

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 Anna Gibbon**

Before:

Justice Timothy R. Lipson, Chair
Ontario Court of Justice

Justice of the Peace Holly Charyna,
Ontario Court of Justice

John Tzanis,
Community Member

REASONS FOR DECISION ON DISPOSITION

Counsel:

Linda Rothstein and Alysha Shore, Presenting Counsel

Eugene J. Bhattacharya and Mary C. Waters Rodriguez, Counsel for Her Worship Anna Gibbon

Table of Contents

Introduction.....	3
Relevant Legal Principles.....	4
Counsels' Submissions on Disposition	7
1. Position of Counsel for HW Gibbon	7
2. Position of Presenting Counsel.....	9
<i>Gladue</i> Principles	10
Relevant Prior Disposition Decisions	12
Aggravating and Mitigating Factors.....	15
1. The nature, extent and frequency of occurrence of the misconduct.....	15
2. Whether the misconduct occurred in or out of the courtroom; and whether the misconduct occurred in the justice of the peace's official capacity or in her private life	19
3. Whether the justice of the peace has acknowledged or recognized that the acts occurred or expressed remorse	21
4. Whether the justice of the peace has evidenced an effort to change or modify her conduct	29
5. Length of service on the bench.....	30
6. Whether there have been prior findings of judicial misconduct.....	32
7. The effect of the misconduct on the integrity of and respect for the judiciary.....	32
8. The extent to which the justice of the peace exploited her position to satisfy her personal desires	34
9. Conduct during the JPRC proceedings.....	34
Character Evidence.....	35
Analysis	38
Disposition	44
Dissenting Reasons for Decision on Disposition.....	45
1. HW Gibbon's Character and Capacity for Remediation.....	45
2. <i>Gladue</i> Principles	47
3. Combined Dispositions	49

MAJORITY REASONS FOR DECISION ON DISPOSITION

(Justice Timothy Lipson and John Tzanis)

INTRODUCTION

[1] In written reasons delivered on February 7, 2022, this hearing panel unanimously found that Justice of the Peace Gibbon committed judicial misconduct in relation to proceedings involving her son on a *Highway Traffic Act* charge. We determined that HW Gibbon's conduct with respect to her son's legal proceeding was incompatible with her position as a justice of the peace and compromised the independence, impartiality and integrity of her judicial office. We further found that HW Gibbon's failure, on multiple occasions, to respect the ethical and professional boundaries of her office and to act with impartiality, integrity and independence, undermined public confidence in herself as a judicial officer, and in the administration of justice generally.

[2] Having made these findings of misconduct, the task before us at this stage of the proceedings is to determine what disposition is necessary to maintain or restore public confidence in the integrity of the judiciary: see *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267, at para. 68; *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191, at para. 34; *Re Barroilhet* (JPRC 2009), at paras. 9-10. Our task is not punitive, but rather, is essentially remedial.

[3] We now turn to the legal principles that guide our analysis of the disposition that is required in the circumstances of this case.

RELEVANT LEGAL PRINCIPLES

[4] Where a hearing panel finds that a disposition is required in the circumstances of proven acts of judicial misconduct, it must turn to consider the range of dispositions under s. 11.1(10) of the *Justices of the Peace Act*. The remedial options are set out in increasing order of seriousness. In accordance with this provision, 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 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.

[5] Section 11.1(11) of the *JPA* provides that a hearing panel “may adopt any combination” of the dispositions set out in s. 11.1(10)(a) to (f). However, a decision to recommend to the Attorney General that the justice of the peace be removed from office cannot be made in combination with any of the other dispositions provided for in s. 11.1(10).

[6] Rule 17.1 of the JPRC Procedures Document mandates that, in determining the appropriate disposition of a complaint following a hearing, the hearing panel shall focus on what is required to restore public confidence in the justice of the peace and in the

judiciary generally. In accordance with r. 17.2, if a hearing panel determines that a disposition under s. 11.1(10) is required, the panel 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 to restore public confidence in the justice of the peace and in the judiciary and the administration of justice generally. The disposition chosen should be proportionate to the misconduct and to the damage to the administration of justice caused by it: *Re Zabel* (OJC 2017), at para. 44.

[7] Rule 17.3 of the Procedures Document lists ten non-exhaustive factors¹ that may be relevant to an assessment of the appropriate sanction for judicial misconduct:

1. Whether the misconduct is an isolated incident or evidences a pattern of misconduct;
2. The nature, extent and frequency of occurrence of the act(s) of misconduct;
3. Whether the misconduct occurred in or out of the courtroom;
4. Whether the misconduct occurred in the justice of the peace's official capacity or in their private life;
5. Whether the judicial officer has acknowledged or recognized that the acts occurred;
6. Whether the judicial officer has evidenced an effort to modify their conduct;
7. The length of service on the bench;
8. Whether there have been prior findings of judicial misconduct about this justice of the peace;

¹ These factors were identified in *Re Chisvin*, (OJC, November 26, 2012), at para. 38. They are now codified in JPRC Procedural Rule 17.3.

9. The effect the misconduct has upon the integrity of and respect for the judiciary; and

10. The extent to which the officer has exploited their position to satisfy their personal desires.

[8] In past decisions, JPRC hearing panels have considered additional factors including:

- Whether the judicial officer has expressed remorse for the misconduct;
- Whether there were multiple complaints;
- Whether the acts constituting judicial misconduct were also the subject of a criminal sanction;
- Whether there was an element of corruption to the misconduct;
- Whether the judicial officer has properly complied with the disciplinary process.

[9] These factors may be aggravating or mitigating, depending on the evidence and the findings of the hearing panel.

[10] These factors are not in any hierarchical order, and weighing them is not a mathematical exercise: *Re Phillips* (JPRC 2013), at para. 18.

[11] The hearing panel may also consider character evidence put forward by the justice of the peace where it is relevant to considering an appropriate disposition.

[12] In the present case, given the serious nature of the misconduct engaged in by HW Gibbon, as will be discussed further below, the central issue that this hearing panel has considered is whether any disposition other than a recommendation for removal would be sufficient to restore public confidence in Her Worship and in the administration of justice generally.

[13] After careful consideration of this issue, the majority of the hearing panel has concluded that no disposition, or combination of dispositions, that are available under the *JPA* other than a recommendation for removal would have such effect. Accordingly, for the reasons that follow, the majority of the hearing panel recommends that Justice of the Peace Anna Gibbon be removed from office on the ground that she has become incapacitated or disabled from the due execution of her office by reason of conduct that is incompatible with the due execution of her office.

COUNSELS' SUBMISSIONS ON DISPOSITION

1. Position of Counsel for HW Gibbon

[14] In written submissions, counsel for HW Gibbon submitted that the appropriate dispositions in the present case would be a reprimand, coupled with apologies to the affected parties as well as an order for education and/or treatment, and participation in a restorative justice healing circle as a condition of continuing to sit as a justice of the peace. Counsel further submitted that a suspension, with or without pay, may also be an appropriate disposition by the hearing panel to send a message of deterrence.

[15] Counsel initially filed two draft apology letters prepared by HW Gibbon, which were addressed to Jody Kontzie and Jessica Strobel. We will refer in greater detail below to the content of these letters, and to other draft letters subsequently filed by counsel. In these draft letters, HW Gibbon indicated that she had “asked not be assigned to Thunder Bay Provincial Offenses [sic] Court for the remainder of my time on the bench”. She went on to state that Ms. Kontzie and Ms. Strobel could thus be assured that “this incident will never be repeated”, and “we will never work together again”.

[16] The hearing panel raised with counsel for HW Gibbon whether it was open to the panel, as part of its disposition, to include a condition that Her Worship would not be assigned to preside in Thunder Bay Provincial Offences court. Counsel for both parties agreed that the hearing panel does not have statutory authority to prohibit a justice of the peace from sitting in a particular court.

[17] The hearing panel shares this view. Section 15(1) of the *JPA* provides that the regional senior judge, under the direction of the Chief Justice of the Ontario Court of Justice, has the authority to direct and supervise the sittings of justices of the peace and the assignment of their judicial duties. It is not within the purview of the JPRC to determine judicial assignments for justices of the peace. The remedial measures set out in s. 11.1(10) of the *JPA* cannot be read as somehow authorizing a hearing panel to make an order regarding the assignment of judicial duties.

[18] Counsel for HW Gibbon subsequently advised the hearing panel that his client is willing to preside in Provincial Offences Court as assigned, subject to receiving a medical accommodation reflecting that she is immunocompromised due to ongoing chemotherapy treatment for chronic leukemia.²

[19] Counsel for HW Gibbon went on to submit that it is open to the hearing panel in the present case “to rely on *Gladue* principles in determining an appropriate [disposition] for Her Worship Gibbon”. Counsel advised that Her Worship had “begun to prepare a

² We note that Her Worship did not file medical evidence during the misconduct stage of the proceedings. The doctor’s note was filed mid-way through the disposition phase, after an issue emerged about whether HW Gibbon could be assigned to preside in Provincial Offences Court in the future.

remediation plan, which includes the arrangement of and participation in a healing circle as part of a Restorative Justice Process". Counsel noted that, to qualify for participation in the process, HW Gibbon must accept responsibility for her actions. According to counsel for Her Worship, participating in a healing circle is intended to result in a healing plan agreement that could include apologies to the affected individuals, community service or counselling.

[20] In oral argument, counsel for HW Gibbon acknowledged that the individuals most affected by Her Worship's conduct had not agreed to participate in a healing circle. Counsel subsequently filed correspondence from Celina Reitberger, an elder on the Indigenous Peoples Court, indicating that frequently, victims do not want to participate in a healing circle (Exhibit 10). Ms. Reitberger advised that in such cases, a surrogate victim can provide feedback about how being subjected to the type of treatment feels.

2. Position of Presenting Counsel

[21] As noted by presenting counsel, the kind of misconduct in the present case, consisting of repeated interventions in the prosecution of a case involving a family member, strikes at the heart of judicial integrity.

[22] Without recommending a specific disposition, presenting counsel submitted that the many aggravating factors, including the numerous inappropriate interactions with multiple justice system participants, and the absence of significant mitigating factors, such as an acknowledgment of the misconduct or an expression of genuine remorse, warranted imposing a disposition at the more severe end of the spectrum.

GLADUE PRINCIPLES

[23] Before considering the relevant case law and the aggravating and mitigating factors in the present case, we first explain our approach to applying the *Gladue* principles in our analysis of the appropriate disposition.

[24] The Supreme Court of Canada in *R. v. Gladue*, [1999] 1 S.C.R. 688, and *R. v. Ipeelee*, 2012 SCC 13, called “upon judges to use a different method of analysis in determining a fit sentence for Aboriginal offenders.” When sentencing an Aboriginal offender in the criminal justice context, judges are called upon to consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection: *Ipeelee*, at para. 159.

[25] *Ipeelee* stresses that being Indigenous does not result automatically in a reduced sentence. Rather, there must be specific evidence to demonstrate how the offender’s Indigenous background played a role in bringing him or her before the decision maker. However, the offender does not need to establish a causal link between their background and the impugned conduct: *Ipeelee*, at paras. 71, 75, 83.

[26] The *Gladue* principles that inform the approach to criminal sentencing have been applied in the professional discipline sphere. For example, in *Law Society of Upper Canada v. Terence John Robinson*, 2013 ONLSAP 18, the Law Society Appeal Panel reduced Mr. Robinson’s penalty from a two-year suspension to 12 months after applying *Gladue* principles. The panel concluded that a licensee’s Indigenous background may

be treated as a mitigating circumstance where there is a demonstrated connection between the licensee's Indigenous background and the proven misconduct.³

[27] In that case, the lawyer was charged with assaulting someone he said had been harassing him. The panel found that Mr. Robinson's experience of differential treatment at the hands of the police played a part in bringing him before the discipline committee. Given his background and experience, Mr. Robinson did not feel comfortable contacting the police to assist him in resolving the dispute with his harasser. As a result, he was forced to deal with it himself, through violence. While not excusing his conduct, the panel concluded Mr. Robinson's "Aboriginal background and circumstances played a mitigating role in his conduct" (at para. 57).

[28] In *Re Phillips*, the JPRC hearing panel was prepared to accept that the principles from *Gladue* and *Ipeelee* apply at the disposition phase in a case where the justice of the peace was Indigenous. However, in that case, the hearing panel concluded that there was no connection between Justice of the Peace Phillips' identity as an Indigenous person and her misconduct to support the imposition of a different disposition (at para. 31). The hearing panel commented (at paras. 31-32):

While it is clear that Her Worship is Aboriginal, we find no connection which would engage the principles [in *Gladue* and *Ipeelee*] to lead us to any other disposition. Justice of the Peace Phillips had been a justice of the peace for over twenty years at the time of this incident. All judicial officers know they may be faced with the dilemma of supporting a family member or a friend at the cost of their judicial integrity. It is a dilemma that all judicial officers hope to confront only in the abstract, in

³ See also *Law Society of Ontario v. Loder*, 2021 ONLSTH 66, at paras. 52-61

the seminar room during judicial education, as opposed to in real life.

At the end of the day, all judicial officers know what they have to do: their integrity and their obligation to the administration of justice have to come first. It is the only way that their personal integrity can be maintained, and more importantly it is the only way that public confidence in the administration of justice can be maintained.

[29] In our Reasons for Decision, we summarized HW Gibbon's testimony concerning why she became so angry after hearing from her son about what had happened in HW Chaput's court on June 19, 2019 (at para. 164). We also accepted HW Gibbon's evidence that it was in keeping with her cultural practices to invite judicial visitors to Thunder Bay to her home as a welcoming gesture (at para. 155).

[30] We will consider later in these reasons the extent to which HW Gibbon's background and circumstances should be considered as mitigating factors in determining the appropriate disposition.

RELEVANT PRIOR DISPOSITION DECISIONS

[31] There are several prior instances in which JPRC hearing panels have made findings of judicial misconduct in factual situations that bear similarities to the present case.

[32] In *Re Barroilhet* (JPRC 2009), the hearing panel found that the justice of the peace had engaged in judicial misconduct by intervening in a court case to assist a family friend. In that case, the justice of the peace was found to have attempted to use his influence as a justice of the peace, and the assistance of an employee of a paralegal firm with which he had inappropriate ties, to assist a family friend in a court proceeding in

another jurisdiction. The hearing panel found that the justice of the peace improperly communicated with two judicial colleagues and asked one of them to waive the requirement for a properly sworn affidavit.

[33] In its decision on disposition, the hearing panel concluded that, notwithstanding the justice of the peace's full apology, the serious nature of the misconduct required a recommendation for removal to restore public confidence in the administration of justice (at para. 28).

[34] In *Re Phillips* (JPRC 2013), the hearing panel found that the justice of the peace had committed judicial misconduct by actively misleading a police officer conducting a traffic investigation involving the justice of the peace's daughter. During a roadside interaction, Justice of the Peace Phillips was identified by the police officer as a justice of the peace. The officer testified that he took comfort in the fact that information was being provided by a justice official. He directly put questions to Justice of the Peace Phillips regarding the identity of the driver and Her Worship actively misled the police officer by providing false information. Her Worship had not acknowledged any wrongdoing, and the hearing panel made adverse credibility findings against her. At the disposition hearing, Her Worship filed numerous letters of support, including from members of the Aboriginal community and members of the bar, who praised her for her service to the community.

[35] The hearing panel concluded that, although this misconduct was an isolated episode in an otherwise distinguished career, the misconduct was so corrosive to the ideal of judicial integrity that a recommendation for removal was the only appropriate disposition (at para. 32). As noted, the hearing panel concluded that the justice of the

peace's identity as an Indigenous person had no connection to the misconduct that would engage the principles found in *Gladue* and *Ipeelee* and lead to a lesser disposition. The hearing panel also concluded that although the misconduct occurred outside the courtroom and in Her Worship's private capacity, it was "inextricably bound up with her role as a justice of the peace" (at para. 23).

[36] In *Re Foulds* (JPRC 2013), the hearing panel found that a justice of the peace acted inappropriately when he attempted to influence the course of an investigation by City of Toronto public health inspectors when he attended an inspection of a friend's restaurant. However, the panel found that the justice of the peace had not actively misled the health inspectors in their investigation in any manner. The panel concluded that a seven-day suspension without pay was capable of restoring public confidence in both the justice of the peace and the bench as a whole.

[37] In *Re Foulds* (JPRC 2018), the same justice of the peace was found to have improperly involved himself in a criminal prosecution in which the complainant was his close friend and later his romantic partner. The improper conduct took place less than a year after the conclusion of the prior JPRC hearing. The conduct included signing a criminal information and issuing a subpoena. In addition, the justice of the peace intentionally misrepresented the nature of his relationship with the complainant to the Crown Attorney's office.

[38] The hearing panel considered that the prior finding of misconduct was a major aggravating factor on disposition. After reviewing the prior disposition, the panel noted that "less than a year later, His Worship again allowed concern for a friend to compromise

his judgment resulting in a course of conduct that served to undermine public confidence in His Worship personally and in the judiciary and administration of justice generally" (at para. 44). The panel noted that HW Foulds failed to truly acknowledge his wrongdoing (at para. 48). Due to the seriousness of the conduct and the justice of the peace's lack of insight, the panel determined that removal was the only appropriate disposition (at paras. 80-83).

[39] We will return to the significance of these past decisions in explaining our findings on disposition.

AGGRAVATING AND MITIGATING FACTORS

[40] We now consider the factors that are relevant to our assessment of the appropriate sanction for the acts of judicial misconduct engaged in by HW Gibbon.

1. The nature, extent and frequency of occurrence of the misconduct

[41] We consider together the first two factors identified in r. 17.3 of the JPRC Procedures Document.

[42] In our Reasons for Decision, we found that HW Gibbon engaged in a pattern of highly inappropriate conduct in relation to her son's court case consisting of the following actions:

- taking advantage of her special access to the non-public entrance to the Provincial Offences Court administration office, HW Gibbon personally filed a Certificate of Offence requesting a trial on behalf of her son. In so doing, Her Worship created a reasonable apprehension that she was trying to influence the proceeding by becoming personally involved (at paras. 137-38, 141);
- HW Gibbon personally filed with the prosecutor's office a disclosure request on behalf of her son and made repeated calls to the

prosecutor's office asking about the readiness of disclosure. These actions served to heighten the appearance that HW Gibbon was acting as an agent or advocate for her son, or that she was attempting to use her position as a justice of the peace to influence the prosecution of his case (at paras. 139 and 141);

- HW Gibbon called the prosecutor, Nicole Klein, to discuss her son's case; in the call, she suggested that she was a justice system participant and commented to the prosecutor that there was no reasonable prospect of conviction. A telephone call by justice of the peace to a prosecutor about a family member's case may reasonably appear as an implied request for some form of preferential treatment for a family member. A prosecutor could reasonably have their confidence shaken in Her Worship's integrity and in the overall administration of justice knowing that a justice of the peace contacted her about her son's case. HW Gibbon's comment about the strength of the case against her son gives rise to an appearance of impropriety and constitutes an improper attempt to intervene in or influence a court proceeding against a family member (at paras. 142-43, 146-50);
- HW Gibbon extended a dinner invitation on the morning of her son's original trial date to the out-of-town justice of the peace who was presiding in conflict court that day, thereby creating a reasonable apprehension of bias on the part of the presiding judicial officer and an appearance that Her Worship was attempting to influence the outcome of her son's case (at paras. 151, 154-58);
- using her security pass on June 19, 2019 to enter the Provincial Offences office, HW Gibbon directed her anger over the adjournment of her son's trial towards the Supervisor of Court Services, Jodie Kontzie, and demanded that court staff be disciplined because of a sticky note⁴ that was left on her son's file; HW Gibbon also demanded that Ms. Kontzie contact the prosecutor to have the charge dropped; this conduct fell "far below the standard of integrity, impartiality and professionalism that justices of the peace are required to uphold" and created the perception that Her Worship was attempting to influence the outcome of the proceeding involving her son (at paras. 159, 167-69);
- HW Gibbon engaged in inappropriate communications with RSJP Caron, which included making a demand to him on June 19, 2019 that court staff be disciplined or dismissed as a result of the sticky note

⁴ The sticky note read: "Conflict Court HW Gibbon's son".

being left on her son's file and making a demand that the prosecutor be asked to withdraw or stay the charges against her son (at paras. 170-71, 175-77);

- following the filing of the complaint to the JPRC about her conduct, HW Gibbon made disparaging remarks in a public place to a court clerk, Jessica Strobel, about the perceived unfairness of the court proceedings against her son and complaining about the conduct of court staff in their handling of his case (at paras. 178, 181-83).

[43] In our Reasons for Decision, we concluded that Her Worship's actions clearly met the high threshold required to establish judicial misconduct and warranted the imposition of a disposition or dispositions under s. 11.1(10) of the *JPA* (at para. 185). In our view, the following aspects of Her Worship's conduct were particularly egregious:

- HW Gibbon's conduct in calling the prosecutor assigned to her son's case was clearly inappropriate and contrary to her ethical duties of integrity, impartiality and independence associated with holding judicial office;
- HW Gibbon's indication to the prosecutor that there was no reasonable prospect of conviction in her son's case was an improper attempt by a judicial officer to intervene in or influence a court proceeding against a family member, which is a serious act of misconduct;
- HW Gibbon's angry outburst directed at the Supervisor of Court Services, Ms. Kontzie, was egregious misconduct, particularly given the power imbalance between them;
- HW Gibbon's request that Ms. Kontzie speak with the prosecutor to have the charge against her son dropped was serious misconduct;
- HW Gibbon's angry conversation with RSJP Caron demanding that the court staff responsible for leaving the sticky note on her son's file be disciplined, and demanding that he have the prosecutor withdraw or stay the charge against her son was very serious misconduct.

[44] Counsel for HW Gibbon concedes that it is an aggravating factor that we found Her Worship engaged in a pattern of misconduct. However, counsel for HW Gibbon contends that the incidents that constituted the pattern of misconduct all relate to a single,

isolated issue, being her son's legal proceedings. According to counsel for Her Worship, "[t]his is not a situation where a pattern of misconduct was repeated over a period of years and in a variety of contexts or venues. It was circumscribed within the specific situation involving a perceived denial of justice arising from the ticket her son received." Counsel for HW Gibbon emphasizes our comment in our Reasons for Decision that it was "understandable that as a mother, HW Gibbon wanted to help her son, who was undoubtedly experiencing anxiety and stress in responding to a charge under the *Highway Traffic Act*" (at para. 184).

[45] We agree with counsel for HW Gibbon that the multiple acts of misconduct were directly related to her son's legal proceeding. There is no suggestion that HW Gibbon was otherwise engaging in problematic conduct on or off the bench. However, the pattern of misconduct in this case is aggravating in part because of the duration of the misconduct. The conduct in issue occurred over the course of one year, from the filing of the Certificate of Offence in February 2019 and extending to Her Worship's grocery store conversation with Ms. Strobel in March 2020, after she was aware of the complaint to the JPRC about her conduct involving her son's case.

[46] In addition to the extended duration of the misconduct, also aggravating is the fact that the acts of judicial misconduct involved numerous different ethical lapses involving multiple justice system actors, ranging from members of the court staff, to the prosecutor assigned to her son's case, to members of the judiciary, including her RSJP.

[47] We thus conclude that the serious nature of the misconduct, as well as the extended duration of the misconduct and the multiple justice system participants who were affected by the misconduct are aggravating factors.

2. Whether the misconduct occurred in or out of the courtroom; and whether the misconduct occurred in the justice of the peace's official capacity or in her private life

[48] As submitted by presenting counsel, we find that these two factors are sensibly considered together.

[49] Counsel for HW Gibbon points out that the conduct in this case occurred outside the courtroom and outside the view of the public, which is a mitigating factor.

[50] We do not agree. We find it significant that many aspects of the misconduct occurred inside the Thunder Bay courthouse as a result of HW Gibbon using her status as a justice of the peace to attempt to gain an advantage for her son in his *Provincial Offences Act* prosecution. We note in particular the following aspects of Her Worship's conduct, that occurred within the courthouse, which we consider to be aggravating:

- By virtue of her role as a justice of the peace, HW Gibbon was able to enter the non-public area of the Provincial Offences office to file her son's Certificate of Offence with Ms. Kontzie, the Supervisor of Court Services;
- On the morning of her son's trial date, HW Gibbon visited the out-of-town justice of the peace assigned to preside in conflict court, HW Chaput, in the office he was using in the Thunder Bay Ontario Court of Justice courthouse and extended to him a dinner invitation at her home for that evening;
- HW Gibbon used her security pass to enter the Provincial Offences office using the non-public access available to justices of the peace in order to confront Ms. Kontzie about the sticky note that was left on her son's file and to demand that the prosecutor drop or stay the charge; and

- HW Gibbon attended at RSJP Caron's office in the courthouse to complain about the handling of her son's court case, and to request that someone be disciplined for leaving the sticky note on the file, and demanding that he do something about the situation including having the matter withdrawn or stayed.

[51] Moreover, while the conduct was related to events in HW Gibbon's private life, all of the misconduct was inextricably linked to HW Gibbon's role as a justice of the peace: *Re Phillips*, at para. 23. As acknowledged by counsel for HW Gibbon, this too is an aggravating factor. Indeed, throughout her son's legal proceeding, HW Gibbon displayed a concerning lack of understanding of the need for a clear and strict demarcation between the public and private life of a judicial officer. The ethical principles of integrity, impartiality and independence that apply to the judiciary require members of the bench to assiduously avoid any involvement whatsoever in a court case involving a relative.

[52] In spite of the ethical obligations that applied to her as a justice of the peace, HW Gibbon took a direct role in her son's case by filing the Certificate of Offence with the Supervisor of Court Services, by requesting disclosure on his behalf, and by contacting the prosecutor about her son's case and by questioning the strength of the case against him.

[53] Her Worship's lack of insight into the need to avoid gaining an advantage for her son in his court proceeding as a result of her role as a justice of the peace is further revealed in her email to RSJP Caron on July 15, 2019:

As for advocating for my child, I'm legally bound to assist self-defendant representatives in court but I'm not able to assist my son as his mother? I was a mother long before my appointment and will continue to be a mother long after my appointment. My son contacted a lawyer only after I REFUSED to assist him in court. I choose my professional

obligations once again over my child's heeds [sic]. [Emphasis added.]

3. Whether the justice of the peace has acknowledged or recognized that the acts occurred or expressed remorse

(a) Whether HW Gibbon acknowledged or recognized that the acts occurred

[54] The JPRC Procedures Document identifies as a relevant factor whether the justice of the peace has acknowledged or recognized that the acts occurred.

[55] Counsel for Her Worship observes that a judicial officer's acceptance of responsibility is an important determinant of whether remediation is likely to be effective. The written submissions filed by counsel for Her Worship contend that she never disputed that the fundamental acts occurred, and that the only contested issue was whether her conduct constituted judicial misconduct.

[56] We do not accept that HW Gibbon acknowledged that the fundamental acts occurred, either in her testimony during the hearing, or having regard to her position during the disposition phase of the proceeding.

(i) HW Gibbon's Testimony

[57] In her testimony, HW Gibbon acknowledged that she:

- personally filed her son's Certificate of Offence with the Provincial Offences office and also filed the disclosure request and then followed up with the Provincial Offences office about the availability of the disclosure;
- was angry, upset and intimidating during her discussion with Ms. Kontzie and demanded that someone be disciplined or lose their job for leaving the sticky note on her son's court file; and
- was still angry and upset when she spoke with RSJP Caron and made demands about staff being disciplined.

However, HW Gibbon denied engaging in the following conduct:

- speaking with the prosecutor about a resolution of the charge against her son, or making comments about the strength of the case, or commenting “Do you even know who I am?”, or indicating that her son would be seeking an adjournment of the trial date because he would be in exams;
- knowing that HW Chaput would be presiding over her son’s case when she invited him to dinner;
- asking Ms. Kontzie and RSJP Caron to have the charge against her son dropped, withdrawn or stayed;
- saying anything to Ms. Strobel about the unfairness of her son’s conviction (including that it was possibly related to race or the fact that he was her son), or that court clerks were experienced and knew not to leave notes on court files, or that her family was going to sue the City of Thunder Bay, or that she was under review by the JPRC.

[58] In our Reasons for Decision, we made adverse credibility findings against HW Gibbon on these points and concluded that these alleged acts occurred. It is thus not accurate to contend that HW Gibbon “never disputed that the fundamental acts occurred”.

[59] Even leaving aside the adverse credibility determinations that we made against HW Gibbon, it is significant that in her testimony, Her Worship steadfastly refused to acknowledge that she did anything improper in involving herself in her son's court case in multiple ways. To the contrary, she testified that she took “extreme steps...to stay completely and totally at arm’s length from this situation even though it involved my son”. During cross-examination, she maintained that she was not advocating for her son when she spoke with Ms. Kontzie and RSJP Caron.⁵

⁵ Transcript, Day 5 (July 5, 2021), p. 727, l. 7- p. 729, l. 4.

(ii) HW Gibbon's Conduct During the Disposition Phase

[60] In written submissions filed at the disposition phase, counsel for HW Gibbon submitted that:

Her Worship acknowledges the Panel's finding that she committed numerous ethical lapses with respect to her conduct in relation to the prosecution of her son's legal proceeding that were incompatible with her position as a Justice of the Peace and that compromised the independence, impartiality and integrity of her judicial office.

Counsel for HW Gibbon further contended that Her Worship "accepts full responsibility for her failure to respect the ethical and professional boundaries of her office, which ultimately undermined public confidence in the administration of justice". In particular, counsel contended that HW Gibbon "accepts full responsibility for the negative impact of her behaviour in her conversations with the court supervisor, Jody Kontzie and Regional Senior Justice of the Peace Caron."

[61] In our view, the draft apology letters that HW Gibbon initially filed at the disposition stage of these proceedings (Exhibit 10) undermine her claims that she has accepted full responsibility for her actions. Both letters are dated March 8, 2022, one month after the release of our Reasons for Decision. They were authored by HW Gibbon and are addressed to Ms. Kontzie and Ms. Strobel.

[62] In oral submissions on disposition, presenting counsel pointed to the highly problematic nature of the two draft apology letters to Ms. Kontzie and Ms. Strobel.

[63] The first observation we would make about the draft apology letters in Exhibit 10 is how troubling it is that HW Gibbon did not see fit to prepare draft apology letters to Ms. Klein, HW Chaput or RSJP Caron. In our Reasons for Decision, we found that HW

Gibbon's conduct towards each of these individuals constituted judicial misconduct. There is no apparent reason why, if HW Gibbon were truly acknowledging her misconduct, she would not also prepare apology letters to these individuals, each of whom testified in these proceedings. It is evident from our Reasons for Decision that Her Worship placed each of these individuals in ethically compromising positions as a direct result of her conduct.

[64] Moreover, the content of the two draft apology letters in Exhibit 10 do not reflect an acknowledgement of the serious nature of her misconduct, particularly towards Ms. Kontzie. In the draft letter to Ms. Kontzie, dated March 8, 2022, HW Gibbon wrote:

Historical and recent traumatic events, for both me and my son, collided the day of his trial and robbed me of my good judgement. As a mother, I'm sure you can empathize how upset I was when my son approached me after court and asked, "Does everyone in this town hate me?" Despite years of racism and discrimination, particularly by institutions, I encouraged my son to have faith that he will be treated fairly by the justice system. I'm sure you can imagine how strong his faith in our system is now.

[65] Rather than acknowledging that she acted entirely inappropriately in angrily shouting at Ms. Kontzie and demanding that court staff be disciplined for the sticky note incident, HW Gibbon instead asked Ms. Kontzie to empathize with her and to put herself in HW Gibbon's position "as a mother". This request is more accurately characterized as a justification for her conduct than an acknowledgement of responsibility.

[66] Also telling in the letter is Her Worship's rhetorical question posed to Ms. Kontzie about her son: "I'm sure you can imagine how strong his faith in our system is now". This comment indicates that HW Gibbon persists in her misconception that it was somehow

unfair that her son's trial date was adjourned due to the sticky note being left on his file. Evidently, Her Worship persists in this misconception despite the fact that she had previously informed the prosecutor, Ms. Klein, that her son would be in exams and that he would be seeking an adjournment. Moreover, this comment indicates that she still fails to acknowledge that it was her own action in inviting the presiding justice of the peace to her home for dinner on the date of her son's trial that caused him to recuse himself.

[67] HW Gibbon's draft apology letter to Ms. Strobel, dated March 8, 2022, similarly fails to convey a genuine acknowledgement of wrongdoing. HW Gibbon does not acknowledge having upset Ms. Strobel by complaining to her about the conduct of court staff. Instead, she seeks to justify her conduct based on the stress she was under at the time:

If anything I said during our conversation on that day, caused you concern or stress, it was unintentional. As you can appreciate and stated in your testimony, that I was under considerable amount of stress at that time. Even though you asked, I should have recognized you were not the conduit to express my stress and anxiety.

[68] Far from apologizing to Ms. Strobel, HW Gibbon's draft apology letter suggests that Ms. Strobel was somehow at fault, and displays a condescending attitude towards Ms. Strobel:

As a Justice of the Peace, I should also have recognized the power imbalance that is inherent with my position, especially given your position. I have come to appreciate that I am viewed as a Justice of the Peace first and foremost. Please be assured that I am firmly entrenched in the parameters of my office and although we can be cordial, I will never share personal matters with you again.

I apologize for burdening you with my reality that day.

The promise to “never share personal matters with [Ms. Strobel] again”, and the apology for burdening her with HW Gibbon’s reality appears as an attempt to shift some of the blame to Ms. Strobel for Her Worship’s misconduct rather than serving as an acknowledgement of misconduct.

[69] As discussed next, in addition to not acknowledging her misconduct, HW Gibbon has not expressed genuine remorse for her conduct.

(b) Whether HW Gibbon has expressed remorse for her conduct

[70] Closely related to the factor of whether the subject justice of the peace has acknowledged their misconduct, past JPRC hearing panels have relatedly considered whether the judicial officer has expressed remorse for their conduct: see, e.g., *Re Lauzon* (JPRC 2020), at para. 49 and *Phillips*, at para. 24.

(i) HW Gibbon’s Testimony

[71] During her testimony, the closest that HW Gibbon came to expressing remorse was in relation to the angry and hostile way that she spoke to Ms. Kontzie on June 19, 2019. However, even this expression of remorse was qualified: “I think I would want her to understand the context of my behaviour. I would apologize.”

[72] When her own counsel asked her to advise if she would change anything about what she had communicated or written to RSJP Caron on June 19, 2019, HW Gibbon testified:

No, sir. I think what I had stated in that letter [of July 15, 2019] has been my position with this right from the get-go.... I took offence to His Worship alluding to the fact that I was trying to influence an outcome. And I was have [sic] emphatic in my email to him that I took offence with even suggesting this, that

all I've ever wanted for my son, as I want for everyone who appears before our courts, to have a fair process.

(ii) HW Gibbon's Conduct During the Disposition Phase

[73] The draft apology letters that HW Gibbon initially filed at the disposition stage of these proceedings also fail to demonstrate genuine remorse for her conduct.

[74] HW Gibbon's draft letters attempt to blame the JPRC process for why she was not able to apologize sooner to either Ms. Kontzie or Ms. Strobel. In the letter to Ms. Kontzie, she wrote:

As the JPRC process is concluding, I felt that this was the appropriate time to write this apology. Unfortunately, unlike traditional justice models, this process did not allow me an opportunity to speak with you in any fashion, nor did it allow us, as the involved parties, to come to an understanding of our actions or the affect those actions had on all of us. Although I have been found guilty of judicial misconduct, I will only have this opportunity to express remorse for my actions that I can only image [sic] had a negative impact on you.

[75] Similarly, in the letter to Ms. Strobel, HW Gibbon wrote:

I would like to apologize for my behaviour of March 17, 2020. As the JPRC process forbids me from communicating with you, I felt that as the process concludes, this would be the appropriate time to offer this apology.

[76] The suggestion by HW Gibbon in her draft apology letters that she was precluded from apologizing to Ms. Kontzie or Ms. Strobel prior to the disposition phase of the JPRC proceedings is entirely unfounded. HW Gibbon could have apologized to Ms. Kontzie long before the complaint against her was filed with the JPRC, and indeed ought to have done so immediately after she regained her composure on June 19, 2019. Even after the complaint was filed with the JPRC, there was nothing preventing HW Gibbon from providing a sincere apology to Ms. Kontzie for her abusive behaviour, or from apologizing

to Ms. Strobel for having criticized the staff of the Thunder Bay Provincial Offences Court and having complained about the supposed unfairness of how her son's case was handled. She also could have apologized to these individuals during her testimony at the hearing.

[77] After hearing the concerns of presenting counsel and the panel about the content of the draft apology letters in oral argument on April 6, 2022, counsel for HW Gibbon filed five new draft apology letters dated April 29, 2022. Two of these letters are again addressed to Ms. Kontzie and Ms. Strobel, and the three additional letters are addressed to Ms. Klein, RSJP Caron and HW Chaput (Exhibit 12). We will not describe these letters beyond indicating that the content of these letters reflect that they were written in a way that seeks to overcome and respond to the criticisms advanced by presenting counsel in oral argument regarding the two original draft letters.

[78] Counsel for HW Gibbon contended that the new letters reflect a learning process and are the result of ongoing education and understanding. We do not find this explanation convincing. The revised apology letters reflect an opportunistic response to the submissions of presenting counsel, rather than constituting genuine apologies or being a product of ongoing education. We note in this regard that counsel for HW Gibbon has provided no evidence that Her Worship has engaged in any education or mentoring on judicial ethics during these proceedings.

[79] We conclude that although the absence of a genuine acknowledgement of misconduct or an expression of remorse is not an aggravating factor, the lack of insight or remorse exhibited by HW Gibbon is relevant to the overarching issue of what

disposition is required to restore public confidence in the judicial officer and in the administration of justice generally.

4. Whether the justice of the peace has evidenced an effort to change or modify her conduct

[80] As noted, there was no evidence before us to suggest that HW Gibbon engaged in efforts to change or modify her behaviour, such as working with a judicial mentor or taking a course in judicial ethics.

[81] In her draft apology letters to Ms. Kontzie and Ms. Strobel, HW Gibbon indicated that she would avoid a repeat of the incident because she had requested that she never be assigned to the Thunder Bay Provincial Offences Court for the remainder of her time on the bench:

As I have asked not to be assigned to Thunder Bay Provincial Offences [sic] Court for the remainder of my time on the bench, you can rest assured that this incident will never be repeated.

Such a statement – which appears in both letters (with a slight difference in wording) – indicates that HW Gibbon was not willing to change or modify her conduct. Rather, she indicates that she will avoid a repetition of the conduct by having asked to be relieved of any possible assignment in the Thunder Bay Provincial Offences Court.

[82] In oral argument, counsel for HW Gibbon attempted to explain the comments in the draft apology letters concerning her not being assigned to Provincial Offences Court to the fact that HW Gibbon's medical condition makes it unsafe for her to preside in in-

person Provincial Offences Court as she is immunocompromised.⁶ Counsel for HW Gibbon also clarified that Her Worship no longer holds the view that she will never preside in Provincial Offences Court. While we accept that HW Gibbon may be willing to preside in Provincial Offences Court with suitable medical accommodations in place, we nevertheless find that the comments in the March 8, 2022 draft letters are inconsistent with an effort to change or modify her conduct.

[83] Counsel for HW Gibbon also asserts that she is making arrangements to participate in a healing circle as part of a restorative justice process. Qualification for this process requires as a precondition that Her Worship accept responsibility for her actions. As explained above, we are not satisfied that Her Worship has shown sufficient insight into her misconduct or acceptance of responsibility to effectively participate in a healing circle.

5. Length of service on the bench

[84] HW Gibbon was appointed to the bench in February 2013. Prior to the complaints, HW Gibbon had a record of seven years of service on the bench. While HW Gibbon is not a newly-appointed justice of the peace, she did not have many years of service prior to the acts of misconduct in issue in these proceedings. In our view, her length of service is a moderately mitigating factor.

⁶ Counsel filed a doctor's note confirming that HW Gibbon was diagnosed in 2018 with chronic myeloid leukemia, and is receiving chemotherapy medicine that has resulted in complete remission (Exhibit 12). Her doctor advises that she must remain on this medication to remain in remission, which means that she is an immunocompromised person. The doctor's note recommends that Her Worship must minimize exposure to other persons especially during the pandemic.

[85] Counsel for HW Gibbon contended that the fact that HW Gibbon has remained as a sitting justice of the peace throughout these proceedings, and that there was no decision to non-assign her pending the final disposition of the complaint is a mitigating factor.

[86] We do not accept the submission that HW Gibbon's continued service on the bench during these proceedings is a mitigating factor. In this case, at the investigation stage of the complaints process, a complaints committee of the JPRC recommended to HW Gibbon's Regional Senior Judge that she be re-assigned to a court location other than the Thunder Bay Provincial Offences Courthouse pending the final disposition of the complaint pursuant to s. 11(11) of the *JPA*. Section 11(11) states:

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

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

(b) the justice of the peace who is the subject of a complaint be reassigned to another location.

[87] The complaint committee's recommendation was accepted by the Regional Senior Judge and HW Gibbon was re-assigned to another court location.

[88] Under the *JPA*, an interim recommendation for non-assignment or re-assignment can only be made by a complaints committee. A hearing panel has no power to order that the justice of the peace be non-assigned during the hearing. At the time the complaints committee made the interim recommendation of re-assignment, they did not have the benefit of a full evidentiary record, including Her Worship's evidence. The fact

that the complaints committee recommended that HW Gibbon be re-assigned to another court location is in no way a mitigating factor in fashioning an appropriate remedial disposition based on the evidentiary record adduced at the hearing.

6. Whether there have been prior findings of judicial misconduct

[89] There have been no prior complaints against HW Gibbon that have resulted in remedial dispositions by the JPRC. This is a mitigating factor: *Re Winchester* (JPRC 2019), at para. 18(h).

7. The effect of the misconduct on the integrity of and respect for the judiciary

[90] HW Gibbon's conduct had the effect of placing multiple justice system participants in ethically challenging positions. The following testimony supports a finding that HW Gibbon's conduct undermined public confidence in her integrity as a judicial officer:

- Nicole Klein testified that HW Gibbon's comments during their telephone conversation put her on "alert" to "proceed with caution";
- HW Chaput testified that he would not have been comfortable attending at HW Gibbon's home for dinner after he presided over her son's case, given the optics;
- Following her interaction with HW Gibbon on June 19, 2019, Ms. Kontzie testified that she was "shaking", and was scared and concerned about what might happen to her and her staff. Ms. Kontzie testified that she knew that HW Gibbon's request that she speak with the prosecutor to have the charge dropped was "wrong";
- RSJP Caron testified that he asked HW Gibbon to leave Ms. Kontzie's office on at least two occasions and told her it was not appropriate for her to be speaking with Ms. Kontzie about the issue. He testified that "it was totally inappropriate" and he wanted her to leave "before any more damage" could be done.

RSJP Caron's email to HW Gibbon on July 3, 2019 communicated his concerns to her about her conduct;

- Ms. Strobel testified that her conversation with HW Gibbon made her "extremely uncomfortable".

[91] Evidently, HW Gibbon negatively impacted the confidence of these individuals – and the public more generally – in her integrity. This is an aggravating factor in fashioning the appropriate disposition.

[92] Counsel for HW Gibbon contends that an informed person, viewing the matter realistically, would conclude that further education, alone or in conjunction with another disposition, could be an appropriate disposition in the present case. Counsel asserts that an informed person – which includes a person informed of the history of systemic discrimination faced by Indigenous persons as justice system participants – would consider Her Worship's experience as an Indigenous woman who was previously denied justice as a mitigating factor in contextualizing her conduct towards Ms. Kontzie and RSJP Caron on June 19, 2019. A reasonable observer would recognize that this conduct was out-of-character and that Her Worship is capable of remediation with a rehabilitative disposition. In terms of her other ethical lapses, counsel for HW Gibbon contends that further education, whether alone or in conjunction with another disposition, could be an appropriate remedy.

[93] We will address these submissions when considering whether, in light of all the aggravating and mitigating factors, together with the character evidence and the principles from *Gladue* and *Ipeelee*, in our final analysis below.

8. The extent to which the justice of the peace exploited her position to satisfy her personal desires

[94] HW Gibbon's conduct was motivated throughout by her personal desire to assist her son with his legal proceeding. As acknowledged by her counsel, this is an aggravating factor.

9. Conduct during the JPRC proceedings

[95] In *Re Lauzon*, the hearing panel concluded that the manner in which a judicial officer conducts herself during the JPRC proceedings is an appropriate consideration in determining the matter of disposition (at para. 133). On judicial review, in dismissing Justice of the Peace Lauzon's application, the Divisional Court affirmed the panel's conclusion, holding that HW Lauzon's conduct during the hearing "showed her lack of insight and lack of remorse": *Lauzon v. Justices of the Peace Review Council*, 2021 ONSC 6174, at para. 61; leave to appeal to Court of Appeal granted January 21, 2022, appeal listed to be heard on September 27, 2022.

[96] In *Re Massiah* (JPRC 2012), the hearing panel relied on its credibility findings against the justice of the peace in determining the appropriate disposition. In dismissing Justice of the Peace Massiah's application for judicial review, the Divisional Court upheld the panel's finding on this issue in *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 (Div. Ct.), at para. 41:

The 2012 Panel referred back to this finding towards the end of its decision on disposition. I agree with counsel for the JPRC that it is difficult to see how, in light of this finding, that is amply supported by the evidence, the 2012 Panel could have achieved the necessary goal of restoring and maintaining the integrity of the judiciary, if it permitted the applicant to remain in his position as a justice of the peace. It is tough to see how the applicant could be seen as being able

to carry out his duties of adjudicating matters affecting members of the public, in light of this devastating attack on his own credibility. [Emphasis added.]

[97] Counsel for HW Gibbon argues that *Lauzon* and *Massiah* are distinguishable because in those cases, the hearing panels made very strong adverse credibility findings against the justices of the peace, whereas in the present case, the panel's adverse credibility findings were not as strongly worded.

[98] We agree that the hearing panels in *Lauzon* and *Massiah* did, on occasion, use stronger language than we did in making their adverse credibility findings against the subject judicial officer. However, it is also the case that this panel found HW Gibbon not to be a credible witness with respect to *every* important factual issue in dispute: see paras. 90-101, 106-108, 115-21.

[99] The overarching issue here is what disposition is required to restore public confidence in the justice of the peace and in the administration of justice generally. Where a hearing panel of the JPRC makes adverse credibility findings against a justice of the peace, this will be an aggravating factor in the assessment of the appropriate remedial disposition. The nature and strength of the adverse credibility finding will play into the analysis, but the fact remains that the public trust in a member of the judiciary will be shaken whenever an adverse credibility finding is made against them.

CHARACTER EVIDENCE

[100] During the hearing on the merits, HW Gibbon called two character witnesses: Roseanna Hudson and David Mackenzie.

[101] Ms. Hudson is the Justice Services Program Manager with the Thunder Bay Indigenous Friendship Centre. She testified to having known HW Gibbon for over 20 years, having received training in conflict resolution from her and having worked with her over the years in the Indigenous community. Ms. Hudson provided evidence about HW Gibbon's reputation of trust within the community. She also filed a support letter, as described below.

[102] Mr. Mackenzie is a lawyer who acted as Crown counsel in Thunder Bay for a number of years and is now in private practice as a defence lawyer. He appeared before HW Gibbon on a number of occasions. Mr. Mackenzie gave evidence about HW Gibbon's compassion, progressive attitude, and good reputation.

[103] HW Gibbon also filed seven letters in support of her ongoing good character and her amenability to rehabilitation. These letters may be summarized as follows:

- Roseanna Hudson, Justice Services Program Manager at the Thunder Bay Indigenous Friendship Centre, who has known HW Gibbon since the late 1990s.

Ms. Hudson comments on HW Gibbon's work while running her own business specializing in mediation and conflict resolution, which was performed at a time when she was also working for the Ministry of Corrections as a Correctional Officer. According to Ms. Hudson, HW Gibbon worked collaboratively in resolving conflict and ensured everyone had a voice. Ms. Hudson also speaks to HW Gibbon's volunteer work trying to bridge the gap between the Indigenous community and the City of Thunder Bay. Ms. Hudson attests that she continues to have faith in her ability to be objective and professional while presiding. She characterizes HW Gibbon as "the most honest, conscientious, sensible and compassionate person I know."

- Celina Reitberger, member of Fort William First Nation and an elder on the Indigenous Peoples Court.

Ms. Reitberger speaks to HW Gibbon's commendable job as the Aboriginal Liaison for the City of Thunder Bay and as a justice of the peace. She attributes Her Worship's judicial misconduct to behaving like a mama makwa (bear) based on the stress of her son being involved in the mainstream justice system. Ms. Reitberger describes how a Restorative Justice Process would work in this situation.

- Joy Wakefield, bilingual staff lawyer for Legal Aid in Thunder Bay who has appeared before HW Gibbon in various courts.

Ms. Wakefield writes at length about HW Gibbon's civility and professionalism in the courtroom and her respect for people who have been the victims of personal and systemic discrimination, and her dedication to the work of the court. Ms. Wakefield observes that our findings are in stark contrast to her personal impressions of HW Gibbon and are markedly out of character for her.

Ms. Wakefield writes that HW Gibbon's presence on the bench as an Indigenous woman holds symbolic value to the community, representing that Indigenous voices matter and providing assurance that they will receive a fair hearing. Ms. Wakefield advocates for the value of restorative justice as championed by the Indigenous communities in the region where HW Gibbon presides and is confident that HW Gibbon will learn from her mistakes and be a faithful public servant. In the words of Ms. Wakefield: "In recognition of the sacrifices that Indigenous judicial officers make to extend the credibility of our courts, the response to their mistakes should be tempered with mercy."

- John Hannam, hired HW Gibbon in the capacity of the Aboriginal Liaison for the City of Thunder Bay in 2008.

Mr. Hannam speaks to HW Gibbon's "innate sense of moral justice, fairness and compassion", and her integrity. Mr. Hannam views the finding of misconduct as "limited to the issues involving her son and decisions she made related to those."

- Pamela Lyghtle, local business owner in Thunder Bay who has known HW Gibbon for 45 years.

Ms. Lyghtle speaks to HW Gibbon's good work ethic and her honesty. She is confident that this type of situation will not be repeated.

- Barry Quinn, retired justice of the peace who served 19 years on the bench and who interacted with HW Gibbon at educational conferences and on two occasions while working at the courts in Thunder Bay.

Mr. Quinn notes that HW Gibbon invited him to dinner at her home one night when he was in Thunder Bay. He is impressed by her compassion, dedication and wisdom.

- David White, retired Provincial Police officer from the Northwest Highway Safety Division of the Ontario Provincial Police.

Mr. White writes that he was frequently in front of HW Gibbon for trial matters and found her to be a fair and impartial adjudicator. HW Gibbon pointed out to him that money or jail may not necessarily be the correct answer to most situations brought before the courts. He speaks of her high degree of professionalism in the courtroom. Mr. White also notes that there are considerable *Gladue* factors to be considered.

[104] The character witnesses uniformly speak to HW Gibbon's admirable qualities, including her high degree of professionalism in the courtroom and to her strong sense of compassion for those appear before her. Each of the individuals indicates in their letter that they have read our Reasons for Decision and are aware of our findings of misconduct. The character evidence indicates that the nature of HW Gibbon's conduct underlying these proceedings is markedly out-of-character. These witnesses also express confidence that HW Gibbon has learned from this process and will be able to faithfully discharge the role of justice of the peace going forward.

ANALYSIS

[105] Restoring public confidence in the judiciary as a whole must be the paramount principle guiding our decision. The question we have asked is whether the lesser dispositions of a reprimand, counselling and education, a healing circle, and possibly also a suspension with or without pay can achieve the objective of restoring public confidence

in Her Worship, the judiciary, and the administration of justice generally. If so, then this combination of dispositions would be the most appropriate one.

[106] As noted, we find that HW Gibbon's seven years of unblemished service should be treated as mitigating.

[107] We also consider mitigating the fact that the conduct in issue in these proceedings was distinctly out-of-character for HW Gibbon, and that it was motivated by a desire to protect her son in his encounter with the justice system.

[108] As found in our Reasons for Decision (at para. 167), we accept that there were a number of factors that contributed to HW Gibbon's highly inappropriate conduct in relation to Ms. Kontzie and RSJP Caron. First and foremost amongst these factors, HW Gibbon was angered that her son's case had not been resolved favourably, and that it was instead adjourned after HW Chaput read the sticky note left on her son's file indicating that the defendant was her son. In her mind, her son was denied justice because his case was adjourned rather than favourably resolved. HW Gibbon was also upset that her family would have to incur further legal costs for her son's defence.

[109] We also find that HW Gibbon's personal history as someone who had been marginalized and victimized by the criminal justice system played some role in explaining the degree of anger she directed towards Ms. Kontzie and RSJP Caron on June 19, 2019. After learning from her son that his trial had been adjourned because the presiding judicial officer saw the sticky note on his file indicating that he was her son, HW Gibbon's tirades directed at Ms. Kontzie and at RSJP Caron were triggered by her son asking her: "Does everyone in this city hate me?". As HW Gibbon testified, at that moment, "the past and

the present collided”. She believed that her son had been denied justice. She testified that her son’s legal predicament triggered a memory of when she had been denied justice many years before when she was employed as a correctional officer and was the victim of a serious assault by a group of inmates. HW Gibbon testified that the police and Crown had denied her the opportunity to provide victim impact evidence or input at both the bail and sentencing stages for one of the accused who had attacked her. During her testimony, HW Gibbon commented, “As Indigenous people, we’ve been denied justice for hundreds of years...As Indigenous women, we’re the most easily dismissed.”

[110] In addition to accepting that there is a connection between Her Worship’s Indigenous background and her acts of misconduct on June 19, 2019, we found in our Reasons for Decision that Her Worship’s conduct in extending a dinner invitation to HW Chaput on the original date of her son’s trial was in keeping with her cultural practice of inviting out-of-town visiting justices of the peace and judges into her home (at para. 155). However, given that HW Gibbon knew that a visiting justice of the peace would be presiding over her son’s case that day, this factor is far overshadowed by the inappropriateness of her conduct in inviting HW Chaput to her home for dinner on the day in question.

[111] We are not satisfied that Her Worship’s background was connected to the other elements of her misconduct in filing the certificate of offence, in filing the disclosure request on her son’s behalf, or in her conversation with the prosecutor, Nicole Klein. We also are not satisfied that her conduct in complaining to Ms. Strobel about the unfairness

of her son's conviction and the note left by court staff on his file was connected to Her Worship's background as an Indigenous woman.

[112] While the principles found in *Gladue* and *Ipeelee* serve, to some degree, to explain and mitigate HW Gibbon's more irrational conduct on June 19, 2019, these principles cannot serve to mitigate the more calculating and self-serving elements of her conduct in trying to influence the outcome of her son's court case, and in casting aspersions on the conduct of court staff in somehow undermining the fairness of the proceeding.

[113] This panel found that HW Gibbon engaged in serious misconduct which jeopardized public confidence in the administration of justice in multiple ways. Fundamentally, when a hearing panel has found that a justice of the peace has engaged in serious misconduct that jeopardizes public confidence in the administration of justice in multiple ways, the restoration of public confidence requires that the hearing panel be satisfied that the justice of the peace has demonstrated an adequate level of insight into, and remorse for, their conduct. Without this level of insight and remorse being shown by the justice of the peace for their conduct, in our view, any disposition or combination of dispositions in s. 11.1(10)(a)-(f) of the *JPA* will fail to restore public confidence in the justice of the peace, the judiciary, and the administration of justice generally. Regrettably, we have concluded that throughout this proceeding, Her Worship failed to acknowledge the more egregious aspects of her misconduct or demonstrate sincere remorse for her misconduct.

[114] It also bears repeating that this hearing panel made multiple adverse credibility findings against HW Gibbon. Her testimony at the hearing was highly problematic and called into question her personal and professional integrity. It is very difficult to see how HW Gibbon can be seen as being able to carry out her duties of adjudicating matters affecting the public, in light of the panel's findings regarding Her Worship's credibility and reliability as a witness at the hearing.

[115] Had HW Gibbon been prepared during the course of the proceedings – including during the disposition phase of the proceedings – to acknowledge most or all of the wrongdoing, or to proactively take rehabilitative steps, such as by engaging in mentoring with a senior jurist, or by providing sincere apologies without rationalizing her conduct or attempting to shift blame to those affected by her actions, this panel may have seen fit to impose a combination of the lesser dispositions that are available under s. 11.1(10) of the *JPA*.

[116] However, our primary task is not to rehabilitate the justice of the peace; rather it is to restore public confidence in the justice of the peace, the judiciary and the administration of justice generally. HW Gibbon's refusal during the hearing to fully acknowledge her wrongdoing, the adverse findings of credibility made against her in the misconduct proceeding, and the lack of insight or acknowledgment that she has shown in her draft apology letters of March 8, 2022 have made it impossible for us to be satisfied that public confidence can be restored by any combination of the dispositions that are available under s. 11.1(10)(a)-(f) of the *JPA*.

[117] The past decisions of the JPRC reviewed above indicate that conduct that compromises a justice of the peace's core personal and professional integrity has required the remedial disposition of a recommendation for removal from office. Even the mitigating factors of an acceptance of responsibility, as in *Re Barroilhet*, or an otherwise unblemished record of service on the bench and substantial community support, as in *Re Phillips*, were found not to have sufficiently remedied the erosion of public confidence caused by the misconduct. Where a fundamental trust in a justice of the peace's integrity and impartiality has been broken, even a combination of the lesser dispositions that are available under the *JPA* have not been found to be adequate to repair public confidence. As the hearing panel stated in *Re Phillips*: "[a] single act of misconduct may wipe out years of meritorious service" (at para. 18).

[118] A recommendation for removal from office is the most serious disposition and should only be imposed in circumstances where a justice of the peace's ability to discharge the duties of office is irreparably compromised such that they are incapable of executing judicial office. The Supreme Court of Canada in *Valente v. The Queen*, [1985] 2 S.C.R. 693, at p. 694, insisted the security of tenure for judicial officers is "the first of the essential conditions of judicial independence". 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.

[119] In the Canadian Judicial Council's report to the Minister of Justice in respect of the conduct of the Honourable Paul Cosgrove (March 30, 2009), the Canadian Judicial

Council adopted the following standard for assessing whether a recommendation for a judge's removal from office is warranted (at para. 19):

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:

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?

[120] It weighs extremely heavily on the members of this panel to conclude that HW Gibbon's conduct has been so manifestly and profoundly destructive of the concept of the impartiality, integrity and independence of the judicial role to render her incapable of executing the judicial office. However, after careful consideration of this issue, we conclude that no disposition, or combination of dispositions, that are available to us under the *JPA* other than a recommendation for removal would have the necessary remedial effect of restoring public confidence in the integrity of the judiciary and in the administration of justice generally.

DISPOSITION

[121] For these reasons, we have concluded that Justice of the Peace Anna Gibbon 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. The hearing panel hereby makes a recommendation to the Attorney General that Justice of the Peace Anna Gibbon 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*.

[122] Counsel for HW Gibbon may provide submissions on compensation for the cost of legal services in relation to the complaint within 14 days of the release of these reasons. Presenting counsel may file any response within 14 days thereafter.

DISSENTING REASONS FOR DECISION ON DISPOSITION

(Justice of the Peace Holly Charyna)

[123] I have had the opportunity to read the reasons for decision on disposition of my co-panel members, Justice Lipson and Mr. John Tzanis. I agree with their findings on the serious nature of the misconduct engaged in by HW Gibbon, and with their findings on the aggravating and mitigating factors in r. 17.3 of the JPRC Procedures. However, in my view, despite the serious ethical lapses of HW Gibbon, and despite her lack of full insight at this stage into why her course of conduct in relation to her son's legal proceeding was so egregiously wrong, the evidence surrounding HW Gibbon's character and her capacity for remediation as well as the *Gladue* principles that must inform our approach to disposition have led me to a different disposition than the majority.

1. HW Gibbon's Character and Capacity for Remediation

[124] In my view, Her Worship's misconduct – as extremely serious as it was – was connected to her misguided sense that she had a responsibility to help her son navigate through the justice system and to protect him in that process. As attested to by her

character witnesses, her conduct in relation to the *Highway Traffic Act* proceeding against her son, who was charged with “fail to yield”, is out of character for HW Gibbon, and is not reflective of the professionalism and care that she brings to her duties as a justice of the peace. Her unblemished record of service similarly demonstrates that this conduct was out of character.

[125] The character evidence reveals that HW Gibbon is a respected and highly valued member of the community who approaches her work with compassion and dedication. Moreover, through her service as a justice of the peace, HW Gibbon has helped to give voice within the justice system to a population that has suffered profoundly from systemic discrimination within the community.

[126] The character witnesses have also expressed their views, as members of the community, that HW Gibbon has learned from the process and will be able to discharge her duties as a justice of the peace going forward. The evidence of these witnesses suggests that HW Gibbon is capable of greater learning about her ethical obligations, and that she would benefit from mentorship and education to gain full insight into her actions. For example, Joy Wakefield wrote that HW Gibbon has told her students that she was never afraid of one of her decisions’ being appealed, because if she was doing something wrong, she wanted to know so that she could learn from it. Ms. Wakefield expressed her confidence that HW Gibbon “will take this opportunity to learn from her mistake and use it to guide her conduct as a faithful public servant”.

[127] For similar reasons, the character evidence supports HW Gibbon’s position that she is willing to take the necessary steps to learn and make amends.

2. *Gladue* Principles

[128] In my view, public confidence in the administration of justice calls for a restorative justice process in this case. Removing an Indigenous woman from the Ontario Court of Justice bench without allowing for a restorative justice approach is antithetical to the principles established by the Supreme Court of Canada in *Gladue* and *Ipeelee*. Public confidence in the administration of justice must also be informed by the view of those who have faced a lengthy and ever-escalating crisis of over-incarceration in this country.⁷ Public confidence in the administration of justice must also take into consideration how a recommendation for removal from office would be perceived by the Indigenous community. In her letter on HW Gibbon's behalf, Ms. Wakefield commented on the severe levels of discrimination and violence faced by Indigenous women, and how HW Gibbon's presence on the bench has helped Indigenous women to confront these challenges.

[129] The majority accepted that there was a connection between HW Gibbon's Indigenous background and her acts of misconduct on June 19, 2019, and her conduct in extending a dinner invitation to HW Chaput (at para. 110). However, the majority was not satisfied that the other elements of Her Worship's misconduct in filing the certificate of offence, in filing the disclosure request, in speaking to the prosecutor, or in complaining to Ms. Strobel had any connection to Her Worship's background as an Indigenous woman. Accordingly, the majority concluded that the principles in *Gladue* and *Ipeelee* did not mitigate these aspects of her misconduct.

⁷ See, e.g., [Understanding the Overrepresentation of Indigenous People - State of the Criminal Justice System Dashboard](#), Department of Justice Canada (April 28, 2022).

[130] Respectfully, I disagree. In my opinion, HW Gibbon's conduct throughout the prosecution of her son's *Highway Traffic Act* charge was connected with her experiences as an Indigenous woman in the community of Thunder Bay and a justice system participant.

[131] As noted in our Reasons for Decision, HW Gibbon testified to her personal history with the justice system, when she was a correctional officer and the victim of a serious assault by a group of inmates. She spoke about being denied justice and the opportunity to provide a victim impact statement or input in relation to one of her attackers. She commented as well that Indigenous women like herself are "the most easily dismissed".

[132] HW Gibbon also testified to the experiences of herself and her family in the Thunder Bay community. She testified that her mother and grandmother were survivors of St. Joseph's Residential School in Thunder Bay. She described her son's experiences of being bullied and discriminated against in school, and the challenges she faced as a parent in protecting him from these experiences.

[133] In my view, HW Gibbon's judgment was clouded by these past experiences from the moment her son got the ticket. These experiences led her to react as a mother, seeking to protect her son from her own negative experiences with the justice system, disregarding her ethical obligations as a member of the judiciary. In her evidence, she repeatedly spoke about wanting her son to have a fair experience with the justice system. In my opinion, her desire for fair justice in her son's case, and her repeated intervention in his case, is inextricably related to her unfair experiences as an Indigenous woman with the justice system and in the community in Thunder Bay.

[134] I am also mindful of the isolation sometimes faced by Indigenous members of the bench, such as HW Gibbon. Appointment to the bench requires, to some extent, a withdrawal from the Indigenous community. HW Gibbon testified about being unable to attend smudging and other ceremonies with other members of the Indigenous community, to preserve her appearance of impartiality as a judicial officer in a small community. Ms. Wakefield commented eloquently on this isolation in her letter on HW Gibbon's behalf. She wrote:

I simply hope to underline the endurance it takes as any Indigenous person to contend with the Canadian legal system, apart from any individual experiences. This can be compounded by the isolation and withdrawal from advocacy required by judicial officers. *In recognition of the sacrifices that Indigenous judicial officers make to extend the credibility of our courts, the response to their mistakes should be tempered with mercy.* [Emphasis added.]

[135] I agree with Ms. Wakefield. HW Gibbon made a series of very serious ethical mistakes, while isolated to some extent from the support and guidance of her community. She has done a great service to that community and to the broader community in Thunder Bay. Her character references speak to the excellent qualities and care she brings to her role as a justice of the peace. Her misconduct was, as I have found, inextricably related to her background and experiences as an Indigenous woman, which is a powerful mitigating circumstance. In my view, all these circumstances call for a restorative, community-based approach, with a combination of dispositions, to which I now turn.

3. Combined Dispositions

[136] In my view, the imposition of a combination of dispositions under s. 11.1(10) would be capable of achieving the overarching objective of restoring public confidence in

HW Gibbon and in the administration of justice generally. The dispositions set out below will engage members of HW Gibbon's various communities in restoring public confidence in HW Gibbon.

[137] The combined dispositions I would impose would first include a warning that HW Gibbon must refrain from any similar conduct in the future, and that any further acts of misconduct may put her beyond any possibility of remediation.

[138] Second, I would impose a reprimand for failing to uphold and maintain judicial integrity and impartiality, thereby undermining public confidence in HW Gibbon and her judicial office and in the administration of justice.

[139] Third, in recognition of the extremely serious misconduct in which HW Gibbon engaged in seeking to intervene in the prosecution of her son's case and in attempting to influence the result of that proceeding in her son's favour, I would impose a 30-day suspension without pay.

[140] Fourth, I would order HW Gibbon to engage in mentoring from a senior jurist of the Ontario Court of Justice, as assigned by the Chief Justice, so that she could gain insight into why her conduct in this case was incompatible with the ethical standards that she is required to uphold as a justice of the peace.

[141] Fifth, after receiving such mentoring and satisfying her mentor that she has demonstrated insight into her misconduct, I would order that HW Gibbon participate in a healing circle as directed by the Indigenous Peoples Court as a condition of continuing to sit as a justice of the peace. I would also order that she participate in any healing plan as directed by the group. This order would be based on the authority under s. 11.1(10)(d) of

the *JPA* to require a 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. With respect to the healing circle, I would stress to HW Gibbon that as the letter from Celina Reitberger explains, a meaningful healing circle requires a full acknowledgement of responsibility.

[142] Sixth, I would order that, after HW Gibbon has participated in the healing circle and completed any healing plan, she would be required to provide apologies to those most affected by her misconduct, including Nicole Klein, Jody Kontzie, Jessica Strobel, HW Chaput and RSJP Caron. These apologies would need to be informed by her learning from the healing circle.

[143] Seventh, I would order that, as a condition of continuing to preside as a justice of the peace, HW Gibbon would be required to undertake additional education and mentoring as assigned by the Chief Justice, including monthly meetings with a mentor, for at least one year or as determined by the Chief Justice. This additional mentoring would commence only after completion of the healing circle process.

[144] In my opinion, this combination of remedial dispositions would have the effect of impressing upon HW Gibbon the seriousness of her misconduct, and would permit her to gain insight into her misconduct and to take responsibility for how her conduct has adversely affected a number of justice system participants and how her conduct undermined public confidence in herself, the judiciary, and in the administration of justice.

[145] These significant combined remedial dispositions would, in my view, be sufficient to restore public confidence in Her Worship, the judiciary and the administration of justice

as a whole, while at the same time giving effect to the *Gladue* principles that apply in the present case.

Released: this 25 day of August, 2022

HEARING PANEL:

The Honourable Justice Timothy Lipson, Chair

Justice of the Peace Holly Charyna, Justice of the Peace Member

Mr. John Tzanis, Community Member