COUNSEL'S SUBMISSIONS

- [20] Presenting Counsel submitted that the unifying theme of Her Worship's misconduct is a pattern of providing legal services to, or participating in, legal proceedings on behalf of individuals with whom she had a personal relationship or as a favour. Unique to Her Worship's case is that she did so while she was on long-term disability leave from her judicial office, without holding a licence or professional liability insurance, and while misrepresenting her status as a lawyer or in respect of her role as a justice of the peace.
- [21] Presenting Counsel pointed out that no prior case reflects a similar constellation of facts. However, with the central theme in mind, Presenting Counsel provided the Hearing Panel with a number of JPRC cases.
- [22] Presenting Counsel submitted that the following general principles emerge from the cases:

¹⁴ Report of the Canadian Judicial Council to the Minister of Justice re: the conduct of the Honourable Paul Cosgrove of the Ontario Superior Court of Justice (30 March 2009), at para. 19.

- a. Conduct that compromises the judicial officer's core personal and professional integrity can rarely be remedied by anything other than removal. In such cases, not even acceptance of responsibility (e.g. *Barroilhet*)¹⁵ or an otherwise exemplary record (e.g. *Phillips*) can offset the damage to public confidence caused by the justice's unscrupulous conduct. If a fundamental trust has been broken, it cannot likely be repaired. In *Barroilhet*, it was the justice's willingness to use his influence for improper purposes (to help a personal friend) that the Panel found to be most egregious and incapable of repair. In *Phillips*, it was the justice's dishonesty in lying to the police (and then lying to the Panel about it) that irreparably compromised her ability to serve in a judicial function. As the Panel stated in *Phillips*, "[a] single act of misconduct may wipe out years of meritorious service."
- b. Lack of remorse or insight combined with a pattern of serious misconduct can similarly impair a judicial officer's personal and professional integrity, such that removal from judicial office is the only appropriate disposition as in *Foulds (2018)*.¹⁶
- c. The judicial officer's capacity for remediation is a powerful factor in determining what disposition is necessary to restore public confidence. Beyond an expressed willingness to remediate, evidence of concrete steps already taken toward that objective can significantly mitigate the harshness of the penalty required. In *Chisvin*, the judge apologized for his misconduct, sought professional assistance for the personal stress that helped precipitate the misconduct, and proposed an educational program on stress for other judges. In *Keast*, the justice presented evidence that he had critically reflected on his misconduct and proactively engaged in counselling to ensure against its repetition. By contrast, in *Bisson*, as a result of his repeated conduct, the justice of the peace was found to be "unwilling or unable to change his ways," and removal was recommended.¹⁷ A similar finding was made in *Foulds (2018)*.

[23] Presenting Counsel also submitted that the judicial officer's acceptance of responsibility is an important determinant of whether remediation is likely to be effective. This does not mean that the judicial officer is penalized for contesting the allegations.

[24] Finally, evidence of the judicial officer's reputation, personal qualities, and judicial track record can make an important difference, especially when the choice is between two remedial options that both appear warranted by the seriousness of the misconduct.

¹⁵ *Re Barroilhet* (October 15, 2009)

¹⁶ *Re Foulds* (April 27, 2018)

¹⁷ *Re Bisson* (July 10, 2018)

- [25] Presenting Counsel pointed out that while Her Worship presented considerable evidence of her otherwise good character and support in the community, none of the witnesses spoke with any specificity to the time period relevant to when the acts of misconduct occurred. It was also not clear whether any of the witnesses fully understood the nature and extent of Her Worship's actions as found by the Panel in its Reasons.
- [26] Presenting Counsel submitted that Her Worship's misconduct appears to have resulted from a serious misunderstanding of her obligations as a judicial officer to maintain her personal conduct in the highest standard, and an ongoing refusal to acknowledge that her actions constituted the provision of legal services and therefore misconduct. Presenting Counsel argued that Her Worship's misconduct and continued failure to acknowledge it raises significant concerns regarding her integrity and judgment. It is concerning that even with the benefit of almost two years' worth of reflection, Her Worship continued to betray a lack of comprehension that what she did was wrong. As well, Presenting Counsel submitted that the repeated nature of Her Worship's conduct further raises concerns about Her Worship's judgment and integrity.
- [27] Presenting Counsel submitted that a significant punitive disposition is required, and the Panel should consider whether any remedy short of a recommendation of removal could restore confidence in the administration of justice. They submitted that it would not be unreasonable for this Panel to find Her Worship's incidents of judicial misconduct are akin to that described by the Hearing Panel in *Phillips*, such that the conduct is "so manifestly and profoundly destructive of the concept of the impartiality, integrity, and independence of the judicial role, that public confidence would be sufficiently undermined so as to render her incapacity of executing the judicial office."

PART V – HER WORSHIP BALLAM'S SUBMISSIONS

- [28] Her Worship submitted that the evidence tendered at this disposition hearing confirms her honesty and good character as does her many years of volunteer work in the City of Kawartha Lakes, including her role with several agencies including Women's Resources, the Residence for Abused Women, the Children's Advisory Committee, the John Howard Society, and the United Way.
- [29] Her Worship stated that she has always tried to act within the rules and did not believe she was doing anything improper with respect to the complaints in question. Her Worship stated that she accepted the finding of the Panel that she engaged in judicial misconduct, and added, that she "feel[s] terrible". Her Worship later repeated that she accepted the finding of this Panel and repeated several assertions previously made during these proceedings to explain her conduct and cast doubt on some of the evidence about the complaints.

[30] Her Worship pointed out that she was called to the Bar in 1991 and served as Vice Chair of the Workplace Safety and Insurance Appeals Tribunal before being appointed as a justice of the peace and that she has never been found to have done anything improper. In addition to this unblemished record, Her Worship relied upon the character evidence attesting to her many years of community service. Her Worship also asked the Panel to be mindful that, at the time of the events in question, she was on medical leave for injuries suffered in a motor vehicle accident and subject to intensive therapy and pain medication. She stated: “At the conclusion of Ms. Tran’s matter I realized I was not ready cognitively or physically to return to work, even on a part-time basis, at that time”.

[31] Her Worship concluded as follows:

I am respectfully submitting to the Panel that they consider my lifetime of public service and 26 years of adjudicative work should not be cancelled out by an isolated series of well-intentioned acts over a short period of time while I was on LTIP and on medication that could have affected my judgment without me knowing it. I was also confused by the rehabilitation section of the Justice of the Peace Act. I would ask the Panel to find that the penalty of The Justice of the Peace Act s. (10)(d) [i.e., s. 11.1(10)(d)] will sufficiently address my failings and restore any confidence that was lost in the administration of Justice by my behaviour.

PART VI – ANALYSIS

[32] The Panel acknowledges that the witnesses called by Her Worship spoke highly of her character as a judicial officer and community volunteer. It must also be noted that none of these witnesses addressed Her Worship’s character and conduct during the time period covered by Her Worship’s misconduct as found by this Panel. Moreover, it is not clear that the witnesses are aware of or fully appreciate that misconduct.

[33] This Panel has found that Her Worship acted as an advocate in court, without a licence to provide legal services or professional liability insurance, and made misleading statements to the courts and a tribunal. This misconduct was not an isolated event and occurred in places of public record. In the case of Ms. Tran, Her Worship engaged in advocacy, not only to assist the defendant, but for the personal desire to test her cognitive abilities to determine if she could return to judicial duties. Although Her Worship submitted at this disposition hearing that she accepted the Panel’s findings of misconduct, she repeated statements previously made that cast doubt on the relevant evidence. This Panel is not satisfied that Her Worship fully recognizes the nature and extent of her misconduct.

[34] In determining the appropriate disposition, the Panel has considered the factors itemized in *Re Chisvin* and concludes as follows:

- (i) It is an aggravating factor that Her Worship's misconduct was not an isolated event but evidenced a pattern of conduct over a prolonged period of time;
- (ii) The nature, extent and frequency of the misconduct is also aggravating. It is a serious matter that from November 2018 to August 6, 2019, Her Worship repeatedly provided legal services to two individuals without a license and without liability insurance;
- (iii) The misconduct did not occur while Her Worship was presiding. Nevertheless, it is aggravating that it happened in courtrooms before judicial officers and before a tribunal;
- (iv) The misconduct did not occur in Her Worship's official capacity. This is a neutral factor;
- (v) In its Reasons for Decision, this Panel found that Her Worship's submissions demonstrate that she does not understand or have any insight into the extent and nature of her misconduct. Thereafter, in submissions at the disposition hearing, despite purporting to accept the Panel's decision, Her Worship continued to cast doubt on some of the evidence about the complaints, demonstrating a lack of recognition and understanding of her misconduct. This is aggravating;
- (vi) There is no evidence that Her Worship has made any efforts to address her misconduct, which is another aggravating factor. The witnesses called by Her Worship at the disposition hearing spoke to her good character but said nothing about efforts to change her behaviour;
- (vii) Her Worship was appointed to the bench in 2002 and remained active until 2015, when she went on long term disability. Before her appointment, she had been a lawyer. This length of service and background makes her misconduct and lack of insight especially troubling and is another aggravating factor;
- (viii) It is a mitigating factor that there have not been prior complaints against Her Worship that resulted in a remedial sanction by the Justices of the Peace Review Council;
- (ix) In acting as an advocate in court without a licence and insurance and misleading adjudicative bodies, Her Worship has adversely affected the integrity of and respect for the judiciary. This is an aggravating factor;

(x) It is also aggravating that Her Worship acted for Ms. Tran, in part, to test her cognitive ability to return to judicial duties.

[35] The Panel finds that Her Worship's misconduct appears to have resulted from a serious misunderstanding of her obligations as a judicial officer. Despite the benefit of almost two years' worth of reflection, her continued lack of insight about the nature and gravity of her misconduct raises significant concerns about her integrity and judgment. Her Worship's admission to some of the underlying conduct continues to be mingled with a continuing effort to deny that her conduct constituted legal services and to minimize her level of responsibility in respect of her actions. This is troubling to both the integrity of and public confidence in the judicial system.

[36] In determining an appropriate disposition, the Panel has considered each of the options set out in s. 11.1(10) of the *Justices of the Peace Act*. The Panel concludes that a warning, reprimand, apology, order for specified measures, or suspension (with or without pay), or any combination of these options, cannot restore public confidence in Her Worship or the judiciary. Similarly, the Panel finds that the remedy proposed by Her Worship, namely, an order to take measures such as education or treatment, cannot meet this objective.

[37] In coming to our conclusion, the Panel recognizes that conduct that compromises a judicial officer's core personal and professional integrity can rarely be remedied by anything other than removal. The Panel finds that the repeated and serious nature of Her Worship's misconduct has compromised this integrity. The Panel concludes that this fact, together with Her Worship's failure to acknowledge or understand her misconduct are so manifestly and profoundly destructive of the integrity of the judicial role that no disposition other than removal from office can restore public confidence in the administration of justice.

PART VII – DISPOSITION

[38] For these reasons, the Panel has concluded that Justice of the Peace Dianne Ballam has become incapacitated or disabled from the due execution of her office by reason of conduct that is incompatible with the due execution of office. We find that the only disposition that can restore public confidence in the integrity of the judiciary and in the administration of justice is a recommendation to the Attorney General that she be removed from office. Accordingly, the hearing panel hereby makes a recommendation to the Attorney General that Justice of the Peace Dianne Ballam be removed from office pursuant to s. 11.1(10)(g) and s. 11.2(2)(b)(ii) of the *Justices of the Peace Act*.

Dated at the City of Toronto in the Province of Ontario, June 20, 2022

HEARING PANEL:

The Honourable Justice Joseph A. De Filippis, Chair

Her Worship Liisa Ritchie, Justice of the Peace Member

Ms. Lauren Rakowski, Community Member