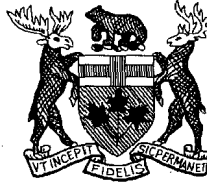


Justices of the Peace Review Council



**IN THE MATTER OF A HEARING ORDERED UNDER
SECTION 11(15) OF THE *JUSTICES OF THE PEACE ACT*,
R.S.O. 1990, c. J.4, as amended,**

**Respecting the conduct of
Justice of the Peace Jorge Barroilhet,
Justice of the Peace in the Toronto Region**

Before: The Honourable Justice Deborah K. Livingstone
Her Worship Senior Justice of the Peace Cornelia Mews
Ms. S. Margot Blight

Hearing Panel of the Justices of the Peace Review Council

Reasons for Decision

Counsel:

Mr. Douglas C. Hunt, Q. C.
Mr. Andrew Burns
Ms. Grace David

Hunt Partners LLP

Presenting Counsel

Mr. Julian N. Falconer
Ms. Jackie Esmonde

Falconer Charney LLP

Counsel to His Worship Jorge Barroilhet

JUSTICES OF THE PEACE REVIEW COUNCIL

REASONS FOR DECISION

INTRODUCTION

On January 19th through to January 22nd inclusive, March 6th, April 2nd, 3rd and April 8th of 2009 the Hearing Panel in this proceeding heard evidence from a series of witnesses in connection with complaints particularized in Appendix “A” of the Notice of Hearing in this matter, dated February 28, 2008, which is attached hereto.

Counsel agree that pursuant to section 4 of the Justices of the Peace Review Council's *Procedural Code for Hearings*, Presenting Counsel's role shall not be to seek a particular order against a respondent, but to see that the complaint against the Justice of the Peace is evaluated fairly and dispassionately to the end of achieving a just result. Our role is now to make findings of fact based on the admissions and the evidence presented, and determine which of those facts result in a finding of judicial misconduct such that one or more of the range of dispositions set out in section 11.1(10) of the *Justices of the Peace Act* are required to restore public confidence in the judiciary (hereinafter simply “judicial misconduct”). The Panel will reconvene to hear submissions from Counsel with respect to the appropriate disposition in view of the findings.

Before concluding that there has been judicial misconduct, we must be satisfied that the evidence presented in the Hearing meets the requisite standard of proof. Both counsel have submitted, and we agree, that that this requires clear and convincing proof based on cogent evidence to establish the allegations as set out in the Notice of Hearing and whether or not the allegations we accept constitute judicial misconduct.

We agree with Presenting Counsel's submission in relation to the definition of judicial misconduct, which we will apply to our findings herein. The issue is whether the impugned conduct of His Worship Barroilhet is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence

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in the ability of the Justice to perform the duties of office or in the administration of justice generally.

Moreau-Bérubé v. New Brunswick (Judicial Council), [2002] 1 S.C.R. 249.

On June 2nd, 2009 His Worship, through Counsel, informed the Hearing Panel that he would be calling no evidence but that he would make three formal admissions. Counsel stated that His Worship's admissions did not restrict or bind the Panel in the course of their determination of findings.

On behalf of His Worship, Counsel admits that these three admissions amount to judicial misconduct.

Counsel for His Worship submitted that there are two main categories of allegations, outside of the admissions, in which findings of fact could be made. The Panel prefers to relate the three admissions to the Particulars in the Notice of Hearing which set out the full extent of the allegations of judicial misconduct. We will set out our findings in that context.

THE FIRST ADMISSION

The first admission was stated as follows in Counsel for His Worship's written submissions:

In respect of the Chad Evans matter, His Worship acknowledges that he improperly intervened in respect of the Provincial Offences matter involving Mr. Evans and he improperly communicated with Her Worship Justice of the Peace Miller and His Worship Justice of the Peace Boon.

Counsel for His Worship submitted that at no time did His Worship offer to swear an affidavit on behalf of Chad Evans.

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THE PARTICULARS WHICH RELATE TO THE FIRST ADMISSION

The Chad Evans matter relates to the allegations particularized at paragraphs 11-16 in the Notice of Hearing. Those Particulars are as follows:

11. *On or about December 19, 2006, you became actively involved in assisting a personal friend, Chad Evans, with a traffic matter under the POA, in Brantford, Ontario. Mr. Evans had been charged with careless driving, tried and convicted in absentia. Mr. Evans is a resident of the United States.*
12. *On or about December 19, 2006, you hired and instructed an agent, Ms. Hernandez, to request a re-opening of a matter on behalf of Chad Evans.*
13. *On or about December 19, 2006, you repeatedly contacted the Brantford court clerk, Ms. Debbie Wright, in an effort to speak with the presiding Justice of the Peace in order to ask for a favour with respect to Mr. Evans' matter.*
14. *On or about December 19, 2006, you contacted Justice of the Peace Miller directly and requested that she exercise her jurisdiction to re-open the matter on behalf of Chad Evans.*
15. *On or about December 19, 2006, you suggested to Justice of the Peace Miller that she exercise "judicial independence" and re-open the matter on behalf of Chad Evans in spite of the fact that the agent attempted to file an unsigned affidavit on behalf of Mr. Evans.*
16. *On or about December 19, 2006, you improperly offered to Justice of the Peace Miller to cure the defect of the unsigned affidavit by signing the affidavit on behalf of Chad Evans.*

THE PANEL'S FINDINGS IN RELATION TO PARTICULARS 11-16

His Worship Justice of the Peace Kerry Boon testified on January 20, 2009. His Worship Kerry Boon was appointed a Justice of the Peace for Ontario in December 2002. Previously, he spent 28 years as a police officer. He is now a *per diem* Justice of the Peace and sits, from time to time, in the Brantford court.

In 2006 His Worship Boon received a note from one of the court clerks with a telephone

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number on it. The clerk indicated she had difficulty understanding the caller because of a heavy accent. His Worship Boon was asked to phone this Justice of the Peace.

His Worship Boon made the call in between his assigned tiers and spoke with His Worship Jorge Barroilhet. His Worship Barroilhet asked whether someone would be available if an agent drove from Toronto regarding a re-opening. His Worship Boon answered that he would avail himself, even though he was not assigned to intake duties, because he would not have wanted someone to drive from Toronto and arrive at Brantford to find there is no Justice of the Peace available. His Worship Boon regarded this as providing good service, and not as a favour to His Worship Barroilhet.

His Worship Boon remained at the Brantford courthouse for the remainder of the day, and no one showed up. His Worship Boon thought it odd that a Justice of the Peace, rather than a defendant or agent, would be making this call.

Deborah Wright, one of the clerks referred to by His Worship Boon, testified on January 20, 2009. She was able to pinpoint the date of this call from His Worship Barroilhet to the Brantford court as December 12, 2006.

She told the Panel that in the early part of the morning His Worship Barroilhet called and asked if His Worship Boon was in intake. She indicated that His Worship Dan MacDonald was. His Worship Barroilhet did not want to speak with him. She gave the message to His Worship Boon when he arrived that His Worship Barroilhet wished to speak to him. She may have given His Worship Barroilhet information about when intake court sits in Brantford.

A week later, December 19, 2006, Ms. Wright took another call from His Worship Barroilhet. He asked who was in the intake court and when she told him it was Her Worship Trillis Miller he asked to have her call him. She gave Her Worship Miller that message, which is Exhibit 7 at this Hearing.

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Ms. Wright delivered a second message that same day from His Worship Barroilhet asking Her Worship Miller to call. This message was not in writing.

We accept the uncontradicted evidence of both of these witnesses as factual underpinnings to the admission by His Worship Barroilhet of improper communication in respect of a matter in a Provincial Offences Court.

Her Worship Trillis Miller testified on January 19, 2009. She was appointed a Justice of the Peace in June 2006 and presides in the Brantford area. She was presiding in intake court on December 19th, 2006 when the Chad Evans application for re-opening was dealt with by the agent from Stop All Traffic Tickets - Consuelo Hernandez. A transcript of that court appearance was filed as Exhibit 6.

Consuelo Hernandez testified with respect to that court appearance. While differing in some details from the transcript evidence (Exhibit 6), Ms. Hernandez's testimony confirms that she was sent to deal with the Evans matter on behalf of Stop all Traffic Tickets. Her Worship was not prepared to grant the re-opening as the Affidavit of Chad Evans had not been signed by him. During the proceeding Ms. Hernandez asked to call her boss and the transcript confirms that she stated, as she told us in her evidence, that: "she understood her boss talked to somebody here about this". While Ms. Hernandez was out of the court, Her Worship Miller received a message that His Worship Barroilhet had called and wanted a return call and that he had called the previous week with respect to a matter relating to a ticket of a friend. That friend was Chad Evans. Her Worship Miller testified about the conversation with His Worship Barroilhet. There was no evidence that anyone other than His Worship Barroilhet communicated with the court about the Evans matter.

She described in her evidence that her telephone conversations with His Worship Barroilhet made her uncomfortable. Later that day she reported the incident to Regional Senior Justice of the Peace Redmond and Local Administrative Justice of the Peace MacDonald. That email became Exhibit 8 at the Hearing. In that email Her Worship

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Miller stated:

... In speaking with Justice Barroilhet he advised me that a friend of his, Chad Evans, had received a ticket, but because Mr. Evans lives in the United States, Justice Barroilhet further advised me that he told Mr. Evans that he would take care of the ticket. Justice Barroilhet in speaking to me asked if I would deal with the matter and re-open the matter for his friend. I advised him that I could not because the Affidavit was not signed by Mr. Evans. Justice Barroilhet advised me that, we (as Justices) are independent and that the nice thing about being independent is that we can make these types of decisions and Justice Barroilhet then asked me to consider overlooking the fact that the Affidavit was not signed. I advised him that I would not consider re-opening the matter without the Affidavit being signed. He then suggested he could sign the Affidavit because he was looking after the matter for his friend and that he had hired the Agent, Ms. Hernandez, on behalf of Mr. Evans. I told Justice Barroilhet that the Affidavit must be signed by Mr. Evans before a re-opening could be considered. He asked me if I would re-open the matter if the Affidavit was signed by Mr. Evans and I told him I would. I then said goodbye and our telephone conversation ended. I realize now after looking into the matter further that I erred in telling him I would re-open the matter if the Affidavit was signed by Mr. Evans because I did not realize that if I denied the Application the next step would be an appeal. ...

Counsel for His Worship Barroilhet submitted that the communication with Her Worship Miller was a serious error in judgment. His position to us, as put to Her Worship Miller repeatedly in cross-examination, was that because His Worship Barroilhet has a thick Spanish accent, it was Her Worship Miller who misunderstood the context of the call. He submits that His Worship Barroilhet did not offer to sign an affidavit to assist in the reopening of the Chad Evans matter.

Counsel for His Worship Barroilhet accepts that there is evidence from Her Worship Miller that his client stated to her that the nice thing about Justices of the Peace being independent is that they can make these types of decisions. He submits, however, that because she couldn't remember exactly when that comment was made in the context of the call, the only cogent evidence is that His Worship Barroilhet wanted a favour on behalf of a family friend.

In our view, the evidence of Her Worship Trillis Miller, in combination with the evidence

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of Consuelo Hernandez about her attendance in Brantford on December 19, 2006 supports a finding of fact beyond the admission of His Worship Barroilhet.

The Panel accepts the uncontradicted evidence of Her Worship Miller. She testified that His Worship Barroilhet told her he had hired Ms. Hernandez on behalf of Mr. Evans. She stated that because of language difficulties she asked His Worship Barroilhet to repeat himself several times. She was a new Justice of the Peace and did not know His Worship Barroilhet. However, in examination-in-chief, in cross-examination, and in re-examination she was consistent in her response that what she heard was a request from a more senior Justice of the Peace to re-open a matter on behalf of a friend. When her response was that she could not, because the affidavit was not signed, we accept her evidence that His Worship Barroilhet offered to sign the affidavit. This did not sit well with her. It disturbed her. She mulled it over and decided to let Senior Administrative Justices of the Peace know her concerns. This was a courageous stance from a newly appointed Justice of the Peace. We conclude that this evidence is clear and convincing proof that His Worship Barroilhet hired Consuelo Hernandez to request a re-opening on behalf of his friend and asked a colleague to waive the requirements for an affidavit duly sworn by the defendant, in this case Chad Evans, as required under section 11(1) of the *Provincial Offences Act*.

We are satisfied, therefore, that Particulars 11-16 have been proven to the standard required at this Hearing, and that the conduct described in Particulars 13-16 constitutes judicial misconduct.

THE SECOND ADMISSION

The second admission was stated as follows in Counsel for His Worship's written submissions:

His Worship admits that he improperly assisted Marta Mateluna, his wife, from time to time by advising her generally in respect of court documents.

Reasons for decision

Counsel for His Worship submitted that this assistance was not in respect of individual clients.

THE PARTICULARS WHICH RELATE TO THE SECOND ADMISSION

The second admission relates generally to the allegations particularized at paragraphs 1-6, 9 and 10 in the Notice of Hearing, which are set out below:

1. *Prior to your appointment as a Justice of the Peace you were the principal owner and operator of 1401875 Ontario Inc., carrying on business as Stop All Traffic Tickets. Stop All Traffic Tickets provides private, for fee paralegal services to clients, primarily charged with matters under the Provincial Offences Act, R.S.O. 1990, c.P.33, as amended, ("POA") and appearing before the Ontario Court of Justice.*
2. *At the time of your appointment as a Justice of the Peace of the Ontario Court of Justice, you had been informed and were aware that you were required to sever all interest, contact or involvement with Stop All Traffic Tickets. You purported to transfer responsibility for the management of the Stop All Traffic Tickets business to your wife, Ms. Marta Marteluna [sic].*
3. *Notwithstanding the foregoing, you had continuing inappropriate interest in, contact with or involvement with paralegal services, including but without limitation the Stop All Traffic Ticket business.*
4. *On or about June 2006, you interviewed Ms. Consuela Hernandez further to her potential employment as a Court and Tribunal Agent for Stop All Traffic Tickets. You had the "final say" in respect of her employment. You hired Ms. Consuela Hernandez on behalf of Stop All Traffic Tickets.*
5. *On or about June 20, 2006, Ms. Hernandez was provided with a day-timer by Ms. Marteluna, your wife and manager of Stop All Traffic Tickets, in which your name and telephone numbers were inscribed by Ms. Marteluna. Ms. Marteluna instructed Ms. Hernandez that if she had questions, she was to telephone you and speak with you. Ms. Hernandez called you and you assisted her on a number of occasions regarding the cases assigned to her at Stop All Traffic Tickets.*

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6. *Thereafter you frequently communicated with Ms. Hernandez and discussed the specific facts and procedure for cases assigned to her by Stop All Traffic Tickets.*

...

9. *Furthermore, during the term of her employment with Stop All Traffic Tickets, you informed Ms. Hernandez that clients who sought an extension of time to pay and a reduction of fine on a sixty-six dollar (\$66) POA ticket would receive a guaranteed twenty dollar (\$20) reduction and additional time to pay on each ticket. Clients of Stop All Traffic Tickets who were seeking a reopening and extension of time to pay before him would receive a guaranteed forty-six dollar (\$46) reduction and extension of time to pay. Fees paid by the clients to Stop All Traffic Tickets would be negotiated based on the guaranteed reductions offered by you. Stop All Traffic Tickets accumulated client requests for reductions, extensions and reopening until a Court and Tribunal Agent of Stop All Traffic Tickets could appear before you on those matters. You always granted the requested extensions of time to pay, re-openings and reductions based on the foregoing guarantee to clients of Stop All Traffic Tickets.*

10. *On or before November 21, 2006, you met with Ms. Hernandez and Mr. Cornejo at the Eglinton courthouse during which meeting you instructed Ms. Hernandez regarding an appeal on behalf of Mr. Cornejo. You subsequently met with Ms. Hernandez at a coffee shop across the street from the courthouse at Old City Hall and assisted Ms. Hernandez with the preparation of the appeal of the Cornejo matter, a client of Stop All Traffic Tickets. Pursuant to your instructions, Ms. Hernandez prepared the appeal and obtained a reduction in fees for the client.*

CORPORATE FRAMEWORK

The corporate records filed as Exhibit 30A indicate the following:

J.H. Barroilhet & Associates Inc. was incorporated on February 15, 2000 as Ontario Corporation Number 1401875 (hereinafter "1401875"). Jorge Barroilhet was the only designated officer of 1401875.

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On September 23, 2002, Jorge Barroilhet on behalf of 1401875 registered the business name "Stop All Traffic Tickets & Associates". A cancellation was filed on September 24, 2003 and the registration expired on September 22, 2007.

On October 17, 2002, Jorge Barroilhet submitted his Curriculum Vitae to the Attorney General, asking to be considered for appointment as Justice of the Peace.

On November 12, 2002, his wife Marta Mateluna was designated a director of 1401875.

Jorge Barroilhet remained the only designated officer of 1401875 after his appointment as a Justice of the Peace in December 2002 until the date the company was dissolved on December 13, 2007.

Another company, 1184004 Ontario Inc. (hereinafter "1184004"), was incorporated on June 14, 1996 and since that date Marta Mateluna has been its only designated officer and director. On August 1, 2003, Marta Mateluna on behalf of 1184004 registered the business name "Stop All Traffic Ticket & Associates". The corporate records indicate that a renewal was filed on September 15, 2008.

The registered business names "Stop All Traffic Ticket & Associates" and "Stop All Traffic Tickets & Associates" are obviously similar. Indeed, the singular form of "Traffic" appears in some documentation. Ms. Hernandez' letter of complaint to the Justice of the Peace Review Council refers to both the singular and plural forms when naming her former employer (Exhibit 20). On the other hand, the plural appears much more frequently in the documentation: in Exhibit 25B (Cornejo Notice of Appeal), in Exhibit 9 (Ms. Hernandez' day-timer), in Exhibit 6 (Chad Evans transcript), on Francis Chung's business card (Exhibit 27 – stopalltraffictickets@bellnet.ca) and in an advertisement placed subsequent to Ms. Hernandez' departure from the business. (Exhibit 16A).

Reasons for decision

The singular form of the name was not registered until several months after His Worship's appointment.

Shirley Alvarez was employed by Barroilhet & Associates, later Stop All Traffic, between 1997 and 2004. She testified on April 8, 2009. Ms. Alvarez noted that before His Worship's appointment, the firm operated under a different name, Barroilhet & Associates. About six months or so after His Worship's appointment, Ms. Mateluna became more involved in the business and it was changed to Stop All Traffic Tickets.

THE PANEL'S FINDINGS IN RELATION TO PARTICULARS 1-6, 9 AND 10

With respect to paragraph 1 of the Particulars, we find that prior to his appointment, His Worship Barroilhet was principal owner and operator of 1401875, carrying on business as "Barroilhet & Associates" (not "Stop All Traffic Tickets" as specified in the Particular), and as such provided private, for fee paralegal services to clients.

Notably, there is cogent evidence of official documentation referring to the plural form of the business name (with which His Worship continued to be associated as an officer): Consuelo Hernandez' employment agreement dated July 12, 2006 (Exhibit 15) refers to employment with Stop All Traffic Tickets; and a release (Exhibit 28) executed by Joe Grasso on December 19, 2007 in favour of "Stop All Traffic Tickets and each of its ... officers, directors, employees, servants and agents, and their successors and assigns.

Based on this evidence, we conclude that there was no clear separation between the business run by His Worship Barroilhet prior to his appointment, and the business run as "Stop All Traffic" afterwards. His Worship's Counsel submitted that this was no more than sloppy record-keeping and that the Panel should rely on Ms. Alvarez's evidence. However, Ms. Alvarez testified that it took several months before the business took on a new name.

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All of the evidence before us supports our conclusion that His Worship sustained corporate ties to his former business following his appointment.

Further, there is uncontradicted evidence that His Worship Barroilhet was aware, prior to his appointment, that he was required to sever all interest, contact or involvement with his former business.

Justice of the Peace Nadkarni testified that she interviewed His Worship Barroilhet along with Associate Chief Justice Ebbs, a Regional Senior Judge of the Toronto area and two lay members of the Justice of the Peace Review Council on November 13, 2002. Through her evidence Her Worship's notes of his responses to questions about his qualifications were tendered as Exhibit 4.

Justice of the Peace Nadkarni testified that when asked the question: "Are you aware that if appointed a Justice of the Peace, that you must relinquish other remunerative positions which you may presently hold?" Mr. Barroilhet's response was: "Aware and willing." Further, when he was asked: "Are you prepared to resign from such positions, if they are in conflict with the duties and responsibilities of a Justice of the Peace?", Mr. Barroilhet indicated to the interview panel that he would be willing to resign from such positions.

She also testified that it was the habit of Associate Chief Justice Ebbs at the Justice of the Peace interviews to spend "a great deal of time indicating to the candidates that when they became Justices of the Peace, that meant that was all they did, not only with regards to work, but also with regards to friends."

Her Worship Nadkarni testified that Mr. Barroilhet was further questioned about his understanding of the concepts "impartial and independent" and described his understanding of these concepts as: "Can distance myself to be impartial and very independent. Not tied or obligated to anyone and can think freely."

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Her Worship Nadkarni testified that when Mr. Barroilhet was asked: “What do you understand the term - ‘conflict of interest’ to mean”?, he responded: “If one of my clients appeared in front of me, would find that to be a conflict of interest, also if I have interests in another firm”; and when asked, “what do you understand by the term ‘perceived conflict of interest’”, his response was: “Office is right beside the Keele Courts. Could not go to lunch with former staff or other paralegals.”

The Panel finds that at the time of his interview, His Worship had a clear idea that meetings with former associates could be perceived as a conflict of interest and that interests in a firm or appearances of former clients before him could create a conflict of interest, which would have to be declared.

In addition, Counsel for his Worship admitted on the record and we accept that his client was aware that he would have to relinquish any and all interests in any paralegal organization.

The Panel finds, therefore, that Particulars 1, 2 and 3 have been proven to the standard required at this Hearing and that the conduct described in Particular 3 constitutes judicial misconduct.

Consuelo Hernandez testified that she met with Marta Mateluna less than a month after graduating from Seneca College, and she was hired after the second interview with Ms. Mateluna. Ms. Hernandez testified that Ms. Mateluna informed her that her husband was a Justice of the Peace. Ms. Hernandez testified that she was subsequently interviewed by Justice of the Peace Barroilhet at a coffee shop by Eglinton and Caledonia. She testified that she asked His Worship about his involvement as a Justice of the Peace, and that His Worship told her: “We need people that are discreet. You have to be discreet.” Ms. Hernandez testified that, at the conclusion of the interview he said: “Welcome, you’re hired.”

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Filed as Exhibits 14 and 15 are Ms. Hernandez's business card and employment agreement as a paralegal with Stop All Traffic Tickets. We accept that Ms. Hernandez was employed at Stop All Traffic Tickets between July 2006 until July 2007. In a complaint made to the Ministry of Labour under the *Employment Standards Act* in July 2007, Ms. Hernandez refers to both Ms. Mateluna and His Worship Barroilhet as her immediate supervisors. Filed as Exhibit 9 is Ms. Hernandez's 2006 day-timer, in which His Worship's cellular and office telephone numbers are inscribed. Ms. Hernandez testified that those telephone numbers were inscribed in Ms. Mateluna's hand. Ms. Hernandez testified that Ms. Mateluna instructed Ms. Hernandez that if she had questions, she was to telephone and speak with His Worship Barroilhet. Ms. Hernandez testified that His Worship assisted her with cases assigned to her at Stop All Traffic Tickets.

A specific example of the assistance His Worship Barroilhet provided is Exhibit 10 which is a document which Ms. Hernandez described as "notes" made in His Worship's hand when he provided her with individual instruction as to strategies for advancing clients' interests, to be employed when applying for extensions to pay fines and re-openings. Ms. Hernandez removed this document from His Worship's desk when the session was concluded. The only evidence we have about this document is the testimony of Ms. Hernandez. The document speaks for itself, even if it was "stolen" from His Worship's desk as his Counsel, Mr. Falconer, submitted.

We note that Ms. Hernandez' employment agreement (Exhibit 15) contemplates that "teaching, instructions, methods and materials" provided by Stop All Traffic Tickets were deemed the exclusive property of Stop All Traffic Tickets and were to be treated as confidential.

We conclude from Ms. Hernandez's testimony, and the corroborating documents, that His Worship Barroilhet was actively involved in her employment as a paralegal with Stop All Traffic Tickets. As a result, the Panel finds that Particular 4 has been proven to the standard required and that the conduct described in Particular 4 constitutes judicial

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misconduct, notwithstanding that the evidence falls short of providing clear and cogent proof that His Worship had the “final say” in her employment as set out in that Particular. We note that these findings also pertain to Particular 3.

The Panel further concludes that Particular 5 has been proven to the standard required and that the conduct described in Particular 5 constitutes judicial misconduct, except in relation to the frequency of communications, as set out in that Particular’s final sentence. We are not satisfied that there is cogent evidence about the frequency of communications between His Worship Barroilhet and Ms. Hernandez.

Counsel for His Worship Barroilhet made it clear that the second admission of inappropriate advice to his wife was not in respect of individual clients. We find that there is cogent evidence of involvement with individual clients of Stop All Traffic Tickets. We accept that there is no evidence of advice to His Worship’s wife about individual clients. There was, however, evidence about advice to Ms. Hernandez.

In addition to the telephone calls and individual instruction referred to earlier in this decision, Consuelo Hernandez testified that she met twice with His Worship Barroilhet to discuss the Cornejo matters, and that the first of those meetings took place at the Eglinton courthouse in the presence of Mr. Cornejo. Although not all of the details set out in Particular 10 have been proven to the standard we require at this Hearing, we find that Ms. Hernandez was representing a gentleman by the name of Mr. Cornejo in her capacity as a paralegal at Stop All Traffic Tickets and that she was introduced to Mr. Cornejo by His Worship. She testified that his Worship Barroilhet reviewed draft pleadings she had prepared on Mr. Cornejo’s behalf. Tendered as Exhibits 25A and 25B are documents which Ms. Hernandez testified were her draft Notice of Motion and Notice of Appeal in one of the Cornejo matters, which she presented to His Worship when they met for the second time. These documents show corrections in red ink, which Ms. Hernandez testified were made in His Worship’s hand, in her presence. We accept Ms. Hernandez’s uncontradicted evidence that the red notations were made by His Worship. Exhibit 25B demonstrates that amendments were made in the same handwriting, which we accept was

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His Worship Barroilhet's handwriting. We accept this as proof that His Worship had sufficient familiarity with the client's file to insert the information number on the Notice of Appeal. Some of the pleadings ultimately filed with the court in the Cornejo matters, were tendered as Exhibits 11A, 12A, 12B, 12C and 13A. Although the evidence falls short of providing clear and cogent proof of the date of the first meeting or the location of the second meeting, this Panel concludes that that Particular 10 has otherwise been proven to the standard required at this Hearing and that the conduct described in Particular 10 constitutes judicial misconduct. We note that the Cornejo findings also pertain to Particular 3.

In relation to the allegations in Particular 9, the Panel accepts, based on Ms. Hernandez' evidence about Exhibit 10 (the document regarding strategies to be employed when applying for extensions to pay fines and re-openings) that His Worship instructed Ms. Hernandez in relation to obtaining reductions of fines for clients of Stop All Traffic Tickets. We do not find, however, that there is cogent evidence which proves that His Worship guaranteed reductions or that Stop All Traffic Tickets accumulated clients' requests for reductions, extensions and re-openings and presented them to His Worship.

Particular 9, therefore, has not been proven to the standard required at this Hearing.

We conclude that His Worship Barroilhet, as he admits, improperly assisted his wife Marta Mateluna by advising her generally in respect of court documents. We further conclude that His Worship's improper assistance to his wife went far beyond general advice in respect of court documents. In the Cornejo matters, His Worship provided advice about the representation of specific client of Stop All Traffic Tickets. In the Chad Evans matter, His Worship intervened directly on behalf of a client of Stop All Traffic Tickets.

We also conclude that he improperly assisted Consuelo Hernandez, an employee of Stop All Traffic Tickets, both by improperly providing general instruction and assistance, and by providing improper assistance in respect of individual clients of Stop All Traffic

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Tickets. As a result, the Panel concludes that Particular 6 has been proven to the standard required at this Hearing and that the conduct described in Particular 6 constitutes judicial misconduct, except insofar as it relates to the frequency of communications which has not been proven to the standard required here.

THE THIRD ADMISSION

The third admission was stated as follows in Counsel for His Worship's written submissions:

His Worship admits that he improperly signed orders in the intake office and presided over joint submissions in Provincial Offences court in respect of individuals who were represented by Stop All Traffic Tickets agents, a paralegal company owned by Marta Mateluna, his wife.

THE PARTICULARS WHICH RELATE TO THE THIRD ADMISSION

The third admission relates generally to the allegations particularized at paragraphs 7 & 8 in the Notice of Hearing, which state:

7. *In respect of some of these matters, Ms. Hernandez would appear in front of you while you were presiding over the matters in your capacity as a Justice of the Peace.*

8. *You failed to recuse yourself from presiding over matters for clients who were represented by Agents of Stop All Traffic Tickets.*

We will also be addressing the allegations particularized at paragraph 19 under this heading. Particular 19 reads as follows:

19. *On September 13, during an appearance of Ms. Consuelo Hernandez before you, when Ms. Hernandez requested that her client's matter be adjourned and set before another Justice of the Peace on the basis of a conflict of interest between she and you, you seized yourself of the matter and adjourned it to December 6, 2007, notwithstanding your knowledge of the relationships between Ms. Hernandez and yourself, your wife Mrs. Marteluna and Stop All Traffic Tickets.*

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Ms. Alvarez testified that early on in the history of Justice of the Peace Barroilhet's appearances as the Justice presiding in court, he brought it to the attention of the prosecutor when she, a former employee, was before him as a paralegal from Stop All Traffic Tickets. She testified: "Yes, a few times when he was just appointed we'd go into court and if he was there, he would say yes, that you know, we had a relationship before, that there was no conflict, the prosecutor was asked if she had any objections and we proceeded." Ms. Alvarez testified that no prosecutor objected and that she received no special treatment from His Worship. Ms. Alvarez ceased her employment with Stop All Traffic Tickets in 2004.

THE PANEL'S FINDINGS IN RELATION TO PARTICULARS 7, 8, AND 19

In view of Ms. Alvarez's evidence, we assume that the third admission pertains to appearances before His Worship Barroilhet by paralegals employed after 2004 by Stop All Traffic Tickets.

We note that the third admission is consistent with the testimony provided by Ms. Hernandez about appearances in His Worship's court and her evidence that neither she, nor His Worship, ever indicated on the record a possible conflict of interest.

We find, therefore, that Particulars 7 and 8 have been proven to the standard required at this Hearing and that the conduct described in Particulars 7 and 8 constitutes judicial misconduct.

It is interesting to note that in the third admission, His Worship limits his admitted impropriety to being only in relation to improperly signing orders in the intake office and presiding over joint submissions in Provincial Offences Court. Ms. Hernandez' evidence, on the other hand, as to the many occasions on which she appeared in His Worship's court, on behalf of clients of Stop All Traffic Tickets, did not describe any limitations as to where or when she would appear in front of him. Ms. Hernandez was cross-examined vigorously by His Worship's Counsel. It was never put to her that her appearances in

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front of His Worship Barroilhet were only for those matters which are set out in his third admission.

Although the Panel does not make a finding that there is cogent evidence which clearly and convincingly proves that paralegals from Stop All Traffic Tickets, including Ms. Hernandez, appeared in His Worship Barroilhet's court for matters beyond intake and joint submissions, it is curious that the only suggestion of any limitation in what Stop All Traffic Ticket's agents had in relation to involvement with His Worship Barroilhet comes from the third admission made at the close of Presenting Counsel's case.

In stark contrast to His Worship's lack of attention to formalities surrounding conflicts of interest when paralegals employed by Stop All Traffic Tickets appeared in his court, we have evidence that His Worship was unwilling to consider the existence of a conflict of interest when that was raised in his court by Ms. Hernandez on September 13, 2007. Ms. Hernandez' evidence is that by this time she had been terminated by Stop All Traffic Tickets, was working on her own, and had applied for vacation and termination pay which she alleged was owed to her by Stop All Traffic Tickets under the *Employment Standards Act*.

Ms. Hernandez testified that she decided to raise the conflict of interest with His Worship Barroilhet in the Avila matter as a result of a court appearance before His Worship earlier that same day. In the earlier matter, Ms. Hernandez was representing a different client, Wendy Freeman. The transcript of that appearance, filed as Exhibit 18, shows that despite Ms. Hernandez' statement that the defendant had signed the authorization of representation presented to the court, His Worship declined to proceed, adjourned the matter, and insisted that the defendant be present in court for the next scheduled appearance.

Ms. Hernandez testified that she felt her treatment by His Worship during that morning's appearance had been unusual and unexpected. She had never received similar treatment from His Worship. She felt she was being treated differently and that something was

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wrong. She felt it was the labour complaint that was bothering him. She was worried that her clients would receive different treatment from His Worship and that her livelihood could be affected. She raised the conflict of interest in an attempt to have her matters transferred to another court.

Filed as Exhibit 19 is a transcript of that proceeding:

THE COURT: Yes, what are you doing with matter?

MS. HERNANDEZ: Your Worship, respectfully asking if there is a conflict of interest....

CLERK OF THE COURT: Sorry, can you just state your name on the record, please?

MS. HERNANDEZ: Yeah, for the record Hernandez initial C. H-E-R-N-A-N-D-E-Z. You have a situation of bias, Your Worship, because I work with your wife's company and I think this matter should be handled with another Justice of the Peace asking you respectfully, Your Worship.

THE COURT: Thank you, it is the Court's position that it is not a conflict of interest, I treat every defendant with the same – but if there is a resolution with the prosecutor you deal with the prosecutor and I decide to what conflict of interest or not. So, you have a resolution with the prosecutor that will be fine if it's not then we will have the trial. Now, please, go ahead and speak with the prosecutor and try to resolve it with her, thank you.

MS. AMBROSI: Your Worship, my understanding this is an adjournment request.

THE COURT: Well, my position today was very clear. But before I go farther than that Ms. Fernandez – Hernandez, sorry, I made the decision if I consider to be proper or is a conflict of interest if you are going to have – if you have difficulty well fine, I do not have difficulty and I treat everybody as I say to Mr. Sutherland just a minute ago, I treat everybody with the same – the same way; I ask everybody the same question, maybe I ask you some questions today which I do not ask tomorrow; I ask that question at three o'clock, 1:30 which I do not ask the same question now because I already got some of the answers, so in this particular case there is absolutely no conflict of interest, unless you have a very good reason why this matter has to be adjourned. The motion to adjourn it is denied, thank you.

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MS. HERNANDEZ: Your Worship, I think it such be – there is a conflict of interest between you and I, you know that I'm taking the matter to the labour board and you – and I know as a fact that you don't like that you just like because I did take this matter to the labour board, so, please I ask in your respectfully to give it some other Justice of the Peace.

THE COURT: Can I see the information, please? I have all the reason to believe that why you want to adjourn this matter...

MS. HERNANDEZ: No.

THE COURT: ... well the Court is not satisfied with the reason that you gave.

MS. HERNANDEZ: Well, I am not ready to proceed, Your Worship, there's a conflict of interest and you are ...

THE COURT: Just have a seat.

Court Monitor's Notes: (Other matters dealt with at this time)

The transcript (Exhibit 19) demonstrates that, with apparent reluctance, His Worship Barroilhet adjourned Ms. Hernandez' request for an adjournment and seized himself of the matter:

THE COURT: Can you come back, please, Ms. Hernandez.; The matter of Mario Avila is coming back; it's adjourned and it's coming back on December the 6th at 10:30 in the court, thank you. The defendants will be here. And, on that date the Court will make a decision with how this matter is going to proceed.

MS. AMBROSI: I'm apologize, Your Worship, December 6th ...

THE COURT: Ten thirty, W3.

MS. AMBROSI: Thank you.

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MS. AMBROSI: Your Worship, am I to understand that you are seized of this matter or is this a matter ...

THE COURT: Yes, I'm seized with the matter, yes, thank you. Did you write the date?

MS. HERNANDEZ: No, Your Worship.

THE COURT: The 6th of December, 10:30, W3.

MS. AMBROSI: Thank you, Your Worship.

THE COURT: And Ms. Avila coming that day and that day I will decide if it's going to be in my court or it's going to be reversed (sic) to another court, all right, thank you.

Although it is not apparent from the transcript, Ms. Hernandez was looking for an adjournment because she had been retained by Mr. Avila outside the courtroom, just before the court appearance. She testified that there had been no disclosure in the matter and that she had nothing to proceed with.

Ms. Hernandez stated on the record of the proceedings that she had made a complaint about His Worship's wife's company to the labour board (in fact, the complaint was made to the Ministry of Labour). We find that His Worship Barroilhet improperly declined to consider the existence of a conflict of interest and seized himself of the Avila matter. On the basis of the transcript of this appearance (Exhibit 19), the Panel concludes that Particular 19 has been proven to the standard required at this Hearing and that the conduct described in Particular 19 constitutes judicial misconduct.

In their legal argument in relation to the findings we should make, Counsel for His Worship Barroilhet argued that no adverse inference should be drawn from His Worship's decision not to call defence evidence. Presenting Counsel conceded, and the Panel accepts that there is no burden upon His Worship to call evidence, or to testify at this Hearing.

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It is noteworthy, however, that Counsel for His Worship cross-examined Consuelo Hernandez on the anticipated testimony of a number of people, including two secretaries employed at Stop All Traffic Tickets, Francis Chung, a paralegal at the firm, and Rosamel Cornejo, the client of Stop All Traffic Tickets to whom we have already referred, and asked her to comment on that potential evidence. As no evidence was called by His Worship, we accept Presenting Counsel's submission that any and all of the assertions so posed by Mr. Falconer are unsupported by evidence and of no probative relevance. The Panel goes no further in its findings on this issue. It does not draw an adverse inference against His Worship for not calling the witnesses referred to by his Counsel.

Nor does the Panel draw any adverse inference against Presenting Counsel for not calling those same witnesses, as Counsel for His Worship seemed to suggest we might. His position was that these witnesses, employees and a client of Stop All Traffic Tickets, could have corroborated Ms. Hernandez, if they had been called by Presenting Counsel.

In our view, Presenting Counsel is under no obligation to call witnesses he considers unnecessary. Further, and as Presenting Counsel has pointed out, Mr. Falconer asserted on the record that these witnesses would be testifying for the defence and therefore Mr. Hunt had every expectation that their evidence would be before the Panel.

The Panel can make its findings only upon the evidence it has heard and which it deems credible and cogent. We cannot speculate on evidence we have not heard.

We do not accept, as Counsel for His Worship has submitted, that Ms. Hernandez is an incredible witness, motivated to lie because she was dismissed by Stop All Traffic Tickets, possibly owed money by Stop All Traffic Tickets and concerned about her livelihood as a paralegal who would be required to appear in courts where His Worship Barroilhet presided.

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The Panel does not find that all of Ms. Hernandez' evidence meets the test required – that is, cogent evidence sufficient of, on a balance of probabilities, clearly and convincingly proving all of the allegations which relate to her. We have referred, in our findings thus far, to the particulars which relate to Ms. Hernandez which are not supported by cogent evidence.

We reject, however, the submissions of Counsel for His Worship that Ms. Hernandez is a liar, who has taken steps to harm His Worship and his wife. Ms. Hernandez was cross-examined in great detail and with great vigour. It is the Panel's view that her evidence, in the aspects we have already referred to, is not only cogent, but also is supported by other evidence, which we accept. Ms. Hernandez, in our view, has put her own livelihood in jeopardy by her testimony, confirmed by Exhibit 6, in relation to her representations of Chad Evans in Brantford on December 19, 2006.

The Panel's assessment of Joe Grasso's credibility, however, is completely the opposite. Particulars 17 and 18 relate specifically to his evidence.

Mr. Grasso, another former employee of Stop All Traffic Tickets, was the subject of a *voir dire* and declared an adverse witness on April 3, 2009, with written reasons released April 6, 2009. He was cross-examined by both Presenting Counsel and Counsel for His Worship Barroilhet on April 8, 2009.

The Panel finds Mr. Grasso's testimony of no value in our deliberations as to the findings we are required to make. There is, therefore, no clear and convincing proof of Particulars 17 and 18.

SUMMARY OF FINDINGS

The Panel finds that there is cogent evidence which clearly and convincingly proves Particulars 1, 2, 3, 7, 8, 11, 12, 13, 14, 15, 16 and 19, as well as 4, 5, 6 and 10 in part, and that therefore judicial misconduct has been established beyond the scope of the three admissions made by His Worship Barriolhet.

The Panel will hear submissions from Presenting Counsel and Counsel for His Worship Barroilhet in relation to the appropriate disposition in accordance with Section 11.1 (10) of the *Justices of the Peace Act* on the date of September 17, 2009.

Dated at the city of Toronto in the Province of Ontario, July 29, 2009.

HEARING PANEL: The Honorable Madame Justice Deborah K. Livingstone
Her Worship Senior Justice of the Peace Cornelia Mews
Ms. S. Margot Blight – Borden Ladner Gervais LLP

ATTACHMENT

NOTICE OF HEARING In the Matter of Complaints Respecting Justice of the Peace Jorge Barroilhet Justice of the Peace in the Toronto Region

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF a complaint respecting

Justice of the Peace Jorge Barroilhet

Justice of the Peace in the

Toronto Region

NOTICE OF HEARING

The Justices of the Peace Review Council (the "Review Council"), pursuant to subsection 11(15) of the *Justices of the Peace Act*, R. S.O. 1990, c. J.4, as amended, has ordered that the following matter of several complaints regarding the conduct or actions of Justice of the Peace Jorge Barroilhet be referred to a hearing panel of the Review Council, for a formal hearing.

It is alleged that you have conducted yourself in a manner that is incompatible with the due execution of your office and that by reason thereof you have become incapacitated or disabled from the due execution of your office. The particulars of the complaints regarding your conduct are set out in Appendix "A" to this Notice of Hearing.

The Review Council will convene at the Judges Conference Room, Suite 2310, 1 Queen Street East, in the City of Toronto, on 10th day of March, 2008, at 9:30 a.m. in the forenoon or as soon thereafter as the Review Council can be convened to set a date for the inquiry into the complaint.

A Justice of the Peace whose conduct is the subject of a formal hearing before the Review Council may be represented by counsel and shall be given the opportunity to be heard and to produce evidence.

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The Review Council may, pursuant to subsection 11.1(10) of the *Justices of the Peace Act*, dismiss the complaints after completing the hearing, with or without a finding that they are unfounded or, if it upholds the complaints, it may:

- (a) warn the justice of the peace;
- (b) reprimand the justice of the peace;
- (c) order the justice of the peace to apologize to the complainants or to any other person;
- (d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- (e) suspend the justice of the peace with pay, for any period;
- (f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or
- (g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2 of the *Justices of the Peace Act*.

You, your counsel or your representative may contact the office of the solicitor for the Review Council in this matter, Douglas C. Hunt, Q.C., Hunt Partners LLP, 192 Bedford Road, Toronto, Ontario, M5R 2K9, Telephone: (416) 350-2939, Fax: (416) 943-1484.

If you fail to attend before the Review Council in person or by

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representative, the Review Council may proceed with the inquiry in your absence.

February 28, 2008



Ms. Marilyn King
Acting Registrar
Justices of the Peace Review Council

TO: **Justice of The Peace Jorge Barroilhet**

CC. Mr. Fernando F. Cugliari
Barrister and Solicitor

APPENDIX "A"

PARTICULARS

1. Prior to your appointment as a Justice of the Peace you were the principal owner and operator of 1401875 Ontario Inc., carrying on business as Stop All Traffic Tickets. Stop All Traffic Tickets provides private, for fee paralegal services to clients, primarily charged with matters under the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended, ("POA") and appearing before the Ontario Court of Justice.
2. At the time of your appointment as a Justice of the Peace of the Ontario Court of Justice, you had been informed and were aware that you were required to sever all interest, contact or involvement with Stop All Traffic Tickets. You purported to transfer responsibility for the management of the Stop All Traffic Tickets business to your wife, Ms. Marta Marteluna.
3. Notwithstanding the foregoing, you had continuing inappropriate interest in, contact with or involvement with paralegal services, including but without limitation the Stop All Traffic Ticket business.
4. On or about June 2006, you interviewed Ms. Consuela Hernandez further to her potential employment as a Court and Tribunal Agent for Stop All Traffic Tickets. You had the "final say" in respect of her employment. You hired Ms. Consuela Hernandez on behalf of Stop All Traffic Tickets.
5. On or about June 20, 2006, Ms. Hernandez was provided with a day-timer by Ms. Marteluna, your wife and manager of Stop All Traffic Tickets, in which your name and telephone numbers were inscribed by Ms. Marteluna. Ms. Marteluna instructed Ms. Hernandez that if she had questions, she was to telephone you and speak with you. Ms. Hernandez called you and you assisted her on a number of occasions regarding the cases assigned to her at Stop All Traffic Tickets.
6. Thereafter you frequently communicated with Ms. Hernandez and discussed the specific facts and procedure for cases assigned to her by Stop All Traffic Tickets.

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7. In respect of some of these matters, Ms. Hernandez would appear in front of you while you were presiding over the matters in your capacity as a Justice of the Peace.
8. You failed to recuse yourself from presiding over matters for clients who were represented by Agents of Stop All Traffic Tickets.
9. Furthermore, during the term of her employment with Stop All Traffic Tickets, you informed Ms. Hernandez that clients who sought an extension of time to pay and a reduction of fine on a sixty-six dollar (\$66) POA ticket would receive a guaranteed twenty dollar (\$20) reduction and additional time to pay on each ticket. Clients of Stop All Traffic Tickets who were seeking a reopening and extension of time to pay before him would receive a guaranteed forty-six dollar (\$46) reduction and extension of time to pay. Fees paid by the clients to Stop All Traffic Tickets would be negotiated based on the guaranteed reductions offered by you. Stop All Traffic Tickets accumulated client requests for reductions, extensions and reopenings until a Court and Tribunal Agent of Stop All Traffic Tickets could appear before you on those matters. You always granted the requested extensions of time to pay, re-openings and reductions based on the foregoing guarantee to clients of Stop All Traffic Tickets.
10. On or before November 21, 2006, you met with Ms. Hernandez and Mr. Cornejo at the Eglinton courthouse during which meeting you instructed Ms. Hernandez regarding an appeal on behalf of Mr. Cornejo. You subsequently met with Ms. Hernandez at a coffee shop across the street from the courthouse at Old City Hall and assisted Ms. Hernandez with the preparation of the appeal of the Cornejo matter, a client of Stop All Traffic Tickets. Pursuant to your instructions, Ms. Hernandez prepared the appeal and obtained a reduction in fees for the client.
11. On or about December 19, 2006, you became actively involved in assisting a personal friend, Chad Evans, with a traffic matter under the POA, in Brantford, Ontario. Mr. Evans had been charged with careless driving, tried and convicted in absentia. Mr. Evans is a resident of the United States.
12. On or about December 19, 2006, you hired and instructed an agent, Ms. Hernandez, to request a re-opening of a matter on behalf of Chad Evans.

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13. On or about December 19, 2006, you repeatedly contacted the Brantford court clerk, Ms. Debbie Wright, in an effort to speak with the presiding Justice of the Peace in order to ask for a favour with respect to Mr. Evans' matter.
14. On or about December 19, 2006, you contacted Justice of the Peace Miller directly and requested that she exercise her jurisdiction to re-open the matter on behalf of Chad Evans.
15. On or about December 19, 2006, you suggested to Justice of the Peace Miller that she exercise "judicial independence" and re-open the matter on behalf of Chad Evans in spite of the fact that the agent attempted to file an unsigned affidavit on behalf of Mr. Evans.
16. On or about December 19, 2006, you improperly offered to Justice of the Peace Miller to cure the defect of the unsigned affidavit by signing the affidavit on behalf of Chad Evans.
17. On or about the summer of 2007 you hired John Grasso to work as an agent of Stop All Traffic Tickets. A week into his employment, you informed Mr. Grasso that you were happy with his performance and you offered to pay him \$1,000 a week on a going forward basis. Mr. Grasso agreed and continued with his employment at Stop All Traffic Tickets.
18. During the term of his employment at Stop All Traffic Tickets, you spoke with Mr. Grasso on a daily basis regarding the conduct of client files and allowed him to appear in front of you on numerous occasions with respect to matters on which you had instructed him, without recusing yourself.
19. On September 13, during an appearance of Ms. Consuelo Hernandez before you, when Ms. Hernandez requested that her client's matter be adjourned and set before another Justice of the Peace on the basis of a conflict of interest between she and you, you seized yourself of the matter and adjourned it to December 6, 2007, notwithstanding your knowledge of the relationships between Ms. Hernandez and yourself, your wife Mrs. Marteluna and Stop All Traffic Tickets.
20. The above-noted conduct as set out in paragraphs 1 through 19 is incompatible with the due execution of your duties and has brought the administration of justice into disrepute.