

# Justices of the Peace Review Council



## IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, c. J.4, AS AMENDED,

### Concerning a Complaint about the Conduct of Justice of the Peace Julie Lauzon

**Before:**

The Honourable Justice Feroza Bhabha, Chair

His Worship Thomas Stinson, Justice of the Peace Member

Ms. Margot Blight, Lawyer Member

### DECISION DENYING THE APPLICATION FOR A NON-PUBLICATION BAN

**Counsel:**

Mr. Ian Smith  
Mr. Andrew Guaglio  
Presenting Counsel

Mr. Lawrence Greenspon  
Counsel for Her Worship

Mr. Scott Rollwagen  
Ms. Margaret Robbins  
Counsel for the Intervenors, the Association of Justices of the Peace of Ontario

Ms. Savitri Gordian  
Mr. Mark Crow  
Counsel for the Attorney General of Ontario, Constitutional Law Branch

## **The Interim Order**

- 1) On December 12, 2018, at the request of Presenting Counsel, this Panel granted an order for an interim publication ban protecting the identities of a number of individuals referred to in a motion record filed by Mr. Lamb, then counsel for Her Worship Lauzon, on December 10, 2018. The motion record was in support of a Notice of Constitutional Question. The order was made on consent of counsel for Her Worship.
- 2) The motion record contains various transcripts, including an interview with the then Crown Attorney for Ottawa by the complaints committee, correspondence between the Crown Attorney and her colleagues, superiors, and the Regional Senior Justice of the Peace. The materials also include transcripts of three (3) bail hearings over which Her Worship presided, and finally, an affidavit sworn by Her Worship who will testify in these proceedings.

## **Order Now Sought**

- 3) Presenting Counsel now seeks a permanent order continuing the publication ban in respect of the names of specified individuals referred to both in the materials filed before this Panel, and in the *viva voce* evidence to be taken at this hearing. Presenting Counsel also requests that any job title relating to certain individuals by which they could potentially be identified also be subject to the publication ban.
- 4) The basis of the request for the ban is that those individuals are participants in the justice system whose conduct has been criticized, and as non-parties, they are not able to respond or defend themselves. Presenting Counsel submits that their professional reputations and those of their respective offices are placed at risk.

## **Position of Her Worship Lauzon**

- 5) Counsel for Her Worship, Mr. Greenspon, consents to the order sought, and in fact requests that the scope of the ban be expanded to include the two allegations set out in Exhibit One: the Notice of Hearing; Appendix "A" Particulars of Complaint, and in

particular paragraphs 18 to 28. The basis of the request is that Presenting Counsel advised early in these proceedings [August 8, 2018] that because of the Supreme Court of Canada's decision in *R. v. Antic*<sup>1</sup>, which was decided after the complaints process began, there is no longer any "RPC" or in this case, no reasonable prospect of an adverse finding against Her Worship.

- 6) Presenting Counsel does not agree that the scope of the publication ban should be expanded to include allegations that are no longer before this Panel for determination. Mr. Smith, Presenting Counsel, takes this position primarily because all of the allegations were made public in 2018 when the Notice of Hearing was filed and have been in the public domain for some time.

## Analysis

- 7) The *Statutory Powers Procedures Act* ("the *SPPA*") under the heading "*Hearings to be public; exceptions*" provides at section 9(1):

9. (1) An oral hearing shall be open to the public except where the tribunal is of the opinion that,

- (a) matters involving public security may be disclosed; or
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing in the absence of the public.

- 8) This provision is reflected in the JPRC's *Procedural Rules*, which adds "personal security" to the criteria to section 9(1) of the *SPPA*.
- 9) We note that no notice of the present motion has been posted on the JPRC website, nor has notice been provided to media outlets, as contemplated by the Rules.

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<sup>1</sup> *R. v. Antic*, 2017 SCC 27

- 10) Counsel in this case rely on the residual category in the exception provided in the *SPPA* and the *JPRC Procedural Rules*.
- 11) The residual category recognizes the possibility that there are reasons, other than disclosure of matters involving public or personal security, and matters involving intimate financial or personal matters, that could justify a publication ban.
- 12) The issue presented here is whether the potential risk to a person's reputation as a result of the role they have played in the background narrative is sufficient reason to justify suppressing their identity. Counsel provided no legal authority for this proposition.
- 13) The background narrative in this case, as put forward by counsel for Her Worship, has a particular context that explains and justifies her public statements.
- 14) Presenting Counsel takes the position that the background narrative is irrelevant and that Her Worship's out-of-court conduct, and the article that is the central issue in this hearing, is to be considered on its face.
- 15) The propriety and impropriety of the conduct of any of the justice participants in the background narrative is not an issue this Panel will decide.
- 16) The open courts principle is longstanding and fundamental to our system of justice in general and in particular to an adjudication such as this where the public has a strong interest in the process and the outcome.
- 17) The Supreme Court of Canada set out a test for a publication ban to be granted, which has become known as the *Dagenais/Mentuck* test<sup>2</sup>:

A publication ban should only be ordered when:

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<sup>2</sup> *Dagenais v Canadian Broadcasting Corp*, [1994] 3 S.C.R. 835; *R. v. Mentuck*, [2001] 3 S.C.R. 442, 2001 SCC 76

- a) Such a ban is necessary in order to prevent a real and substantial risk to the fairness of the proceeding, because reasonably available alternative measures will not prevent the risk; and,
- b) The salutary effects of the publication ban outweigh the deleterious effects of the publication ban.

18) The *Dagenais/Mentuck* test requires the party opposing media access to demonstrate that the order for the ban is necessary to prevent a serious risk to the proper administration of justice, and that the salutary effects of the order sought outweigh the deleterious effects on the rights and interests of the parties and the public.

19) Departure from the open court principle requires compelling reasons. We see no compelling reasons to ban publication of the names or the offices of the judicial officials and legal counsel involved in the narrative.

20) All are professionals and officers of the court who were at the time acting in their official capacities, often on the record. In this case, the roles of the individuals are critical to understanding the contextual evidence of the narrative. In addition, we have not been advised that any of the individuals on whose behalf a publication ban is sought have made such a request.

21) We considered the *Foulds* case<sup>3</sup>, which provides, in our view, limited assistance because the publication ban in that case pertained to the identities of a complainant and defendant in a criminal case where the charges were withdrawn and the defendant requested that he not be identified. The identities of these individuals were irrelevant to the underlying narrative.

22) With respect to the two allegations outlined in paragraphs 18 to 28 of Appendix “A” to the Notice of Hearing in respect of which Presenting Counsel is no longer proceeding, we similarly find no compelling reason to depart from the open court principle.

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<sup>3</sup> *Re His Worship Foulds* (JPRC, 2018)

23)In the result, the application for a publication ban protecting the names and job titles of the 16 individuals identified by Presenting Counsel in the list provided to this Panel today is denied.

Dated at the city of Toronto in the Province of Ontario, September 17, 2019

HEARING PANEL:

The Honourable Justice Feroza Bhabha, Chair

His Worship Thomas Stinson, Justice of the Peace Member

Ms. Margot Blight, Lawyer Member