

**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**

Counsel:

Linda Rothstein and Alysha Shore, Presenting Counsel

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

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## INTRODUCTION

[1] On January 13, 2020, the Justices of the Peace Review Council (“JPRC” or “Review Council”) received a letter of complaint from the Thunder Bay City Solicitor, Patty Robinet, setting out concerns about the conduct of Justice of the Peace Anna Gibbon. The complaint focused on Her Worship Gibbon’s conduct in relation to the prosecution of a *Highway Traffic Act* charge against her 17-year-old son, who had been involved in an automobile accident. The complaint alleged that HW Gibbon engaged in conduct that amounts to judicial misconduct in that she:

- failed to maintain her personal conduct at a level that ensures public trust and confidence;
- failed to avoid a conflict of interest, or the appearance of a conflict of interest, in the performance of her judicial duties, and
- failed to use the power of her judicial office appropriately, in that she intended to use her judicial office to influence the prosecutorial proceedings against her son.

[2] After reviewing and investigating the complaint in accordance with s. 11(1) of the *Justices of the Peace Act (JPA)*, a complaints committee of the Review Council directed that a formal hearing be held pursuant to s. 11(15) of the *Act*. Pursuant to the Procedures of the Review Council, a Notice of Hearing was prepared setting out the allegations to be considered by the hearing panel.

[3] In summary, the Notice of Hearing alleges that:

Her Worship acted as an advocate for her son in respect of his legal matter and attempted to persuade, threaten and/or intimidate the prosecutor, the Supervisor of Court Services and/or the Regional Senior Justice of the Peace into having the charge against her son

withdrawn or stayed. Her Worship invited judicial officers assigned to preside over her son's matter to her house for dinner. Her Worship disclosed confidential information about the Council's investigation into her conduct to a court clerk and made disparaging remarks to the court clerk about court staff. Her Worship abused her position of judicial office and failed to uphold the integrity, impartiality and independence of judicial office.

[4] For the reasons that follow, we are satisfied that the evidence adduced at this hearing establishes that HW Gibbon engaged in judicial misconduct. HW Gibbon's conduct in relation to the prosecution of 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 find that HW Gibbon's failure, on more than one occasion, to respect the ethical and professional boundaries of her office and to act with impartiality, integrity and independence has undermined public confidence in the administration of justice.

## **PROCEDURAL HISTORY**

[5] As noted, a complaint about HW Gibbon's conduct was received on January 13, 2020 and was investigated by a complaints committee of the Review Council. Pursuant to s. 11(11)(a) of the *JPA*, the complaints committee made an interim recommendation to the Regional Senior Justice that HW Gibbon be reassigned to a court location other than the location from which the complaint arose, pending the final disposition of the complaint. The interim recommendation was accepted, and Her Worship has been reassigned to another court location pending the final disposition of the complaint.

[6] Following its investigation and consideration of the complaint, the complaints committee referred the complaint to a formal hearing pursuant to s. 11(15) of the *JPA*.

The Notice of Hearing, dated December 21, 2020, was publicly filed at the initial set-date appearance held on January 27, 2021.

[7] On April 19, 2021, presenting counsel filed a motion to withdraw two of the allegations in the Notice of the Hearing on the basis that there was no reasonable prospect of a finding of judicial misconduct in respect of those allegations. The hearing panel granted the motion on consent on April 28, 2021. The hearing panel ordered presenting counsel to serve and file an Amended Notice of Hearing, which is appended as Appendix A to these reasons.

[8] The hearing of the evidence took place during the weeks of June 14-18 and July 5-9, 2021.<sup>1</sup> Due to the coronavirus pandemic, on consent of all the parties, the hearing was held virtually by videoconference.<sup>2</sup>

[9] Further to a motion brought on consent by HW Gibbon on July 5, 2021, the hearing panel ordered that HW Gibbon's residential address and the telephone numbers of she and her family be redacted in the evidence and documents that form part of the public record in this hearing.

[10] The panel received written closing submissions from counsel for HW Gibbon and from presenting counsel, which were followed by oral closing submissions heard on November 12, 2021.

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<sup>1</sup> Evidence was heard on June 14-16, 18 and July 5-6, 2021.

<sup>2</sup> In accordance with s. 5.2.1 of the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22 (the "SPPA") and Rule 9.1 of the JPRC Procedures Document

## **OVERVIEW OF THE ALLEGATIONS**

[11] The Amended Notice of Hearing set out in Appendix A to these reasons alleges that HW Gibbon's conduct towards the prosecutor who had carriage of the prosecution of the charge against her son, towards her judicial colleagues, including Regional Senior Justice of the Peace Bernard Caron, and towards court staff, constituted a failure to act with independence, impartiality and integrity in respect of the court proceedings involving her son, and/or gave the appearance that she failed to act with independence, impartiality and integrity (Allegation #1).

[12] It is further alleged that Her Worship's ongoing conduct in relation to her son's court case demonstrated a continuing pattern of inappropriate conduct that undermined the independence, impartiality and integrity of her judicial office (Allegation #2).

[13] The Amended Notice of Hearing provides a detailed list of particular allegations regarding Her Worship's conduct towards the prosecutor, other justices of the peace, including RSJP Caron, the supervisor of Court Services, and a court clerk in the Provincial Offences Office at the Thunder Bay courthouse (Allegation #3). The particularized allegations will be explored below.

[14] These particularized items of alleged misconduct are said to "individually and collectively, constitute judicial misconduct that harms the public's confidence in the judiciary, the integrity, impartiality and independence of her judicial office and in the judiciary as a whole, and the administration of justice, and warrants a disposition under section 11.1(10) of the *Justices of the Peace Act*" (Allegation #4).

## **ROLE OF THE JPRC HEARING PANEL**

[15] The mandate of a hearing panel of the Review Council is to inquire into the facts and determine whether there has been judicial misconduct, and, where judicial misconduct is found, determine the appropriate disposition to restore public confidence in the judiciary: JPRC Procedures Document, r. 10.1. The hearing panel's focus is remedial.

[16] The role played by judicial councils in conducting a hearing into a complaint is not to be confused with the role played by trial courts, nor by other administrative tribunals. The distinct role of judicial councils in ensuring accountability for judicial conduct is well-captured in a 2002 decision of the Supreme Court of Canada in *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 1, [2002] 1 S.C.R. 249, at para. 58:

In some cases, however, the actions and expressions of an individual judge trigger concerns about the integrity of the judicial function itself. When a disciplinary process is launched to look at the conduct of an individual judge, it is alleged that an abuse of judicial independence by a judge has threatened the integrity of the judiciary as a whole. The harm alleged is not curable by the appeal process.

[17] In the Supreme Court of Canada decision of *Ruffo v. Conseil de la magistrature*, [1995] 4 SCR 267, Gonthier J., writing for the majority of the Court, discussed the role of the Comité d'enquête under the Quebec *Courts of Justice Act*. Justice Gonthier explained that the mandate and role of the Comité is not in the nature of a trial court, but rather is of an inquisitorial nature:

[72] As I noted earlier, the Comité's mandate is to ensure compliance with judicial ethics; its role in this respect is clearly one of public order. For this purpose, it must inquire into the facts to



decide whether the Code of Ethics has been breached and recommend the measures that are best able to remedy the situation. Accordingly, as the statutory provisions quoted above illustrate, the debate that occurs before it does not resemble litigation in an adversarial proceeding; rather, it is intended to be the expression of purely investigative functions marked by an active search for the truth.

[73] In light of this, the actual conduct of the case is the responsibility not of the parties but of the Comité itself, on which the *CJA* confers a pre-eminent role in establishing rules of procedure, researching the facts and calling witnesses. Any idea of prosecution is thus structurally excluded. The complaint is merely what sets the process in motion. Its effect is not to initiate litigation between two parties. This means that where the Conseil decides to conduct an inquiry after examining a complaint lodged by one of its members, the Comité does not thereby become both judge and party: as I noted earlier, the Comité's primary role is to search for the truth; this involves not a *lis inter partes* but a true inquiry in which the Comité, through its own research and that of the complainant and of the judge who is the subject of the complaint, finds out about the situation in order to determine the most appropriate recommendation based on the circumstances of the case before it. [Underlining in original.]

[18] As described by Deputy Judge Rouleau in *Girouard v. Canada (Attorney General)*, 2018 FC 865, aff'd 2019 FCA 148 and 2019 FC 1282, at para. 62, the role of a Judicial Council is not to adjudicate a winning litigant in a conflict between two parties, but rather is to seek the truth. As further explained by the hearing panel in *Re Phillips* (JPRC, 2013)<sup>3</sup> at paragraph 11:

Judicial Councils, however, do not follow the adversarial system common to most litigation in Canada. Their role is unique in that they must balance constitutionally protected rights, such as judicial independence and ensure compliance with judicial ethics.

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<sup>3</sup> Reasons for Decision on Calling a Witness. See also *Re Foulds* (JPRC 2017), at para. 5

[19] It is open to a hearing panel to admit hearsay evidence, make inquiries of witnesses and even seek evidence from a witness not called to testify. For example, s. 12(1) of the *SPPA* authorizes a hearing panel to require any person, including a party, by summons, to give evidence under oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things which are relevant to the subject matter of the hearing.

[20] After completing a hearing, the hearing panel may dismiss the complaint, with or without a finding that it is unfounded. If the hearing panel finds that there has been misconduct, the hearing panel may order a number of things, from a warning, a reprimand, an order for apology or an order to take education or treatment, to a suspension, with or without pay, to, at the most serious end, a recommendation to the Attorney General that the justice of the peace be removed from office: s. 11.1(10) of the *JPA*.

## **STANDARDS OF JUDICIAL CONDUCT**

[21] It is well-established in the jurisprudence of the Review Council that justices of the peace are judicial officers and the standards of conduct that apply to judges of the provincial and superior courts apply to justices of the peace: see, for example, *Re Massiah* (JPRC 2015), at para. 16.

[22] In *Re McLeod* (OJC 2018), Justice Robert J. Sharpe observed that: “Judges ... are not guided or bound by a crystal-clear set of rules. They must look to more general principles of judicial ethics that have evolved over time.” He then noted that the ethical

principles are advisory in nature and not meant to be an exhaustive code or list of prohibited behaviours.

[23] The *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* (the “*Principles*”), approved by the Review Council on December 7, 2007, pursuant to s. 8(c) of the *JPA*, set out the “standards of excellence and integrity to which all justices of the peace subscribe”. The Preamble to the *Principles* declares that:

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

The following principles of judicial office are established by the justices of the peace of the Ontario Court of Justice and set out the standards of excellence and integrity to which all justices of the peace subscribe. These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives.

[24] The relevant *Principles* in this case provide that:

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

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

3.3 Justices of the peace must not abuse the power of their judicial office or use it inappropriately.

[25] In his text “Judicial Conduct and Accountability” (Scarborough, Ontario: Carswell, 1995), Justice David Marshall remarked on the basic values that judges must uphold (at p. 67):

These can be stated concisely, but almost compendiously, as essentially three: first, to refrain from any action or activity that might compromise a judge’s independence or impartiality; secondly, judges must always act with civility; and thirdly, and simply, judges must be diligent in the performance of their duties.

[26] The case law makes clear that public confidence in the judiciary and the administration of justice is a crucial consideration in assessing allegations of judicial misconduct. The Supreme Court of Canada has set out three aspects of judicial conduct that underpin public confidence in the judiciary and the administration of justice: impartiality, independence and integrity: *Therrien (Re)*, 2001 SCC 35, [2001] 2 S.C.R. 3. In *Therrien*, Justice Gonthier at para. 110 quoted from a paper by the Canadian Judicial Council explaining the significance of public confidence in and respect for the judiciary:

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simply misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality and good judgment (Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14). [Emphasis added.]

[27] In *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 1, [2002] 1 S.C.R. 249, the Supreme Court explained how misconduct by a judge may threaten the integrity of the judiciary as a whole (at para. 58):

In some cases, however, the actions and expressions of an individual judge trigger concerns about the integrity of the judicial function itself. When a disciplinary process is launched to look at the conduct of an individual judge, it is alleged that an abuse of judicial independence by a judge has threatened the integrity of the judiciary as a whole. The harm alleged is not curable by the appeal process.

### **TEST FOR JUDICIAL MISCONDUCT**

[28] The Panel's role in these proceedings is to determine whether the allegations, if proven on a balance of probabilities, should result in a finding (or findings) that HW Gibbon engaged in judicial misconduct, such that a disposition or combination of dispositions should be imposed under s. 11.1(10) of the *JPA*.

[29] The *JPA* does not define judicial misconduct. In addition to the general ethical principles outlined, the case law assists in characterizing what conduct constitutes misconduct.

[30] In *Re Baldwin* (OJC 2002), a Hearing Panel of the Ontario Judicial Council applied the Supreme Court of Canada's test for removal from office in reaching its conclusion that there was no judicial misconduct in that case:

The issue is – what is necessary to constitute misconduct within the meaning of that section.

In two recent cases, *Therrien v. Minister of Justice et al.* (2001), 155 C.C.C. (3d) 1, and *Moreau – Berube v. New Brunswick (Judicial Council)*, 2002 S.C.C. 11, the Supreme Court of Canada considered the requirements for judicial misconduct albeit in the

context of statutes in other provinces that did not have the full range of alternative dispositions found in s. 51.6(11) [of the *Courts of Justice Act*, R.S.O. 1990, c. C-43]. Nonetheless, in our view the test set out by the Supreme Court is applicable to findings of misconduct under the Ontario Statute.

In *Moreau-Berube v. New Brunswick (Judicial Council)*, the Supreme Court discussed the tension between judicial accountability and judicial independence. Judges must be accountable for their judicial and extra-judicial conduct so that the public have confidence in their capacity to perform the duties of office impartially, independently and with integrity. When public confidence is undermined by a judge's conduct there must be a process for remedying the harm that has been occasioned by that conduct. It is important to recognize, however, that the manner in which complaints of judicial misconduct are addressed can have an inhibiting or chilling effect on judicial action. The process for reviewing allegations of judicial misconduct must therefore provide for accountability without inappropriately curtailing the independence or integrity of judicial thought and decision-making.

The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in s. 51.6(11) should be invoked, when necessary in order to restore a loss of public confidence arising from the judicial conduct in issue.

Paraphrasing the test set out by the Supreme Court in *Therrien* and *Moreau-Berube*, the question under s. 51.6(11) is whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence.

It is only when the conduct complained of crosses this threshold that the range of dispositions in s. 51.6(11) is to be considered. Once it is determined that a disposition under s. 51.6(11) is required, the Council should first consider the least serious – a warning – and move sequentially to the most serious – a recommendation for removal – and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally.

[31] The hearing panel in *Baldwin* explained that in determining whether the conduct in issue is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office, or in the administration of justice generally, public confidence should be viewed from the perspective of the "reasonable, fair-minded, informed member of the public".

[32] Hearing panels of the Justices of the Peace Review Council have in the past relied on the *Baldwin* analysis in considering the test for judicial misconduct. For example, in *Re Winchester* (JPRC 2020), the Hearing Panel provided the following description of the nature of judicial misconduct, at para. 15:

In an OJC hearing about the conduct of Justice Norman Douglas (*Re Douglas*, OJC 2006), the Hearing Panel described the test for judicial misconduct as follows:

[8] Based on *Re: Baldwin* and *Re: Evans*, the test for judicial misconduct combines two related concerns: (1) public confidence; and (2) the integrity, impartiality and independence of the judge or the administration of justice. The first concern requires that the Hearing Panel be mindful not only of the conduct in question, but also of the appearance of that conduct in the eyes of the public. As noted in *Therrien*, the public will at least demand that a judge give the appearance of integrity, impartiality and independence. Thus, maintenance of public confidence in the judge personally, and in the administration of justice generally, are central considerations in evaluating impugned conduct. In addition, the conduct must be such that it implicates the integrity, impartiality or independence of the judiciary or the administration of justice.

[9] Accordingly, a judge must be, and appear to be, impartial and independent. He or she must have, and appear to have, personal integrity. If a judge conducts

himself, or herself, in a manner that displays a lack of any of these attributes, he or she may be found to have engaged in judicial misconduct. [Emphasis added.]

[33] This test applies to judicial conduct that occurs in or outside of a court proceeding.

[34] The settled jurisprudence in this area makes it clear that the purpose of judicial misconduct proceedings is “essentially remedial”. The role of the hearing panel is to focus on what is necessary to restore a loss of public confidence resulting from the conduct in issue, rather than to punish the individual judicial officer.

[35] In short, the panel must engage in a two-step inquiry. The first step is to determine whether Her Worship’s conduct was incompatible with judicial office. If the answer to that question is yes, the second question is whether Her Worship’s conduct was so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public’s confidence in her ability to perform the duties of office or in the administration of justice generally so as to require a finding of judicial misconduct.<sup>4</sup>

## **BURDEN AND ONUS OF PROOF**

[36] Presenting counsel bears the onus of establishing the allegations on a balance of probabilities. Justice of the Peace Gibbon is presumed not to have engaged in any judicial misconduct unless the evidence establishes otherwise.

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<sup>4</sup> See *Re McLeod: Reasons for Decision* (OJC, 2018) at para 71.



[37] A finding of professional misconduct requires clear and convincing proof, based on cogent evidence: *F.H. v. McDougall*, [2008] 3 SCR 41 at para. 46; see also *Re Evans* (OJC 2004) and *Re Douglas* (OJC 2006).

## **APPROACH TO CREDIBILITY FINDINGS**

[38] In their written closing submissions, presenting counsel accurately summarizes the law of credibility in civil cases:

Evaluating evidence involves the assessment of a witness's reliability and credibility. These are distinct but related concepts with reference to the witness's accuracy (the former) and veracity (the latter). Evaluating credibility is not a scientific process and there are no hard and fast rules to apply.

...

Notably, discrepancies in a witness's testimony, or between her testimony and that of others does not necessarily mean the evidence should be discredited. No one should expect perfection or absolute consistency in testimony.

Nevertheless, the cases above highlight the following hallmarks of a witness that is not credible:

- (a) argumentativeness and unresponsiveness to questions;
- (b) inconsistency with previous statements and/or the surrounding circumstances;
- (c) the inherent improbability of the witness's story;
- (d) conveniently selective memory; and
- (e) refusal to acknowledge obvious yet unfavourable points.

Ultimately, the Hearing Panel is entitled to accept none, some or all of a witness's evidence. The Hearing Panel is also entitled to conclude that a witness misremembers certain details but is still credible on key points.

[39] Counsel for HW Gibbon accepts presenting counsel's summary of the law on the approach to assessing credibility. Counsel for HW Gibbon also asks this panel to take into account Her Worship's experience as an Indigenous woman in the community of Thunder Bay, and in the legal community in particular, in assessing her credibility.

## **ROLE OF PARTICULARS IN THE NOTICE OF HEARING**

[40] Allegations in misconduct hearings are not akin to counts in a criminal indictment and should not be treated as such by this hearing panel. The leading authority on this point is the Divisional Court decision in *Re Stevens and Law Society of Upper Canada*, 1979 CanLII 1749 (ON SC). Justice Cory, writing for the Court, held:

The charges brought against a professional person by his governing body should not, in most cases, be approached as though they were counts in an indictment alleging that he committed an offence or offences contrary to the *Criminal Code*. The essence of the discipline hearing will be to determine whether or not there has been professional misconduct: see *Re Milstein and Ontario College of Pharmacy et al.* (1978), 1978 CanLII 1294 (ON CA), 20 O.R. (2d) 283, 87 D.L.R. (3d) 392. Charges of professional misconduct should, if possible, avoid using the wording of the *Criminal Code*. Rather they should specify that there has been professional misconduct and set out the particulars relied upon to demonstrate such conduct. Those particulars should not be given the designation of "count" which may imply that the procedure to be followed is that provided by the *Criminal Code*.

[41] The overriding concern is whether the justice of the peace has had a fair opportunity to respond to the substance of the allegations being made. Where a Notice of Hearing does not particularize certain conduct that is raised in evidence in the hearing, the hearing panel may nonetheless consider this evidence, subject to any concerns of prejudice to the subject justice of the peace, including whether the justice of the peace had an opportunity to respond to evidence that was not referred to in the Notice of

Hearing: see, e.g., *LSUC v. McSween*, 2012 ONLSAP 3; *LSUC v. Sunday*, 2008 ONLSAP 11; *LSUC v. Wong*, 2011 ONLSAP 15; *LSUC v. Ross*, 2011 ONLSAP 4.

## **THE EVIDENCE**

[42] Presenting counsel and counsel for HW Gibbon arrived at an Agreed Statement of Facts which was filed at the hearing (Exhibit 4). In addition, oral evidence was received from various witnesses, including HW Gibbon, over the course of six days: June 14, 15, 16, 18, July 5 and 6, 2021.

### **1. Undisputed Evidence**

[43] The following evidence emerges from the Agreed Statement of Facts, from HW Gibbon's testimony and from the unchallenged evidence called by presenting counsel.

#### **(a) Background facts**

[44] In February 2013, HW Gibbon was appointed as justice of the peace and assigned to the Northwest Region, which includes the City of Thunder Bay.

[45] On February 5, 2019, HW Gibbon's teenaged son was in a car accident. After being advised of the accident by her husband, Her Worship attended at the scene. The police were on scene when she arrived. A police officer said to HW Gibbon and her son, "we believe your son didn't stop" at the intersection where the accident occurred. Police laid a charge of fail to yield under s. 136(1)(b) of the *Highway Traffic Act*. The penalty upon conviction for this offence is an \$85 fine, plus court costs and three demerit points.

[46] The charge of fail to yield is a strict liability offence and is normally heard by a justice of the peace presiding in Provincial Offences court.

[47] On February 6, 2019, HW Gibbon attended the Thunder Bay Provincial Offences court office and filed a Certificate of Offence on behalf of her son requesting a trial. She filed the Certificate by entering the non-public area of the office and providing the Certificate to Jody Kontzie, who was the Supervisor of Court Services.

[48] Jessica Strobel, a court clerk in the Provincial Offences office, identified that the case would need to be heard in conflict court since the defendant's mother was a justice of the peace presiding in Thunder Bay. In accordance with the office procedures at the time, Ms. Strobel placed a sticky note on the defendant's copy of the Certificate of Offence identifying the need to schedule the case in conflict court. The sticky note read: "Conflict Court HW Gibbon's son".

[49] On or about February 25, 2019, the matter was scheduled for a June 19, 2019 trial in conflict court. The Notice of Trial was sent to Her Worship's son around that time.

[50] HW Gibbon testified that, on or about March 4, 2019, she personally filed her son's Request for Provincial Offences Disclosure form at the Municipal Prosecutor's office. She testified that she did so at her son's request. HW Gibbon further testified that she put her own name and phone number on the form and requested court staff to phone her when the disclosure was ready to be picked up.

[51] HW Gibbon testified that she followed up with the Municipal Prosecutor's office on two occasions to ask when the disclosure would be ready. After being informed that it was available, she picked up the disclosure and provided it to her son. She testified that she was advised by staff in the Municipal Prosecutor's office that a prosecutor had been

assigned to deal with her son's case and that it was scheduled to be heard on June 19, 2019.

[52] On May 3, 2019, the June 2019 sitting schedule was sent to the justices of the peace of the North West Region, including HW Gibbon. The schedule indicated that Justice of the Peace Gordon Chaput was presiding in Provincial Offences conflict court in Thunder Bay on June 19, 2019.

**(b) HW Gibbon's interactions with the Prosecutor**

[53] On May 22, 2019, the Municipal Prosecutor's office emailed Nicole Klein, an out-of-town paralegal, to retain her to act as the prosecutor for the trial of HW Gibbon's son on June 19, 2019. In the email to Ms. Klein, the prosecution clerk indicated that the investigating officer was not available on the date scheduled for the trial. Ms. Klein was asked if she wanted to issue a summons or have the clerk prepare an application to adjourn the trial.

[54] Ms. Klein spoke with the prosecution clerk by telephone that same day, and documented the conversation in a subsequent email to the clerk. The email states that Ms. Klein advised the clerk to contact the defendant to provide him with disclosure and with her (Ms. Klein's) contact information "for the purpose of discussing resolution." Ms. Klein indicated in the email that, if the matter did not resolve, she would seek an adjournment of the trial to a date in 2020 when the officer in charge was available.

[55] On May 27 and 28, 2019, HW Gibbon's son and Ms. Klein exchanged emails and phone calls but were unable to connect by phone.

[56] HW Gibbon testified that on May 28, 2019, she telephoned Ms. Klein and identified herself as the mother of the defendant. She did not identify herself as a justice of the peace. As is her standard practice, Ms. Klein asked HW Gibbon if she had consent to speak on behalf of her son and HW Gibbon confirmed that she did. At no time during the call did HW Gibbon advise Ms. Klein that she was a justice of the peace. Ms. Klein did not know HW Gibbon, nor had she had any previous contact with her.

[57] Ms. Klein advised HW Gibbon that the police (*i.e.*, the witness for the prosecution) was on leave and would be unavailable to attend the trial on June 19, 2019. HW Gibbon advised Ms. Klein that her son had an exam the day after the trial.

[58] There are significant differences between the evidence of Ms. Klein and Her Worship with respect to other aspects of this phone call. These differences in the evidence are germane to some of the particulars found in Allegation #3 of the Amended Notice of the Hearing. The conflicting evidence is discussed below at paras. 79-101.

**(c) HW Gibbon's dinner invitation to HW Chaput**

[59] On June 19, 2019, Her Worship drove her son to the courthouse but did not attend the courtroom in which the trial was being held with him and his lawyer.

[60] Prior to the start of court, HW Gibbon saw HW Chaput. During their brief discussion, she invited him to dinner that night. It was HW Gibbon's standard practice to invite visiting colleagues to dinner as a gesture of hospitality. She extended the same invitation to Justice of the Peace Margot McLeod, who was also in Thunder Bay on June 19, 2019 as a visiting justice of the peace.

[61] HW Chaput accepted HW Gibbon's dinner invitation. He testified that he did not know at the time that he was scheduled to preside over the trial of HW Gibbon's son. When the defendant's case was called that morning, HW Chaput did not recognize the defendant's name or realize that he was related to HW Gibbon.

[62] While Ms. Klein was making brief submissions seeking an adjournment, which was opposed by the defence, HW Chaput reviewed the file and noticed the sticky note indicating that the defendant was HW Gibbon's son. He immediately advised counsel that he would not be able to proceed. The matter was adjourned as a result.

[63] It was not disputed during this hearing that the sticky note should not have formed part of the court file that was placed before the presiding justice of the peace.

[64] Following the appearance, HW Gibbon's son and his lawyer advised Her Worship of what had happened in court with the sticky note. In addition, HW Chaput sent a text message to HW Gibbon advising her of what had occurred in court and stating that he would no longer be attending dinner at her house as he did not believe "the OPTICS are favourable." Sometime later, HW Gibbon responded by text as follows: "I understand completely Gord – please know we hold you no ill will Anna".

[65] The only issue in dispute related to this aspect of the evidence is whether HW Gibbon knew that HW Chaput would be presiding at her son's trial before she invited him to dinner at her house that evening. That issue will be discussed below at paras. 102-108.

**(d) HW Gibbon's interactions with Ms. Kontzie and RSJP Caron**

[66] It is not disputed that, immediately after learning about the sticky note, HW Gibbon went to the Provincial Offences office, and used her security pass to enter the private area of the office. She asked to speak to Jody Kontzie, Supervisor of Court Services, in her office.

[67] HW Gibbon asked Ms. Kontzie to call Regional Senior Justice of the Peace (RSJP) Bernard Caron on speakerphone. The three of them had a 5 to 10-minute discussion over speakerphone. HW Gibbon acknowledged that during this conversation, she:

- wanted to know how the sticky note got left on her son's file;
- expressed frustration over the mounting legal costs as a result of the adjournment of the trial;
- was "angry" and "incredulous";
- asked who was going to "lose their job" for leaving the sticky note on the file; and
- "intimidated" Ms. Kontzie.

[68] In cross-examination, Her Worship acknowledged that RSJP Caron instructed her to leave Ms. Kontzie's office on two occasions during their speakerphone conversation. Eventually she heard him, left Ms. Kontzie's office, and went to speak with RSJP Caron in his office.



[69] HW Gibbon acknowledged during cross-examination that, when speaking with Ms. Kontzie, she was in the “arousal phase” and was behaving like a “mama bear protecting her cub”. She conceded that her ability to see her own behaviour was impaired.

[70] HW Gibbon testified that during her ensuing conversation with RSJP Caron, she was “still very upset” and “still very angry”. She felt her son was “denied justice” and wanted to know “what RSJP Caron was going to do about this.” She expressed the view that someone should lose their job as a result. RSJP Caron advised her that he would look into the matter further to better understand what had occurred.

[71] On July 3, 2019, RSJP Caron sent HW Gibbon an email in which he stated, in part:

I have no authority to ask the POA office or the prosecutor to have someone disciplined, to have the matter withdrawn or stayed. More importantly, you have to be careful when advocating for your son. You will always be a Justice of the Peace and therefore, you should not use you [sic] position or appear to use your position to influence the outcome. If there are some recourses or remedies, the[y] are for your son’s lawyer and him alone to make before another Justice of the Peace or the prosecutor. [Emphasis in original.]

[72] HW Gibbon responded to the RSJP’s email on July 15, 2019 with a lengthy email in which she stated, in part:

Thank you for your reply Your Worship,

What would we have done if my son didn’t have a lawyer? 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].

If I were member of the public I would have demanded to speak to the supervisor (she is a public servant and answerable to the public) at the front counter, berated her publicly and probable [sic] taken this issue to the Mayor and made it public. Instead, I maintained my professionalism, asked politely to speak with her privately and ensured that that conversation was not held alone as I requested she contact you.

You are implying that I'm trying to influence the outcome. That is NOT what I'm trying to do and take quite offense that you would even suggest that. From the start of this issue, I have been transparent and detached from this process as to not jeopardize or influence the outcome. As I've shared with you on numerous occasions, my son has been horribly discriminated against in this community and has a fear of speaking with people in positions of authority. ...

[73] There are three particular aspects of the evidence regarding HW Gibbon's interaction with Ms. Kontzie and RSJP Caron that are disputed. In addition, there is a dispute as to whether HW Gibbon asked RSJP Caron to have the charge against her son withdrawn or stayed, as indicated in RSJP Caron's July 3<sup>rd</sup> email. These areas of dispute are discussed in paras. 109-21 below.

**(e) HW Gibbon's reaction following the adjournment of her son's trial**

[74] The defendant's trial ultimately took place in December 2019. On January 3, 2020, he was found guilty. After learning of the verdict, HW Gibbon sent RSJP Caron two text messages:

Fri, Jan 3, 2:42 PM

Just wanted you to know that [name omitted] was found guilty today – considering his matter would have been dismissed last year if the clerk hadn't put that sticky note on his certificate he is now losing 3 demerit points and his insurance is going through the roof. So much for Justice for my son.

Fri, Jan 3, 5:56 PM

Justice Wilson found that his testimony wasn't "credible". Meanwhile the other kid could [sic] remember the make of the car he was driving.

**(f) HW Gibbon's conversation with Jessica Strobel**

[75] On February 3, 2020, HW Gibbon was informed by her Regional Senior Judge that she would not be assigned to Provincial Offences Court in Thunder Bay pending the final disposition of a complaint about her conduct that had been filed with the Justices of the Peace Review Council (*i.e.*, the present complaint). A letter from the Review Council to the Regional Senior Judge, on which HW Gibbon was copied, summarized the allegations in the complaint. The letter states that "correspondence from the Review Council, including this letter, is confidential" (Exhibit 7).

[76] On March 17, 2020, HW Gibbon ran into Ms. Strobel at a grocery store and stood behind her in line at the check-out counter. HW Gibbon had been on medical leave since mid-January 2020, and they had not seen each other in some time. They had a causal conversation about the pandemic while paying for groceries.

[77] While leaving the grocery store, Ms. Strobel asked HW Gibbon how she was feeling, given that the justice of the peace had been off work for several months on medical leave. In response, HW Gibbon discussed her son's case and the stress it was causing her family, including the financial toll.

[78] There are several material points on which the evidence of Ms. Strobel and HW Gibbon differ, as discussed below at paras. 122-29.

## **2. Disputed Evidence**

### **(a) Content of Conversation between HW Gibbon and the Prosecutor**

[79] There is no dispute that HW Gibbon telephoned Ms. Klein on May 28, 2019 to speak to her about her son's case. However, HW Gibbon's evidence regarding the content of this conversation differs substantially from Ms. Klein's.

[80] HW Gibbon testified that she advised Ms. Klein that her son wished to speak to her about the case and asked Ms. Klein to contact him, since he was available to speak to her at that time. According to HW Gibbon, Ms. Klein told her that she was not willing to speak with her son about his understanding of the events in relation to the accident. She also testified that Ms. Klein did not speak to her about any form of resolution of the charge.

[81] In contrast, Ms. Klein testified that during the May 28 phone call:

- she discussed a possible resolution of the charge, first with HW Gibbon, and later with HW Gibbon's son;
- HW Gibbon asked her if she had reviewed the file and asked her if she "even believed there was a reasonable prospect of conviction";
- HW Gibbon commented "Do you even know who I am?" during their conversation, at which point Ms. Klein stopped Her Worship from providing any further details, after explaining that her role as a conflict prosecutor is not to be privy to the relationships or the roles of people that could lend some sort of bias.
- HW Gibbon advised that the defendant would be bringing a motion for an adjournment because he was in high school and had exams.

[82] HW Gibbon denied having made any of the comments attributed to her by Ms. Klein, although in cross-examination, she acknowledged that she may have mentioned

something to Ms. Klein about her son having exams. However, she denied that she suggested or agreed to an adjournment.

**(i) Positions of the Parties**

[83] Presenting counsel contends that the following considerations may tend to support the credibility and reliability of Ms. Klein's testimony about the content of her conversation with HW Gibbon:

- On June 19, 2019, when the case against HW Gibbon's son was called, the court transcript reveals that Ms. Klein informed HW Chaput that she had had "resolution discussions with both Mr. Gibbon and one of his parents" and that it was her "initial understanding" that "they would be seeking an adjournment due to a number of factors". According to presenting counsel, as an officer of the court, Ms. Klein's spontaneous remarks to the presiding justice of the peace in court before any issue with respect to Her Worship's conduct was known or raised should be given significant weight.
- Ms. Klein based her recollection of the events on her standard practices of always inquiring if an agent or representative of the defendant has the consent of the defendant to speak to her; that she always begins a case by trying to have the matter resolved; and she does not bring a motion to adjourn where she believes there is consent.
- Ms. Klein's evidence at the hearing is consistent with the following documentary evidence, namely three emails that Ms. Klein sent to staff of the City of Thunder Bay, which were admitted into evidence on agreement of the parties:

- 1) An email from Ms. Klein to the City of Thunder Bay court clerk, Nuala Wieckowski, on May 22, 2019, in which Ms. Klein wrote:

This will confirm our telephone conversation [of] today's date that you will contact the defendant and provide disclosure as requested. In addition, please provide the defendant with my contact information for the purpose of discussing resolution.

If I do not hear from the defendant, or if this matter does not resolve, I will be seeking an adjournment of

the trial to a date when the OIC is available in 2020 due to his inability to attend any conflict dates this year.

According to presenting counsel, this email tends to undermine HW Gibbon's evidence that Ms. Klein told her during the conversation on May 28, 2019 that she was unwilling to speak with her son about his understanding of events in relation to the accident. It also tends to undermine HW Gibbon's evidence that Ms. Klein had not raised the issue of an adjournment due to the unavailability of the Officer in Charge to attend at the scheduled trial date of June 19, 2019.

- 2) An email from Ms. Klein to Leslie Dack, a City of Thunder Bay prosecutor, on June 20, 2019, the day after the trial was adjourned, in which Ms. Klein wrote in part:

Upon speaking with [defendant] and his mother about three weeks ago with regard to disclosure and possible resolution, the defendant's mother advised me that they were seeking an adjournment of the trial due to the fact that [defendant] is in highschool and had exams scheduled on June 19, 2019. It was my anticipation that it would be a joint request for adjournment under all of those circumstances as this was discussed at length with the defendant and his mother.

In court on Wednesday, [defendant's] lawyer attended with [defendant] indicating they were there and ready for trial. I called the matter and addressed the court with respect to my request for an adjournment, and put on record that I was of the understanding that it was a joint request based on my communication with the defendant and his mother regarding his exams.

We did not get very far in any event... as someone (I assume from the POA administration?) put a sticky note on the court copy of the certificate of offence indicating that the defendant's mother was a local Justice of the Peace. The Justice sitting on Wednesday brought this to our attention on record, and indicated he would not hear the matter under those circumstances.

- 3) An email from Ms. Klein to Ms. Wieckowski, dated July 8, 2019, wherein Ms. Klein wrote in part:

On May 28, 2019, I received a phone call from Anne Gibbon who advised me she was [the defendant's] mother and that she was calling on his behalf and with his consent. I attempted to discuss the file and possible resolution of the charge, and Ms. Gibbon indicated that she did not believe I had any reasonable prospect of conviction, and asked whether I had even reviewed the evidence. I advised her that I did, and that I was content with RPC [reasonable prospect of conviction]. At one point in the conversation, Ms. Gibbon stated to me, "Do you even know who I am?... I am..." at which point I stopped her from making any further comments, and advised that I did not wish to know how she may be related to this charge or defendant, and that her attempting to advise me of her involvement would be highly inappropriate, and that I wished to remain unbiased without any further information provided about the parties involved. Ms. Gibbon then advised that her son, ... , would not be available for the trial scheduled for June 19<sup>th</sup> as he would be in the middle of exams and unable to attend. Anne Gibbon indicated she would be bringing a motion to adjourn the trial. I indicated I would not object to any adjournment as it was also my intention to seek an adjournment due to the inability of the OIC [officer-in-charge] to attend. We discussed that the matter could go over to the next conflict date of September 11<sup>th</sup>. At this point, I advised of my position for resolution if they were interested, and asked that her son ... contact me to discuss the particulars.

On May 28, 2019, I subsequently spoke with [the defendant] with whom I discussed the charge, the consequences of conviction, and possible resolution. He indicated he would discuss matters with his mother and let me know how he wished to proceed. I did not receive any further communication by email or telephone from either [defendant] or Anne Gibbon.

[84] Presenting counsel also references various emails between Ms. Klein and Her Worship's son on May 27 and 28, 2019 that tend to confirm that Ms. Klein was willing to speak with HW Gibbon's son about the case. In these emails, Ms. Klein states that she had tried calling HW Gibbon's son several times but was greeted with the voicemail for Anne Gibbon. Ms. Klein invited HW Gibbon's son to contact her on her cell phone in the evening of May 27 and 28 and provided him with her cell phone number.

[85] Presenting counsel also points out that HW Gibbon's written response during the investigative stage of the complaints process contradicts her evidence at this hearing. In her written response to the complaints committee of the JPRC dated August 31, 2020, HW Gibbon stated:

I deny that I agreed that Ms. Klein and I would be making a joint request for the adjournment of the Trial. In fact, I stated that my son had obtained counsel and that he and his counsel would be ready to proceed with the Trial on June 19, 2019.

[86] However, in her testimony before this hearing panel, HW Gibbon testified that her son did not retain counsel until sometime after her conversation with Ms. Klein.

[87] Counsel for HW Gibbon asks the panel to find that Ms. Klein's evidence is unreliable and seeks an unfavourable credibility finding against her based on her alleged lack of an independent or specific recollection of events. Counsel places particular importance on the fact that, on the topic of resolution, Ms. Klein testified that although she had no specific memory of discussing resolution with HW Gibbon and her son, she relied on her "common practice".



[88] In addition, counsel contends that there were inconsistencies in Ms. Klein's evidence about her conversations with HW Gibbon and her son. For example, Ms. Klein testified at the hearing that she was "100 percent certain" that HW Gibbon uttered the words "Do you know who I am?" during their telephone conversation. Ms. Klein further testified that hearing a comment like that "immediately puts [her] on alert" to proceed with caution. However, she went on to testify that she did not take any notes of the conversation because "there was nothing out of the ordinary in the conversation that caused [her] to think that [she] needed to write anything down". Counsel submits it is highly improbable that Ms. Klein was simultaneously on high alert, while at the time perceiving "nothing out of the ordinary".

[89] Counsel for HW Gibbon also places considerable reliance on the fact that when Ms. Klein was interviewed by investigating counsel, Mr. Robin McKechney, who was retained to investigate the complaint against HW Gibbon on behalf of the JPRC, she stated that the officer who had investigated the accident appeared in court on the June 19th, 2019 appearance date. She also stated that Her Worship asked, "Do you know who I am?", and then proceeded to tell her that she was a justice of the peace in Thunder Bay. She further advised investigating counsel that the case against Her Worship's son was heard in the Superior Court of Justice when it was actually heard in the Ontario Court of Justice.

**(ii) Factual Findings**

[90] Upon weighing all of the evidence, including the testimony of HW Gibbon and Ms. Klein at the hearing, as well as the contemporaneous documentary evidence in the form

of the three emails from Ms. Klein quoted above, we make the following factual findings concerning the May 28<sup>th</sup> phone conversation that HW Gibbon initiated with Ms. Klein:

- HW Gibbon and Ms. Klein spoke about a possible resolution of the charge.
- HW Gibbon indicated to Ms. Klein that she did not believe there was a reasonable prospect of conviction.
- HW Gibbon asked Ms. Klein during the conversation if she knew who she was.
- HW Gibbon indicated that they would be seeking an adjournment of the trial date because her son would be in exams at that time.

[91] These factual findings are anchored in Ms. Klein's testimony at the hearing, which was unshaken in cross-examination, and are supported by her contemporaneous emails.

[92] We conclude that the credibility and reliability of Ms. Klein's evidence concerning the content of the May 28<sup>th</sup> phone conversation is to be preferred to that of HW Gibbon for a number of reasons. First, Ms. Klein had no motive to mislead the court on June 19, 2019 about having had resolution discussions with the defendant and one of his parents, or that she understood the defendant would be seeking an adjournment.

[93] In addition, it is uncontested that the panel may consider and assign weight to the contemporaneous emails that Ms. Klein sent to staff of the City of Thunder Bay and to HW Gibbon's son. These emails were sent long before a complaint to the JPRC was filed in this matter. Section 15(1) of the *SPPA* states:

15.(1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[94] In the email of May 22, sent prior to Ms. Klein's conversation with HW Gibbon, Ms. Klein asked the court clerk to provide the defendant with her contact information for the purpose of discussing resolution, and also indicated her intention to seek an adjournment because of the unavailability of the officer-in-charge. The emails of May 27 and 28<sup>th</sup> between Ms. Klein and Her Worship's son reveal that Ms. Klein was making multiple efforts to contact him to discuss his case, and she provided him with her personal cell number. This evidence undermines the credibility of HW Gibbon's testimony that Ms. Klein indicated she was not prepared to speak to her son about his version of events.

[95] The emails of June 20 and July 8, 2019 are consistent with Ms. Klein's testimony that HW Gibbon brought up the need for an adjournment due to the fact that her son was in exams. Ms. Klein would not have known that he was in exams, as mentioned in these emails, had HW Gibbon not referred to that consideration after being advised by Ms. Klein that she would be seeking an adjournment of the trial date due to the unavailability of the officer in charge of the investigation.

[96] In making our findings, we have rejected the submission by counsel for HW Gibbon that there are material inconsistencies in Ms. Klein's evidence. The fact that she didn't take notes of her conversation with HW Gibbon on May 28<sup>th</sup> is not a sufficient reason to discredit her testimony. While it may have been preferable had Ms. Klein taken

notes of the conversation given her concerns about Her Worship's comment , "Do you know who I am?", there is no suggestion that there was any kind of professional obligation on Ms. Klein to take contemporaneous notes, particularly where she had no reason to suspect that anything untoward would transpire during the call. Counsel for HW Gibbon does not suggest – nor is there any basis to suggest – that Ms. Klein had any motive to fabricate or mislead the City of Thunder Bay's office when she wrote the email of July 8, advising that HW Gibbon stated in her May 28<sup>th</sup> phone call, "Do you even know who I am?". In cross-examination, Ms. Klein testified that she was 100 percent certain that HW Gibbon uttered those words.

[97] Nor do the inconsistencies and inaccuracies in Ms. Klein's interview with investigating counsel for the JPRC cause us to question the credibility or reliability of her testimony at the hearing. The most reasonable inference on the evidence is that Ms. Klein was simply mistaken in stating that the officer-in-charge was present on June 19, 2019, as well as in thinking that the trial occurred in the Superior Court of Justice rather than in the Ontario Court of Justice. It is understandable that, at an interview conducted almost a year after the events in question had occurred, Ms. Klein may have been mistaken about some of these less salient details.

[98] In cross-examination at the hearing, Ms. Klein agreed that she told investigating counsel for the JPRC that, during the May 28<sup>th</sup> phone call, HW Gibbon said she was a justice of the peace in Thunder Bay, in addition to having said, "Do you know who I am?". However, in her testimony before us, Ms. Klein testified that her emails written after the first court appearance would be more reliable. She went on to testify that she could not

confirm if Her Worship actually said she was a justice of the peace during the phone call. Her independent recollection was that she may have. But Ms. Klein acknowledged that her contemporaneous emails do not attribute this comment to HW Gibbon. She explained that, before meeting with investigating counsel, she had not reviewed her contemporaneous emails and documents to refresh her memory of the events in question.

[99] In short, the inconsistencies relied on by counsel for HW Gibbon, in our view, do not serve to discredit Ms. Klein's testimony at the hearing. The content of the contemporaneous emails that Ms. Klein sent in the ordinary course of business, several months before any complaint against HW Gibbon had been filed, was adopted by Ms. Klein at the hearing and are confirmatory of her testimony, which was unshaken during cross-examination.

[100] In contrast, HW Gibbon's testimony that the only reason she called Ms. Klein was to facilitate contact between Ms. Klein and her son is belied by the documentary evidence indicating that Ms. Klein and her son were in touch via emails dated May 27 and 28. These emails reveal that Ms. Klein provided Her Worship's son with her cell phone number and invited him to call her in the evening.

[101] In addition, HW Gibbon was not forthright in her evidence regarding what she said to Ms. Klein about the need for an adjournment due to her son's exam schedule. It was only in cross-examination that HW Gibbon acknowledged that she may have said something to Ms. Klein about her son being in exams around the scheduled trial date.

**(b) HW Gibbon's knowledge when she invited HW Chaput to dinner**

[102] HW Gibbon testified that when she invited HW Chaput to her home for dinner on the morning of June 19, she did not know that he was presiding in conflict court that day or even think about it. She further testified that had she known he would be presiding over her son's case, she would not have extended the dinner invitation. At the same time, HW Gibbon testified that it was her regular practice to invite visiting justices of the peace to her home for dinner or to join her on tours of Thunder Bay followed by dinner at a restaurant.

**(i) Positions of the Parties**

[103] Presenting counsel contends that HW Gibbon's testimony that she did not know HW Chaput would be presiding at her son's trial is implausible. She refers to the significance of the fact that Her Worship's text message to HW Chaput after he resiled from the dinner invitation contained no indication that she was unaware he would be presiding in conflict court, nor did it contain any semblance of regret or apology for the oversight.

[104] Moreover, presenting counsel places reliance on the fact that, in her response letter to the JPRC, dated August 31, 2020, HW Gibbon did not deny knowing HW Chaput would be presiding over her son's case; rather, she defended her actions on the basis that she was not attempting to influence HW Chaput by extending the dinner invitation:

I admit that I did invite him to attend my residence after court for dinner. I had no intention of attempting to influence him in respect of any decision making role he may have played in respect to the Trial of my son, [name omitted], as his decision would have already been made. ... I did not intend to have made any discussion with His Worship Chaput at that time regarding my son's case.

In retrospect, I must agree with His Worship Justice of the Peace Chaput's own words, that the "optics" were not good. As I had already invited another visiting Justice of the Peace to dinner, I felt that His Worship Chaput may have felt unwelcome if he were left out.

[105] Counsel for HW Gibbon submits that HW Chaput's evidence regarding the invitation to dinner is consistent with that of her Worship Gibbon. In this regard, he points out that HW Chaput testified that the dinner invitation was extended during an unplanned encounter with her that occurred near his chambers on the morning of June 19.

**(ii) Factual Findings**

[106] The evidence is clear that HW Gibbon invited two out-of-town justices of the peace, HW McLeod and HW Chaput, to her home for dinner on the same date that her son was scheduled to appear in conflict court. Regardless of whether she knew with certainty that HW Chaput would be the presiding justice of the peace at her son's trial, HW Gibbon was clearly aware that *an* out-of-town justice of the peace would be presiding at her son's trial that day, and she knew that HW Chaput was an out-of-town justice of the peace.

[107] We also find that Her Worship's June 19<sup>th</sup> text message to HW Chaput discredits, to some extent, her testimony that she was unaware he would be presiding over her son's trial. In response to HW Chaput's text message stating that he would no longer be attending dinner at Her Worship's house as he did not believe "the OPTICS are favourable", HW Gibbon simply responded, "I understand completely Gord – please know we hold you no ill will Anna". This response does not attempt to convey any form of

apology or even express surprise that HW Chaput had been the justice of the peace assigned to preside over her son's trial.

[108] We further agree with presenting counsel's position that the hearing panel can take into consideration that HW Gibbon's testimony denying that she knew that HW Chaput would be presiding over her son's trial is inconsistent with the account she gave in her response letter to the JPRC, dated August 31, 2020. Her letter suggests that she knew HW Chaput would be sitting on her son's case when she stated: "I had no intention of attempting to influence him in respect to any decision-making role he may have played in respect to the Trial of my son...as the decision would already have been made". Furthermore, when she invited him, she believed he would have rendered his decision before their dinner and had no intention of discussing the case with him at dinner. We find that the statements in her letter to the JPRC to be a more accurate reflection of Her Worship's knowledge and thought pattern at the time she extended the dinner invitation to HW Chaput.

**(c) Interactions between HW Gibbon, Jodie Kontzie and RSJP Caron**

[109] There are four disputed areas of the evidence regarding the interactions between HW Gibbon, Ms. Kontzie and RSJP Caron, which may be summarized as follows:

- 1) Whether HW Gibbon started the conversation with Ms. Kontzie before RSJP Caron was on the phone, as testified to by Ms. Kontzie, or whether she did not speak to Ms. Kontzie about what had happened with her son's matter until RSJP Caron was present on the phone, as testified to by HW Gibbon.
- 2) Whether HW Gibbon used profanity before and after RSJP Caron was on the phone, as Ms. Kontzie testified, or whether HW Gibbon did not use any profanity during the discussion. HW Gibbon denied



using profanity, while RSJP Caron testified that, while he could not say that HW Gibbon did not use any profanity, he did not recall her having used profanity. He agreed that she was not someone who uses foul language professionally or otherwise.

- 3) Whether HW Gibbon said to Ms. Kontzie “you need to talk to the prosecutor to have this charge dropped”, as testified to by Ms. Kontzie, or whether HW Gibbon’s evidence should be accepted that she did not make any statement demanding that Ms. Kontzie speak to the prosecutor or using any terminology such as “drop the charges”.
- 4) Whether HW Gibbon asked RSJP Caron to have the charge against her son withdrawn or stayed, as indicated in RSJP Caron’s email dated July 3, 2019. RSJP Caron testified that he did not recall HW Gibbon asking him to speak with the prosecutor to have the charge dropped.

**(i) Positions of the Parties**

[110] In assessing the credibility of Ms. Kontzie’s evidence regarding what transpired in the Provincial Offences office, presenting counsel asks the panel to consider the following:

- Both Ms. Kontzie and HW Gibbon testified that they had a “friendly professional relationship” before June 19, 2019;
- HW Gibbon acknowledged that on June 19, Ms. Kontzie did not lose her temper or overreact when confronted by Her Worship;
- Ms. Kontzie testified in a manner which reflected the clear and obvious negative impact on her of Her Worship’s conduct on June 19;
- Ms. Kontzie’s testimony did not feature overstatement or exaggeration;
- On the afternoon of June 19, shortly after the disputed events occurred, Ms. Kontzie took notes about what had happened, which were disclosed to defence counsel. Ms. Kontzie was not cross-examined on those notes;

- Ms. Kontzie conducted an investigation to determine what happened with the sticky note left on the file and took corrective action to change the office procedure, acknowledging that this should never have happened and that a mistake had been made;
- Contrary to Ms. Kontzie's evidence, RSJP Caron does not recall Her Worship using profanity during their conversation on speakerphone. The RSJP testified that HW Gibbon is not someone who uses foul language professionally or otherwise.

[111] Presenting counsel also asks the panel to consider HW Gibbon's testimony, both in chief and in cross-examination, wherein she acknowledged being in a heightened emotional state when speaking with Ms. Kontzie, describing herself in the "arousal phase" and behaving like a "mama bear protecting her cub". Her Worship conceded during cross-examination that the ability to see her own behaviour was impaired. Presenting counsel submits that it is open to the panel to conclude that in such a heightened emotional state, the reliability of HW Gibbon's evidence regarding this encounter is not reliable and should be given less weight.

[112] Regarding the disputed issue of whether HW Gibbon asked RSJP Caron to have the charge against her son withdrawn or stayed, RSJP Caron's testimony was that he did not recall, but that "it may have been part of the – of the things she asked me." Presenting counsel asks the panel to consider if an email that RSJP Caron sent to HW Gibbon on July 3, 2019 advising Her Worship that he has no authority "to have the matter withdrawn or stayed" is a more reliable reflection of their discussion than their independent recollections two years later.

[113] Counsel for HW Gibbon contends that there are various factors the panel should consider in assessing the credibility and reliability of Ms. Kontzie's evidence, including

that Ms. Kontzie's evidence that HW Gibbon used profanity during the conversation was not consistent with RSJP Caron's recollection, and that Ms. Kontzie admitted to being scared that she might lose her job as a result of the situation with the sticky note.

[114] Counsel for HW Gibbon also contends that Mr. Kontzie's discussion with Ms. Strobel about the interaction she (Ms. Strobel) had with HW Gibbon on March 17, 2020, "was a clear violation of their obligations with respect to confidentiality" as laid out in a letter of confidentiality that investigating counsel provided to Ms. Strobel. He submits that the evidence from Ms. Strobel suggests that Ms. Kontzie, Ms. Strobel and the complainant, Patty Robinet, had ongoing discussions about the complaint while it was still subject to confidentiality. This consideration, counsel for HW Gibbon submits, weighs against the credibility and reliability of Ms. Kontzie's testimony.

**(ii) Factual Findings**

[115] We find that Ms. Kontzie's evidence describing the interaction in the Provincial Offences office on the afternoon of June 19 with HW Gibbon is to be preferred to that of Her Worship. Having said this, we do not believe that much significance attaches to the first two areas of dispute between Ms. Kontzie and HW Gibbon concerning whether Her Worship spoke with Ms. Kontzie before the start of the conference call with RSJP Caron, or whether Her Worship used foul language during this encounter. The undisputed evidence, including Her Worship's own admission during questioning by the hearing panel, is that HW Gibbon was very angry and raised her voice when she confronted Ms. Kontzie about the sticky note being on her son's file, that she misconducted herself in

how she reacted to the situation, and that she regrets the manner in which she interacted with Ms. Kontzie,

[116] In reaching our credibility determination, we place significance on the factors identified by presenting counsel, as listed above in para. 110, with one exception. We place no weight on the fact that counsel for HW Gibbon did not cross-examine Ms. Kontzie on her notes of what happened on June 19. These notes are not part of the record, and it would be inappropriate to place significance on the lack of cross-examination on notes that have not been tendered in evidence.

[117] There are a number of reasons why we find HW Gibbon's evidence regarding this incident to be unreliable. She conceded during cross-examination that, when speaking with Ms. Kontzie, she was behaving like a "mama bear protecting her cub" and that her ability to see her own behaviour was impaired. When Her Worship was questioned by the hearing panel about what happened during her interaction with Ms. Kontzie, she acknowledged that she was not thinking rationally at the time, and that she was an "angry mother" when she confronted Ms. Kontzie. She explained that she wanted there to be "a level of accountability" for the sticky note on her son's file.

[118] In addition, we place significance on RSJP Caron's testimony that during the speakerphone conversation, HW Gibbon's "tone was an angry tone" and she was "really upset". He testified that he informed HW that "where she is is not the appropriate place to be" and asked her "to leave without any further conversation with anyone" and to come to his office "before any more damage can be done".

[119] We also place significance on the fact that RSJP Caron's testimony regarding the nature of the exchange with HW Gibbon is consistent with the following passage in an email that he sent to Her Worship, dated July 3, 2019 regarding what transpired on June 19:

Upon knowing this [that HW Chaput declared he was not able to deal with the adjournment request after seeing the sticky note indicating that the defendant was HW Gibbon's son] you went to the POA manager office to have her call me on speakerphone with you there. You wanted to know what I was going to do for your son's denial of justice. You will recall that my immediate answer to you, was to ask you to exit the manager office, not to talk to her or the prosecutor. I told you to let your son's lawyer do this job... **You came to my office and I was able to appreciate how annoyed and irritated you were.** .... Considering your son was being denied fair justice, you ask[ed] me what I was going to do about it.

...

**I have no authority to ask the POA office or the prosecutor to have someone disciplined, to have the matter withdrawn or stayed.** More importantly, you have to be careful when advocating for your son. You will always be a Justice of the Peace and therefore, you should not use you [sic] position or appear to use your position to influence the outcome. If there are some recourses or remedies, there [sic] are for your son's lawyer and him alone to make before another Justice of the Peace or the prosecutor. [Emphasis added. Underlining in original.]

[120] Based on all the evidence before us, we find that HW Gibbon asked Ms. Kontzie to speak to the prosecutor about having the charges dropped and demanded that the court clerk who had left the sticky note on her son's file be fired. Regardless of whether or not HW Gibbon used foul language in the course of her discussion with Ms. Kontzie, even on HW Gibbon's own evidence, it is abundantly clear that Her Worship spoke to Ms. Kontzie in an angry and aggressive manner.

[121] We also find that HW Gibbon asked RSJP Caron to have the charge against her son withdrawn or stayed. In making this finding, we accept presenting counsel's submission that the email RSJP Caron sent to HW Gibbon on July 3, 2019 advising her that he has no authority "to have the matter withdrawn or stayed" is a more reliable reflection of their discussion than their independent recollections two years later.

**(d) Conversation between HW Gibbon and Ms. Strobel**

[122] The evidence of Ms. Strobel and HW Gibbon differs regarding whether HW Gibbon said any of the following to Ms. Strobel during their conversation in the grocery store parking lot on March 17, 2020:

- that her son's conviction was unfair as it was possibly related to his race or his being HW's son, as people were not happy with her appointment;
- that all of the court clerks in the Thunder Bay provincial offences office are experienced and know not to leave notes on court files;
- that she or her family were going to sue the City because her son was not treated fairly; and
- that she was under review by the JPRC and they were trying to take her job.

[123] During her examination-in-chief, Ms. Strobel testified that the conversation with Her Worship made her extremely uncomfortable for the following reasons:

[I]t was extremely uncomfortable because she had put the blame on the clerks of the court quite a number of times and our court office as well at least I would say two, three, four times if [sic] the course of that conversation.

...

And knowing that I'm a part of now – a part of her investigation and she's telling me all of this but I couldn't stop her in a way that would

alert her or that would not alert her, sorry, that made me uncomfortable because I didn't know how to get out of that situation without being extremely rude or causing a problem with the investigation.

**(i) Positions of the Parties**

[124] Presenting counsel asks the panel to consider the following when assessing the credibility of Ms. Strobel's evidence that HW Gibbon made the comments attributed to her at the grocery store:

- Ms. Strobel made contemporaneous notes of the conversation, which were provided to HW Gibbon's counsel; counsel did not cross-examine her on the notes;
- Ms. Strobel's recollection of the comments that HW Gibbon made are consistent with Her Worship's evidence during the hearing. Ms. Strobel would have had no way of knowing HW Gibbon's views on these topics without having been advised by Her Worship directly;
- Ms. Strobel immediately called her supervisor before leaving the parking lot out of concern about the ongoing investigation;
- Ms. Strobel remained calm and consistent throughout a rigorous cross-examination.

[125] In assessing Ms. Strobel's evidence, counsel for HW Gibbon asks the panel to consider, among other things, the fact that Ms. Strobel spoke to her supervisor, Ms. Kontzie, about the conversation with HW Gibbon despite the clear confidentiality requirements that applied to the investigation of the complaint, as set out in the letter sent to Ms. Strobel by investigating counsel.

[126] Ms. Strobel's evidence on this point is as follows:

**Q.** And what did you do after the conversation ended?

**A.** Since I had already been interviewed by Robin McKechney about the investigation, I realized that this would likely be something I should explain to the people that were involved from a legal standpoint. I don't know if this is relevant or not, so I wanted them to decide by me just telling them what happened. So I spoke to my supervisor, Jody Kontzie, on the phone to let her know what had happened, and she said she would call Patty Robinet which was the city solicitor for the city of Thunder Bay. So she advised she may be getting back to me. But instead of Patty reaching me, it was Robin McKechney again asking for an interview.

[127] Counsel for HW Gibbon submits that Her Worship did not know that Ms. Strobel was aware of the JPRC investigation at the time of their encounter at the grocery store and therefore did not know that discussing the investigation would cause Ms. Strobel discomfort. Moreover, counsel submits that it was Ms. Strobel, and not HW Gibbon, that was subject to a continuing duty to keep the complaint and investigation confidential.

**(ii) Factual Findings**

[128] We find that Ms. Strobel's evidence regarding the content of her conversation with HW Gibbon is credible and reliable. In reaching this determination, we place significance on the factors identified by presenting counsel, as listed in para. 124, except for the factor that HW Gibbon's counsel did not cross-examine Ms. Strobel on her contemporaneous notes of their conversation on March 17th. As with Ms. Kontzie's notes of the June 19<sup>th</sup> incident, these notes are not part of the record, and it would be inappropriate to place significance on the lack of cross-examination on notes that were not tendered in evidence.

[129] We reject counsel for HW Gibbon's argument that Ms. Strobel's credibility is undermined by an alleged breach of the JPRC's confidentiality policy in reporting the conversation she had with HW Gibbon to her supervisor, Ms. Kontzie. HW Gibbon



initiated the discussion regarding the complaint against her with Ms. Strobel. There can be no suggestion that Ms. Strobel was in some way attempting to taint the investigation by relaying to her supervisor what HW Gibbon had freely and voluntarily said to her about the incident that prompted the complaint against her.

## **WHETHER HW GIBBON ENGAGED IN JUDICIAL MISCONDUCT**

[130] For the reasons that follow, we find that HW Gibbon engaged in a pattern of highly inappropriate conduct in relation to her son's court case that was contrary to, and had the effect of undermining, the independence, impartiality and integrity of her judicial office.

### **(a) Filing of Certificate of Offence and Requesting Disclosure**

[131] It is uncontested that on February 6, 2019, HW Gibbon attended the Thunder Bay Provincial Offences office and filed a Certificate of Offence on behalf of her son requesting a trial. She filed the Certificate by entering the non-public area of the office and providing the Certificate to Jody Kontzie, who was the Supervisor of Court Services.

[132] In addition, HW Gibbon testified that she subsequently personally filed her son's Request for Provincial Offences Disclosure form in the Municipal Prosecutor's office and put her own name and phone number on the form. She requested staff to phone her when the disclosure was ready to be picked up. Moreover, she twice followed up with the prosecutor's office to ask when the disclosure would be ready and once it was available, she personally picked it up for her son.

### **(i) Positions of the Parties**

[133] Presenting counsel takes the position that the act of personally filing the Certificate of Offence was "ill advised and not best practice; however, this conduct in and

of itself is likely not incompatible with judicial office, nor does it rise to the level of judicial misconduct”.

[134] Presenting counsel notes that there was no specific allegation in the Amended Notice of Hearing concerning HW Gibbon’s conduct in personally filing the disclosure request with her own name and phone number on the form, or in twice following up with the prosecutor’s office regarding when disclosure would be ready. Presenting counsel states that it is worth noting that this conduct is incompatible with judicial office, as it created an appearance of conflict. HW Gibbon was essentially communicating with the prosecution office about her son’s legal matter.

[135] Counsel for HW Gibbon argues that the action of filing the Certificate of Offence does not offend the *Principles of Judicial Office* or rise to the level of judicial misconduct. Counsel points to HW Gibbon’s explanation in her testimony that it was more practical for her to file the Certificate than have her son miss school, and that she felt she had an obligation to file it because she had to notify the staff of the conflict.

[136] Counsel for HW Gibbon does not address the significance of the evidence that emerged during the hearing of Her Worship’s subsequent conduct in personally filing the disclosure request, twice following up on the readiness of disclosure, and personally attending to pick up the disclosure, other than to state that the Panel may consider such evidence in addressing whether Her Worship engaged in a pattern of misconduct.<sup>5</sup>

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<sup>5</sup> Counsel for HW Gibbon takes the position that the Panel cannot make an independent finding of misconduct on such evidence given that it was not particularized in the Notice of Hearing.

**(ii) Findings**

[137] HW Gibbon's conduct in personally attending at the Provincial Offences office at the Thunder Bay Courthouse using the non-public staff entrance to file her son's Certificate of Offence requesting a trial was not, in and of itself, judicial misconduct, but marks the beginning of a pattern of conduct that fell below the standards of office that apply to justices of the peace of the Ontario Court of Justice. HW Gibbon had a clear and pressing ethical duty to distance herself entirely from the prosecution of her son's case, which was proceeding in the court on which she served.

[138] It was only due to her position as a justice of the peace that HW Gibbon had direct access to the non-public entrance to the Provincial Offences Act office. It was highly inappropriate for her to take advantage of this special access to file an originating court document on behalf of her son. This action created a reasonable apprehension that HW Gibbon was trying to influence the proceedings against her son by personally becoming involved in the conduct of his case. Court staff in the court location where the charge against her son was being tried, including Ms. Kontzie, obviously were well aware that HW Gibbon was a member of the Ontario Court of Justice bench.

[139] HW Gibbon's purported explanation for her personal attendance at the Provincial Offences office to file the Certificate of Offence in order to declare a conflict rings hollow in light of her own testimony. HW Gibbon testified that, after filing the Certificate, she later personally attended the Municipal Prosecutor's office to file a disclosure request with her own name and phone number included as the contact information on the form. In addition, she twice contacted the Municipal Prosecutor's office to ask if her son's disclosure was

ready, and once it was, she personally attended to pick it up. These are not the actions of a person who was genuinely concerned about having a conflict of interest in her son's court case and who wanted to avoid any suggestion of a conflict. On the contrary, these actions served to heighten the appearance that HW Gibbon was acting as an agent or advocate for her son in his court case, or that she was attempting to use her position as a justice of the peace to influence the prosecution of that case. It was incumbent on Her Worship to completely distance herself from the prosecution of her son's case and leave it to others, such as his counsel, to handle carriage of the matter.

[140] In reaching these findings, we recognize that the conduct related to requesting her son's disclosure is not specifically referred to in the Amended Notice of Hearing. Nonetheless, we may consider HW Gibbon's evidence regarding her actions concerning her son's disclosure in assessing whether she engaged in judicial misconduct: see *Barrington v. The Institute of Chartered Accountants of Ontario*, 2011 ONCA 409, at paras. 94-96, leave to appeal dismissed, [2011] SCCA No. 367. Her Worship was on notice that the JPRC is conducting a hearing into allegations that she acted inappropriately in relation to her son's court case. Clearly, HW Gibbon is not prejudiced by a lack of notice in respect of her own testimony in relation to that very issue: *LSUC v. McSween*; *LSUC v. Sunday*; *LSUC v. Wong*; *LSUC v. Ross*. Moreover, in oral submissions, counsel for Her Worship confirmed that the disclosure request form was produced by presenting counsel at the "initial disclosure stage" of the hearing process.

[141] HW Gibbon's conduct in filing the Certificate of Offence and in requesting and receiving disclosure on behalf of her son was at odds with her ethical duties of impartiality,

integrity and independence. We need not determine whether this aspect of her conduct – standing alone – constitutes judicial misconduct. As we go on to discuss, this conduct is merely the start of an ongoing pattern of conduct in relation to her son's case that violated the ethical principles of integrity, impartiality and independence that apply to justices of the peace, and that support a finding of judicial misconduct.

**(b) Conversation between HW Gibbon and the Prosecutor**

[142] It is uncontested that on May 28, 2019, HW Gibbon telephoned Ms. Klein and identified herself as the mother of the defendant. As is her standard practice, Ms. Klein asked HW Gibbon if she had consent to speak on behalf of her son and she confirmed that she did. Ms. Klein did not know HW Gibbon, nor had she had any previous contact with her. Ms. Klein advised HW Gibbon that the officer in charge was on leave and unavailable to attend the trial on June 19, 2019. HW Gibbon advised Ms. Klein that her son had an exam the day after the trial.

[143] Our factual findings in relation to the contested aspects of the content of the May 28<sup>th</sup> telephone conversation are that:

- HW Gibbon and Ms. Klein spoke about a possible resolution of the charge.
- HW Gibbon indicated to Ms. Klein that she did not believe there was a reasonable prospect of conviction.
- HW Gibbon asked Ms. Klein during the conversation if she knew who she was.
- HW Gibbon indicated that they would be seeking an adjournment of the trial date because her son would be in exams at that time.

**(i) Positions of the Parties**

[144] The parties' respective positions on the particularized allegations related to the May 28<sup>th</sup> phone conversation need not be set out in detail here.<sup>6</sup> Presenting counsel contends that a finding of judicial misconduct is available in relation to Allegations 3(a)(i) and 3(a)(iii), namely that HW Gibbon acted as her son's agent and/or legal representative by communicating with Ms. Klein about his case, and that HW Gibbon abused the power of judicial office by attempting to coerce Ms. Klein to withdraw the charge against her son out of fear or intimidation.

[145] In contrast, counsel for HW Gibbon contends that a finding of judicial misconduct is not available on the evidence, contending that Her Worship did not identify herself as her son's agent or legal representative, but only as his mother, and that her limited purpose in contacting Ms. Klein was simply to coordinate a time to speak with her son. The allegation that HW Gibbon attempted to abuse her power of office is said to be unsupported on the evidence.

**(ii) Findings**

[146] The ethical principles of integrity, impartiality and independence that apply to the judiciary foreclose a justice of the peace from making inquiries of a prosecutor into a court proceeding in which the defendant is their relative. A telephone call by a justice of the

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<sup>6</sup> The parties agree the evidence does not support Allegation 3(a)(ii) that HW Gibbon attempted to interfere with Ms. Klein's prosecutorial discretion by advising her that she was a justice of the peace and giving her view of whether there was a reasonable prospect of conviction. They also agree the evidence does not support Allegation 3(a)(iv) that HW Gibbon acted in a manner that gives rise to a perception that she may in future hold a bias against Ms. Klein for her failure to withdraw the charge against her son. In addition, the parties agree that there is no evidence to support the allegation in 3(e)(ii) that Her Worship identified herself as a justice of the peace while engaging in discussions about the merits and prosecutorial aspects of her son's case with the prosecutor.

peace to a prosecutor about a family member's case, even if made innocently and without identifying themselves as a member of the bench, may appear to a reasonable observer to be an implied request for some form of preferential treatment for the family member. Clearly, the names of justices of the peace who preside on the Ontario Court of Justice are publicly available on that Court's website and through Government of Ontario announcements of appointments.

[147] The uncontested evidence is that HW Gibbon contacted the prosecutor in her son's case, and that she confirmed in response to Ms. Klein's standard question that she had consent to speak to the prosecutor on her son's behalf. It is clearly inappropriate for a judicial officer to contact the prosecutor's office in relation to the prosecution of a provincial offences act charge against their child. A judicial officer has an ethical responsibility to remain independent from the prosecution service generally, and even more so in relation to a prosecution of a close relative: see *Re Foulds* (JPRC 2018), at para. 128.

[148] We have rejected HW Gibbon's evidence that her conversation with Ms. Klein was limited to asking her to contact her son about the case. We accept Ms. Klein's evidence that Her Worship asked her if she knew who she was, and then commented on the lack of a reasonable prospect of conviction in her son's case.

[149] The comment "Do you know who I am?" would have suggested to Ms. Klein – who was specially assigned to the case as an out-of-town prosecutor – that the defendant's mother was a justice system participant. A prosecutor in the position of Ms. Klein would reasonably have their confidence shaken in the integrity of Her Worship and

the overall administration of justice once it became known that she was in fact a justice of the peace and that she nonetheless called the prosecutor about her son's court case.

[150] In addition, Her Worship's comments about the strength of the case against her son is further evidence of a pattern of inappropriate conduct that undermined confidence in Her Worship's independence, impartiality and integrity. Even accepting that HW Gibbon did not expressly identify herself as a justice of the peace, her call to the prosecutor to discuss the merits of the prosecution's case against her son gives rise to an appearance of impropriety and constitutes an improper attempt by a judicial officer to intervene and/or influence a court proceeding against a family member.

**(c) Dinner Invitation to HW Chaput**

[151] It is uncontested that HW Gibbon invited HW Chaput to her home for dinner on the same date that he was assigned to preside over her son's case. Regardless of whether she knew with absolute certainty that HW Chaput would be the presiding justice of the peace on her son's trial, HW Gibbon was clearly aware that *an* out-of-town justice of the peace would be presiding at her son's trial that day, and she knew that HW Chaput was an out-of-town justice of the peace.

**(i) Positions of the Parties**

[152] Presenting counsel takes the position that a finding of judicial misconduct is available based on the fact of the dinner invitation. On Her Worship's own admission, inviting HW Chaput to dinner at her house that evening was not prudent. While there is no evidence that HW Gibbon invited HW Chaput with the intent to influence him, simply doing so reasonably gives rise to such a perception.



[153] Counsel for HW Gibbon acknowledges that the dinner invitation was made but contends that there is no evidence that this invitation was intended to influence the outcome of her son's case. HW Gibbon testified that it was never her practice to review sitting schedules in advance because assignments are subject to change. Counsel for HW Gibbon submits that while it would have been prudent for HW Gibbon to have reviewed the sitting schedule before extending the dinner invitation to HW Chaput, the evidence does not rise to the level of undermining public confidence in the ability of Her Worship to perform the duties of office or in the administration of justice generally. Counsel further contends that the spontaneous nature of the invitation, as well as the cultural practices of Her Worship in routinely inviting out-of-town members of the judiciary to her home for dinner, must be considered.

**(ii) Findings**

[154] The appearance of a justice of the peace inviting a colleague who was about to preside over her son's court case to dinner would cause a reasonable member of the public to be concerned that the justice of the peace was attempting to influence the course of the proceedings, and create a reasonable apprehension of bias on the part of the presiding judicial official. As HW Chaput put it in his text to HW Gibbon advising that he would not be attending at her house for dinner after learning of the identity of the defendant: "I don't believe the OPTICS are favourable".

[155] We accept that Her Worship regularly invited out-of-town judicial officers to her home as a welcoming gesture, and that her invitation to HW Chaput was in keeping with her cultural practices. However, on that particular day, when she was aware that her son

had an appearance in conflict court, Her Worship ought not to have extended a dinner invitation to *any* out-of-town justice of the peace before whom her son might appear. At the very minimum, HW Gibbon ought to have taken steps to determine who the presiding judicial official would be at her son's trial to avoid creating a conflict of interest on the part of the presiding judicial officer.

[156] In other words, it matters not whether HW Gibbon knew with certainty that HW Chaput would be presiding at her son's trial when she extended the dinner invitation to him; what matters is that she extended the dinner invitation in the first place, knowing that her son was scheduled to appear in conflict court that day and that HW Chaput was an out-of-town justice of the peace who could very well be presiding over his trial. The invitation itself gave rise to the perception that Her Worship was seeking to influence the outcome of her son's legal matter, or otherwise thank the presiding out-of-town justice of the peace for the outcome.

[157] Had the sticky note not been inadvertently left on her son's court file by a member of the Provincial Offences office, HW Chaput would have been placed in the compromising position of attending a dinner hosted by his colleague whose son had appeared before him on a *Highway Traffic Act* charge that very day. Indeed, Her Worship's sense of injustice arising from the sticky note having been left on her son's file reflects a profound lack of insight into the inappropriateness of her conduct throughout the court proceedings involving her son. Rather than being grateful that the sticky note prompted HW Chaput to recuse himself and thereby avoid a conflict of interest, HW maintained that her son had been denied justice for this very reason.

[158] We find that Her Worship's dinner invitation to HW Chaput compromised the appearance of her impartiality and integrity as a justice of the peace and was incompatible with the obligations of her judicial office. HW Gibbon's conduct sufficiently undermines the public's confidence in the administration of justice to require a finding of judicial misconduct. We therefore conclude that Allegations 3(b)(i) and (ii) in the Amended Notice of Hearing are made out.

**(d) Inappropriate Communications with Ms. Kontzie on June 19, 2019**

[159] It is uncontested that on June 19, 2019, after her son's trial was adjourned, HW Gibbon used her security pass to enter the Provincial Offences office using the non-public access available to justices of the peace. She did so in order to confront Ms. Kontzie about the sticky note being left on her son's file. Her Worship acknowledged that she raised her voice and displayed anger towards Ms. Kontzie. Her Worship further acknowledged that Ms. Kontzie would have been intimidated by her, both because of the power imbalance inherent in their professional relationship, and by the manner in which Her Worship was speaking. It is also uncontested that Her Worship demanded that Ms. Kontzie ensure court staff were disciplined for leaving the sticky note on her son's file. We have further found, based on our acceptance of Ms. Kontzie's evidence, that HW Gibbon demanded that Ms. Kontzie speak with the prosecutor about getting the charges against her son dropped.

**(i) Positions of the Parties**

[160] Presenting counsel asks the hearing panel to find that Allegation 3(c)(ii) in the Amended Notice of Hearing – that Her Worship exploited the access available to justices of the peace to the office of the Supervisor of Court Services and displayed bullying and

intimidating behaviour – is established. Presenting counsel notes that the duty of professionalism that justices of the peace are required to uphold in accordance with the Preamble to the *Principles of Judicial Office* extends to conduct towards court staff. It is submitted that Her Worship's conduct towards Ms. Kontzie fell below the standard expected of justices of the peace and undermined the public's confidence in the administration of justice sufficiently to require a finding of judicial misconduct. Presenting counsel notes that Her Worship has yet to apologize to Ms. Kontzie for her conduct.

[161] Presenting counsel further contends that a finding that HW Gibbon told Ms. Kontzie to speak with the prosecutor to have the charge against her son dropped would entitle the panel to conclude that Allegations 3(c)(i)<sup>7</sup>, 3(e)(iii)<sup>8</sup> and 3(e)(iv)<sup>9</sup> are established. Such conduct was clearly incompatible with her judicial office and was so seriously contrary to the impartiality, integrity and independence of the judiciary as to undermine the public's confidence in the administration of justice to require a finding of judicial misconduct.

[162] Counsel for HW Gibbon contends that, despite Her Worship's admissions regarding her interaction with Ms. Kontzie, she did not display bullying or intimidating behaviour towards her, or even if she did, the conduct did not rise to the level of judicial misconduct. In addition, counsel seeks to justify Her Worship's conduct in raising the

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<sup>7</sup> HW Gibbon attempted to coerce or intimidate Ms. Kontzie into withdrawing the case against her son by demanding that Ms. Kontzie speak with the prosecutor to have the charge against her son withdrawn

<sup>8</sup> HW Gibbon raised concerns with Ms. Kontzie and RSJP Caron about the administrative and prosecutive handling of her son's matter

<sup>9</sup> HW Gibbon attempted to coerce or influence other participants in the justice system to have the charge against her son withdrawn or stayed.

issue of the sticky note being left on her son's file, contending that the purpose of bringing this occurrence to the attention of Ms. Kontzie and RSJP Caron was to make sure it did not happen again. Accordingly, she was not abusing her judicial position or interfering with the administration of justice in raising the administrative handling of her son's matter with her RSJP and the Supervisor of Court Operations.

[163] Counsel for HW Gibbon also submitted that "judicial notice should be employed to expand the traditional public confidence perspective to include a recognition of the broad systemic and background factors that affect Aboriginal people generally. This includes a recognition that the history of colonialism translates into higher rates of victimization, racial bias, stereotypes and assumptions that result in Indigenous women being viewed as less than worthy victims or as less believable. The purpose of such recognition is to 'provide the necessary context for understanding and evaluating the case-specific information presented by counsel'." The case of *R. v. Ipeelee*, 2012 SCC 13, at paras 59 and 60 was cited in support of this proposition.

[164] In this regard, counsel for HW Gibbon referred the panel to his client's emotional testimony as to why she became so angry when she first learned about the "sticky note" incident. HW testified that her son said to her, "does everyone in this city hate me?" HW Gibbon testified that at that moment, "the past and the present collided". She believed that her son had been denied justice. His legal predicament in turn triggered a memory of when she had been denied justice many years before when she was employed as a correctional officer and the victim of 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.”

[165] Counsel for HW Gibbon submitted that Her Worship’s personal history with the justice system as well as her experience as an Indigenous woman are factors that should weigh against a finding of judicial misconduct. Counsel referred to two character witnesses called by Her Worship, Roseanna Hudson and David McKenzie, who testified about Her Worship’s positive reputation within the Indigenous community in Thunder Bay and as a justice of the peace.

[166] In reply, presenting counsel submitted that there is no authority for the proposition that the principles set out in *Gladue*<sup>10</sup> and *Ipeelee* are relevant at the “liability stage” of this hearing, and therefore it is premature for the Panel to consider such principles at this stage.

### **(ii) Findings**

[167] We find that the principles espoused in *Gladue* and *Ipeelee* are not directly relevant to our credibility analysis or our conclusions on whether judicial misconduct occurred. That said, we accept that there were a number of factors which contributed to HW Gibbon’s highly inappropriate conduct in relation to Ms. Kontzie and RSJP Caron. In her mind, Her Worship Gibbon believed that her son had been denied justice. She was

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<sup>10</sup> *R v. Gladue*, [1999] 1 SCR 688

also upset that her family would have to incur further legal costs for her son's defence. HW Gibbon explained that her anger was further fuelled by her own experience from years before when her voice as a victim of crime was ignored. We do not discount in any way HW Gibbon's experience with discrimination because of her Indigenous background. However, it is also the case that none of these reasons can justify or excuse her conduct directed at Ms. Kontzie or RSJP Caron.

[168] The uncontested evidence supports a finding of judicial misconduct in relation to Her Worship's treatment of Ms. Kontzie. Following the adjournment of her son's case, HW Gibbon gained access using her security pass to the Provincial Offences office in order to express her anger about the handling of her son's case by members of that office and to express her view that the person responsible for the sticky note should lose their job. We have already explained how inappropriate it is for a justice of the peace to intervene in the prosecution of a case involving a relative, let alone their own child. Doing so in such an angry and intimidating way constitutes egregious misconduct, particularly given the power imbalance between HW Gibbon and Ms. Kontzie. Her Worship's conduct was far below the standard of integrity, impartiality and professionalism that justices of the peace are required to uphold, as expressed in the *Principles of Judicial Office*. Her conduct sufficiently undermines the public's confidence in the administration of justice to require a finding of judicial misconduct.

[169] Given our finding that HW Gibbon told Ms. Kontzie to speak with the prosecutor to have the charge against her son dropped, we further conclude that Allegations 3(c)(i), 3(e)(iii) and 3(e)(iv) in the Amended Notice of Hearing are established. This demand

clearly created the perception that Her Worship was attempting to influence the outcome of the proceeding involving her son. Such conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it undermines the public's confidence in the administration of justice and requires a finding of judicial misconduct.

**(e) Inappropriate Communications with RSJP Caron**

[170] It is uncontested that, during her conversation with RSJP Caron in his office after the exchange with Ms. Kontzie, HW Gibbon was "still very upset" and "still very angry". She felt her son was "denied justice" and wanted to know "what RSJP Caron was going to do about this." Her Worship expressed the view to RSJP Caron that someone should lose their job as a result of the sticky note being left on her son's file.

[171] Although RSJP Caron testified that he did not recall HW Gibbon asking him to speak with the prosecutor to have the charge dropped, his contemporaneous email message to HW Gibbon dated July 3, 2019 permits a contrary inference. It states: "I have no authority to ask the POA office or the prosecutor to have someone disciplined, to have the matter withdrawn or stayed." As discussed above at paras. 115-121, we are satisfied on a balance of probabilities that HW Gibbon expressed to both Ms. Kontzie and to RSJP Caron that the prosecutor should be asked to withdraw or stay the charges as a result of her view that her son had somehow been denied justice.

**(i) Positions of the Parties**

[172] Presenting counsel submits that a finding of judicial misconduct in relation to the conversation with RSJP Caron is available based on HW Gibbon's own admissions regarding this incident, namely:



- She asked RSJP Caron to discipline the court staff responsible for leaving the sticky note on her son's file;
- She asked RSJP Caron to "do something" about her son's "denial of justice";
- She used her special access as a justice of the peace to speak with RSJP Caron on behalf of her son; and
- She sent RSJP Caron communications regarding her son's legal matter.

[173] While Her Worship denied having advocated for her son, she admitted to expressing her dissatisfaction with the sticky note situation with RSJP Caron and demanding a response from him. Presenting counsel submits that her conduct constitutes advocacy on an issue of procedural fairness, on behalf of a family member, which is conduct incompatible with judicial office.

[174] Counsel for HW Gibbon submits that Her Worship was not acting as an advocate for her son, nor was she communicating inappropriately with RSJP Caron in raising her concerns about the sticky note with him. Counsel repeats the argument that Her Worship raised concerns with RSJP Caron about the administrative handling of her son's matter in order to prevent the same mistake from occurring in the future. Counsel further submits that if the panel finds that Her Worship communicated inappropriately with RSJP Caron regarding her son's case, it should nonetheless conclude that such communication did not rise to the level of judicial misconduct.

### **(ii) Findings**

[175] Her Worship's conversation with RSJP Caron in his office about the handling of her son's court case is yet another example of her failure to act with independence, impartiality and integrity, and is part of a continuing pattern of inappropriate conduct,

which served to undermine public confidence in her judicial office and in the judiciary as a whole.

[176] As RSJP Caron pointed out to Her Worship in his conversation with her on June 19, 2019, as documented in his email dated July 3, 2019, she should have “let [her] son’s lawyer do his job and speak to whoever he thinks could fix the problem”. RSJP Caron’s email went on to caution HW Gibbon:

[Y]ou should not use you[r] position or appear to use your position [as a justice of the peace] to influence the outcome. If there are some recourses or remedies, the[y] are for your son’s lawyer and him alone to make before another Justice of the Peace or before the prosecutor. [emphasis in original.]

[177] It was entirely inappropriate for HW Gibbon to request that RSJP Caron intervene in any way in her son’s court case, including by having someone disciplined for the sticky note being left on his file, or by requesting that the matter be withdrawn or stayed. A parent’s understandable concern for their child does not justify attempting to use one’s authority and position as a justice of the peace to influence the administrative handling of their child’s court case, or the substantive outcome of that case. A finding of judicial misconduct is required.

**(f) Inappropriate Conversation with Ms. Strobel**

[178] We have found that HW Gibbon expressed her views to Ms. Strobel that her son’s conviction was unfair and made disparaging remarks about court staff at the Thunder Bay Provincial Courthouse, including insinuating that the sticky note was left intentionally on her son’s Certificate of Offence. She also revealed to Ms. Strobel that she was currently under review by the JPRC.

**(i) Positions of the Parties**

[179] Presenting Counsel submits that a finding of judicial misconduct is available on the evidence presented at the hearing in regard to HW Gibbon's conversation with Ms. Strobel. Her Worship's insinuation that a court staff member intentionally left the sticky note on her son's file to cause her and/or her family harm was a serious allegation to levy against court staff, of which Ms. Strobel was a member. This is particularly so when an internal investigation had concluded that the sticky note was left on the file accidentally. Ms. Strobel testified that the conversation made her "extremely uncomfortable because she [HW Gibbon] had put the blame on the clerks of the court quite a number of times." Presenting counsel contends that this type of conduct is in the same vein as the conduct directed at Ms. Kontzie, but less severe, and that it is open to the hearing panel to conclude that Her Worship's comments were incompatible with judicial office and constitute judicial misconduct.

[180] Counsel for HW Gibbon submits that the basic allegation that Her Worship approached Ms. Strobel at a grocery store is not established. Rather, the evidence was that they mutually acknowledged each other. Alternatively, this was essentially a private conversation. Counsel asserts there is insufficient evidence to substantiate the allegations concerning the disparaging remarks testified to by Ms. Strobel. While the evidence supports a finding that the conversation made Ms. Strobel feel uncomfortable, any discomfort was not as a result of Her Worship acting without integrity. It is contended that HW Gibbon had no way of knowing that Ms. Strobel knew anything about the JPRC investigation, or that the conversation would cause her discomfort.

**(ii) Findings**

[181] We find it highly concerning that Her Worship made disparaging remarks in a public place about the handling of her son's case, particularly when Her Worship was facing a judicial misconduct complaint arising from this very issue. It matters not whether Her Worship approached Ms. Strobel or vice versa leading up to this conversation.

[182] The conversation with Ms. Strobel exemplifies HW Gibbon's lack of understanding of the ethical principles and professional boundaries that required her to refrain from commenting to a member of the court staff about how her son's case was handled by the Provincial Offences office. While we do not find HW Gibbon was trying to intimidate Ms. Strobel during the conversation, we do find that she was inappropriately venting to a member of court staff whom she knew in her capacity as a justice of the peace.

[183] Standing on its own, it is a close call whether Her Worship's conversation with Ms. Strobel would support a finding of judicial misconduct. But we need not view this conduct in isolation. We may take the evidence of this conversation into account in concluding that Her Worship's conduct in relation to the provincial offences proceeding against her son reflects an ongoing pattern of inappropriate conduct that collectively constitutes judicial misconduct.

**CONCLUSION**

[184] It is 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*. However, the duties of her office as a justice of the peace precluded

her from intervening or inserting herself in any way in her son's court case. Indeed, in allowing her role as a mother to come before her duties as a judicial officer, HW Gibbon fell far short of the ethical standards of her office.

[185] HW Gibbon committed numerous ethical lapses, commencing with her decision to personally file the Certificate of Offence requesting a trial on behalf of her son, and continuing with her decision to personally file with the prosecutor's office a disclosure request on his behalf, followed by her repeated calls asking about the readiness of disclosure. The pattern of unethical conduct included Her Worship's call to the prosecutor to discuss her son's case, followed by the dinner invitation she extended on the morning of her son's trial to the out-of-town justice of the peace who was presiding in conflict court that day. The inappropriateness of her conduct was significantly compounded by her angry exchange with the court supervisor and RSJP Caron – including her demand that court staff be disciplined and that the charge against her son be dropped. Several months after her son was convicted of the charge, HW Gibbon went on to have an ill-advised conversation with a court clerk about the perceived unfairness of the court proceeding against him. Her Worship's actions clearly meet the high threshold required to establish judicial misconduct and warrant the imposition of a disposition or dispositions under s. 11.1(10) of the *Justices of the Peace Act*.

[186] The parties will be afforded an opportunity to present evidence and/or submissions on the appropriate disposition(s) to address the findings of judicial misconduct contained in these reasons. A return date for the disposition stage of this hearing will be scheduled by the Registrar in consultation with the parties and this Panel.

Released: this 7<sup>th</sup> day of February, 2022

**HEARING PANEL:**

The Honourable Timothy R. Lipson, Chair

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

John Tzanis, Community Member

## APPENDIX "A"

### ALLEGATIONS IN THE AMENDED NOTICE OF HEARING

1. Her Worship's conduct towards the prosecutor, her judicial colleagues, court staff and the RSJP constituted a failure to act with independence, impartiality and integrity in relation to the events described above and/or gave the appearance that she failed to act with independence, impartiality and integrity.
2. Her Worship's ongoing conduct in relation to her son's court case demonstrated a continuing pattern of inappropriate conduct that undermined the independence, impartiality and integrity of her judicial office.
3. In particular:
  - a. On or around May 28, 2019, during a telephone conversation with Ms. Klein, Her Worship abused her judicial office, failed to respect prosecutorial independence and communicated inappropriately with Ms. Klein, when Her Worship:
    - i. acted as her son's agent and/or legal representative by communicating with Ms. Klein about his case;
    - ii. attempted to interfere with Ms. Klein's prosecutorial independence by advising her that she was a judicial officer and offering her assessment of the merits of her son's case;
    - iii. abused the power of judicial office by attempting to coerce Ms. Klein to withdraw the charges against her son out of fear or intimidation; and/or
    - iv. acted in a manner that gives rise to a perception that Her Worship may in future hold a bias against Ms. Klein for her failure to withdraw the charge against her son; and/or
  - b. Her Worship failed to uphold judicial independence, impartiality and integrity and engaged in inappropriate interactions with His Worship Chaput, when Her Worship:
    - i. invited Justice of the Peace Chaput to her house for dinner on or around June 19, 2019, the same day he was assigned to preside over her son's legal matter; and/or
    - ii. invited His Worship Chaput to her house for dinner in order to influence the outcome of her son's legal matter or to thank him for the outcome. In the alternative, the invitation could give rise to such a perception; and/or

- c. Her Worship abused the judicial office, failed to respect prosecutorial independence, and communicated inappropriately toward Jody Kontzie, Supervisor of Court Services, when Her Worship:
  - i. attempted to coerce or intimidate Ms. Kontzie into withdrawing the case against her son by demanding that Ms. Kontzie speak with the prosecutor to have the charge against her son withdrawn; and/or
  - ii. exploited the access available to justices of the peace to the office of the Supervisor of Court Services and displayed bullying and intimidating behaviour toward Ms. Kontzie on June 19, 2019, including yelling and/or swearing at her; and/or
- d. Her Worship attempted to interfere with the administration of justice and communicated inappropriately with RSJP Caron, when Her Worship:
  - i. asked or demanded that RSJP Caron and/or Ms. Kontzie have court staff disciplined for leaving a sticky note on her son's file;
  - ii. asked RSJP Caron to "do something" about her son's "denial of justice" or words to that effect;
  - iii. improperly used her position in acting as an advocate for her son, contrary to her duty to hold the principles of judicial independence, impartiality and integrity; and/or
  - iv. continued to send RSJP Caron inappropriate communications regarding her son's legal matter, including but not limited to, her July 3, 2019 email and January 3, 2020 text message to RSJP Caron; and/or
- e. Her Worship abused her judicial position and interfered with the administration of justice, when Her Worship:
  - i. personally filed the Certificate of Offence on her son's behalf in a courthouse where she presided and where court staff knew her to be a justice of the peace;
  - ii. engaged in discussions about the merits and prosecutorial aspects of her son's case with the prosecutor and identified herself as a justice of the peace while doing so;
  - iii. raised concerns with Ms. Kontzie and RSJP Caron about the administrative and prosecutorial handling of her son's matter;



- iv. attempted to coerce or influence other participants in the justice system to have the charge against her son withdrawn or stayed; and/or
- v. continued to express concerns and dissatisfaction about the handling of her son's legal matter to RSJP Caron; and/or
- f. Her Worship failed to act with integrity in communications with Jessica Strobel, when her Worship approached Ms. Strobel at a grocery store in Thunder Bay and, in a public space:
  - i. disclosed and discussed the complaint made to the Review Council, a matter that is confidential in accordance with the law and the Procedures of the Review Council;
  - ii. made disparaging remarks to Ms. Strobel about court staff at the Thunder Bay Provincial Courthouse, including insinuating that the sticky note was left intentionally on her son's Certificate of Offence; and/or
  - iii. made Ms. Strobel feel uncomfortable.
- 4. Her Worship's actions as set out above, individually and collectively, constitute judicial misconduct that harms the public's confidence in the judiciary, the integrity, impartiality and independence of her judicial office and in the judiciary as a whole, and the administration of justice, and warrants a disposition under section 11.1(10) of the *Justices of the Peace Act*.