

Justice of the Peace Vernon A. Chang Alloy

Report of a Judicial Inquiry Re: His Worship Vernon A. Chang Alloy a Justice of the Peace

WARNING:

The Commissioner of Inquiry has ordered a ban on the publication of the complainant's identity in this matter.

While access to the material is permitted, members of the public are reminded that publishing, broadcasting or transmitting in any way information that would identify the complainant in this matter is a contravention of the Commissioner's order.

The Honourable Mr. Justice William A. Gorewich Commissioner

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[Transmittal Letter](#)

INTRODUCTION

I was appointed by Order in Council dated May 28, 2008 to conduct an inquiry pursuant to s. 12(1) of the Justices of the Peace Act, R.S.O. 1990 c. J. 4, as it read immediately before January 1, 2007 (hereinafter referred to as the Act), into complaints about the misconduct on the part of His Worship Vernon Albert Chang Alloy, a Justice of the Peace. A copy of the Order in Council is attached as Appendix 1.

The complaints were investigated by the Justices of the Peace Review Council and a recommendation was made in the report of the Council dated November 19, 2007 that this inquiry be conducted. A Notice of Public Hearing regarding this inquiry was published in the Brampton Guardian, Mississauga News, and Ontario Reports. A copy of the Public Hearing Notice is attached as Appendix 2.

This Commission of Inquiry was held to determine whether there had been misconduct by Justice of the Peace Chang Alloy and, if misconduct was found, to determine whether a recommendation should be made

to the Lieutenant Governor in Council to remove His Worship Chang Alloy from office or recommend that the Justices of the Peace Review Council implement a disposition under s. 12(3.3) of the Act).

THE STATUTORY FRAMEWORK

Pursuant to s. 12(1) of the Act), the Lieutenant Governor in Council may appoint a provincial judge to inquire into the question of whether there has been misconduct by a Justice of the Peace. If there is a finding of misconduct then subsection 12(3) provides the commission “may recommend that the Lieutenant Governor in Council remove the Justice of the Peace from office in accordance with s. 8 of the Act, or that the Review Council implement a disposition under subsection (3.3).” Section 8(1) reads as follows, “a justice of the peace may be removed from office only by order of the Lieutenant Governor in Council.” Such an order can be made only if the prerequisites in section 8(2) have been met. Section 8(2) reads:

Grounds for removal

(2) The order may be made only if,

(a) a complaint regarding the justice of the peace has been made to the Review Council; and

(b) the removal is recommended, following an inquiry held under section 12, on the ground that the justice of the peace has become incapacitated or disabled from the due execution of his or her office by reason of,

(i) infirmity,

(ii) conduct that is incompatible with the execution of the duties of his or her office, or

(iii) having failed to perform the duties of his or her office as assigned. R.S.O. 1990, c. J.4, s. 8 (2).

THE INQUIRY

On May 11, 2009 the inquiry commenced. A Statement of Agreed Facts was filed, a copy of which is filed and attached as Appendix 3. The Statement has been signed by Commission Council Mr. Gavin MacKenzie and Justice of the Peace Chang Alloy. Viva voce evidence was called by counsel for the Commission and counsel for Justice of the Peace Chang Alloy.

BACKGROUND OF JUSTICE OF THE PEACE VERNON A. CHANG ALLOY

Vernon A. Chang Alloy was appointed justice of the peace on April 20, 1990 and had presided in the Central West Region at all material times.

Vernon A. Chang Alloy was born in 1945 in Port Antonio, Portland, Jamaica. He came to Canada in 1969 as a permanent resident. Upon arrival in this country he attended Ryerson Polytechnical Institute, which later became Ryerson University. He studied hotel restaurant administration, and later received a scholarship enabling him to pursue his studies in Europe. He ultimately earned a Bachelor of Applied Arts in Hotel Management in 1974 from Ryerson University. In 1981 he received a Bachelor of Commerce degree from Concordia University in Montreal.

Vernon A. Chang Alloy, in 1988, prior to his appointment as a justice of the peace, acquired a real estate license. The evidence is not clear how active he was in the real estate industry, but there is reference to some difficulties finding employment in his area of qualification. He was appointed, as noted above, as a Justice of the Peace in Brampton in accordance with the practice then in effect, and has served in that position since, first at the Brampton Provincial Courthouse on Clarence St. until he moved into the new Granville Davis Courthouse in 2000.

THE COMPLAINTS

This Commission dealt with the complaints as set out in the Notice of Public Hearing, attached. The complaints raised for determination by this Commission of Inquiry are:

- (i) Whether, on or around June 30, 2006, Justice of the Peace Chang Alloy made unwanted physical contact with another Justice of the Peace by inappropriately touching her in a sexual manner, and later told her he checks his work schedule to see when she is working and that he had never checked his schedule like that before?
- (ii) Whether, on or about July 20, 2006, Justice of the Peace Chang Alloy made unwanted physical contact with the other Justice of the Peace by inappropriately touching her in a sexual manner?

In the event that either or both of these questions is answered in the affirmative, the Commission of Inquiry will then have to decide whether such conduct amounts to misconduct and, if so, whether a recommendation should be made that the Lieutenant Governor in Council should remove Justice of the Peace Chang Alloy from office, or whether a recommendation should be made that the Justices of the Peace Review Council implement a decision to impose one of the sanctions listed in section (3.3) of the Act. Those sanctions are:

- (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 the justice of the peace to 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; or
- (f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days.

THE ISSUES

The Agreed Statement of Facts, filed as Exhibit 1 in this hearing, sets out only the background facts, as there is no agreement as to the alleged misconduct. The Agreed Statement of Facts also sets the details of my appointment as Commissioner, the Order in Council is contained herein and is dated May 28, 2008; reference to the recommendation of the Justices of the Peace Review Council, recommending the appointment of this Commission of Inquiry; the Report of the Opinion of the Justices of the Peace Review Council respecting its investigations into the complaints described below; a Notice of Public Hearing published in the Brampton Guardian, Mississauga News and the Ontario Reports. This Agreed Statement of

Facts has been signed by Commission Counsel, Mr. Gavin MacKenzie and Justice of the Peace Chang Alloy on the advice of counsel, Mr. Eugene Bhattacharya.

Commission Counsel in this matter called the complainant who was a justice of the peace, Ms. Sarswatee Ramdath, also referred to in these proceedings as Hema Sepersaud, Justice of the Peace Currie and Justice of the Peace Frederiksen. Justice of the Peace Chang Alloy testified on his own behalf, and as well called Melissa Sagarese. Two volumes of materials speaking to Justice of the Peace Chang Alloy's character have been filed and are marked as Exhibits 2 and 3 respectively.

The complainant in this matter testified before this Commission of Inquiry and spoke of her background, her appointment in December 2005, the geographic locations of where she presides as a justice of the peace, including Brampton. It is noted she was chambered in the Granville Davis Courthouse in Brampton, Ontario at the relevant times, and spent about 95% of her time presiding at that location. She testified Justice of the Peace Chang Alloy as well was chambered there and presided in that location during the relevant timeframes herein. Their respective chambers were diagonally across the hall from each other.

For purposes of clarity I propose to break down the analysis into three parts, to reflect each complaint.

1. About one week prior to July 20, 2006, the complainant, according to her testimony, was going to the justice of the peace lounge on the sixth floor of the courthouse. She was wearing her judicial vest, but not her robes. She told the commission that Justice of the Peace Chang Alloy came in, they exchanged good morning greetings and a court related conversation ensued. She testified when she walked away, Justice of the Peace Chang Alloy ran his finger down her back. She said nothing to him, wondered why he would do that, and ultimately did not think much about it and concluded it was something about which she should not be concerned. She did not speak about this to anyone.

2. The complainant then spoke about another encounter which took place subsequent to the incident in the lounge, also prior to July 20. This exchange took place in her office. She thought this took place in the morning. Her evidence is Justice of the Peace Chang Alloy came into her office with his coffee cup, sat down as she was at her computer, and she thought she had her schedule on the screen. She testified that at that time he commented that he never used to check his schedule, but now checks to see where "I" am every day. He also said, according to her evidence, that he never did that before. She just ignored him. She allowed in her evidence that, because of his accent, she sometimes has a hard time understanding him.

She later expressed her concerns about Justice of the Peace Chang Alloy's comments to Local Administrative Justice of the Peace Currie, who testified that was one of the reasons conveyed by the complainant for her concern and why she did not want to be moving through the courthouse on her own.

3. The complainant testified that on July 20, 2006, during the 11:00 a.m. break, she noticed Justice of the Peace Chang Alloy go by her chambers as she was standing in her own chambers. She testified they spoke as he came by her door. She then left her chambers and walked with him toward his chambers as they continued to talk. They then stood outside his office facing each other as they conversed, joked and laughed.

Her evidence is that he stood right in the doorway. She stated she was at an angle, standing off to the side, thus while talking to him she was unable to see into his office.

During this conversation the evidence is there was no physical contact, but as she turned to her right, while they were still both laughing, he grabbed and squeezed her left buttock. She instantaneously turned around, but he was already back in his office, out of her vision, because of the angle at which she was standing. She then went back to her office, saying nothing to him. She described the contact as a “deliberate full-handed grab and squeeze.”

The complainant testified there was no possibility her gown became caught in a doorway, and indeed rejected any innocent explanation as was suggested as to how such a thing could have happened. At the time this occurred she told the inquiry she was wearing her judicial robes, a loose fitting garment, with a sash affixed onto the robe, clipping at the shoulder, a judicial vest, and slacks. She agreed it would be difficult to know where one’s back would end and the buttocks begin when wearing such attire. She testified that after the incident she continued her assignments in court that day. She agreed she was thereafter concerned about running into Justice of the Peace Chang Alloy, and as well wanted her office moved away from that area. She testified that after the incident, there were no other justices of the peace in their offices, and none were in the lounge, as she always looks in the lounge to see who is around. She agreed in a previous proceeding she testified she did not look in the lounge. She testified, at the commission hearing, she looked in the lounge as it is something she always does. She finally was not able to specifically recall whether she did or not on that day.

She testified she did not speak to anyone about the incident until the next day, being unsure as to what she should do. She recalled speaking to the Justice of the Peace intake clerk, Sarswatee Ramdath, also referred to in these proceedings as Hema Sepersaud, possibly the next day in the early morning, although she was somewhat uncertain. Ms. Ramdath is a person the complainant trusted, with whom some personal matters had been discussed in the past, although they did not have a relationship outside of the courthouse. The complainant testified after the incident she did not know what to do. She did testify later, in re-examination, that she had previously been a witness in an unrelated proceeding in February 2006 and was required to provide a statement, but nonetheless stated she was not aware of the process.

Ms. Ramdath testified she spoke to the complainant around midday on the day she understood the incident occurred. The complainant testified she told Ms. Ramdath about the incident, indicating it happened so fast she could not believe it happened. The complainant testified after she told Ms. Ramdath that something disturbing happened to her, Ms. Ramdath’s response was, “Who touched you?” This was confirmed in Ms. Ramdath’s evidence. The complainant told Ms. Ramdath it was Justice of the Peace Chang Alloy. Ms. Ramdath testified that the complainant told her not to tell anyone.

The complainant denied asking Ms. Ramdath about whether Justice of the Peace Chang Alloy had been involved in this type of behaviour previously. She received some advice from Ms. Ramdath upon which she did not act. The advice was to speak to Justice of the Peace Chang Alloy about the incident.

The complainant testified she recalled only speaking to Ms. Ramdath once about the July 20 incident, while Ms. Ramdath testified she spoke to the complainant about the incident on two other occasions. The complainant testified she did not recall having a conversation with Ms. Ramdath about her possibly being a witness in an inquiry. In cross-examination Ms. Ramdath testified that the complainant did tell her that she might have to be interviewed. The complainant did not recall telling Ms. Ramdath she had made a written complaint. Ms. Ramdath testified her attitude toward Justice of the Peace Chang Alloy did not change subsequent to this disclosure to her. The complainant testified she did not think she had a duty to speak directly to Justice of the Peace Chang Alloy about the incident.

It is noted from the evidence, the complainant shared an office with Her Worship Bustaquio-Syme. The complainant referred to a conversation, about two weeks prior to the July 20 incident, with Local Administrative Justice of the Peace Currie, about her judicial robes smelling of cigarette smoke because she used the same wardrobe as her office mate Justice of the Peace Bustaquio-Syme, whose husband was a smoker. As a consequence of Justice of the Peace Bustaquio-Syme's robes smelling of cigarette smoke, the complainant's robes smelled of cigarette smoke, and she stated in her testimony she wished another wardrobe. Her evidence is that she did not mention another wardrobe to Justice of the Peace Currie, but that was how the cigarette smoke smell issue could be resolved in her mind. She stated in chief she was not allergic to cigarette smoke, while Justice of the Peace Currie testified in cross-examination she told him she was allergic. She told the inquiry it was Justice of the Peace Currie who suggested, based on the discussion just noted above, that he could procure another office for her. She insisted she had no desire to move her office at that time.

Justice of the Peace Currie testified about that same conversation, the one which took place prior to the July 20 incident, with the complainant. He testified that the complainant asked if she could switch chambers, because of the cigarette smell issue with her office mate. This was confirmed as well in his cross-examination.

While speaking to Justice of the Peace Currie about the office move, subsequent to the July 20 incident, the complainant testified she thought she must have appeared upset causing him to ask what was the matter; she then began to cry and told him about the incident. Justice of the Peace Currie confirmed she was visibly upset when she attended his office after the July 20 incident. Justice of the Peace Currie quickly arranged for the change of office after that last conversation, when it was disclosed to him the circumstances of the July 20 incident.

As a result of that conversation, the complainant spoke to Justice Culver, the Regional Senior Justice for Central West, who laid out her options, including the option of making a complaint to the Justices of the Peace Review Council. She testified she filed the complaint against Justice of the Peace Chang Alloy in writing on August 7, 2006. Her office was moved to another part of the building shortly thereafter.

Justice of the Peace Currie testified to a concern expressed by the complainant in the subsequent conversation, that she did not want to be alone in the same courthouse as Justice of the Peace Chang Alloy

because of his references to her schedule, one of the complaints herein. As a result of the disclosure to Local Administrative Justice of the Peace Currie, the complainant and Justice of the Peace Chang Alloy were scheduled so they would not preside in the same courthouse at the same time. There was also an offer by Justice of the Peace Currie or another colleague to escort her to her car during this period. In cross-examination, Justice of the Peace Currie stated he did not advise the complainant to discuss the incident with court staff, although he did suggest she discuss the matter with her husband. He also noted that Justice of the Peace Chang Alloy does have an accent and sometimes was unable to understand fully the words he was saying.

The complainant testified she also spoke to Justice of the Peace Frederiksen in the "A" intake office sometime in the afternoon, although there was no exact date referred to in her evidence. She testified it was he or she who closed the door to that room. This conversation occurred after she had spoken to Justice of the Peace Currie. She disagreed with the suggestion that meeting took place at the end of the day at the elevators when the two of them were leaving, as Justice of the Peace Frederiksen later testified. Both however agreed it was a chance meeting.

When asked whether she told Justice of the Peace Frederiksen that Justice of the Peace Chang Alloy followed her down the hall late one evening when no one was around to witness the incident, as Justice of the Peace Frederiksen later testified, she stated she did not recall saying that. She was unable to recall whether she told Justice of the Peace Frederiksen about the other two incidents, but she said she might have. She was unable to recall telling Justice of the Peace Frederiksen that he might be a witness, and that she was concerned about making this disclosure concerning Justice of the Peace Chang Alloy because of her short time in this position versus his many years as a Justice of the Peace. Justice of the Peace Frederiksen testified she did advise he might be a witness, and as well testified she did express concern about making this disclosure as she was so junior.

The complainant referred to two incidents after July 20, 2006 involving Justice of the Peace Chang Alloy. She indicated that after July 20 she tried to avoid Justice of the Peace Chang Alloy. The first incident she recalled took place not too long after she filed her complaint. She referred to an incident when she went through a windowless door, equipped with a push bar, to leave the secure area. As she pushed the bar to open the door, the door accidentally struck Justice of the Peace Chang Alloy, who was on the other side of it. Her evidence is that he looked at her and said, "I bet you have been wanting to do that for a while." She testified it did not appear to her that he was joking, and stated he had "a very, very stern or serious look on his face." She later agreed that the use of the words "very, very" was meant to convey the fact he had a serious look on his face. She agreed it was an exaggeration and apologized for that in her testimony.

Justice of the Peace Chang Alloy, who testified later in these proceedings, agreed he might have made that comment, but is not certain. He stated it might have been as a greeting when that happened. He stated it was something he would probably say, not out of anger, but out of humour.

The other incident she testified to also took place after July 20, 2006, when Justice of the Peace Chang Alloy came up to her and asked to borrow her security pass swipe card, as he had forgotten his. She was shocked and upset as she stated. She recalled he asked her for it several times and she finally gave it to him. She thought he had asked for the swipe card in a forceful manner. She thought he could have asked Ms. Ramdath for the security pass. She testified he "had me locked up basically against the wall." She waited by Ms. Ramdath's desk until he came back, at which time he returned her pass card to her. She thereafter carried on with her duties.

Justice of the Peace Chang Alloy had no recollection of this event, but agreed on occasion he forgot his security pass swipe card and would borrow one from a colleague. He testified that it is not his style to be forceful, as he is more laid back.

The complainant testified to having a conversation about the corridor incident with a court clerk, Melissa Sagarese, but stated she did not initiate the conversation. This conversation, according to the complainant, took place sometime after that incident. The circumstances surrounding this discussion took place when the complainant proceeded to her court and, while en route, noticed her clerk, Ms. Sagarese talking to Justice of the Peace Chang Alloy. The complainant testified she froze, Justice of the Peace Chang Alloy looked at her, and went to his courtroom. The complainant then told the Commission that Ms. Sagarese looked at both of them and asked her, "What is going on?" The complainant testified she told Ms. Sagarese she could not discuss it, to which the clerk replied, according to the complainant's evidence, "Well, you don't have to tell me, I know there is something going on. I know it has to do with him and I would not be caught alone on an elevator with him."

In her testimony, Ms. Sagarese denied it was she who initiated the conversation. She categorically denied making the statement, "I would not be caught alone in an elevator with that man." She agreed she had picked up the complainant at the elevator to walk her to her court and at that point she recalled the complainant asked if she wondered why she was required to walk her back and forth to and from court. Ms. Sagarese testified she responded to the complainant that she was not wondering about that, and it was none of her business. She told this inquiry she did not pry and indeed did not want to know. It was at that point, according to her testimony, that the complainant told her of the situation as between herself and Justice of the Peace Chang Alloy.

In alluding to the situation she had been told of, she had some recollection of being told there was inappropriate behaviour in the elevator when Justice of the Peace Chang Alloy was alone with the complainant in the elevator. She described the complainant's demeanour, when she was relating the circumstances, as just talking, not whispering, perhaps a little quieter as they were in the back hall near the courtrooms.

In cross-examination Ms. Sagarese was confronted with her testimony from a previous proceeding in this matter where she said she noticed that day in the corridor outside the courtrooms that the complainant made it a point to stay further away from Justice of the Peace Chang Alloy and stayed closer to her and it was

obvious. While she did not recall saying that, she did indicate that what she said in the previous proceeding would have been the truth.

The conversation referred to above took place after the complainant's conversation with Justice of the Peace Currie. Ms. Sagarese denied, in her testimony, asking what was going on or making any comment. In the previous proceeding, the complainant, in quoting Ms. Sagarese, had stated Ms. Sagarese said, "I would not be caught dead in an elevator with him." When challenged on her use of the word "dead" in that previous proceeding, the complainant stated she retracted the word dead stating she used it in error because it is just such a common expression.

On the issue of who initiated the conversation, the complainant disagreed it was she and further disagreed with the suggestion Ms. Sagarese told her she did not want to hear about the incident and that it was none of her business.

Ms. Sagarese testified her dealings with Justice of the Peace Chang Alloy were proper and professional, although she had trouble understanding him from time to time.

Justice of the Peace Chang Alloy testified. His background has been outlined above. He has been married for 30 years and has one daughter. He was not able to recall when he met the complainant but assumes it was soon after her appointment in 2005. Any contact between them has been confined to courthouses in which they have worked. He became aware her office was across from his likely in February or March 2006. He cannot recall having seen her at seminars.

He has some recollection of being alone with the complainant sometimes, on occasion in his chambers and as well in her chambers on occasion. He agreed that he joked around with her and chatted with her from time to time, but there was nothing specific he was able to recall. He agreed that the complainant joked along the lines of dragging out her court so she would not have to help his court. He testified they liked each other as professional colleagues. He also acknowledged he was not aware of any reason why the complainant would make up a story about his grabbing her left buttock, or running his finger down her back. He knew of no reason why she would exhibit any animosity towards him. He testified he was not aware of any issues with the complainant until he received the Notice of Complaint in this matter. He was shocked when he became aware of the allegations. He testified up until receiving the Notice of Complaint he never sensed there was anything untoward or sinister in terms of their relationship.

When asked if he grabbed her buttocks on July 20, 2006, his answer was "I did not do that, so I have nothing to say in that regard." He had no recollection of running his finger down her back some time prior to July 20, 2006. While the complainant was asked questions about being mistaken about what occurred on July 20, 2006, Justice of the Peace Chang Alloy did not advance that in his testimony, and he repeated it did not happen. In cross-examination as well, he maintained he did not run his finger down her back. He further maintained in cross-examination that he did not make the comment about "checking his schedule to see when she is on duty and he never has done that before." He allowed he might have mentioned the subject

matter of schedules to her, for the purpose of ascertaining who was working in 102 court. He has no control or power regarding scheduling, his or anyone else's.

Justice of the Peace Chang Alloy responded in writing to the Judicial Review Council denying the allegations. He has testified that the effect of these allegations on himself and his family has been stressful. Mr. Bhattacharya asked the following question of Justice of the Peace Chang Alloy: "Is there anything that you can tell us that you have done that you may consider inappropriate or unwanted on the complainant's part that you've done to her?" The response was, "No." He expanded on this after a subsequent question by counsel stating there was no touching or inappropriate comments made by himself to the complainant.

He testified he did notice a change after July 20, in that the complainant did not speak to him and did not respond to greetings in the elevator.

Justice of the Peace Chang Alloy, in cross-examination, agreed he has been working continuously as a real estate broker prior to his appointment and then again since 1996. He agreed one of the reasons he accepted the appointment was that it would help him in his real estate business. He disagreed with a portion of a letter of reference written on his behalf that characterized him as not being gregarious, indicating he was a bit more gregarious when he got to know someone.

I have reviewed Exhibits 2 and 3 in this matter, which have been tendered in evidence. I have treated this evidence as admissible in the same fashion had vive voce evidence been called to address the same issues.

SUBMISSIONS OF COUNSEL

Mr. MacKenzie urges this Commission to accept the evidence of the complainant, notwithstanding certain inconsistencies that emerged in her evidence. He submits that the one thread of consistent evidence throughout was that the inappropriate behaviour of Justice of the Peace Chang Alloy occurred. He asks the question what would motivate the complainant to make up a story and come forward in an inquiry such as this. It is submitted that this inquiry should accept the time frames within which the incident was reported firstly to Ms. Ramdath and subsequently the filing of the complaint as a circumstance particular to the individual making the complaint. Commission Counsel did acknowledge that Justice of the Peace Chang Alloy did not advance mistake as an explanation, and the fact he said it could not have happened should not be accepted as a possible explanation. Commission Counsel did allude to the differences in the recollections of the various witnesses as mentioned above, but in particular he referred to the moving of her office, and has urged this inquiry to accept the move of her office was predicated solely on the issues before this inquiry. This inquiry has been asked to consider the evidence in particular of Justice of the Peace Chang Alloy's contention there has been no animosity between himself and the complainant.

Several authorities have been cited, as well as other Commission Inquiries relating to allegations of misbehaviour of justices of the peace. The Commission Inquiry concerning Justice of the Peace Blackburn, the report of Commissioner The Honourable Justice Mary Hogan dated January 21, 1994 was referred to. It is of significance that Justice of the Peace Blackburn admitted the allegations against him. Similarly, in the

inquiries concerning the behaviour of Justices of the Peace Obakata and Quon, the allegations against them were admitted. In other inquiries placed before me for assistance, there is none which has the dynamic of one Justice of the Peace making allegation against another in circumstances such as the one under discussion, i.e. a total denial of inappropriate behaviour. Mr. MacKenzie urges this Commission to answer the questions posed in the issues as set out above in the affirmative and find Justice of the Peace Chang Alloy behaved as per the complaints of the complainant.

Mr. Bhattacharya on behalf of Justice of the Peace Chang Alloy cited the Evans inquiry to stress the proposition this process should not be approached as a credibility contest. He reviewed the allegations from the evidence and posed many questions for this Commission. He too, spoke of the inconsistencies or differences in the evidence as between the complainant and the witnesses called by Commission Counsel.

He questioned why Justice of the Peace Frederiksen would be so wrong in his recall of where and when the meeting with the complainant took place. He questioned how Justice of the Peace Frederiksen could have not remembered more accurately the content of his discussion with the complainant. Thus issues in his evidence arose with respect to time, place and content of the conversation with the complainant.

Issues with respect to Ms. Ramdath's evidence and that of the complainant were dealt with in submissions. Counsel questioned why such discrepancies would happen on such areas as how many times the complainant discussed the matter with Ms. Ramdath.

He pointed out as well the inconsistencies in the evidence as between Justice of the Peace Currie and the complainant regarding the issue of the request for the move of office, the reason for it and being allergic to cigarette smoke. The question is asked as to whether the issue of the office move could be the motivation to bring these complaints.

The conflict in the evidence between the complainant and Melissa Sagarese was reviewed in submissions. The exaggerations in the evidence of the complainant are outlined in the submissions. Reference is made to the use of the term "dead" by the complainant, in quoting the comments of Ms. Sagarese in a related proceeding, such use of the word later being acknowledged by the complainant as not being said by Ms. Sagarese. Reference was also made to the description of Justice of the Peace Chang Alloy's face as being very, very serious, in reference to the door incident, again later acknowledged by the complainant to be an exaggeration for the purpose of making a point.

Mr. Bhattacharya submits that while the complainant testified she did not know what to do after the event of July 20, her evidence reflects she has some familiarity with the process as she was a witness in an unrelated proceeding, which required her to file a statement.

Reference in submissions was made to Justice of the Peace Chang Alloy's accent, in relation to the scheduling comment, as well noting he had no control over schedules. He further submits, notwithstanding the allegation of the running of his finger down her back, she continued her professional relationship with him even to the extent of engaging him in joking conversation, such as this inquiry has heard.

After reviewing the essence of Justice of the Peace Chang Alloy's evidence, Mr. Bhattacharya asks this inquiry to find the standard of evidence required has not been met and the questions with respect to the issues set forth be answered in the negative, that he did not behave in the manner alleged on any of the complaints.

GENERAL COMMENTS ON THE EVIDENCE, CONCLUSIONS AND FINDINGS

Having heard the evidence of the complainant and Justice of the Peace Chang Alloy and the witnesses called in their respective support regarding the issues before this Commission, and the submissions of counsel, the assessments, findings and conclusions which will follow are based on an analysis of the evidence, set out in some detail above.

The mandate of the Commissioner sitting in such Commissions has been set out above. The relevant sections of the Justices of the Peace Act, in operation as it was at the time of the complaint, have also been set out above. The task this Commission is charged with is to determine whether the evidence establishes Justice of the Peace Chang Alloy is guilty of misconduct, and if so to make recommendations to the Justices of the Peace Review Council under the statute.

The standard of proof in these matters is not as high as the standard of proof required in criminal matters, i.e. proof beyond a reasonable doubt, but requires more than simple probability. In such hearings, where serious allegations have been made and may result in the removal from office, the proof of the allegations " must be clear and convincing and based upon cogent evidence which is accepted by the tribunal", such standard enunciated in *Re Bernstein and College of Physicians and Surgeons of Ontario* (1977), 15 O.R. (2d) 447 at 485 (Ont. Div. Ct.)

The evidence of the complainant has been outlined in considerable detail above. I accept it was a difficult, stressful and awkward process for her, in that she was a junior colleague of Justice of the Peace Chang Alloy. I accept this entire situation placed her and her family under considerable stress. She had to testify in two proceedings.

I do not find her evidence, on certain issues such as the time she spoke to Ms. Ramdath as having a bearing on the determination of the issues herein. I find she reported the incident to Ms. Ramdath within rapid fashion, be it on the day the incident was alleged to have occurred or the day following. There is, however, a discrepancy between the two as to how many times the complainant spoke to Ms. Ramdath; the complainant was convinced it was only one time, whereas Ms. Ramdath testified it was three in total. This bears on the complainant's ability to recall details. In assessing the complainant's evidence there are other areas which merit some comment and upon which I will make findings:

- (a) The issue of her seeking advice because she did not know what to do. The evidence reflects she did have previous experience in being a witness in such a proceeding and in having to provide a statement. I find she had some knowledge of the procedure.
- (b) The difference between her testimony and that of Justice of the Peace Currie on the issue as to whether

she requested a change of office prior to July 20, 2006. I find the issue was addressed with Justice of the Peace Currie prior to July 20 and further, I find it was she who initiated the discussion about the change of office, not Justice of the Peace Currie as she testified.

(c) There is a discrepancy in their respective testimonies as to whether she was allergic to smoke. I simply make the finding of the discrepancy, and find the inconsistency exists.

I do find she was stressed when she came to see Justice of the Peace Currie after the July 20 incident.

There are two questions that arise on this evidence; did she attend on Justice of the Peace Currie's office to further her discussions about a change of office because of the cigarette smoke issue or was it because of the Justice of the Peace Chang Alloy issue or both? I find she attended Justice of the Peace Currie's office to discuss the office move, and the issue of July 20 arose when she became upset. I am unable to conclude the purpose of the visit to Justice of the Peace Currie's office initially was for the purpose of complaining about the July 20 incident. These discrepancies and inconsistencies impact on the accuracy and reliability of her evidence in part.

I do not draw a conclusion adversely affecting the testimony of the complainant because there was a two-week delay between the incident and the formal complaint.

The question has been asked, what would be the motivation for the complainant to bring forward these allegations in such a public forum if they indeed did not occur, particularly in the light of the testimony of Justice of the Peace Chang Alloy that no animosity existed between them? While one answer to this question might be obvious, there is evidence which could have the effect of blurring the motivation. The question of the change of office request was initiated with Justice of the Peace Currie by the complainant before the disclosure of the July 20 complaint, and was pursued after the disclosure to him. It is evidence upon which the complainant and Justice of the Peace Currie are not ad idem. I am unable to provide a definitive answer to the question from the evidence, but cannot ignore the possibility. Further the evidence reveals that the complainant spoke to at least three people about July 20 and was given advice by one person that she confront Justice of the Peace Chang Alloy, which she did not do, and by the others that she has the option of acting on the complaint, which she did.

The complainant was adamant she was not in error, there was no misunderstanding about what happened, and she reacted as set out in the evidence. Her evidence differs from that of Justice of the Peace Frederiksen as to where and when their meeting took place and indeed the content of the disclosure to Justice of the Peace Frederiksen as to where the incident took place. Her evidence differs from that of Ms. Melissa Sagarese as to the chance encounter that the two justices of the peace had in a court corridor and what was said and who initiated the conversation. Ms. Sagarese testified she did not want any involvement in such a dispute, where the complainant testified Ms. Sagarese wanted to know what was going on and made a negative comment about Justice of the Peace Chang Alloy.

In making these observations, I find there are three instances, on significant issues, where there is diametrically opposing evidence concerning the complainant's evidence and that of the witnesses called in

this inquiry, two of whom were called by Commission Counsel, namely Justices of the Peace Currie and Frederiksen, the third witness being Ms. Sagarese. The common thread in the evidence of the complainant is that all four witnesses testified disclosure was made of inappropriate behaviour in reference to July 20. Given the discrepancies in the evidence, however, the assertions by the complainant cannot simply be taken to stand on their own. Those assertions must be assessed along with the evidence of the witnesses on corollary matters as well, not only to determine credibility but as well to determine accuracy and reliability, and indeed the ability to recall certain events with clarity, notwithstanding our human failings.

There is only limited use that can be made of the evidence of two incidents referred to by the complainant, the first being the incident with the push bar door hitting Justice of the Peace Chang Alloy and his comment thereafter, and the second being the request for the security swipe card. I do not make any finding adverse to Justice of the Peace Chang Alloy in assessing this evidence. I find the complainant exaggerated when describing the serious look on the face of Justice of the Peace Chang Alloy in reference to the door incident. Ms. Ramdath made no reference to the swipe card incident in her testimony, although the evidence suggests she was present. Justice of the Peace Chang Alloy did not specifically recall the swipe card incident, but agreed from time to time he would borrow a swipe card from a colleague if he forgot his own, and in any event I do not find the circumstances of the borrowing of the card by Justice of the Peace Chang Alloy such that I am able to make an adverse finding based on this evidence.

In the face of the assertions by the complainant is the denial by Justice of the Peace Chang Alloy and the assertion that no inappropriate behaviour took place. He expressed shock when he received the Notice of Complaint. In his evidence, he often gave responses against his own interest. I refer to his admission he still was engaged in the real estate business while carrying on his duties as a Justice of the Peace. He was frank, and while carrying on a real estate business in my view is a questionable practice, in terms of this hearing it inures to his credibility. This inquiry is not about that. He further allowed he could have made the comment attributed to him when he was hit by the door, such comment could be seen to be against his interest, but agreed it is something he could have said. He is as adamant in his denials as the complainant is in her assertions. His evidence is that at no time did he engage in any of the actions or comments attributed to him by the complainant. He stood firm in cross-examination and even rejected the notion of mistake as he maintained the July 20 incident did not happen.

With reference to the comment attributed to him about watching schedules as he never did before, there are a number of possibilities presented by the evidence. Those possibilities are: he did not make such a comment; he made a comment about schedules as he stated in evidence he wanted to know who was sitting in 102 court, the busy bail court; he was clearly misunderstood given his noticeable accent as from time to time he was not understood by colleagues, including the complainant and staff; he could have been heard to say exactly what the complainant recalled. Taking this comment at its highest, as the complainant recalled it, I cannot only draw the conclusion it was made in the context understood by the complainant. There are the other possibilities noted. I find there was no misbehaviour of Justice of the Peace Chang Alloy with respect to this allegation.

Justice of the Peace Chang Alloy denied he ran his finger down the back of the complainant in the justice of the peace lounge sometime prior to July 20. Her evidence was she said nothing to him when it occurred, she did not think anything about it only that it was strange, but given the events of July 20, it became a concern as she reflected back. She, in her evidence, stated when it happened it was something about which she would not be concerned. I am unable to find on the conflicting evidence concerning this allegation the evidence is such that misbehaviour could be found, taking into account the standard of evidence required in these matters.

There are direct assertions by the complainant and equally direct denials by Justice of the Peace Chang Alloy respecting his behaviour on July 20, 2006. The evidence of the complainant differed in certain crucial areas from that of witnesses called by Commission Counsel. I find there is at least one area of exaggeration in her evidence noted above. It is of concern in assessing the quality of the complainant's evidence, that such exaggeration would be employed, to make a point, i.e. to convey the serious look on the face of Justice of the Peace Chang Alloy.

I find the evidence of Ms. Sagarese telling and accept her evidence. It appears to me that a court clerk not wanting to become involved in a dispute between two judicial officers is a common sense approach and prudent. It may well be the entire incident of July 20 occurred as the complainant testified, but equally it may well be it did not occur as Justice Chang Alloy has maintained throughout. They were the only two people who could testify to the incident. I have kept in mind in assessing the quality of the evidence presented herein the standard of evidence required in these matters. There are some questions that only can be answered on the basis that evidence did not rise to the standard enunciated above. I refer, for example, to the question as to what the motivation of the complainant would be to lodge the complaints and carry them through to this point. It is one issue to lodge the complaint, it is another issue to give evidence that rises to the required standard.

I have read the evidence contained in Exhibits 2 and 3, the character references filed on behalf of Justice of the Peace Chang Alloy, and have extracted, from that material, comments which I deem to be admissible, rejecting that which would not be admissible. I need not comment further on that material.

I find, based on the standard of evidence required, "clear and convincing, based on cogent evidence accepted by the tribunal" that the evidence herein does not meet that standard and thus I am unable to conclude that Justice of the Peace Chang Alloy is guilty of the behaviour complained of, that is the incident alleged to have occurred on July 20, 2006. I therefore make no recommendation to the Lieutenant Governor in Council or to the Justices of the Peace Review Council.

COSTS

As recommended by Commission Counsel, pursuant to subsection 12(3.1) of the Justices of the Peace Act, I recommend that Justice of the Peace Chang Alloy be compensated for all of his costs for legal services incurred in connection with this inquiry.

Dated at Newmarket, Ontario the 19th day of November, 2009

William A. Gorewich

Commissioner

LIST OF APPENDICES

1. [Order in Council No. 806/2008](#)
2. [Notice of Public Hearing](#)
3. [Agreed Statement of Facts](#)