

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 Two Complaints about the Conduct of Justice of the Peace Alfred Johnston

Before: The Honourable Justice P. H. Marjoh Agro, Chair
 His Worship Maurice Hudson, Justice of the Peace
 Dr. Emir Crowne, Community Member

 Hearing Panel of the Justices of the Peace Review Council

REASONS FOR DECISION

Counsel:

Ms. Marie Henein
Henein Hutchison LLP

Presenting Counsel

Mr. Peter Brauti
Brauti Thorning Zibarras LLP

Counsel for His Worship Alfred Johnston

Introduction

Two unrelated complaints were received by the Justices of the Peace Review Council (the “Review Council”) concerning the conduct of Justice of the Peace Alfred Johnston. The Review Council established a complaints committee pursuant to sub-section 11(1) of the *Justices of the Peace Act*, R.S.O. 1990, C.J. 4, as amended (the “Act”). The complaints committee investigated each matter and ordered that a formal hearing into each complaint be held, pursuant to sub-section 11(15) of the *Act*.

The Chief Justice of the Ontario Court of Justice, the Chair of the Review Council, established a Hearing Panel pursuant to sub-section 11(1) of the *Act*¹ and, as a result, a hearing into both complaints commenced, the particulars of which are set out below. For convenience, the first complaint is entitled the “Leaf Matter”, and the second complaint is entitled the “Docket Dismissal”.

Leaf Matter

The complaint alleges that on November 22nd, 2012 His Worship breached his duty to assist a self-represented defendant² and/or failed to ensure a fair trial.

A self-represented defendant, Mr. Alexander Leaf, was charged with “Drive Hand-Held Communication Device” contrary to sub-section 78.1(1) of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, as amended (the “HTA”). It is alleged that His Worship ridiculed the defendant’s pronunciation of *R v Askov*, [1990] 2 S.C.R. 1199 (“Askov”) and even feigned ignorance of the case at times. These actions allegedly persuaded the defendant to abandon his motion relating to sub-section 11(b) of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (the “11(b) motion”).

It is also alleged that His Worship refused to give Mr. Leaf an opportunity to retrieve from his car a copy of the relevant legislation that was essential to his defence, in breach of his right to make full answer and defence.

Upon review of the audio recording and written transcript of November 22nd, 2012, the Panel finds that the record supports the following findings, namely:

- a) His Worship Johnston failed in his role as a judicial officer to provide a self-represented defendant with the requisite minimum assistance in applying, and even pronouncing, *Askov*.

¹ The Notice of Hearing was tendered as Exhibit 1, and is attached to these reasons as Appendix A.

² The duty to provide assistance to unrepresented defendants was reinforced in *R v Rijal*, 2010 ONCJ 329 at para. 66:

“To repeat the words of Laskin J.A. in *Winlow*, at para. 71, a case involving the trial of a party who conducted his own defence under Part I of the *Provincial Offences Act*, “Special care must be taken to ensure that POA proceedings are fair to defendants.” (citations omitted).

- b) In feigning ignorance of *Askov*, His Worship used a mocking tone that led the defendant to abandon the 11(b) motion.
- c) His Worship Johnston failed to ensure that any applicable exemption(s) from sub-section 78.1(1) of the *HTA* was researched and considered, before concluding (as he did) that no such exemption existed.³

The Panel, however, finds no support for the allegation that His Worship denied Mr. Leaf an appropriate opportunity to obtain a copy of the legislation from his car. Mr. Leaf made the request during the delivery of His Worship's reasons for judgment when it became abundantly clear His Worship was about to find Mr. Leaf guilty. In dealing with the interruption, His Worship was both courteous and patient with Mr. Leaf. Furthermore, before rendering his decision, His Worship asked Mr. Leaf if he wished to call any further evidence or make any additional submissions, to which Mr. Leaf replied in the negative.

It is our view that characterizing the facts set out in paragraph 7(c) of the Agreed Statement of Facts⁴ as misconduct, whether as a single act or part of a continuum of events in the course of the trial, would set an unacceptable precedent for the trial process and appropriate courtroom decorum.

Docket Dismissal

On December 4th, 2012, His Worship presided in Courtroom "F" of Provincial Offences Court at 60 Queen Street West, in Toronto. His Worship's decision to dismiss the 1:30 p.m. tier at approximately 1:33:37 p.m. for want of prosecution forms the basis of the second complaint.

Transcripts of those proceedings confirm that His Worship entered the courtroom at 1:32:46 p.m. No prosecutor was present. At 1:33:57 p.m., and after attempting to page the prosecution once, His Worship dismissed the entire docket purportedly pursuant to sub-section 53(1) of the *Provincial Offences Act*, R.S.O. 1990, c. P.33 (the "*POA*"), which states that:

"Where the defendant appears for a hearing and the prosecutor, having had due notice, does not appear, the court may dismiss the charge or may adjourn the hearing to another time upon such terms as it considers proper."⁵

In our view, the conduct of His Worship in dismissing the entire docket fell short of the behaviour expected of a judicial officer. His Worship's actions were hasty, intemperate

³ Here the Panel is wary of its jurisdiction. We are not holding His Worship culpable for any legal error, rather, his tone and comportment in relation to such.

⁴ The Agreed Statement of Facts was tendered as Exhibit 7, and is attached to these reasons as Appendix B.

⁵ *Ibid.* (As with the law surrounding the Leaf matter, the Panel is mindful of its jurisdiction. We are not dealing with the legality per se of His Worship's actions, rather the manner in which they were performed and the impact on the public's confidence in the administration of justice).

and lacked proportionality. It struck at the very core of the public's confidence in the administration of justice.

Dispositions & the Judicial Disciplinary Process

Sub-section 11.1(10) of the *Justices of the Peace Act* sets out the dispositions available to this Panel, namely:

“After completing the hearing, the panel may dismiss the complaint, 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 complainant 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.”

The dispositions are therefore arranged from the least serious (i.e., a warning) to the most serious (i.e., a recommendation to the Attorney General to remove the Justice of the Peace from office). Pursuant to sub-section 11.1(11), most dispositions may also be combined (“The panel may adopt any combination of the dispositions set out in clauses (10) (a) to (f)”).

The philosophy behind the judicial disciplinary process is the restoration of public confidence in the judiciary and in the administration of justice. The entire range of dispositions, from dismissal through to a recommendation of removal from office, all serve that overriding objective. Disciplinary panels are neither pre-disposed to punish, or protect, judicial officers.

In this regard, the remarks of the Supreme Court of Canada in *Re: Therrien*, 2001 SCC 35 are particularly relevant, namely:

110. ... the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the

public places in it. Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.

(Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14)

111. The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens.

The misconduct in this instance was serious. It struck at the heart of the administration of justice, and in the public confidence attached to it. Warnings, reprimands, education or treatment are simply insufficient or inapplicable to remedy the misconduct.

Suspensions (with or without pay), or a recommendation of removal from office, are left. We deal with removal first. A recommendation that a judicial officer be removed from office is a severe sanction. In our view, it should only be ordered where no other combination of sanctions could reasonably achieve the overriding objective.

To that end, a suspension without pay, but with benefits, for a period of seven (7) consecutive calendar days is warranted in this instance, as is a letter of apology. In arriving at this sanction, we were mindful of the need to restore public confidence in the judiciary and in the administration of justice while ensuring His Worship's sanction is in accordance with growing jurisprudence in this area and the particularized facts of this case, in particular:

1. The lack of remorse or self-reflection prior to the public hearing. Indeed, there is no evidence that His Worship expressed regret or apologized for any of his

actions in his responses to the complaints or prior to June 9th, 2014⁶ (when Mr. Brauti filed with the Review Council's office his submissions containing an apology letter, dated June 6th, 2014); and

2. The non-isolated nature of the misconduct. There were two (2) separate events in question, both of which had a damaging and public impact on the administration of justice; and
3. The public resources expended by the City of Toronto in appealing four (4) of the dismissals.

These, and other, aggravating factors are also addressed in our analysis with respect to costs. In light of the factors set out in *Re: Foulds*, 2013 (JPRC) with respect to costs, the overlap is inevitable.

Indeed, we may have opted for a lengthier suspension, had the following mitigating factors not come to bear:

1. His Worship has had no previous findings of misconduct;
2. Five (5) letters of support tendered from various stakeholders involved in the administration of justice;
3. His Worship has since admitted to the allegations by way of a letter of apology and the Agreed Statement of Facts;
4. His Worship's verbal acknowledgment before this Panel that his comments, actions and demeanour were inappropriate and amounted to judicial misconduct;
5. There is some evidence before us that at the relevant time His Worship was suffering episodes of hypoglycemia, related to a diabetic condition, as well as stress and depression due to matrimonial issues; and,
6. His Worship has undergone counselling.⁷

Costs

The Panel in *Re: Foulds*, 2013 (JPRC) set out some guidelines with respect to the awarding of costs (*ibid.*, para 62) (the "*Foulds* factors"). We adopt those guidelines, with the caveat that each case is to be measured against its own facts and surrounding circumstances, namely:

⁶ Quite unlike the situation in *Re: Chisvin*, 2012 (OJC), where Justice Chisvin also dismissed an entire docket for want of prosecution, yet recognized his error that very day and reported the mistake to his Regional Senior Justice (*ibid.*, para. 43).

⁷ Due to policy restrictions in His Worship's Employee Assistance Plan, the reasons for and the nature of the counseling was not disclosed by the service provider. Only the dates of counseling sessions were provided.

“Some factors that might be weighed are these:

- a) the severity of the misconduct;
- b) the complexity of the hearing;
- c) the conduct of the justice of the peace in the course of the hearing, including whether the justice of the peace prolonged or expedited the process;
- d) the nature of the disposition(s);
- e) whether public funds were lost as a result of the misconduct;
- f) whether there had been previous findings of misconduct made against the justice of the peace; and
- g) whether the conduct in question relates to a judicial function or impacts judicial independence.”

The case before this Panel falls within the extremes of the spectrum of cases that come before the Review Council. In other words, the allegations against His Worship were not such that they failed to meet the threshold of judicial misconduct and ought to be dismissed, nor was they so egregious and damaging to the public’s confidence in him, the judiciary in general and the administration of justice, that dismissal from office is recommended by this Panel.

Turning now to the *Foulds* factors:

- a) the severity of the misconduct:

- i) The Leaf Matter

During the course of the trial on November 22nd, 2012 His Worship demonstrated an arrogant and sarcastic attitude that falls short of the conduct expected of a judicial officer in dealing with a self-represented defendant and offends the Principles of Judicial Office for Justices of the Peace.

The disrespect shown to Mr. Leaf not only compromised that defendant’s right to make full answer and defence but also compromised the dignity of the court and the trial process.

- ii) The Docket Dismissal

The dismissal of an entire list of charges under the *POA* (68 charges against 62 defendants) three (3) minutes and fifty six (56) seconds after court was set to commence and a mere one (1) minute and ten (10) seconds after he himself entered the courtroom was an abuse of the

authority granted a justice of the peace under sub-section 53(1) of the *POA*. It required a review of those charges that were dismissed and an appeal of a selected number, all at public expense.

We consider these to be serious instances of misconduct that undermine the public's confidence in this justice of the peace, his colleagues, the process by which they are appointed, and in the administration of justice as a whole.

b) the complexity of the hearing:

The hearing itself has not been particularly complex or prolonged.

The evidence relied upon by Presenting Counsel consisted of the court records of November 22nd, 2012 and December 4th, 2012. Those records speak for themselves. Even in the absence of an Agreed Statement of Facts, it is unlikely that other witnesses would have been required.

c) the conduct of the justice of the peace in the course of the hearing, including whether the justice of the peace prolonged or expedited the process:

There are factors that bear on the conduct of the hearing that we do take into account. The first appearance before the Panel was on March 25th, 2014. On that occasion the Notice of Hearing setting out the nature of the complaint was filed.

The Chair offered a pre-hearing before another judicial officer to assist in narrowing the issues or moving toward resolution. That offer was left open to counsel should they wish to avail themselves.

The Chair also explored the feasibility of an Agreed Statement of Facts given the nature of the allegation.

Neither counsel made a definitive commitment respecting these inquiries, although Mr. Niman, who appeared on behalf of Mr. Brauti for His Worship, expressed confidence the matter would resolve before the next return date: *Re Johnston*, transcript, March 25th, 2014, p.8, l.15-16.

On the return date of May 20th, 2014, it became clear to the Panel that little or no discussion of the issues had taken place and that a multi-day hearing could not be arranged until March 2015 (given other responsibilities of both counsel, the lack of communication between them in the intervening months, and the collective availability of Panel members).

In the view of this Panel, it is incumbent on both counsel to communicate in a timely and cost effective manner once a hearing is required.

At a minimum, counsel should explore without undue delay which facts might be admitted and which might require formal proof; whether witnesses might be required to further that proof or whether the record in any proceeding that is the

subject matter of an allegation of judicial misconduct is sufficient to establish that proof; and which might be the range of dispositions sought by Presenting Counsel.

By exploring the issues in this fashion the necessity of a lengthy hearing may be obviated. The Panel is aware of the demands on counsels' time and the importance of other matters where the liberty of their clients may be in jeopardy. However, it must not be forgotten that an allegation of judicial misconduct not only has an impact on the justice of the peace before the Hearing Panel but also on the public's confidence in the bench and the administration of justice at large. It is incumbent on counsel to expedite, and not prolong, matters whenever and however possible.

- d) the nature of the dispositions:

The Panel's decision on disposition will, no doubt, have a deterrent effect on His Worship's conduct going forward. It comes with some financial consequence to him as well.

- e) whether public funds were lost as a result of the misconduct:

The wholesale dismissal of an entire list of charges had far reaching consequences to the public purse.

An entire afternoon of court time was squandered. Defendants and witnesses, both law enforcement and civilian, were inconvenienced. A review of those matters was required and appeals of a selected number were successful. The financial cost, while not quantified, is obvious.

- f) whether there had been previous findings of misconduct made against the justice of the peace:

There have not been any prior findings of misconduct against His Worship that form part of our considerations on the cost issue.

- g) whether the conduct in question relates to a judicial function or impacts judicial independence:

The misconduct in the course of both the Leaf Matter and the Docket Dismissal relates to the performance of a judicial function.

However, it is not the judicial function *per se* that is the focus of this hearing, as was the case in *Reilly v Alberta*⁸ (which made the case for a recommendation for costs).

⁸ 1999 ABQB 252, aff'd by 2000 ABCA 241.

Errors in law made by judicial officers are reversible on appeal. Any legal error made by His Worship might have been remedied with that process, as was done in the case of the docket dismissal. It is therefore, His Worship's manner of performance of his judicial functions that is the subject of this review.

Costs Summary

Given the gravity of the misconduct, and in particular that the misconduct occurred while in the performance of judicial duties with significant effect on the administration of justice, members of the public and the public purse, we are of the view that this is not an appropriate case for a recommendation for costs.

In deciding not to award costs we emphasize that our decision is not intended to be punitive. It is merely a reflection of the unique features of the matters before us, and the discretionary nature of any recommendation.

Conclusion

The Panel orders that His Worship:

1. apologize in writing to Mr. Leaf. The letter of apology tendered to the Panel on July 22nd, 2014, labelled as Exhibit 10 and attached hereto as Appendix C shall be deemed to satisfy this disposition; and
2. be suspended without pay, but with benefits, for seven (7) consecutive calendar days commencing the 8th day of September 2014.⁹

DATED at the City of Toronto in the Province of Ontario this 19th day of August, 2014.

HEARING PANEL:

The Honourable Justice P. H. Marjoh Agro, Chair

His Worship Maurice Hudson, Justice of the Peace

Dr. Emir Crowne, Community Member

⁹ The date was chosen to provide sufficient opportunity for the Court's administration to cover His Worship's dockets for the period of suspension.

APPENDIX A
NOTICE OF HEARING
EXHIBIT ONE IN THE HEARING

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF two complaints respecting

Justice of the Peace Alfred Johnston

Justice of the Peace in the

Toronto Region

NOTICE OF HEARING

JUSTICES OF THE PEACE REVIEW COUNCIL	
COPY OF EXHIBIT <u>1</u>	
In the matter of a hearing into a complaint against	
Justice of the Peace <u>Alfred Johnston</u>	
<u>Mar. 25/14</u>	<u>G. B. B. B.</u>
Date	st. / Registrar

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 two complaints regarding the conduct or actions of Your Worship, Justice of the Peace Alfred Johnston, 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 complaints 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 Tuesday, the 25th day of March, 2014 at 10 o'clock in the morning or as soon thereafter as the Hearing Panel of the Review Council can be convened to set a date for the hearing into the complaints.

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 a complaint after completing a hearing, with or without a finding that it is unfounded or, if it upholds a 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 Ms. Marie Henein of Henein Hutchison LLP, 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 brought not later than 10 days before the set-date.

February 7, 2014



Marilyn E. King,
Registrar
Justices of the Peace Review Council

- c. Mr. Peter Brauti, Counsel for His Worship
Ms. Marie Henein, Presenting Counsel

APPENDIX "A"

PARTICULARS OF THE COMPLAINTS

The particulars of the complaints regarding the conduct of His Worship Alfred Johnston are set out below:

Breach of Duty to Assist Self-Represented Defendant and Ensure a Fair Trial

1. On November 22, 2012 when His Worship was presiding in Provincial Offences Court at 60 Queen Street East in Toronto, a self-represented defendant charged with Drive Hand-Held Communication Device contrary to section 78.1(1) of the *Highway Traffic Act* appeared before him. His Worship failed to meet the standard of conduct expected of a judicial officer in dealing with a self-represented defendant. His Worship failed to give the defendant the requisite minimal level of assistance that should be provided when presiding over a trial to ensure the defendant received a fair trial and was able to make full answer and defence.
2. When the defendant showed a lack of understanding of the requirements and the correct case name to proceed with a motion based on a violation of his right to a trial in a reasonable time under the *Charter of Rights and Freedoms*, His Worship responded in a mocking sarcastic manner including mocking the defendant's incorrect pronunciation of the case, *Askov v. R.*, [1990] 2 S.C.R. 1199. His Worship appeared to deliberately feign ignorance of the case and nature of the motion intended by the defendant in circumstances where it would be clear to a judicial officer what case and motion were intended.
3. His Worship suggested to the defendant that if he wished to bring a *Charter* motion, he should retain a lawyer and said he would give him an opportunity to hire someone. After the defendant was finally told by His Worship that he had not provided proper notice to bring the motion, the defendant explained that he was not a lawyer and he was just a hardworking driver. His Worship stated, "Well, I know you're not a lawyer, sir, and these arguments are usually done by professionals. We don't have people stand up trying to argue something they know very little about and can't even refer to the leading cases and don't even know what they're arguing for sure." As a result, the defendant withdrew his motion.
4. The defendant tried to object to the police officer using notes on the basis that they were written in the hall outside of the courtroom and His Worship interrupted him and curtailed his efforts to contest the evidence and to make submissions and arguments about the notes.
5. The defendant, a courier delivery driver, raised in his defence the lawful exemption under the *Highway Traffic Act* for hand-held devices for the courier industry and asked to be allowed to obtain a copy of the applicable legislation from his car parked just outside of the courthouse. As a self-represented litigant,

he was unable to recall the particular section of the legislation; however, he maintained that he had a copy of it in his car. The defendant tried several times to obtain permission to obtain the copy of the legislation from his car. At the time, Regulation 366/09 under the *Highway Traffic Act* provided for an exemption under the law until January 1, 2013 for courier delivery vehicles to drive a motor vehicle while holding or using a two-way radio. When the defendant pleaded to go his car to get the legislation, His Worship refused to permit him to do so, effectively denying him the opportunity to make full answer and defence. Rather than taking steps to ensure that all relevant legislation was before the court that may have provided a defence under the law, His Worship said he was not aware of this exemption and said he just checked the *Act* and the section and that there was no such exemption under the *Highway Traffic Act*.

6. His Worship failed to understand or ignored the obligations that he owed to a self-represented defendant to provide him with a full and fair hearing, resulting in a possible miscarriage of justice to the defendant.
7. His Worship demonstrated a disregard for the defendant's basic right to fully put forward his defence and of the importance of making a decision based on all of the applicable law.

Dismissal of Entire Court Docket

8. On December 4, 2012, His Worship was presiding in courtroom "F" of Provincial Offences Court at 60 Queen Street West in Toronto. The afternoon tier was scheduled for 1:30 p.m. At approximately 1:00 p.m., the prosecutor assigned to courtroom "F" arrived at the prosecutors' desk outside of the courtroom and began checking in 35 defendants and agents, police officers and interpreters. At 1:30 p.m., the prosecutor was sitting at the prosecutor's desk outside of the courtroom, still concluding a plea negotiation with a defendant who was scheduled for courtroom "F". As His Worship walked to the courtroom, the prosecutor saw His Worship look at him.
9. When His Worship entered the courtroom at 1:32:46 p.m., the prosecutor was not yet in the courtroom. The prosecutor was paged. There was some evidence that the paging system may not have been working properly. At 1:33:10 p.m. His Worship would not permit a person in the courtroom to step outside of the courtroom to get the prosecutor, stating, "Well, you know what – no, don't go out, don't go out anywhere. Still no prosecutor?" A person in the courtroom said, "They're coming?" Seconds later, at 1:33:57 p.m., His Worship announced, "All right, well the prosecutor's failed to appear. The list will be dismissed due to lack of prosecution pursuant to section 53(1). Adjourn the court."
10. There were 68 charges against 63 defendants on the list that were dismissed including charges for offences contrary to the *Highway Traffic Act*, the *Liquor Licence Act*, the *Smoke-Free Act Ontario*, as well as charges for parking violations and a municipal bylaw infraction.

11. When His Worship left the courtroom, he looked at the prosecutor and said, "Too late."
12. The City of Toronto successfully appealed four of the dismissals but decided against proceeding with the charges. New charges were not laid against the remaining persons who had their charges dismissed by His Worship.
13. His Worship's actions and demeanour on November 22, 2012 and December 4, 2012, as set out above, were contrary to the standards of conduct expected of justices of the peace and contrary to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that were established and approved pursuant to the *Justices of the Peace Act*.
14. As stated in the *Principles of Judicial Offices of Justices of the Peace of the Ontario Court of Justice*, justices of the peace have a duty to follow the law. They have a duty to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law. His Worship violated that duty. Section 53(1) of the *Provincial Offences Act* did not give His Worship the power to make the order which he purported to make.
15. A justice of the peace's courtroom conduct symbolizes the law in action and it is the manner in which a justice of the peace conducts himself that promotes and preserves public confidence in the integrity of the judiciary. His Worship's actions demonstrated a dismissive, arrogant attitude, impatience towards a defendant and towards a prosecutor, and a lack of judicial respect that compromised the rights of defendants, the prosecutor and witnesses to be heard and also compromised the dignity and decorum of the courtroom.
16. The actions of His Worship affected the interests of the prosecutor, defendants, the City of Toronto, and negatively impacted the confidence of members of the public in the judiciary and in the administration of justice. Defendants, police and prosecutors have a right to expect that cases will be fully heard before an impartial justice of the peace who will be faithful to and uphold and apply the law and afford litigants the full right to be heard. His Worship ignored critical aspects of the adversary process. The conduct of His Worship on December 4, 2012 as set out above constituted an abuse of power and judicial authority, and demonstrated a disregard for the proper administration of justice in accordance with the law. In the circumstances, the justice of the peace's actions were highhanded and did a disservice to the proper administration of justice.
17. His Worship's actions as set out above, individually and collectively, could be found to constitute judicial misconduct that warrants a disposition under section 11.1(10) of the *Justices of the Peace Act*.

APPENDIX B
AGREED STATEMENT OF FACTS
EXHIBIT SEVEN IN THE HEARING

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF a complaint respecting

Justice of the Peace Alfred Johnston

Justice of the Peace in the

Toronto Region

JUSTICES OF THE PEACE REVIEW COUNCIL	
COPY OF EXHIBIT <u>7</u>	
In the matter of a hearing into a complaint against	
Justice of the Peace <u>Alfred Johnston</u>	
Date <u>June 12/14</u>	<u>QaBrydo</u> Registrar

AGREED STATEMENT OF FACTS

His Worship Alfred Johnston, and Counsel for His Worship, Mr. Peter Brauti, and Presenting Counsel, Ms. Marie Henein, agree as provided herein.

1. The *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* state that the justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office. They further state that justices of the peace have a duty to follow the law, to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law.
2. Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. One factor which is capable of undermining public respect and confidence is the conduct of justices of the peace, in and out of court, that demonstrates a lack of integrity, independence or impartiality.
3. A justice of the peace's courtroom conduct symbolizes the law in action and it is the manner in which a justice of the peace conducts himself that promotes and preserves public confidence in the integrity of the judiciary.

4. The public expects that justices of the peace must be and must give the appearance of being an example of impartiality, independence and integrity.
5. Justice of the Peace Alfred Johnston, the subject of the two complaints detailed below, is now and was at all times referred to in this document, a justice of the peace of the Ontario Court of Justice. His Worship Johnston has served in that capacity since August 7, 2003.

Admissions

6. Justice of the Peace Johnston admits to the facts set out in the transcripts and audio recordings of the court proceedings that took place on November 22, 2012 and December 4, 2012 and that have been filed as exhibits in this hearing.
7. Specifically, on November 22, 2012, when His Worship was presiding in Provincial Offences Court at 60 Queen Street East in Toronto, a self-represented defendant appeared before him for his trial on a charge of “Drive Hand-Held Communication Device” contrary to section 78.1(1) of the *Highway Traffic Act*. His Worship failed to give the defendant the requisite minimum level of assistance that should be provided when presiding over a trial to ensure the defendant received a fair trial and was able to make full answer and defence, in that:
 - a) When the defendant showed a lack of understanding of the requirements and the correct case name to proceed with a motion based on a violation of his right to a trial within a reasonable amount of time under the *Charter of Rights and Freedoms*, His Worship responded in a sarcastic manner including questioning the defendant’s incorrect pronunciation of the case, *Askov v. R.*, [1990] 2 S.C.R. 1199. His Worship appeared to deliberately feign ignorance of the case and nature of the motion intended by the

defendant in circumstances where it would be clear to a judicial officer what case and motion were intended.

- b) His Worship suggested to the defendant that if he wished to bring a Charter motion, he should retain a lawyer and said he would give him an opportunity to hire someone. After the defendant was finally told by His Worship that he had not provided proper notice to bring the motion, the defendant explained that he was not a lawyer and he was just a hardworking driver. His Worship stated, "Well, I know you're not a lawyer, sir, and these arguments are usually done by professionals. We don't have people stand up trying to argue something they know very little about and can't even refer to the leading cases and don't even know what they're arguing for sure." As a result, the defendant withdrew his motion.
- c) The defendant, a courier delivery driver, raised in his defence the lawful exemption under the *Highway Traffic Act* for hand-held devices for the courier industry and asked to be allowed to obtain a copy of the applicable legislation from his car parked just outside of the courthouse. As a self-represented litigant, he was unable to recall the particular section of the legislation; however, he maintained that he had a copy of it in his car. The defendant tried several times to obtain permission to obtain the copy of the legislation from his car. His Worship refused to permit him to do so, effectively denying him the opportunity to make full answer and defence. Rather than taking steps to ensure that all relevant legislation was before the court that may have provided a defence under the law, His Worship said he was not aware of this exemption and said he just checked the Act and the section and that there was no such exemption under the *Highway Traffic Act*. At the time, Regulation 366/09 under the *Highway Traffic Act* provided for an exemption under the law until January 1, 2013 for courier delivery drivers to drive a motor vehicle while holding or using a two-way radio, as long as they were operating clearly identified courier vehicles.

- d) His Worship failed to understand or ignored the obligations that he owed to a self-represented defendant to provide him with a full and fair hearing, resulting in a possible miscarriage of justice to the defendant.
- e) His Worship demonstrated a disregard for the defendant's basic right to fully put forward his defence and of the importance of making a decision based on all of the applicable law.

His Worship thereby failed to meet the standard of conduct expected of a judicial officer in dealing with a self-represented defendant. His actions were also contrary to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* that were established and approved pursuant to the *Justices of the Peace Act*.

8. On December 4, 2012, His Worship was presiding in courtroom "F" of the Provincial Offences Court at 60 Queen Street West in Toronto. His Worship violated his duty to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law, abused his power and judicial authority, and demonstrated a disregard for the proper administration of justice in accordance with the law, in that:

- a) The afternoon tier for that day was scheduled for 1:30 p.m. At approximately 1:00 p.m., the prosecutor assigned to courtroom "F" arrived at the prosecutors' desk outside of the courtroom and began checking in 35 defendants and agents, police officers and interpreters. Another prosecutor was also present right outside courtroom "F". At 1:30 p.m., the prosecutor assigned to courtroom "F" was sitting at the prosecutor's desk outside of the courtroom, still concluding a plea negotiation with a defendant who was scheduled for courtroom "F". As His Worship walked to the courtroom, His Worship acknowledged both prosecutors present outside the courtroom doors.
- b) When His Worship entered the courtroom at 1:32:46 p.m., the prosecutor was not yet in the courtroom. The prosecutor was paged. There was some

evidence that the paging system may not have been working properly, although as ~~long~~^{far} as His Worship was aware, the paging system was operational at the time. At 1:33:10 p.m., His Worship addressed an individual who offered to go outside of the courtroom to get the prosecutor, stating "Well, you know what – no, don't go out, don't go out anywhere. Still no prosecutor?" A person in the courtroom said, "They're coming?" Seconds later, at 1:33:57 p.m., His Worship announced, "All right, well the prosecutor's failed to appear. This list will be dismissed due to lack of prosecution pursuant to section 53(1). Adjourn the court."

- c) There were 68 charges against 63 defendants on the list that were dismissed including charges for offences contrary to the *Highway Traffic Act*, the *Liquor Licence Act*, the *Smoke-Free Act Ontario*, as well as charges for parking violations and a municipal bylaw infraction. The courtroom was very busy and many people were forced to stand as no seats were available.
- d) When His Worship left the courtroom, he looked at the prosecutor and said, "Too late."
- e) On several prior occasions, His Worship had voiced his concerns regarding the practice of prosecutors showing up late for court duties.
- f) While, strictly speaking, section 53(1) of the *Provincial Offences Act* gives a Justice of the Peace the power to make the order that was made, to do so in these circumstances was an abuse of that power and of His Worship's authority.
- g) The City of Toronto successfully appealed four of the dismissals but decided against proceeding with the charges. New charges were not laid against the remaining persons who had their charges dismissed by His Worship.

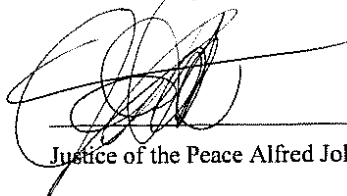
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Justices of the Peace of the Ontario Court of Justice that were established and approved pursuant to the *Justices of the Peace Act*.

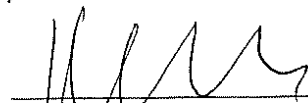
9. His Worship agrees that the actions set out above, individually and collectively, constitute judicial misconduct and warrant a disposition(s) under section 11.1(10) of the *Justices of the Peace Act*.

10. His Worship Johnston agrees that a disposition(s) ordered by the Justices of the Peace Review Council must be sufficient to restore and preserve the dignity and integrity of the judicial position. The disposition(s) should also seek to restore public confidence in His Worship Johnston's integrity and ability to carry out his duties as a justice of the peace.

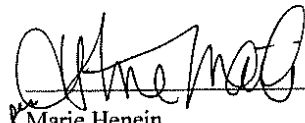
11. His Worship agrees that he will not repeat such conduct in the future, mindful of the potential harm that such conduct poses to public confidence in the integrity and impartiality of the judiciary and to the administration of justice.


Justice of the Peace Alfred Johnston

JUNE 10, 2014
Date


Mr. Peter Brauti
(Counsel for Justice of the Peace Johnston)

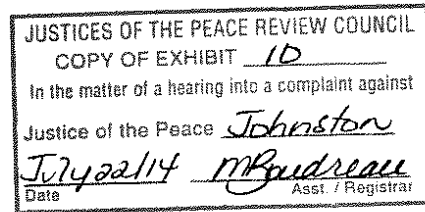
JUNE 9, 2014
Date


Marie Henein
(Presenting Counsel)

JUNE 10, 2014
Date

APPENDIX C
LETTER OF APOLOGY
EXHIBIT TEN IN THE HEARING

June 6, 2014



To the Members of the Justices of the Peace Review Council,

Please accept this as my formal apology for my behavior which brings me before you. Specifically, I wish to extend my apologies to Mr. Alex Leaf, anyone affected by my actions on December 4, 2012 and the public generally for my actions.

At the time of these incidents, I was going through a very difficult time in my personal life. I was having difficulties in my marriage and relationships with other members of my family were suffering greatly as a result. I was suffering from a great degree of stress, but did not seek out assistance. I am very much a private person and did not feel comfortable sharing my struggles with others. Instead, I attempted to resolve these issues personally. This approach led me to become even more isolated and upset with my circumstances. I began to lose my appetite and lost significant weight. I have suffered from diabetes for the last 30 years and was experiencing difficulty controlling my blood sugar levels which caused me to experience semi-blackouts, nausea and disoriented feelings. I also began to experience chest pains and recent testing has shown that I experienced a mild heart attack, although I do not know when this occurred. I believe that the stress I was under during this time had a direct effect on my health issues.

I mention none of this in an attempt to excuse my behavior, but to provide context for it. At the time of the incidents which bring me before this council, I was simply not myself. I made the mistake of attempting to deal with the stress, anxiety and intense emotions I was experiencing on my own which in turn, affected the way I handled my professional life and those I associated with in my capacity as a Justice of the Peace. I realize that this was unacceptable and have taken responsibility for it. The misconduct which I was engaged in on those occasions was serious and not at all indicative of the type of Justice of the Peace I believe myself to be. It was always my intention to accept whatever penalty you choose to impose on me for my actions. I have learned a great deal from this experience and am trying to use it as motivation for me to improve myself, both professionally and personally.

To Mr. Leaf, my actions in dealing with you during your trial were inappropriate. I was rude and sarcastic and showed you far less patience than you were owed as a self-represented litigant. I disappointed not only you who appeared before me, but members of the public and perhaps, more importantly, myself. I hope that you can accept my apologies for my behavior and my assurance that I will be more patient and respectful to any person who appears before me in the future, whether they are represented or not.

In relation to my actions on December 4, 2012 when I dismissed the list after a representative of the prosecutor's office failed to attend court, I again would like to apologize for my actions. I asked the court clerk to page for the prosecutor, who I knew was right outside the door. Since that day, it has come to my attention that the paging system may not have been properly functioning at the time, which is something I was unaware of. Regardless, I understand my actions were wrong and simply unfair to the members of the justice system. My behavior undermined the appearance of fairness of the justice

the members of the justice system. My behavior undermined the appearance of fairness of the justice system and to that end, it was truly regrettable. I never intended to leave the public with the impression that I was catering to my personal whim by dismissing the list – such action is out of character for me and I am truly sorry that it occurred.

Since this experience, I have sought counselling which I feel has helped me tremendously. I have been attending with my therapist for approximately one year now and my commitment to bettering myself is one which I intend on maintaining. I have learned how to deal with some of the emotions surrounding my relationship with my family members and ensure that residual feelings of stress or anger I may be experiencing in relation to my personal circumstances will never affect my professional obligations going forward. My family relationships are improving greatly and I hope to continue with this progress.

I take immense pride in serving as a Justice of the Peace. Although this experience has been truly humbling and one which I am very remorseful for, I have honestly learned from it. I have plans to retire at the end of next summer and have been trying to focus my energy on ending my career in a way I can be proud of. I am committed to ensuring that I continue to serve the members of the public and our administration of justice in a fair and professional manner.

Thank you for your time and consideration.

Sincerely,



Alfred "Budd" Johnston