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 ****Margot McLeod****

****Before**:**

Justice Vincenzo Rondinelli, Chair
Ontario Court of Justice

Justice of the Peace **Kristine Diaz**,
Ontario Court of Justice

**George Nikolov**, Community Member

REASONS FOR DECISION

**Counsel:**

Linda Rothstein and Mannu Chowdhury, Presenting Counsel

Paul D. Stern and Margot Davis, Counsel for Justice of the Peace Margot McLeod

Introduction

* 1. A Complaints Committee of the Justices of the Peace Review Council, composed of a judge, justice of the peace, and Law Society or community member of the Council, ordered that a complaint regarding the conduct of Justice of the Peace Margot McLeod be referred to a hearing panel of the Review Council for a formal hearing pursuant to s. 11(15)(c) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (the “Act”).[[1]](#footnote-1)
	2. In accordance with the Procedures of the Review Council, a Notice of Hearing setting out the allegations to be considered by the Hearing Panel was filed as an exhibit in these proceedings.
	3. The hearing lasted two days and evidence was led by way of an Agreed Statement of Facts (“ASF”), a joint book of exhibits, and *viva voce* evidence of two witnesses: Justice of the Peace Kathleen Bryant and Justice of the Peace Margot McLeod.
	4. For the reasons set out below, the Hearing Panel finds that the first allegation does not support a finding of judicial misconduct and the remaining allegations have not been established on a balance of probabilities.

Background

* 1. The ASF provides important context for the consideration of the allegations. The relevant background facts are as follows.
	2. Justice of the Peace McLeod is a justice of the peace of the Ontario Court of Justice assigned to preside in the Central West region. Justice of the Peace McLeod has served in that capacity since 2007.
	3. In January 2021, Justice of the Peace McLeod was subject to a prior hearing before the Justice of the Peace Review Council. The first hearing panel found that Justice of the Peace McLeod engaged in multiple instances of judicial misconduct, including a “pattern of conduct toward defendants and the legal process that fails to uphold the integrity and impartiality of judicial office and demonstrates a lack of patience, decorum, professionalism, dignity, restraint, tact, objectivity, fairness, respect and judgment.”[[2]](#footnote-2)
	4. On April 20, 2021, in its Decision on Disposition, the first hearing panel imposed the following remedial measures on Justice of the Peace McLeod:

(a) a warning that Justice of the Peace McLeod must refrain from similar conduct in the future and that any further findings of misconduct may put her beyond any possibility of remediation;

(b) a reprimand for failing to uphold and maintain judicial integrity and impartiality;

(c) an order that Justice of the Peace McLeod write letters of apology; and,

(d) an order that Justice of the Peace McLeod engage in continued education and mentorship for a period of one year or as determined by the Chief Justice.[[3]](#footnote-3)

* 1. As part of the mentorship requirement, Justice of the Peace McLeod was required to have monthly meetings with a mentor. The Chief Justice assigned Justice of the Peace Kathleen Bryant to be Justice of the Peace McLeod’s mentor.
	2. On July 13, 2021 and August 4, 2021, Justice of the Peace McLeod attended mentorship meetings with Justice of the Peace Kathleen Bryant. The events at these meetings form the basis of the allegations in the “Fresh as Amended” Notice of Hearing. The particulars of the allegations are summarized below.

Allegation #1

* 1. The Notice of Hearing alleges that on July 13, 2021, Justice of the Peace McLeod attended a mentorship session with Justice of the Peace Bryant while impaired by prescription medication, which allegedly demonstrates:

(a) a lack of professionalism, integrity, decorum, and propriety on Her Worship’s part; and/or,

(b) a failure to responsibly and meaningfully undertake the remedial measures imposed by the [first] hearing panel in support of the administration of justice and restoring the public’s confidence in Her Worship.

Allegation #2

* 1. The Notice of Hearing further alleges that, on one or more occasions between July 13 and August 4, 2021, Justice of the Peace McLeod presided in court and/or rendered one or more bail decisions while impaired by prescription medication, which would lead a reasonable person informed of all the relevant circumstances, including the standards of conduct expected of a justice of the peace, to conclude that Justice of the Peace McLeod:

(a) comports herself below the expected standards of a justice of the peace;

(b) lacks competence and professional judgment required to fulfil her judicial role;

(c) acts in and/or out of the courtroom in a manner that lacks integrity; and/or,

(d) tarnishes the dignity of the court, the solemnity of the court proceedings, and brings the administration of justice into disrepute.

* 1. It is further alleged that Justice of the Peace McLeod’s decision to preside in court and/or to render one or more bail decisions while impaired, and her subsequent lack of insight into such conduct, demonstrate a series of failures on her part including:

(a) a lack of insight into the expected standards of a justice of the peace;

(b) a lack of remorse, regret or concern for the conduct;

(c) a failure to self-report or disclose the conduct to appropriate judicial authority; and/or,

(d) a misapprehension of the judicial role and the ethical and legal concerns associated with a justice of the peace presiding in court and/or engaging in judicial decision-making while impaired.

* 1. In addition, it is alleged that, irrespective of whether Justice of the Peace McLeod’s impairment was apparent to courtroom participants at the time Justice of the Peace McLeod presided in court and/or rendered her decision(s), a reasonable person apprised of the relevant circumstances would share the concerns stated above.
	2. Relevant to the second set of allegations are the following agreed facts. Justice of the Peace McLeod presided in bail court in 2021 on July 16 (Hamilton); July 19 (Cayuga and Simcoe); July 21 (Brampton); July 23 (Hamilton); July 26 (Hamilton); July 30 (Orangeville) and August 3 (Milton).
	3. On July 16, 2021, Justice of the Peace McLeod released bail decisions and presided over bail hearings. In particular, on July 16, 2021, Justice of the Peace McLeod orally rendered the reasons for a bail decision in *R v. McKenzie* (bail hearing conducted on July 6, 2021). *R v. McKenzie* was subject to bail review before the Ontario Superior Court.

Allegation #3

* 1. The Notice of Hearing alleges that in 2021, a JPRC hearing panel imposed remedial measures on Justice of the Peace McLeod in part due to Justice of the Peace McLeod’s behaviour in the courtroom. Less than five months after the first hearing panel issued its decision, the Review Council received similar allegations related to Justice of the Peace McLeod’s professional judgment, integrity, and manner of communication. It is alleged that Justice of the Peace McLeod’s more recent behaviour reflects similar failures that led to the previous findings of misconduct.

Test for Judicial Misconduct

* 1. This Panel must determine if Justice of the Peace McLeod has engaged in conduct that constitutes judicial misconduct. While judicial misconduct is not defined in the Act, Rule 16 of the *Justices of the Peace Review Council Procedures* sets out the test that this Panel is to apply. Rule 16 provides as follows:

16.1 To ensure that the Review Council may address misconduct of varying degrees of severity as contemplated by ss. 11.1(10)(a)-(g) of the *Justices of the Peace Act*, the Review Council has adopted the following test for judicial misconduct that should be applied by Hearing Panels.

16.2 (1) If the Hearing Panel finds that:

(a) some or all of the alleged conduct has been proven on a balance of probabilities, and

(b) some or all of the proven conduct is incompatible with judicial office,

the Hearing Panel shall make a finding that the justice of the peace has engaged in judicial misconduct.

(2) In determining whether the proven conduct is incompatible with judicial office, the Hearing Panel shall consider all the circumstances, including:

(a) whether the conduct is inconsistent with the *Principles of Judicial Office* and/or any standards of conduct established by the Chief Justice of the Ontario Court of Justice and approved by the Review Council under s. 13(1) of the *Justices of the Peace Act*;

(b) whether the conduct is contrary to the impartiality, integrity, and/or independence of the judiciary;

(c) whether the conduct undermines the public’s confidence in the justice of the peace’s ability to perform the duties of office; and

(d) whether the conduct undermines the public’s confidence in the administration of justice generally.

* 1. Presenting Counsel bears the onus of establishing the allegations on a balance of probabilities.

Allegation #1 – Analysis and Findings

* 1. On July 13, 2021, Justice of the Peace McLeod attended a mentorship meeting with Justice of the Peace Bryant. The meeting was remote by video. Justice of the Peace Bryant testified as to her observations of Justice of the Peace McLeod at that meeting. She stated that Justice of the Peace McLeod’s eyes were slightly shut and she appeared lethargic. She wrote in her notes that Justice of the Peace McLeod stated at the meeting that she was “a bit out of it.” As such, Justice of the Peace Bryant kept the mentorship meeting short.
	2. Justice of the Peace McLeod testified that she was medicated during that meeting due to a back injury. She stated that it was the first time she had taken such medication. She stated that she was lethargic and listless and probably not in a good frame of mind for a mentoring session.
	3. On the basis of the testimony of both Justice of the Peace Bryant and Justice of the Peace McLeod, which this Panel accepts, we find that Justice of the Peace McLeod was impaired from the prescription medication she was taking for a back injury when she attended the mentoring session on July 13, 2021.
	4. As such, the next issue to be determined is whether such conduct is incompatible with judicial office.
	5. Although there is no formal code or definition of impairment-related conduct for judicial officers, the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice*[[4]](#footnote-4) (“*Principles of Judicial Office*”) and the Canadian Judicial Council’s *Ethical Principles for Judges*[[5]](#footnote-5) (“*Ethical Principles*”) provide some guidance in this area.
	6. The Preamble to the *Principles of Judicial Office* provides that:

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

* 1. The *Ethical Principles* include the following relevant principles and commentary:

**II. Integrity and Respect**

**Statement**

Judges conduct themselves respectfully and with integrity so as to sustain and enhance public confidence in the judiciary.

**Principles**

A. Judges comply with the law and conduct themselves both inside and outside the courtroom in a manner that is above reproach in the view of reasonable and informed persons.

\* \* \*

**Commentary**

2.A.1 Public confidence in the judiciary is essential to an effective judicial system and, ultimately, the rule of law. Within that system, judges hold positions of significant trust, confidence and responsibility. Conduct, in and out of court, that exhibits integrity ensures public respect for and confidence in the individual judge and, more significantly, contributes to public confidence in the judiciary and the judicial system as a whole. Judges should therefore act with a high degree of decorum, propriety and humanity.

2.A.2 Public expectations of the integrity of judges are understandably high. Behaviour considered acceptable if exhibited by some members of the public may not be appropriate for members of the judiciary. Judges should therefore be mindful of the ways in which their conduct would be perceived by reasonable and informed members of the community and whether that perception is likely to lessen respect for the judge or the judiciary as a whole. Behaviour that would diminish that respect in the minds of such persons should be avoided.

* 1. The *Ethical Principles* further recognize the importance of the physical well-being of the judiciary:

**III. Diligence and Competence**

**Statement**

Judges perform their duties with diligence and competence.

**Principles**

D. Judges strive to maintain their wellness to optimize the performance of judicial duties.

**Commentary**

**Wellness**

3.D.2 Judges should set aside sufficient time and make a commitment to the maintenance of physical and mental wellness, and take advantage of judicial assistance programs as appropriate.

* 1. Due to some medical attention that Justice of the Peace McLeod received for a back injury, she was prescribed Pantoprazole, Naproxen and Cyclobenzaprine on July 12, 2021. From the exhibits filed at the hearing, it appears that each of the medications carry some potential negative side effects.
	2. Potential side effects associated with Pantoprazole include headaches, diarrhea, and dizziness (caution is to be used when getting up from a lying or sitting position).
	3. With respect to Naproxen, potential side effects included headaches, indigestion, increase in blood pressure, skin sensitivity to UV rays, and drowsiness or dizziness (caution is to be used if driving).
	4. Potential side effects of Cyclobenzaprine included blurred vision and dryness of the mouth, altered sense of taste, and drowsiness or dizziness (caution is to be used if driving).
	5. All of these potential side effects appear relatively minor and are not severe enough to even prohibit driving. Of course, the extent of side effects may vary amongst individuals, and the evidence before this Panel does not speak to the cognitive impact any of the medication would have on an individual.
	6. This case raises a novel issue in having to consider what level of impairment would interfere with the discharge of a justice of the peace’s judicial duties, and at the same time, undermine the public’s trust and confidence in the judiciary. For example, is it enough that a justice of the peace has a headache or a migraine or is feeling a bit under the weather to prevent them from discharging their judicial duties? Or, is there an appreciable difference between taking over the counter medication as opposed to medically prescribed narcotics to deal with ailments that would render a justice of the peace incapable of properly discharging their duties?
	7. Neither legislation nor jurisprudence provides any clear guidance relating to identifying an unacceptable degree of impairment on the part of the judiciary. Because impairment is a broad concept, it does not easily lend itself to bright line rules. A judicial officer can be impaired in the sense of not being able to focus on a task for any number of reasons, for example, due to the effects of alcohol or drugs, fatigue, relationship difficulties, or medical treatment, to name a few.
	8. The specific issue before the Hearing Panel relates to the treatment of a physical condition with medication that caused side effects. In such situations, it is this Panel’s view that a justice of the peace should consider: i) whether they can perform their duties safely; and ii) whether their cognitive ability or judgement is significantly diminished to the point that they cannot discharge their duties as required under the Act, and having regard to the *Principles of Judicial Office* and the *Ethical Principles*.
	9. As stated, Justice of the Peace McLeod testified that she was lethargic and listless and probably not in a good frame of mind for a mentoring session. This Panel is of the view that Justice of the Peace McLeod should not have attended the meeting in the state that she was in, as it was not conducive to learning or engaging in a meaningful manner. However, it is important to note that Justice of the Peace McLeod did not attend to any court commitments that day. As such, she did not put herself or anyone else at risk by driving to the courthouse, or by presiding over court matters or rendering any judicial decisions.
	10. Further, the mentoring meeting was remote. At that time, use of remote technology was in its relative infancy. Even today, court participants – including judicial officers – continue to accustom themselves to the evolving advantages and limitations of the use of remote technologies in the administration of criminal justice. One of those advantages include being able to participate in a criminal trial by remote means if one is too ill to physically attend.[[6]](#footnote-6)
	11. Again, this Panel is of the view that Justice of the Peace McLeod was not in a condition to meaningfully participate, even remotely, in the mentoring session on July 13, 2021. However, Justice of the Peace McLeod testified that the meeting was important to her since mentoring was mandated and she wished to resolve some technological issues she was facing at the time. It is also important to note that this was the only mentoring meeting she presented in this manner and the other meetings proceeded without any concern of impairment.
	12. In this Panel’s view, the circumstances surrounding the mentoring meeting on July 13, 2021 would not leave a reasonable and informed person with the impression that Justice of the Peace McLeod acted in a manner that adversely impacted the integrity of the judiciary, or that undermined public confidence in the justice of the peace’s ability to perform the duties of her office.
	13. As such, this conduct does not rise to the level of being incompatible with judicial office. This allegation does not support a finding of judicial misconduct.

Allegation #2 – Analysis and Findings

* 1. Allegation #2 alleges that on one or more occasion between July 13, 2021 and August 4, 2021, Justice of the Peace McLeod presided in court and/or rendered one or more bail decisions while impaired.
	2. A lot was made at the hearing over the word “high” that was alleged to have been used by Justice of the Peace McLeod during the mentorship meeting on August 4, 2021. Justice of the Peace Bryant testified that Justice of the Peace McLeod disclosed during that meeting that she had given a reserved bail decision while “high” and that she was concerned someone had ordered a transcript, but she did not remember which decision it was, or who had ordered the transcript. Justice Bryant made handwritten notes during the August 4th meeting to that effect, which were filed in evidence at the hearing.
	3. Justice of the Peace McLeod testified that she may have used the word “high” during the August 4th meeting, but it was in relation to how she was feeling on the July 13th meeting while she was at home on medication. Justice of the Peace McLeod testified that she did not use the word “high” to describe “anything she did on July 16th because I wasn’t high”.
	4. Justice of the Peace McLeod testified that she was off sick and on non-preside days from Monday, July 12 to Thursday, July 15, 2021. She returned to presiding on Friday, July 16, 2021 when she rendered two bail decisions, which she had on reserve, and she presided over other bail hearings on that date. She testified that she took her last prescribed pill at approximately 9:00 p.m. on Thursday, July 15, 2021 and did not take any medication on Friday, July 16, 2021. Justice of the Peace McLeod was not cross-examined about this part of her testimony, and it is thus uncontradicted evidence.
	5. As noted above, in addition to having presided on July 16, Justice of the Peace McLeod also presided in bail court on July 19 (Cayuga and Simcoe); July 21 (Brampton); July 23 (Hamilton); July 26 (Hamilton); July 30 (Orangeville) and August 3 (Milton) of 2021. A review of the audio and/or transcripts of these proceedings does not disclose any apparent irregularities as to her conduct in the courtroom. Nor is there evidence that concerns about her conduct were raised by any of the parties that appeared before Justice of the Peace McLeod on any of those dates.
	6. One of the bail decisions Justice of the Peace McLeod rendered on July 16, 2021 was upheld by the Superior Court of Justice. In the bail review reasons, an observation of the reviewing judge is of particular note. The judge stated:

The decision of the Justice was 38 pages. It was thorough and covered all the evidence. She was clear on the facts and the law. She fully understood the submissions of counsel and was alive to all the issues. Her analysis was logical as to how she reached her decision. Whether I would have made a different decision had I been the judge of first instance is irrelevant. Her decision was not clearly inappropriate under all the circumstances. She carefully put in place safeguards to protect the public, and it appears that to date there have been no breaches of her conditions.

* 1. In the end, while there may be some discrepancy as to how the word “high” was used by Justice of the Peace McLeod during the August 4th meeting, in considering all of the evidence, including the uncontradicted evidence of Justice of the Peace McLeod that she stopped taking medication on the eve of her return to presiding, along with evidence of her conduct on the various dates she presided in the relevant time period, this Panel concludes that Presenting Counsel has failed to establish Allegation 2 on a balance of probabilities.
	2. Having made this finding, there is no need to consider whether the alleged conduct is incompatible with judicial office.

Allegation #3 – Analysis and Findings

* 1. The final allegation centres around the fact that, five months after a Review Council imposed remedial measures on Justice of the Peace McLeod in 2021, the Review Council received a complaint related to Justice of the Peace McLeod’s professional judgment, integrity, and manner of communication.
	2. As Presenting Counsel acknowledged in submissions, this allegation is tied to any findings that this Panel makes in respect to Allegations 1 and 2. Having found that neither Allegation 1 nor 2 supports a finding of judicial misconduct, Allegation 3 meets a similar outcome.
	3. There is no doubt that the mentoring relationship between Justice of the Peace Bryant and Justice of the Peace McLeod involved challenges, and that it took some time for a structured mentoring plan to crystallize. While this Panel made a finding that Justice of the Peace McLeod was impaired by prescription medication during her mentorship session on July 13, 2021, and thus was not in a state conducive to learning, we also found that this fact did not undermine public confidence in the justice of the peace’s ability to perform the duties of her office or adversely affect the integrity of the judiciary as a whole.
	4. Of additional note is that the remedial measures imposed on Justice of the Peace McLeod in 2021 were due to her behaviour in the courtroom and her written comments on public court documents. A fair sample size of proceedings reviewed for the purpose of this hearing does not reveal any behaviour that approaches the type of improper behaviour demonstrated at Justice of the Peace McLeod’s first hearing.
	5. Accordingly, this Panel concludes that the Presenting Counsel has failed to establish Allegation 3 on a balance of probabilities. Consequently, there is no need to consider whether the alleged conduct is incompatible with judicial office.

Conclusion

* 1. Upon consideration of all the evidence, and for the reasons outlined above, this Panel has concluded that the entirety of the evidence adduced in support of the allegations does not support a finding of judicial misconduct and the complaint is therefore dismissed.
	2. Given that this complaint is dismissed, this Panel need not consider the imposition of a disposition under s. 11.1(10) of the Act.
	3. Pursuant to s. 11.1(17) of the Act, we are required to consider whether Justice of the Peace McLeod should be compensated, in whole or in part, for her legal costs incurred in connection with the investigation of this complaint and the hearing.
	4. The parties are afforded an opportunity to present submissions on compensation in writing. Justice of the Peace McLeod shall file written submissions, appending all statement(s) of account, within 10 business days of the date this decision is released. Presenting Counsel may file a written response within 10 business days of the receipt of these submissions. Submissions shall be filed through the Registrar.
	5. If any party requests, or should this Panel require, an oral hearing following receipt of written submissions, a hearing will be scheduled by the Registrar in consultation with the parties and this Panel.

Released: this 20th day of November, 2023

**HEARING PANEL:**

Justice Vincenzo Rondinelli, Chair

Justice of the Peace **Kristine Diaz**, Justice of the Peace Member

George Nikolov, Community Member

1. The Review Council’s procedures provide that a complaints committee may order a hearing into a complaint where there is an allegation of judicial misconduct that has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct: rule 6.23 of the JPRC Procedures Document (May 2023). [↑](#footnote-ref-1)
2. *Re McLeod* (JPRC 2021), at para. 83. [↑](#footnote-ref-2)
3. After the present complaint was received in September 2021, the Complaints Committee made an interim recommendation to the Regional Senior Justice that Her Worship McLeod be unassigned from judicial duties pending the final disposition of the complaint. The interim recommendation was accepted. It will be for the Chief Justice to determine the effect to be given to the first hearing panel’s disposition decision requiring Justice of the Peace McLeod to engage in continued education and mentorship for a period of one year or as determined by the Chief Justice. [↑](#footnote-ref-3)
4. The *Principles of Judicial Office* were established pursuant to s. 13(1) of the Act in order to provide guidance on the conduct expected of justices of the peace. The *Principles of Judicial Office* were approved by the Review Council in December 2007, pursuant to s. 8(2)(c) of the Act. [↑](#footnote-ref-4)
5. Updated by the Canadian Judicial Council in 2021. In May 2023, the JPRC unanimously approved the adoption of the *Ethical Principles* (2021) as part of the ethical standards for justices of the peace of the Ontario Court of Justice. [↑](#footnote-ref-5)
6. For example, s. 714.1 of the *Criminal Code* allows for a process in which a sick witness can attend a trial by video. [↑](#footnote-ref-6)