

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 Tom Foulds

Before: The Honourable Justice Peter Tetley, Chair
Justice of the Peace Monique Seguin
Ms. Jenny Gumbs, Community Member

Hearing Panel of the Justices of the Peace Review Council

DECISION ON THE MOTION FOR PARTICULARS

Mr. Scott K. Fenton
Ms. Amy Ohler
Fenton, Smith Barristers

His Worship Tom Foulds, self-represented

Presenting Counsel

Decision on the Motion for Particulars

Heard: October 10, 2017

Motion for Particulars

1. By Notice of Motion, dated October 2, 2017, the Respondent, Justice of the Peace Tom L. Foulds, seeks further particularization of the conduct or actions by which he is alleged to have committed judicial misconduct. His Worship submits that the Notice of Hearing, dated September 2, 2016, and Appendix “A” to the Notice of Hearing (the “Notice”) do not clearly define, with sufficient particularity, the allegations he must address in order to prepare a proper defence. A copy of the Notice of Hearing, including the Appendix setting out the alleged misconduct, is attached to this Ruling. Pursuant to Rule 18(5) of the procedural code for hearings, leave has been granted to allow this motion to be heard on short notice.
2. In the Notice of Motion, His Worship expresses concern that the “Particulars of the Complaint”, as detailed in the Notice of Hearing, references a number of allegations and a number of alternative means by which certain alleged conduct might be contended to amount to incidents of judicial misconduct.
3. Concern is also expressed by His Worship that the format of the particularization of the specific incidents of alleged judicial misconduct is confusing. He indicates that his confusion is heightened by the fact that the allegations were assessed as being “...built around certain facts that had been admitted that are placed in the midst of allegations that are challenged.” (see paragraph 8 of the Notice of Motion).
4. As a consequence of the manner in which the allegations are structured, His Worship asserts “...that the effect of this structure is to conflate certain findings of the Complaint Committee such that the statements do not represent with clarity, or in some cases at all, findings made by the Complaint Committee”.
5. His Worship asserts that the Notice of Hearing, which references the individual and cumulative effect of the allegations set out, infringes the fundamental principles of natural justice that demand that His Worship “...be entitled to know clearly, and with sufficient particularity, the allegations he must address in order to be able it (sic) to prepare a proper defence.”
6. His Worship submits that it was unnecessary to provide five of the ten pages included in the Notice, that information included in the particulars is unnecessary and that he wishes the allegations narrowed down so that it will be clear to him what he is alleged to have done. He submits that there should be less “fluff” in the Notice.

Presenting Counsel's Response

7. In response, Presenting Counsel, Mr. Fenton, submits that the “particulars of the complaint”, as detailed in the formal notice, contain a clear and concise summary of the allegations of judicial misconduct made against His Worship Foulds.
8. The Notice is submitted by Mr. Fenton as being consistent with, and based on, the Reasons for Decision of the Complaints Committee dated August 2, 2016 and is contended to provide a clear and concise summary of all of the allegations in issue in this hearing.
9. Presenting Counsel notes the following considerations in support of his request that the Motion by His Worship be dismissed:
 - (i) The Notice sets out the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that have been established to guide the conduct of all justices of the peace, and the expectation that justices of the peace will conduct themselves in a manner independent and autonomous from other participants in the justice system and those involved in the administration of justice;
 - (ii) The Notice provides an overview of the impugned conduct that is alleged to have violated those central principles with paragraph 2 of Appendix A of the Notice specifying a timeframe for the conduct in issue, and particulars of each allegation of bad faith or improper motive or the perception of such a motive, in circumstances where the independence, impartiality and integrity of the judicial office of the justice of the peace were compromised. This consequence is specifically asserted to have occurred as a result of the justice of the peace “actively inserting himself into the criminal investigation and prosecution of Mr. B.B.”. In subsequent paragraphs, the specific acts of impugned conduct are detailed and include but are not limited to:
 - a) The signing of the initial Information that contained criminal charges against Mr. BB in circumstances where Ms. AA, a person with whom His Worship had a personal relationship, was the complainant in the criminal process;
 - b) The issuance of a subpoena to Ms. AA by His Worship Foulds at the time His Worship was involved in a romantic relationship with her;
 - c) Inappropriate communications with the police and Crown who had carriage of the BB prosecution when there was a clear conflict of interest arising from the fact His Worship Foulds was in a personal relationship with the complainant in the criminal case. These actions, considered either individually or cumulatively, are asserted to constitute an abuse of His Worship's judicial office and incidents of judicial misconduct.

- (iii) The Notice is submitted to outline the specific averments relating to how His Worship Foulds' conduct is alleged to have violated the principles of judicial independence, integrity and impartiality that a justice of the peace is expected to uphold. Paragraphs 3(a) to 3(g) of the Notice provide detailed summaries of the factual allegations relating to asserted impropriety including the signing of the original Information against BB, several incidents of subsequent contact with Crown counsel having carriage of the prosecution of the criminal allegations against Mr. BB and the subsequent signing of a subpoena to the complainant requiring her to attend at Mr. BB's trial, as well as attempts to influence the manner in which the subpoena was to be served;
- (iv) The Notice outlines the relevant facts that are pertinent to establishing proof of the allegations of misconduct. Paragraphs 4 to 17 of the Notice detail the alleged personal involvement of His Worship Foulds in the police investigation of Mr. BB and His Worship's participation as a potential witness in that criminal proceeding. Specifics of the issuance of the initial judicial process involving Mr. BB (the signing of the original Information and the confirmation of legal process), the failure to digitally record that procedure, incidents of contact with the Crown Attorney regarding the BB prosecution on June 13, September 8 or 9 and October 23, 2014 are also detailed in this portion of the Notice, together with a reference to an interaction in the summer of 2015, after Mr. BB's charges had been disposed of, with another Crown Attorney who had been involved in the prosecution of those charges.
- (v) Mr. Fenton submits that in paragraphs 18 to 23 of the Notice, the characterization ascribed to His Worship Foulds' conduct and the impact of that conduct on other participants in the criminal justice system are clearly delineated. The allegations include the following:
 - a) That His Worship acted in a manner that was "calculated and deceptive" by providing limited information at different stages in the criminal process and by his actions, comments and interventions, as detailed previously;
 - b) His Worship had inappropriate contact with members of the Toronto Police Service and a Crown Attorney;
 - c) That his involvement added expense to Mr. BB's defence of the criminal charges;
 - d) That his conduct compromised the independence, impartiality and integrity of the judicial office that His Worship holds;

- e) That his conduct occasioned the additional expenditure of public resources and caused Mr. BB to have a negative impression of the justice system.
 - f) By involving himself, in a continued manner, in a criminal prosecution in which he had a personal interest, it is contended that His Worship “gave the appearance that he failed to act with independence, impartiality and integrity, in relation to the allegations made by the complainant against Mr. BB.” (See paragraph 20 of the Notice).
- 10. As set out in paragraphs 21 and 22 of the Notice, these alleged actions, considered either individually or cumulatively, when viewed objectively by a “reasonable, fair-minded person” are asserted to constitute incidents of judicial misconduct warranting a disposition under s. 11.1(10) of the *Justices of the Peace Act*.
- 11. Finally, Presenting Counsel references the fact that His Worship Foulds has been provided with the following disclosure materials:
 - a) Extensive disclosure of all materials collected by the complaints committee during the investigation of the complaint;
 - b) Transcripts of witness statements as requested by and reviewed by the complaints committee during the investigation of the complaint;
 - c) A list of the witnesses that Presenting Counsel intends to call on the s. 11.1 hearing; and,
 - d) The notes of Presenting Counsel’s interviews of the witnesses in anticipation of their testimony at the hearing.

Relevant Legal Authorities

- 12. A number of legal authorities are cited in the respective motion records. In *R. v. General Electric Co.*, [1974] O.J. No. 13 (H.C.J.), at paragraph 35, the Court held that particulars in a criminal trial fulfill two functions:

Primarily their function is to give such exact and reasonable information to the accused respecting the charge against him as will enable him to establish fully his defence. The second purpose is to facilitate the administration of justice (*R. v. Odduono*, (1940), 1 D.L.R. 597, 73 Can. C.C. 152). The secondary purpose can be illustrated quite simply. When a conspiracy count involves an alleged widespread complicated conspiracy for the accomplishment of a purpose going beyond the performance of individual acts, the particulars furnished will assist the Judge in ruling on the relevancy of the evidence. To adopt a homely form of words, a trial

circumscribed by particulars will not wander all over the shop and will foreclose an unreal controversy.

13. Similar sentiments are expressed in a more recent case, *R. v. Armour Pharmaceutical Company*, [2006] O.J. No. 137 (S.C.) at paragraph 21, where the Court stated as follows:

Where the court is satisfied that it is "necessary for a fair trial", the court may order the prosecutor to furnish particulars of the act or omission and transaction referred to in the charge. The function of particulars is to supplement an indictment which, although sufficient, is not adequate for the accused to properly prepare his defence and be assured of a fair trial. Particulars also define the issues and ensure that the trial judge is capable of making evidentiary rulings particularly with respect to relevance. The transaction must be clearly identified so the accused knows the exact charge against him [citations of footnotes omitted].

14. At paragraph 50 of *Hesje v. Law Society of Saskatchewan*, a decision of the Saskatchewan Court of Appeal, the Court notes Cory J.'s comments on review of a Law Society disciplinary proceeding in the matter of *Re: Stevens and Law Society of Upper Canada*, (1979), 55 O.R. (3d) 405 (H.C.J.) at 409, as follows:

...A solicitor faced with...an allegation [of professional misconduct] is entitled to and should receive the particulars that form the basis of the allegation against him...

Nonetheless,

[t]he 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*. ...

15. Based on the foregoing, Presenting Counsel submits that the Notice sets out, with sufficient clarity, the allegations against His Worship Foulds by which he is alleged to have committed judicial misconduct by compromising the principles of judicial independence, integrity and impartiality.
16. The particulars of the complaint are submitted by Presenting Counsel as setting out the allegations by which His Worship Foulds is contended to have compromised the aforementioned principles of judicial office.
17. On consideration of the detailed nature of the Notice, Presenting Counsel submits that His Worship Foulds has not been deprived of knowledge of the actions that are alleged to constitute misconduct and accordingly, his ability "to prepare a proper defence" has not in any way been infringed as a result of any deficiency in the particularization of the allegations of misconduct.

18. As the Notice references specific incidents of alleged judicial misconduct; the facts on which the alleged misconduct are based; the specific timeframe of events in issue; the evidence to be called on the hearing and; the anticipated evidence of the witnesses and documents upon which Presenting Counsel seeks to rely. Presenting Counsel contends that there has been no prejudice to His Worship Foulds' ability to make full answer and defence in accordance with the principles of natural justice.
19. He submits that no further particularization of the complaints is warranted.

Analysis and Conclusion

20. In dismissing His Worship Foulds' motion on October 10, 2017, with further reasons to follow, this Panel concluded that the Notice of Hearing included sufficient particularity of the specific allegations of judicial misconduct and the factual circumstances alleged.
21. For the reasons referenced in responding Presenting Counsel's Factum, the Notice of Hearing was concluded by this Panel to be detailed in nature and to reference, in a clear, unambiguous, detailed and comprehensive fashion the specifics regarding each of the allegations of judicial misconduct.
22. The conduct contended to constitute incidents of judicial misconduct is particularized chronologically and the transactions anticipated to be established by evidence during the hearing are detailed.
23. Based on the forgoing considerations, it was concluded that the allegations are set out in sufficient detail to fully apprise His Worship of the nature of the alleged misconduct that enables him to fully respond. In reaching this conclusion, we are mindful of the fact that His Worship has received advance disclosure of all of the evidence to be presented before this Panel. We concluded that His Worship was provided with the information to be able to properly prepare his response.
24. Given the comprehensive and detailed nature of the Notice itself, it was the conclusion of the Hearing Panel that further particularization of the Notice was not warranted and would not serve to provide any additional clarity of the allegations that His Worship Foulds must address in order to "prepare a proper defence".
25. The detailed Notice was accordingly concluded to clearly delineate the allegations of judicial misconduct, to describe the manner in which His Worship Foulds' conduct or actions are alleged to constitute incidents of judicial misconduct, the timeframe within which those actions are alleged to have occurred, and the impact those actions are alleged to have had on other justice participants.
26. The Notice of Hearing was concluded to clearly define and delineate the circumstances that are asserted to support the allegation that His Worship "acted in bad faith or with an improper motive, or in a manner that could reasonably be perceived as acting in bad faith or with an improper motive" compromising the

independence, impartiality and integrity of the judicial office of the justice of the peace.

27. Accordingly, the request for additional particularization of the complaint was found to be without merit and was dismissed.

Dated this 16th day of October, 2017

HEARING PANEL:

The Honourable Justice Peter Tetley, Chair

Her Worship Monique Seguin, Justice of the Peace Member

Ms. Jenny Gumbs, Community Member

EXHIBIT 1(B) IN THE HEARING

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF a complaint respecting
Justice of the Peace Tom Foulds
Justice of the Peace in the
Toronto Region

NOTICE OF HEARING

A complaints committee of the Justices of the Peace Review Council (the "Review Council"), pursuant to subsection 11(15)(c) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (the "*Act*"), has ordered that the following matter of a complaint regarding the conduct or actions of His Worship Justice of the Peace Tom Foulds be referred to a Hearing Panel of the Review Council, for a formal hearing under section 11.1 of the *Act*.

The Hearing Panel will determine whether the allegations against you support a finding of judicial misconduct and whether, by reason of that, a disposition should be imposed pursuant to section 11.1(10) of the *Act*. The particulars of the complaint that will be presented to the Hearing Panel are set out in Appendix "A" to this Notice of Hearing.

The Hearing Panel of the Review Council will convene at the Justices of the Peace Review Council Boardroom, Suite 2310, 1 Queen Street East, in the City of Toronto, on Wednesday, September 28, 2016, at 9:00 a.m. or as soon thereafter as the Hearing Panel of the Review Council can be convened to set a date for the hearing 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.

The Review Council may, pursuant to subsection 11.1(10) of the *Justices of the Peace Act*, dismiss the complaint after completing the hearing, with or without a finding that it is unfounded or, if it upholds the complaint, 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; and/or,
- (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*.

The Panel may adopt any combination of dispositions set out in clauses (10)(a) to (f). A recommendation under clause (10)(g) cannot be combined with another disposition.

You or your counsel may contact the office of Mr. Scott Fenton of Fenton, Smith Barristers, the solicitor retained on behalf of the Review Council to act as Presenting Counsel in this matter.

If you fail to attend before the Review Council in person or by representative, the Review Council may proceed with the hearing in your absence and you will not be entitled to any further notice of the proceeding.

In accordance with the Procedures of the Review Council, any motions should be filed not later than 10 days before the set-date.

September 2, 2016

Original Signed

Marilyn E. King
Registrar
Justices of the Peace Review Council

cc. Mr. Mark Sandler, Counsel for His Worship

Mr. Scott Fenton, Presenting Counsel

APPENDIX "A"

PARTICULARS OF THE COMPLAINT

The particulars of the complaint regarding the conduct of His Worship are set out below:

1. Justices of the peace are expected to be, and be perceived as, independent and autonomous from other offices and participants in the justice system and the administration of justice. While justices of the peace are people with lives outside of court, there are important boundaries between personal life and the duties of judicial office that justices of the peace are expected to respect.

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, impartiality 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. A justice of the peace must personally observe those standards so that the integrity, independence and impartiality of the judiciary may be preserved.

The conduct of a justice of the peace is an important and essential element that promotes public confidence in the judiciary. Public confidence is impacted by negative perceptions about the conduct of judicial officers. Justice must not only be done, it must be seen to be done. The appearance that a justice of the peace is not independent, impartial or acting with integrity casts disrepute upon the judiciary.

Litigants have a right to expect that their cases will be processed and treated in accordance with the laws and standard procedures that govern the police, the Crown Attorneys and judicial officers each who have defined roles. It could be an abuse of judicial power, or a perceived abuse of judicial power, if a justice of the peace attempts to use his or her judicial power or office, or is perceived to use that judicial power or office, to advance personal interests or the interests of another party. Conflicts of interest, both actual and perceived, must be assiduously avoided.

Abuse of judicial office can include: intervening in the adversary process of the administration of justice; acting in a manner that suggests that the justice of the peace has or seeks a special relationship with the police or Crown Attorney, or; acting in a conflict of interest. Such intervention by a justice of the peace can give rise to actual or perceived special treatment on the part of the public, the police or Crown Attorneys. Such intervention by a justice of the peace could also be perceived as a justice of the peace attempting to use his position to influence judicial proceedings.

2. Between the spring of 2014 and the summer of 2015, His Worship acted in bad faith or with an improper motive, or in a manner that could reasonably be perceived as acting in bad faith or with an improper motive, and compromised the independence, impartiality and integrity of the judicial office of the justice of the peace, by actively inserting himself into the criminal investigation and prosecution of Mr. BB by: issuing process (an *Information*) against Mr. BB; issuing a *subpoena* for the complainant Ms. AA (the "Complainant") at a time when he was engaged in a romantic relationship with her; and engaging in inappropriate communications with the police and officers of the Crown who had carriage of the BB prosecution, when His Worship was in a clear conflict of interest thereby constituting an abuse of judicial office.
3. Specifically, His Worship acted in bad faith or with an improper motive, or in a manner that could reasonably be perceived as acting in bad faith or with an improper motive, and compromised the independence, impartiality and integrity of the judicial office of the justice of the peace, when:
 - a. on May 21, 2014 His Worship received and signed the *Information* alleging a criminal charge against Mr. BB in circumstances where His Worship was a close friend or romantic partner of the Complainant and was a potential witness in respect of the proceedings against Mr. BB, thereby constituting an abuse of judicial office;
 - b. on May 21, 2014, in circumstances where His Worship had personal involvement with the Complainant and Mr. BB, His Worship did not keep an audio recording when he received and signed the *Information* against Mr. BB, thereby constituting an abuse of judicial office;
 - c. on March 2, 2015 His Worship received and signed a *subpoena* for the Complainant to attend at Mr. BB's trial in circumstances where His Worship was the romantic partner and co-habitant of the Complainant, as well as a potential witness in respect of the proceedings, thereby constituting an abuse of judicial office;
 - d. on March 2, 2015 His Worship made attempts to be present when the Complainant was to be served with the *subpoena* or to receive the subpoena himself on her behalf. These attempts were made even though His Worship improperly issued the *subpoena*, was the romantic partner and co-habitant of the Complainant, and was a potential witness in respect of the proceedings against Mr. BB, thereby constituting an abuse of judicial office;

- e. between June 13, 2014 and October 27, 2014, and again in the summer of 2015, His Worship initiated and continued contact with Crown counsel having carriage of the prosecution of Mr. BB, even though he knew he had a serious conflict of interest in the case and was directly told so by Crown counsel, thereby constituting an abuse of judicial office;
- f. throughout the time frame referred to above, His Worship improperly repeatedly intervened in the adversary process and acted in a manner that suggested that His Worship had, or was seeking to exploit, a special relationship he had as a judicial officer with the police and Crown counsel, thereby constituting an abuse of judicial office; and
- g. on or before April 16, 2015, despite the Open Courts Principle, His Worship attempted to obtain an order seeking a non-publication and sealing order with respect to Mr. BB's application for production of third-party records to obtain His Worship's personal emails relating to His Worship's involvement in the investigation and prosecution of Mr. BB, thereby constituting an abuse of judicial office.

Personal Involvement in Investigation of Mr. BB

- 4. On February 19, 2014, His Worship contacted the Justice Sector Security Office alleging [delete: with respect to] troubling comments made by Mr. BB to the Complainant, then a friend of His Worship. Mr. BB and the Complainant had recently ended a romantic relationship.
- 5. On March 15, 2014, the Complainant telephoned the Toronto Police Service ("TPS") to report that her fur coat had been stolen. His Worship was present with the Complainant at the time of the report. The Complainant identified His Worship as her "partner". The attending police officer recognized His Worship as a justice of the peace. His Worship requested that he not to be named in the TPS Occurrence Report.
- 6. On May 18, 2014, His Worship attended with the Complainant at 53 Division, a police station within the jurisdiction in which he presides and was identified as a justice of the peace. The Complainant attended at the police station to report that her former partner, Mr. BB, had allegedly assaulted her. His Worship told members of the TPS that he was attending with the Complainant to assist her with the report and that he was not in a relationship with Ms. AA. His Worship provided context to the police, information regarding the condition of the Complainant, the reason for her attendance and remained at the station while the Complainant made a statement. His Worship also communicated to members of the TPS that it was the Complainant's request that Mr. BB not be kept overnight for a bail

hearing and that she would be amenable to his release from the station provided that he be released on a condition not to have any contact with the Complainant.

7. On May 19, 2014, His Worship attended at a hospital with the Complainant and witnessed her sign a consent form for medical information in relation to her alleged injuries relating to the criminal charges against Mr. BB. On that date, His Worship also initiated contact with the police to report having seen Mr. BB at a restaurant.

Issuing Judicial Process Against Mr. BB

8. On May 21, 2014, a member of the TPS attended before His Worship in Intake Court at the College Park Courthouse to swear an *Information* alleging Mr. BB assaulted the Complainant. His Worship did not disclose the nature of his relationship with the Complainant and/or Mr. BB to the officer. His Worship signed and confirmed process of the *Information*, acting in a clear conflict of interest.

Failure to Digitally Audio Record Intake Court Proceedings

9. On May 21, 2014, in circumstances where His Worship had personal involvement with the Complainant and Mr. BB, he did not turn on the digital audio recording system to ensure that there was a proper record in Intake Court of the attendance of the officer before him who was seeking to swear the *Information* and have process confirmed.

Contact with the Assistant Crown Attorney

10. On June 13, 2014, His Worship attended at the Crown Attorney's office at the College Park Courthouse and spoke directly to Crown counsel regarding the BB prosecution. His Worship asked that he not be assigned to a court where Mr. BB's case might be heard because His Worship knew the Complainant. His Worship then advised Crown counsel that he had signed the *Information* alleging Mr. BB had assaulted the Complainant. During the conversation with Crown counsel, His Worship made a derogatory comment regarding Mr. BB suggesting that the relationship between Mr. BB and the complainant had been "abusive".
11. As a result of His Worship's disclosure, Crown counsel took immediate steps to have a replacement *Information* sworn to before a different justice of the peace as there were concerns about His Worship having issued the original *Information* while in a conflict of interest, thereby compromising the integrity and impartiality of the proceedings.

12. His Worship was aware that he remained in a conflict of interest due to his close relationship with the Complainant and the fact that he could be a witness. Notwithstanding that, on or about September 8 or 9, 2014, His Worship again contacted the same Crown counsel and sought legal advice as to whether His Worship should provide a witness statement to the police.
13. Again His Worship was fully aware that he remained in a conflict of interest due to his close relationship with the Complainant and the fact that he could be a witness. Notwithstanding that on October 23, 2014, His Worship emailed the same Crown counsel requesting legal advice about His Worship's involvement in the BB matter.

Issuing Subpoena and Attempt to Arrange Special Treatment for Ms. AA

14. On March 2, 2015, a civilian member of the TPS attended before His Worship to have a *subpoena* issued for the Complainant to attend court for Mr. BB's trial. His Worship signed the subpoena despite being aware that he remained in a conflict of interest due to his intimate relationship with the Complainant and the fact that he could be a witness, and even though the *Information* he improperly signed on May 21, 2014 had to be withdrawn and replaced.
15. Despite the above, His Worship then requested that he be advised when the *subpoena* was to be served so that he may be present. His Worship then contacted the officer in charge of the investigation and suggested that His Worship take the *subpoena* to the Complainant.

Attempt to Obtain Non-Publication Order and Order Sealing the Record

16. In the course of his defence, Mr. BB brought an application for third party records to obtain production of His Worship's personal emails with respect to His Worship's involvement in the investigation and the prosecution of Mr. BB. Despite the Open Courts Principle, sometime on or before April 16, 2015, His Worship attempted to obtain an order seeking a non-publication and sealing order with respect to those materials relevant to the third party records motion. The motion was withdrawn on April 16, 2015 following the decision by Crown counsel to enter a stay of the proceedings as against Mr. BB.

Approaching Crown Counsel to Discuss the BB Matter after It was Concluded

17. As stated, His Worship was aware that he remained in a conflict of interest due to his close relationship with the Complainant. Nevertheless in the summer of 2015, after Mr. BB's charges were withdrawn, His Worship approached another Crown counsel, who at one time had carriage of the BB matter, and stated, "Are we good?", causing Crown counsel to feel

uncomfortable and take steps to avoid engaging with His Worship on the subject.

Effects of His Worship's Conduct

18. Further, His Worship acted in a manner to obfuscate his personal interest in the prosecution of Mr. BB in a manner that was calculated and deceptive. His Worship only shared limited information at different stages to make it appear as though he was being up front when, in fact, he was not being completely honest or forthcoming. His Worship's actions, comments and interventions during the criminal process led to:
- a. Inappropriate interactions with members of the TPS and individual Assistant Crown Attorneys;
 - b. the accrual of significant legal fees on the part Mr. BB;
 - c. the perception by different participants in the criminal justice system, including Crown counsel and TPS staff, that His Worship's conduct compromised the independence, impartiality and integrity of the judicial office of the justice of the peace;
 - c. over-taxing public resources by increasing the workload on the office of Crown counsel due to the need to respond to Mr. BB's allegations of improper involvement by His Worship, including responding to additional disclosure requests as well as requests for third party records related to His Worship; and
 - d. causing Mr. BB to lose confidence in His Worship as a judicial officer and to have a negative impression of the justice system.
19. Given His Worship's feelings about the Complainant, his strongly held views about Mr. BB, and the remedial lessons provided through His Worship's judicial disciplinary hearing in 2013, [wherein His Worship admitted engaging in judicial misconduct by interfering in an investigation carried out by Toronto Public Health inspectors into a restaurant owned by His Worship's friend], His Worship acted in bad faith or with an improper motive, or in a manner that could reasonably give rise to a perception that he acted in bad faith or with an improper motive, and compromised the independence, impartiality and integrity of the judicial office of the justice of the peace, when he signed the *Information*, later signed the *subpoena* for the Complainant and when he initiated and then continued improper contact with the TPS and Crown counsel, thereby abusing the office of the justice of the peace.

20. Further, His Worship demonstrated a pattern of inappropriate conduct that violated the independence, impartiality and integrity of his judicial office, and/or His Worship gave the appearance that he failed to act with independence, impartiality and integrity, in relation to the allegations made by the Complainant against Mr. BB.
21. His Worship's actions were, or could be perceived by a reasonable fair-minded person as an abuse of the office of the justice of the peace.
22. Individually and cumulatively, His Worship's actions in relation to the criminal process involving the Complainant and/or Mr. BB, as summarized above constitute judicial misconduct.
23. The act or acts as set out in paragraphs 2 to 20, inclusive, constitute judicial misconduct that warrants a disposition under section 11.1(10) of the *Justices of the Peace Act*.