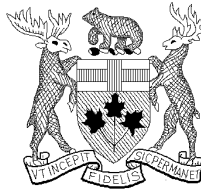


# Justices of the Peace Review Council



## 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 Three Complaints 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

## REASONS FOR DECISION

### Counsel:

Mr. Ian Smith and Mr. Andrew Guaglio  
Presenting Counsel

Mr. Lawrence Greenspon and Mr. Graham Bebbington  
Counsel for Her Worship

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

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

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- A - History of the Proceedings
- B - The Article - online version (Exhibit 3, Tab 2)
- C - The Article - print version (Exhibit 3, Tab 3)
- D - The comparison of the versions (Exhibit 11)

## REASONS FOR DECISION

### PART I: OVERVIEW AND PROCEDURAL HISTORY

- [1] This proceeding concerns the conduct of Justice of the Peace Julie Lauzon, a member of the Ontario Court of Justice, on two separate occasions: one in relation to out of court statements made in the public domain and the other relating to comments made in court in a bail proceeding.
- [2] On March 14<sup>th</sup>, 2016, Her Worship Lauzon wrote an article that was published online in the National Post newspaper. The article was entitled: “When bail courts don’t follow the law”.
- [3] In the article, she called the Court in which she presides “a disgrace”, citing a “lack of respect for the JP bench” and “the absence of the rule of law in this court”. She also referred to the court as “dysfunctional and punitive” and repeated in the last paragraph that it was “devoid of the rule of law”.
- [4] In particular, Her Worship referred to the conduct of Crown Attorneys appearing before her as being characterized by “cynicism and bullying.” She described three specific incidents alleging unprofessional behaviour of Crown Attorneys. In one of the incidents, Her Worship described how when she questioned certain proposed bail conditions, the prosecutor threw a “temper tantrum”. She also wrote alleging that prosecutors “attempt to wrestle jurisdiction from the court through a variety of unacceptable tactics” instead of appealing decisions with which they are unhappy.
- [5] The National Post article is the subject matter of the first of the two allegations of judicial misconduct before the Panel.<sup>1</sup>
- [6] The second allegation involves a comment Her Worship made in court during the course of a bail hearing on February 26<sup>th</sup>, 2015. At the bail hearing, the Assistant Crown Attorney brought to Her Worship’s attention a decision of Justice Ratushny of the Superior Court of Justice on a bail review. Justice Ratushny had conducted a bail review and reversed a previous release order that Her Worship Lauzon had ordered on December 30<sup>th</sup>, 2014. The Assistant Crown Attorney relied on the decision of Justice Ratushny arguing that it applied to the case before Her Worship. Her Worship was unaware of Justice Ratushny’s decision prior to the bail hearing.
- [7] Her Worship reviewed Justice Ratushny’s decision. She then referred to a particular passage of the decision and commented: “Well this sounds like a post-conviction statement. There is no mention and there is no illusion [sic] to the presumption of

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<sup>1</sup> See Notice of Hearing, Exhibit 1

innocence and yet the *Charter* is very clear, people are presumed innocent until found guilty by a court of law. That's what I am bound to. (Emphasis added.)

- [8] In April 2017, a complaints committee of the Justices of the Peace Review Council (the “JPRC”) received three (3) letters of complaint about the conduct of Justice of the Peace Julie Lauzon from:
- a. Mr. James Cornish, Assistant Deputy Attorney General, Criminal Law Division, Ministry of the Attorney General;
  - b. Mr. Brian Saunders, Director of Public Prosecutions, on behalf of the Public Prosecution Service of Canada; and,
  - c. Ms. Kate Matthews, President of the Ontario Crown Attorney’s Association, on behalf of the Ontario Crown Attorneys’ Association.
- [9] Following an investigation, the complaints committee ordered that the three complaints be referred to a Hearing Panel of the Review Council, for a formal hearing under section 11.1 of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (“the *JPA*”).
- [10] Her Worship Lauzon came before this Hearing Panel in June 2018. A Notice of Hearing was filed as an exhibit on June 22, 2018.
- [11] The allegations contained in the Notice of Hearing can be summarized as follows:

***1<sup>st</sup> allegation (“the Article”):***

Her Worship failed to uphold the integrity, impartiality and independence of the judiciary when she inappropriately used the power and prestige of her judicial office to make out-of-court statements in the media in an opinion piece entitled, “When Bail Courts Don’t Follow the Law” published in the National Post newspaper on March 15, 2016 in which she made disparaging comments and allegations of misconduct against Crown counsel and other members of the judiciary, without regard for their personal and professional reputations.

***2<sup>nd</sup> allegation (“the AJN Bail Hearing”):***

Her Worship made inappropriate comments about another jurist during the course of a bail hearing that could be perceived as inconsistent with the integrity, impartiality and independence expected of the judiciary.

- [12] On August 1, 2018, the Association of Justices of the Peace of Ontario (“AJPO”) sought and was granted Intervenor status in these proceedings.
- [13] On October 16, 2018, counsel for Her Worship Lauzon, then Mr. Dominic Lamb, filed a Notice of Constitutional Question (the “NCQ”) questioning the constitutional applicability of the *JPA* provisions that relate to JPRC disciplinary hearings.
- [14] The legal basis for the constitutional question relating to the first allegation (the “Article”) is whether the principles of freedom of expression enshrined in s. 2(b) of the *Charter of Rights and Freedoms* (the “*Charter*”) apply to Justice of the Peace Lauzon when making public statements about matters relevant to the administration of justice and if so, would sanctions by the JPRC violate that freedom, and if such a violation is a reasonable limit prescribed by law as can be reasonably demonstrably justified in a free and democratic society.
- [15] In respect of the second allegation (the AJN bail hearing) the question is framed as interference by the Attorney General for Ontario and/or the Attorney General for Canada (the “Attorneys General”), through the JPRC complaints process, with the judicial independence of Justice of the Peace Lauzon to conduct her cases and make her decisions as she sees fit.
- [16] The NCQ also raises the following question: whether and to what extent Justice of the Peace Lauzon should be protected and insulated from the external influence of Attorneys General, that could potentially be seen to be undermining her ability to adjudicate impartially.
- [17] During the hearing, counsel for Her Worship confirmed that Her Worship is no longer seeking declarations of constitutional invalidity, as set out in her initial factum.<sup>2</sup> The remedy sought is a stay under s. 24(1) of the *Charter*, or a dismissal of the allegations.
- [18] On December 12, 2018, the Attorney General for Ontario (“the AG Ontario”) sought and was granted Intervenor status in these proceedings on the NCQ, and in particular, as it pertained to the ability of Attorneys General to make a complaint about a sitting justice of the peace.
- [19] The AG Ontario made submissions on the related issues of the AG Ontario’s role in superintending the administration of justice in the province and in bringing a complaint before the JPRC, and judicial independence. The AG Ontario made no submissions on the s. 2(b) issue.

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<sup>2</sup> See Transcript of proceedings, October 10<sup>th</sup>, 2019, p. 173, l. 18 to p.174, l. 23

[20] A more detailed history of the proceedings is set out in Appendix “A” attached to this decision.

### **Justice of the Peace Lauzon’s Background**

[21] Justice of the Peace Lauzon was appointed to the Ontario Court of Justice in May of 2011. She presides in the East Region and at the time of the alleged conduct presided primarily in Ottawa.

[22] Her Worship was born in Penetanguishene, Ontario. Her first language is French.

[23] Her Worship graduated from Guelph University in 1979 where she obtained her Bachelor of Science in Animal Sciences. She joined the Royal Canadian Air Force in 1988 and in 1990 qualified as an Air Navigator.

[24] She graduated from the University of Ottawa Law school in the French Common Law Programme in 2007 and was called to the bar in 2008.

[25] Following her call to the bar, she worked at the Tax Court of Canada as a legal researcher and then acting Executive Legal Counsel to the Chief Justice of the Court.

[26] In 2014, Her Worship completed her LL.M. at the University of Laval. Her thesis dealt with: The Role of Formal Logic in Judicial Reasoning (Le rôle de la logique formelle dans le raisonnement judiciaire).

## **PART II: GENERAL FRAMEWORK FOR THESE PROCEEDINGS**

### **Legislative Framework**

[27] These proceedings are governed by the *JPA*, the JPRC’s Procedural Rules as well as the *Statutory Powers Procedures Act*, R. S. O. 1990, c. S. 22.

### **Jurisdiction**

[28] The JPRC’s Procedural Rules confirm that:

“[t]he jurisdiction of the Council is limited to the investigation and review of complaints about conduct. The Council does not have the legal authority to change a decision of a justice of the peace.<sup>3</sup> (Emphasis added.)

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<sup>3</sup> See Justices of the Peace Review Council: Procedures Document, Rules 4.4 and 4.5

- [29] The limited jurisdiction of this Panel is particularly relevant to second allegation that relates to comments Her Worship made during the course of a bail hearing. It is the conduct of Her Worship in the course of that bail hearing that is the panel's focus, not the outcome or result of the bail hearing itself.

### **Burden of Proof and Standard of Proof**

- [30] Justice of the Peace Lauzon is presumed not to have engaged in any judicial misconduct, unless the evidence establishes otherwise.
- [31] Presenting Counsel bears the onus of establishing the allegations on a balance of probabilities. A finding of professional misconduct requires clear and convincing proof, based on cogent evidence.<sup>4</sup>

### **Remedial Role of the Panel**

- [32] The purpose of judicial misconduct proceedings is “essentially remedial”. The Hearing Panel is to focus on what is “necessary in order to restore a loss of public confidence arising from the judicial conduct in issue”. The object is not to punish the justice of the peace but rather to repair any damage to the integrity and repute of the administration of justice.<sup>5</sup>
- [33] The remedial purpose of the hearing is something the Panel must bear in mind throughout the proceedings even if the question of what is necessary to restore a loss of public confidence in the administration of justice may come into sharper focus at a later stage of the proceedings when deciding the issue of whether a sanction is necessary and if so, the appropriate sanction. This is because not all conduct that is found to be incompatible with judicial office will necessarily result in a finding of judicial misconduct. Similarly, not all judicial misconduct will require one of the sanctions set out in subsections 11.1 (10) and (11) of the *JPA*. A sanction should only be imposed if it is necessary in order to restore a loss of public confidence arising from the judicial conduct in issue.

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<sup>4</sup> See *Re Evans* (2004) and *Re Douglas* (2006) both Hearings of the Ontario Judicial Council; See also *F.H. v. MacDougall* [2008] 3 S.C.R. 41 at paras. 45-46

<sup>5</sup> See: *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 (S.C.C.) at para 68 (*Ruffo* (1995)), and *Re The Honourable Justice Donald MacLeod*, 2018 (*Re McLeod*) (2018), Presenting Counsel's Casebook, tab 3 at para 70; See also *Re Baldwin*, (OCJ, May 10 2002) and *Re Douglas*, (OCJ, March 6, 2006)



## PART III: EVIDENTIARY RULING AND OTHER PRELIMINARY MATTERS

### Ruling on the Admissibility of Affidavit Evidence

- [34] Her Worship tendered affidavits of six of her colleagues. The affidavits are found in the Brief of Affidavits marked as Exhibit 4. The affidavits essentially describe the experiences of some of Her Worship's colleagues in bail court in the various jurisdictions throughout Ontario, including Ottawa.
- [35] Both Presenting Counsel and counsel for Her Worship at the hearing, Mr. Lawrence Greenspon, were content that the Panel receive the materials into evidence, subject to issues of relevance and weight.
- [36] Presenting Counsel does not concede the relevance of the affidavits or the *viva voce* testimony of three of the six justices of the peace who testified in support of Her Worship.<sup>6</sup>
- [37] Having read all six of the affidavits and having heard the *viva voce* testimony of three of the witnesses, we find that the evidence of the experiences of other justices of the peace is not directly relevant to these proceedings.<sup>7</sup> For this reason we give this evidence no weight.
- [38] Her Worship was the sole author of the Article<sup>8</sup>. She made it clear in her testimony that she was chronicling her own personal experiences in the bail court in Ottawa. Although she did make reference to similar experiences in other courts, she did not purport to represent some or all of her colleagues or to recount their specific experiences.
- [39] Her Worship was very clear in her testimony that she deliberately did not confer with any of her colleagues or seek their input or advice before she wrote the Article.<sup>9</sup>
- [40] We accept that at the time the Article was written there were significant systemic issues in the bail courts in Ontario. A culture of risk-aversion accounted for some of the problems plaguing bail positions taken and bail decisions made. But there were other issues as well including the inconsistent application of bail provisions. That much is clear from various reports, studies and commentaries that both pre-date

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<sup>6</sup> Although most if not all of the affiants were expected to testify, after the first three (3) affiants testified, counsel for Her Worship chose not to call any remaining witnesses.

<sup>7</sup> The following justices of the peace gave *viva voce* testimony: Her Worship Linda Pearson and Her Worship Rhonda Roffey on September 16<sup>th</sup>, 2019 and Her Worship Maxine Coopersmith on September 17<sup>th</sup>, 2019.

<sup>8</sup> Agreed Statement of Facts dated September 11<sup>th</sup>, 2019, Exhibit 2, paragraph 6.

<sup>9</sup> Transcript of September 17<sup>th</sup>, 2019, p. 153, l. 21 to p. 155, l.6

and post-date the Article<sup>10</sup>. See also the Supreme Court of Canada's decision in *R. v. Antic*, 2017 SCC 27 at paragraphs 64-66.

[41] In the circumstances, the Panel fails to appreciate how the experiences of a select group of Her Worship's colleagues assists us in determining the central issue before us. At this stage of the proceedings, our task is to consider whether Her Worship engaged in conduct that was incompatible with her judicial function when she wrote the Article in the manner she did; that is, considering the forum, language, tone and content of an article she authored. She made it clear that she made a deliberate choice not to consult with colleagues, or anyone else for that matter before publishing the piece.

### **Presenting Counsel's Submissions on Disposition**

[42] In written submissions, Presenting Counsel made submissions relating to the severity of the alleged misconduct.<sup>11</sup> These submissions were based in part on commentary about Her Worship's testimony in general, and specifically, about her conduct during the proceedings, which Presenting Counsel submitted demonstrated:

- continuing apparent and actual bias;
- lack of remorse;
- lack of understanding of the impropriety of her conduct; and
- lack of regard for these proceedings

[43] Counsel for Her Worship objects to these submissions on the basis that they go to final disposition. In particular, he noted that one of the submissions was that: "it would be open to the Panel to conclude that [Her Worship] is incapable of performing the duties of her office".<sup>12</sup> He submits that these submissions are presumptuous and premature at this stage of the proceedings where our task is to determine whether or not the two allegations of misconduct have been established on a balance of probabilities. He likened it to making sentencing submissions before a finding of guilt.

[44] Presenting Counsel, Mr. Ian Smith, responded that the submissions were appropriately made and are necessary for the Panel to determine the severity of the misconduct. Not any improper conduct qualifies as judicial misconduct. It has to be

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<sup>10</sup> For example, "Broken Bail" report of June 2015, Supplementary book of Authorities (Presenting Counsel) Exhibit 10, at tab 2, and others referred to in Submissions of Mr. Greenspon: See Transcript of October 11<sup>th</sup>, 2019 p. 16, l. 14 to p. 18, l. 13

<sup>11</sup> Paragraphs 79 to 97 of Presenting Counsel's Written Submissions on Judicial Misconduct.

<sup>12</sup> Ibid, at paragraph 84

so seriously contrary to the impartiality, integrity and independence of the judiciary that public confidence is undermined.

- [45] As such, Mr. Smith submits that the impugned submissions are necessary for the Panel to determine whether a remedy is necessary, not what that remedy should be.
- [46] We do not agree that Presenting Counsel's submissions are prejudicial to Her Worship or that those submissions are capable of interfering with this Panel's ability to remain impartial and to assess the evidence that is relevant at this initial stage of the proceedings. There is no reference to any matters extraneous to these proceedings. Her Worship chose to testify. We heard her responses to the questions put to her and we observed the manner in which she testified.
- [47] The Panel finds that all of Her Worship's testimony relating to the Article, and in particular, her motivation, objectives, choice of language, content and tone, as well as her comments about Justice Ratushny's bail review ruling are directly relevant to the allegations.
- [48] The Panel can disabuse itself of any submissions that *could* be said to veer into the what might be appropriate in making a final disposition. Without making a finding that Presenting Counsel's submissions at paragraphs 79-97 are improper, we are prepared to put those submissions "on reserve". We have focussed on the initial task: determining whether judicial misconduct has been proven on a balance of probabilities, and if so, whether it is serious enough to warrant a disposition in the circumstances.

### **AJPO's Submissions on Disposition**

- [49] The Panel granted AJPO Intervenor status on October 30<sup>th</sup>, 2018.
- [50] AJPO's request for permission to intervene was premised on its submission that its contribution to the proceedings would be limited to constitutional and legal questions relating to the appropriate boundary between speech and independence of the judiciary.
- [51] When a Panel member asked if the Association was promising not to take a position on the issue of whether or not misconduct occurred, counsel for AJPO assured the Panel: "So, our submissions are going to be limited"... "We are not going to take a position on the complaint itself..."<sup>13</sup>

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<sup>13</sup> Transcript, October 30<sup>th</sup>, 2018, at pp. 42-43

- [52] Yet, in both its written and oral submissions, AJPO descended into the arena as if a party to the proceedings by addressing the factual issues in play at this hearing, and by referring to Her Worship's evidence about her perceptions and those of other justices of the peace who testified before this Panel, and by repeatedly taking a position on disposition.
- [53] Counsel for AJPO, in his written materials, first submitted that: in light of Her Worship's perception of a lack of respect afforded to her office as a justice of the peace; the circumstances that gave rise to the publication of the article; and, the remedial role of the Panel, "it is open to the Council to weigh the need for any action on this complaint against the background of these perceptions".<sup>14</sup> (Emphasis added.)
- [54] AJPO then went further and commented about the first allegation relating to the Article. Counsel for AJPO submitted that "however regrettable the article" and the circumstances that led to its publication, when this Panel considers the remedial nature of its jurisdiction, that "no action by the Council is required". (Emphasis added.) AJPO, referring to the circumstances of this case, invited the Panel to consider that the circumstances that gave rise to these complaints as "a regrettable consequence of committed participants in the Justice system doing what they believed they needed to do in a system facing significant systemic pressures and legal uncertainty".<sup>15</sup>
- [55] AJPO, returned in its written submissions to the perception of the justice of the peace bench that they are afforded less respect, yet they are on the front-lines of the justice system, uniquely vulnerable to pressures that can interfere with their independence. AJPO submitted that "[w]hile this perception may not excuse a failure to abide by what otherwise might be the highest standards of judicial conduct", the Panel is entitled to consider it in determining whether and to what extent action is warranted in the circumstances.<sup>16</sup>
- [56] Finally, AJPO concluded by submitting that it is open to this Panel to conclude that what occurred in this case was a consequence of a variety of factors that have been substantially ameliorated by new policies, and procedures and jurisprudence such that this dynamic is unlikely to occur in the future".<sup>17</sup>
- [57] We find that AJPO exceeded the scope of its intervention by descending into the arena, by making submissions on disposition and taking on an advocacy role, rather

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<sup>14</sup> Submissions of the Association of Justices of the Peace (AJPO) (Merits Hearing), para.3

<sup>15</sup> *Ibid*, at para. 4

<sup>16</sup> *Ibid*, at para. 15

<sup>17</sup> *Ibid*, at para.

than focusing its contribution in these proceedings to the legal and constitutional issues as they apply to the limitations on judicial speech and judicial independence.

- [58] For these reasons, the Panel has not given any consideration to AJPO's submissions going to the merits or final disposition, nor, is it our intention to consider those submissions at any secondary stage of these proceedings.

## **PART IV: ANALYTICAL FRAMEWORK**

- [59] The complaints that gave rise to the first allegation regarding the Article raise a number of issues given that the Article was a public statement. The complaint with respect to the second allegation is somewhat different in that it relates to conduct in court within the context of Her Worship's judicial function.

- [60] In assessing the merits of the allegations, and in particular the first allegation, the Panel approached the analysis using the following framework:

- a) What is the standard of conduct expected of judicial officers in terms of how they are to comport themselves both in and outside of the courtroom?
- b) What are the principles that guide the conduct of justices of the peace both off and on the bench?
- c) What constraints, if any, are there on judicial officers in expressing their personal views on matters relating to the administration of justice?
- d) To the extent that there are any constraints on judicial officers when they express their opinions outside the courtroom, how should s. 2(b) of the *Charter* be applied in the context of a judicial officers ethical and professional duties?
- e) What is the test for judicial misconduct? Do different standards of conduct apply in court as opposed to in the community?
- f) Balancing the values in s. 2(b) of the *Charter* with the need to ensure a judicial officer's integrity, impartiality and independence, was Her Worship's conduct in writing and publishing the Article in the manner she did incompatible with judicial office? Specifically, was the language, tone, and tenor of the Article incompatible with the high standards of conduct expected of a judicial officer, in particular, her

duty to maintain an appearance of impartiality, integrity and/or independence considering all of the circumstances?

- g) If the conduct failed to uphold the high standards of conduct expected of a judicial officer, the next question is whether Her Worship's conduct was so seriously contrary to the impartiality, integrity and/or independence of the judiciary that it has undermined the public's confidence in her ability to perform the duties of judicial office or in the administration of justice generally so as to require a finding of judicial misconduct.
- h) It is only if a finding of judicial misconduct is made, that the hearing proceeds to the third stage to determine the appropriate sanction, if any, for the misconduct.

## **PART V: THE STANDARDS OF JUDICIAL CONDUCT AND THE TEST FOR MISCONDUCT**

- [61] Justices of the peace are judicial officers and are held to the same high standards of conduct as judges. The case law makes no apparent distinction.<sup>18</sup>
- [62] Justice Robert J. Sharpe in *Re McLeod* (OJC, 2018) observed that: "Judges ... are not guided or bound by a crystal clear set of rules. They must look to more general principles of judicial ethics that have evolved over time." He then noted as did the Court of Appeal of Quebec in *Re Ruffo*, that ethical principles that guide jurists at all levels of court are advisory in nature and not meant to be an exhaustive code or list of prohibited behaviours. These principles "aim for perfection" and attempt to provide "general guidance" rather than stating that specific conduct is impermissible.<sup>19</sup>

### **Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice**

- [63] In the Agreed Statement of Facts marked as Exhibit 2, the parties agreed that "[r]elevant principles for consideration of this matter may be found in the *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice*" (the "*Principles of Judicial Office*").

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<sup>18</sup> *Re Justice of the Peace Errol Massiah*, (2012) at para. 195, Presenting Counsel's Casebook, tab 4, at para 187; and *Re His Worship Rick C. Romain*, at p. 21

<sup>19</sup> *McLeod (Re)*, (2018) at para. 55; *Ruffo (Re)*, (2005) at para. 44

- [64] The *Principles of Judicial Office* guide judicial conduct both in court and in the community but, as noted, are not the sole source of guidance on the issue of judicial conduct.
- [65] The other sources or authorities that supplement the *Principles of Judicial Office* include: the *Ethical Principles for Judges* of the Canadian Judicial Council; commentary from Canadian and international jurists relating to the conduct of judicial officers, and a body of case law that has considered the issue.
- [66] Starting with the *Principles of Judicial Office*, part of the Preamble to the Principles declares 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.

The following principles of judicial office are established by the justices of the peace of the Ontario Court of Justice and set out the standards of excellence and integrity to which all justices of the peace subscribe. These principles are not exhaustive. They are designed to be advisory in nature and are not directly related to any specific disciplinary process. Intended to assist justices of the peace in addressing ethical and professional dilemmas, they may also serve in assisting the public to understand the reasonable expectations which the public may have of justices of the peace in the performance of judicial duties and in the conduct of their personal lives. (Emphasis added.)

- [67] Section 1.1 provides that “Justices of the peace must be impartial and objective in the discharge of their judicial duties. The commentary explains that: “Justices of the peace should maintain their objectivity and shall not by words or conduct, manifest favour, bias or prejudice towards any party or interest.” (Emphasis added.)
- [68] Section 3 of the *Principles of Judicial Office* is entitled: “The Justice of the Peace in the Community”. It goes on to state in section 3.1 that: “Justices of the peace should maintain their personal conduct at a level which will ensure the public’s trust and confidence.”

## Ethical Principles for Judges

- [69] In addition to the *Principles of Judicial Office* referred to above, the *Ethical Principles for Judges* of the Canadian Judicial Council also provide guidance to jurists regarding appropriate conduct both off and on the bench.
- [70] Section 2.4 states that: “Judges should exhibit and promote high standards of judicial conduct so as to re-enforce public confidence which is the cornerstone of judicial independence.” (Emphasis added.) While the commentaries encourage judges to be staunch defenders of their own independence, they also caution that “the form and nature of the defence must be carefully considered.” (Emphasis added.)
- [71] Section 3.1 addresses the issue of integrity. “Judges should make every effort to ensure that their conduct is above reproach in the view of reasonable and fair minded and informed persons”. The commentary elaborates that “[m]any factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary”.
- [72] Section 6.A. 1 speaks to the issue of impartiality. It states: “Judges should strive to ensure that their conduct, both in and out of court, maintains and enhances confidence in their impartiality and that of the judiciary”. (Emphasis added.)
- [73] The commentary to Section 6.B.1 dealing with impartiality provides this guidance:
- A reasonable perception that a judge lacks impartiality is damaging to the judge, the judiciary as a whole and the good administration of justice. Judges should, therefore, avoid deliberate use of words or conduct, in and out of the court that could reasonably give rise to a perception of an absence of impartiality”. (Emphasis added.)
- [74] In *Ruffo* (2005), the Court of Appeal of Quebec commented on the significance between Codes of Ethics for judges and their ethical duties:
- ... the ethical duties of members of the judiciary do not depend on the formal structure of the Code of Ethics; rather, they are a requirement of the judicial function, and are as much the result of the commitment made by judges in their oath of office as of the obligations inherent to the judicial function.<sup>20</sup> (Emphasis added.)

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<sup>20</sup> at para. 44



- [75] In his text “Judicial Conduct and Accountability”, Justice David Marshall noted that there are a number of ways to look at the question of judicial conduct. It can be divided into misconduct in office and nonofficial misconduct, or more simply, on-the-bench and off-the-bench conduct.

Another way to look at judicial conduct is to consider the basic values that judicial conduct must uphold. These can be stated concisely, but almost compendiously, as essentially three: first, to refrain from any action or activity that might compromise a judge’s independence or impartiality; secondly, judges must always act with civility; and thirdly, and simply, judges must be diligent in the performance of their duties. <sup>21</sup> (Emphasis added.)

- [76] Justice Marshall observed that one value stands out. The predominant value in all rules of judicial conduct is to maintain completely the appearance of impartiality. “Put another way, most of all of the requirements for judicial conduct can be related to public confidence in the integrity of the judicial process”. (Emphasis added.)

- [77] A review of the commentaries and the relevant case law confirms two consistent themes. Firstly, public confidence in the administration of justice is a crucial consideration in assessing any allegation of judicial misconduct. Secondly, the need for restraint, especially when engaging in public discourse, is a recurring theme.

- [78] In *Re Massiah* (JPRC, 2012), the Hearing Panel described public confidence in the justice system as a “touchstone principle” in considering the issue of judicial misconduct. The Panel took note that the Supreme Court of Canada addressed the important role of public confidence in *Therrien v. Minister of Justice*, as did the Court of Appeal of Quebec in *Ruffo (Re)*.<sup>22</sup>

- [79] The Hearing Panel in *Massiah* referred specifically to this passage from *Therrien, infra*, on the subject of public confidence and the direct correlation between an individual judge’s conduct and its impact on the justice system as a whole, at paragraph 184:

... 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.

- [80] In *Therrien*, Justice Gonthier quoted from a paper by the Canadian Judicial Council explaining the significance of public confidence in and respect for the judiciary:

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<sup>21</sup> Marshall: Judicial Conduct and Accountability; 1995 Carswell, at p. 67

<sup>22</sup> *Re Justice of the Peace Massiah; Re: Therrien*, [2001] S. C. R. 3 (S.C.C.) at paragraphs 108-112; *Ruffo (Re)* (2005) *supra*.

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 simply 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.<sup>23</sup> (Emphasis added.)

- [81] The Supreme Court of Canada, in a previous case involving Justice Ruffo also emphasized the importance of restraint. Justice Gonthier stated:

The duty of judges to act in a reserved manner is a fundamental principle. It is in itself an additional guarantee of judicial independence and impartiality and is aimed at ensuring that the public's perception in this respect is not affected. The value of such an objective can be fully appreciated when it is recalled that judges are the sole impartial arbiters available where the other forms of dispute resolution have failed. The respect and confidence inspired by this impartiality therefore naturally require that judges be shielded from tumult and controversy that may taint the perception of impartiality to which their conduct must give rise.<sup>24</sup> (Emphasis added.)

- [82] Justice David Marshall wrote:

Certainly a judge's out-of-court conduct is as important for the judiciary as a whole as his or her in-court conduct. Confidence in judges will be affected by either class of misconduct. Any conduct in private life that indicates bias or the inability to be impartial will still be harmful to the judge and the judiciary collectively.

//... //

...to ensure continued respect, judges must take a restrained approach to speaking on any subject.<sup>25</sup> (Emphasis added.)

- [83] In more recent times, former Chief Justice Beverly McLachlin in an interview with CBC News in 2017 issued the same *caveat*. She noted that judges are part of the justice system and while it is important that they speak out to address issues with the system when they see them, they "have to be very careful what [they] say and

<sup>23</sup> Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14

<sup>24</sup> *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 at para. 107 (Ruffo (1995))

<sup>25</sup> Judicial Conduct and Accountability, at pp. 67 and 71

how [they] say it.” In particular, judges must be careful not to enter the political fray or give the appearance of bias.<sup>26</sup> (Emphasis added.)

## The Test for Judicial Misconduct

[84] Judicial misconduct is not defined in the *JPA*.

[85] In addition to the general principles outlined above that guide judicial conduct, the case law assists in determining what conduct constitutes misconduct.

[86] In *the Re Barroilhet* (JPRC, 2009) decision, the Panel described the test for judicial misconduct as follows:

whether the impugned conduct //...// is so seriously contrary to the impartiality, integrity and independence of the judiciary that it *has undermined the public’s confidence in the ability of the Justice to perform the duties of office or in the administration of justice generally.*<sup>27</sup> (Emphasis added.)

[87] In *Re Massiah*, the Hearing Panel applied the test formulated in *Re Douglas*, (OJC, 2006) and *Re: Baldwin* (OJC, 2002) paraphrasing the test in *Therrien v. Minister of Justice* and *Moreau-Bérubé v. New Brunswick* (Judicial Council), as follows:

“Accordingly, a judge must be, and appear to be, impartial and independent. He or she must have, and appear to have, personal integrity. If the judge conducts himself, or herself, in a manner that displays a lack of any of these attributes, he or she may be found to have engaged in judicial misconduct.<sup>28</sup> (Emphasis added.)

[88] In *Re McLeod*, the Panel applied a pared down test for deciding the issue of judicial misconduct.<sup>29</sup> The approach the Panel adopted was to ask two questions: the first is whether the jurist’s conduct was incompatible with judicial office. This will necessarily require an examination of the context of the conduct and engage such considerations as to whether the conduct compromised the jurist’s impartiality, integrity or independence. If the answer to that question is yes, the second question is whether the conduct was so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public’s confidence in her

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<sup>26</sup> CBC News, Chief Justice Beverly McLachlin says judges should speak out about delays, (May 31, 2017), online: CBC News <https://www.sbs.ca/news/canada/british-columbia/chief-justice-beverly-mclachlin-speaks-out-about-delays-1.4139750> [McLachlin CJC Article], cited in Exhibit 9, Her Worship’s response to the complaints, pp. 15-16.

<sup>27</sup> *Re Barroilhet* citing *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R.246

<sup>28</sup> *Re Massiah*, (JPRC, 2012), para. 185; also, *Re Douglas*, para. 9

<sup>29</sup> *Re McLeod* (2018), *supra*, at paras. 70-71

ability to perform the duties of office or in the administration of justice generally so as to require a finding of misconduct. The degree of restraint, in our view, will be an important consideration at this second stage of the analysis.

[89] Only if such a finding of misconduct is made, should the Panel proceed to the third stage which is to decide whether a disposition is warranted, and if so, the appropriate disposition(s) under s. 11.1(10) of the *JPA*.

[90] Finally, the Court of Appeal of Quebec decision in *Ruffo (Re)* at paragraph 62 offers guidance on how to assess alleged misconduct in contexts that involve public speech by a judicial officer. The court held that in assessing whether a judicial officer has engaged in misconduct in making public statements, the following factors ought to be considered:

- 1) The manner in which the statement was made;
- 2) The fervency of the statement;
- 3) The forum of the statement;
- 4) The visibility of the statement; and
- 5) The appropriateness of the statement at the time it was made

## **PART VI: RULINGS ON ABUSE OF PROCESS AND CONSTITUTIONAL ISSUES**

### **A. Abuse of Process**

#### **Overview**

[91] In essence, counsel for Justice of the Peace Lauzon submits that this hearing is a continuation of a concerted campaign by the Ottawa Crown Attorney's Office to seek the removal of Her Worship from Office and therefore amounts to an abuse of process.

[92] This submission is declaratory and has no basis in the evidence.

[93] Her Worship failed to adduce any clear and convincing evidence of improper motive, or that the independent processes that followed the three independent complaints were tainted or influenced by the alleged initial improper motive of one of the three complainants.

[94] For these reasons, the Panel finds that the argument that there was an abuse of process in bringing these proceedings and in adjudicating it is wholly without merit.

[95] The application for a stay of proceedings is dismissed.

## **Analysis**

[96] Mr. Greenspon raised this issue for the first time in his closing submissions

[97] By way of background, the evidence adduced at this hearing demonstrates that the relationship between some members of the Ottawa Crown Attorney's office, including Ms. Bair, and Her Worship was one that was fraught with mutual frustration and tension well before the publication of the Article.<sup>30</sup>

[98] In her Article, Her Worship described a number of alleged improper Crown tactics and conduct she suffered in her court, and that made the court "a disgrace", "devoid of law". Among the examples she gave of inappropriate and unprofessional Crown Attorneys' behaviour was that prosecutors tried to wrestle jurisdiction from the court.

[99] Her Worship testified that her comments about the Crown Attorneys attempting to wrestle jurisdiction from the bench was a reference, in part, to recusal applications brought by the Crown Attorney's office, including the Crown Attorney herself, Ms. Bair, instead of pursuing appeals from her decisions.<sup>31</sup> This, she submits, was an attempt to interfere with her judicial independence.

[100] Ms. Bair, who has since retired from the Ottawa Crown Attorney's office, was anticipated to testify at these proceedings. She ultimately was not called as witness because she was not available on the dates scheduled. Ms. Bair did, however, agree to an interview with an independent investigator retained by the Council to investigate the allegations. Counsel for Her Worship tendered a transcript of that interview into evidence at this hearing.

[101] The Panel finds that the application for a stay based on an alleged abuse of process ignores the fact that the Ottawa Crown Attorney's office is not a complainant in these proceedings. The three complainants are:

- 1) Mr. James Cornish, Assistant Deputy Attorney General (for Ontario), Criminal Law Division, Ministry of the Attorney General;
- 2) Mr. Brian Saunders, Director of Public Prosecutions, on behalf of the Public Prosecution Service of Canada; and,

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<sup>30</sup> Exhibit 5 "History" – tab 2: email correspondence from Crown Attorney, V. Bair to Hillary McCormack dated October 02-13 attaching draft memo to colleagues; tab 3(a) - Transcript in *R. v. Christopher Hoare*, at p. 5, l. 5 to p. 6, l. 20; tab 5 - correspondence from Her Worship to His Worship Leblanc dated January 8, 2016.

<sup>31</sup> Transcript of September 17<sup>th</sup>, 2019 at p. 114, l. 15 to p.115, l. 15; Transcript of September 18<sup>th</sup>, 2019 at p. 28, l. 18 to p. 34, 24

3) Ms. Kate Matthews, [then] President of the Ontario Crown Attorneys' Association, on behalf of the Ontario Crown Attorneys' Association.

[102] There was no evidence that Ms. Bair or any member of the Ottawa Crown Attorney's office, influenced the Assistant Deputy Attorney General for Ontario, Mr. Cornish, in the decision to make the complaint to the Council.

[103] There is no evidence of any *animus* on the part of the Assistant Deputy Attorney General James Cornish against Her Worship. Even if that were the case, the Ministry of the Attorney General was only one of three complainants.

[104] There is no evidence of any *animus* on the part of the Public Prosecution Service ("the PPS") or the Ontario Crown Attorney's Association (the "OCAA") against Her Worship.

[105] Ms. Kate Matthews, president of the OCAA at the relevant time, testified that the OCAA's decision to make a complaint was a decision made by the board of that association.

[106] There was no evidence that Ms. Bair played any role in the decision to make a complaint to the JPRC. Ms. Matthews testified that Ms. Bair, the then Crown Attorney for Ottawa, was not a member of the OCAA.<sup>32</sup>

[107] It was never put to Ms. Matthews that any members of the Ottawa Crown Attorney's office influenced the OCAA board to make a complaint about Her Worship or that they played any role in that decision.

[108] It was also never suggested to Ms. Mathews, that she, or members of the board of the OCAA had any *animus* towards Her Worship.

[109] Similarly, there was no evidence that the PPS has any animus towards Her Worship.

[110] For the reasons noted, we reject the submission that there was an abuse of process at any stage of these proceedings that would warrant a stay.

[111] Even if it could be said that there was any *animus* by any one of the three complainants, the evidence before the Panel is that the three (3) independent complaints were *independently* investigated, *independently* authorized and *independently* presented.

[112] After the three complaints were made, an independent lawyer was retained to assist the complaints committee of the JPRC, an independent body, in its investigation of

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<sup>32</sup> Evidence of Kate Matthews, October 9<sup>th</sup>, 2019, p. 55, l. 23 to p. 56, l. 5

the matters. After that investigation, the complaints committee of an independent tribunal made a decision that there should be a hearing into the matters complained of.

[113] Following the decision of the committee, independent Presenting Counsel was retained who is unconnected to any of the complainants or to Ms. Bair, or members of the Crown Attorney's office.

[114] Finally, an independent Hearing Panel of an independent tribunal was convened to consider the two allegations and the evidence.

[115] We adopt Presenting Counsel's submission that even *if* the initial complaint made by the OCAA or any of the complainants *could be said* to have been improperly motivated, the independent investigation of the three complaints, and subsequent decision of the independent JPRC committee to require a hearing before this independent tribunal inoculates these proceedings against an attack on the basis of an abuse of process. See: *R. v. Finn* [1996] N.J. No. 71, (C.A.) per Marshall, J at para 37, affirmed [1997] 1 S.C.R. 10.

## **B. Constitutional Issues**

### **i. Executive Interference with Judicial Independence**

[116] Counsel for Justice of the Peace Lauzon filed a Notice of Constitutional Question questioning the constitutional applicability of the JPRC disciplinary hearing provisions under the *JPA*. The legal basis for the question is Her Worship's assertion that the filing of a complaint by the Attorneys General leading to JPRC discipline proceedings fundamentally interferes with her judicial independence and her ability to conduct her cases and make decisions as she sees fit.

[117] Counsel for Her Worship also questions "[w]hether and to what extent justices of the peace should be protected from the external influence of the [attorneys general], that could potentially be seen to undermine her ability to adjudicate impartially".

[118] The Intervenor, AJPO, emphasized that of the three branches of government, the judiciary is the weakest and most vulnerable to attack by the executive branch, in particular. For this reason, AJPO submits, the judiciary is deserving of more protection and that this Panel should be mindful of this in assessing the merits of the allegations.

[119] Counsel for Her Worship no longer seeks a declaration of constitutional invalidity but seeks a stay of the proceedings under s. 24(1) of the *Charter*, or in the alternative, a dismissal of the allegations.

[120] Both Presenting Counsel and counsel for the AG Ontario, an Intervenor in these proceedings, made submissions that there was no merit to the constitutional challenge and that Her Worship's position is contrary to long-standing binding authority. It also ignores the duality of the role of an Attorney General; firstly as the chief law officer of the province and secondly as a member of the executive branch. We agree with those submissions.

[121] A review of the relevant case law confirms that the issue is a matter of well settled law.

[122] In *Cosgrove, infra*, the Federal Court of Appeal decided this very issue, although the relevant legislation was a provision of the *Judges Act*, which empowered provincial attorneys general to require the Canadian Judicial Council to commence an inquiry in the conduct of a federally appointed judge.<sup>33</sup> The Court concluded that the applicable provision was constitutional.

[123] Section 10.2 of the *JPA* similarly empowers "any person", which would include Attorneys General, to make a complaint requiring the JPRC to commence an investigation into the conduct of a justice of the peace.

[124] The court in *Cosgrove* recognized that an independent judiciary is essential to the rule of law in a democratic society, but also noted that the principle applies for the benefit of the litigants, not the judges, *per se*, assuring them that judges will determine the cases before them without interference from anyone, including the executive or legislative branches of government. The Court also observed that judicial independence is not absolute and that "judicial independence does not require that the conduct of judges be immune from scrutiny by the legislative and executive branches of government". To the contrary, such scrutiny is "consistent with Canadian constitutional principles for provincial attorney's general to play a part in the review of the conduct of judges".

[125] The Supreme Court of Canada in *Moreau-Bérubé v. New Brunswick (Judicial Council)* observed that there will unavoidably be occasions where a judge's conduct will be called into question. The Court recognized that in order to review the conduct of a judge some restraint on judicial independence is necessary and justified in order to protect the integrity of the judiciary as a whole.<sup>34</sup>

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<sup>33</sup> 2007 FCA 103 at paras. 32, 36, 83, leave to appeal to S.C.C. refused, [2007] S.C.C.A. No. 242

<sup>34</sup> 2002 SCC 11 at para 59



[126] As for the duality of the role of the Attorney General, the AG Ontario has two functions. Firstly, the constitutional responsibility to superintend the administration of justice and to maintain public confidence in the rule of law. Secondly, membership in the executive branch of government.

[127] One of the measures to safeguard judicial independence is a complaints process whereby complaints about alleged judicial misconduct are adjudicated upon in a fair, impartial manner by an independent tribunal composed primarily of judicial officers.

[128] We find that this describes the JPRC complaints process established under the *JPA* and also note that preceding this hearing, there was an independent investigation of the complaints and that thereafter the independent committee made a determination as to whether the complaints against Her Worship merited a hearing. Finally, the allegations were heard before an independent tribunal.

[129] The Panel therefore finds that the filing of the complaint by the Attorney's General is constitutional. It is not an improper or arbitrary interference with Her Worship's judicial independence. It is, as the Supreme Court of Canada found in *Moreau-Bérubé*, a necessary restraint on judicial independence.

## ii. **Section 2(b) of the Charter - Freedom of Expression**

[130] Counsel for Justice of the Peace Lauzon delivered a Notice of Constitutional Question questioning the constitutional applicability of the JPRC Disciplinary Hearing provisions under the *JPA*, given the guarantee of freedom of expression in section 2(b) of the *Charter*. A remedy is sought under section 24(1) of the *Charter*.

[131] In summary, it is alleged that any sanctions against Justice of the Peace Lauzon for public expression about the administration of justice would violate her freedom of expression.

[132] The grounds for the *Charter* arguments based on freedom of expression were clarified by Her Worship's counsel in argument. Her Worship accepts that restrictions on judicial free speech are appropriate and does not challenge the constitutionality of the *Principles of Judicial Office* which apply to Her Worship.

[133] Rather, the argument is that section 2(b) of the *Charter* was engaged when Her Worship was subjected to the disciplinary process under the *JPA* because of her expression of views. It is argued that the expression of views by Her Worship in the Article is protected speech under section 2(b) of the *Charter* and she cannot be penalized for it unless the fettering of her freedom of expression has been found to be justified. It is further argued that the criteria to be applied are those under section

1 of the *Charter*, as interpreted in *R. v. Oakes*, [1986] 1 S.C.R. 103. Her Worship maintains that the second and third branch of the *Oakes* test, namely careful design in view of the state objectives and proportionality, have not been met. As a result, it is argued that a remedy is available under section 24(1) of the *Charter* and the allegation set out in the Notice of Hearing about the Article should be stayed or dismissed.

[134] In urging us to conduct an *Oakes* analysis, counsel for Her Worship relies heavily on the decision of the Court of Appeal for Ontario in *R. v. Kopyto*, [1987] O.J. No. 1052. That case involved a constitutional challenge under section 2(b) of the *Charter* to *Criminal Code* provisions on contempt by scandalizing the court. The offending section of the *Criminal Code* was declared to be unconstitutional following an application of the *Oakes* test.

[135] Counsel for Her Worship concedes that the objective of maintaining public confidence in the judiciary is sufficiently important to warrant overriding the constitutionally protected right to freedom of expression. The suggestion seems to be that allegations of improper judicial speech cannot be pursued as misconduct unless Presenting Counsel can prove that it is reasonable and demonstrably justified to do so, by application of the *Oakes* proportionality test to the allegations themselves.

[136] We agree that disciplinary proceedings against Her Worship for the expression of her views engage section 2(b) of the *Charter*. Despite his assurance that the *Principles of Judicial Office* are not subject to any constitutional challenge in this case, counsel for Her Worship suggested that they are overly vague. We reject this suggestion.<sup>35</sup> As stated by the SCC in *Ruffo v. Conseil de la magistrature*, “more precision cannot be required of ethical rules than their subject matter allows”. Accordingly, the *Principles of Judicial Office* remain applicable as a “general framework of values and considerations that will necessarily be relevant in evaluating allegations of improper conduct”.<sup>36</sup> We assess Her Worship’s conduct in light of those *Principles* and the supplementary sources and authorities referred to previously, all of which are directed to ensuring that judicial officers conduct themselves in such a manner as to protect public confidence in the independence, integrity and impartiality of the judiciary. In short, it is the role of a justice of the peace in the justice system, and the direct correlation between the conduct of an individual justice of the peace and its impact on public confidence in the judiciary and in the

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<sup>35</sup> Her Worship testified that in publishing the Article she anticipated that she would be before the JPRC – Transcript of September 18<sup>th</sup>, 2019, p. 46, l. 10 to p. 47, l. 4, and p. 57 ll. 17-22

<sup>36</sup> [1995] 4 S.C.R. 267 at para. 111; (*Ruffo* (1995))

administration as a whole that forms the basis for limits on the free expression of judicial officers.

[137] The impact of section 2(b) of the *Charter* on limits to judicial expression were considered in *Ruffo (Re)*, [2005] Q.J. No. 17953. In that case, the Court of Appeal of Quebec held that the free expression of judicial officers may be restricted to the extent that it sows doubt as to the integrity of the judicial function (para. 58). The analysis in *Ruffo* is consistent with the administrative law approach to adjudicating *Charter* issues described in by the SCC in *Doré v. Barreau du Québec*, [2012] S.C.R. 395: that disciplinary bodies should approach *Charter* issues of free expression by balancing the right to free expression against the objectives behind the restrictions sought to be imposed, instead of by means of an application of the *Oakes* test. As previously noted, those objectives are to protect public confidence in the independence, integrity and impartiality of the judiciary. Some restraint on judicial independence is necessary and justified to protect the confidence in the judiciary as a whole.

[138] As urged by Presenting Counsel, and following the approach set out in *Doré*, we have been guided by *Charter* principles in our findings about the Article written by Her Worship.

[139] For the reasons articulated in our assessment of the merits elsewhere in these Reasons, we find that Justice of the Peace Lauzon in expressing herself in the manner she did, called into question her own integrity, and impartiality and in the process also undermined public confidence in the judiciary as a whole and public confidence in the administration of justice. Balancing her expressive rights with her ethical obligations, we find that the Article fell outside the public's expectations of how judicial officers should conduct themselves. In short, the opinions expressed in the Article exceeded the limits of permissible speech for a judicial officer.

[140] The application for a stay pursuant to section 24(1) of the *Charter* is denied.

## **PART VII: SUMMARY OF FINDINGS ON MISCONDUCT**

### **The First Allegation: The National Post Article**

[141] The Panel finds that in writing the Article entitled “When bail courts don’t follow the law” in the manner that she did, and having it published, Her Worship engaged in judicial misconduct. As noted above, in arriving at this conclusion we applied *Doré*. We balanced Her Worship’s expressive rights protected under section 2(b) of the *Charter* with her duties and obligations as a judicial officer. We conclude that the

impugned conduct fell outside the bounds of what the public expects of judicial officers.

[142] For the reasons articulated in these Reasons, we find that Her Worship's conduct failed to uphold the *Principles of Judicial Office*, that she undermined the integrity and impartiality of the judiciary, and that she inappropriately used the power and prestige of her judicial office to express her opinions about bail court and other participants in the justice system in a national newspaper.

[143] In the Article, Her Worship made disparaging and insulting comments and allegations of misconduct, both general and specific, against the Crown Attorneys without regard to the personal and professional reputations of individuals whom she did not name but who she knew could be identified within the courthouse community.<sup>37</sup>

[144] In this respect, she showed no restraint or care in the manner in which she wrote the Article or in choosing the very public forum in which to disseminate her opinion. The language and tone of the Article was not measured, balanced, dignified or judicious. It was insulting, personal, and inflammatory. It fell well below the high standard of conduct that is expected of judicial officers.

[145] The overall effect of the Article was such that Her Worship failed to uphold the dignity, integrity and impartiality expected of the judiciary. To maintain public confidence in the judiciary, a justice of the peace must be, and appear to be, impartial and act with integrity. A justice of the peace must conduct his or her extra-judicial activities so that he or she does not cast doubt on his or her capacity to act impartially as a judicial officer. Her Worship publicly admonished and laid blame squarely on prosecutors who appear before her in court for issues she allegedly encountered in bail court, thereby creating an apprehension that she was biased against the Crown Attorneys.<sup>38</sup> Finally, Her Worship acted in a manner that undermined public confidence in the administration of justice when she publicly asserted that the court was "a disgrace" and "devoid of the rule of law." A justice of the peace should preserve and encourage, not undermine, respect for the judiciary and the administration of justice.

[146] The first allegation of judicial misconduct in the Notice of Hearing relating to the Article published in the National Post newspaper is therefore upheld.

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<sup>37</sup> Transcript, September 18<sup>th</sup>, 2019, p. 7, l. 25 to p. 8, l. 4

<sup>38</sup> Transcript, September 17<sup>th</sup>, 2019, p. 186, ll. 3-24 and p. 232, ll. 13-16

## **The Second Allegation: Comments in the AJN Bail Hearing**

[147] The Panel dismisses the second allegation relating to Her Worship's comments in the bail hearing of *R. v. AJN*. The impugned remarks were made when the Assistant Crown Attorney relied on the decision of another jurist, Justice Ratushny, then of the Superior Court of Justice, in which Her Worship's decision to release the accused in that matter was reversed.

[148] Her Worship's comments appear to suggest that while she understands and is bound by the *Charter*, Justice Ratushny, in failing to specifically advert to the presumption of innocence in the bail review decision did not appreciate the role of the presumption of innocence at a bail hearing.

[149] We find that Her Worship's comments were unfair to Justice Ratushny in that they did not reflect the full context of Her Honour's decision. The words "presumption of innocence" do not appear in Justice Ratushny's bail review decision in *R. v. Nicholas Philion*; however, read in its full context, it is clear Justice Ratushny was fully aware that the defendant had not yet been found guilty.

[150] We accept Her Worship's testimony that she did not intend to insult Justice Ratushny. We also take into account that the impugned comments were made in an unscripted oral judgment.

[151] Finally, we find that Her Worship's comments, even taken at face value, do not threaten the integrity of the judiciary as a whole. In the circumstances, we therefore find that the impugned comments do not rise to the level of judicial misconduct.

## **PART VIII: ANALYSIS OF THE FIRST ALLEGATION OF JUDICIAL MISCONDUCT**

### **The Article**

[152] This part of the analysis will address the Article itself using the analytical framework set out in Parts IV and VI, B. ii (the *Charter* principles under section 2(b)) above and will address the following questions:

- Was the language, tone and overall tenor of the Article in keeping with the ethical obligations of the judiciary and the high standard of conduct expected of the judiciary and in particular, the preservation of public confidence in the independence, integrity and impartiality of the judiciary?

- Even if the Article was not in keeping with the ethical obligations of the judiciary and the high standard of conduct expected of the judiciary, did it amount to judicial misconduct considering all of the circumstances, such that a disposition is needed to restore public confidence in the judiciary?

[153] The evidence that the Panel considered in assessing the allegation of misconduct relating to the Article was the following:

- 1) The Article itself – both the online and print versions;
- 2) The affidavit of Her Worship and her *viva voce* evidence;
- 3) The transcripts of several bail hearings over which Her Worship presided *after* the publication of the Article that involved recusal applications;
- 4) The evidence of Ms. Matthews, and,
- 5) The media's response to the Article.

[154] Firstly, Her Worship admits she is the sole author of the online version of the Article entitled “When bail courts don’t follow the law”.<sup>39</sup> However, in both the Agreed Statement of Facts (Exhibit 3) and in her *viva voce* testimony, Her Worship sought to distance herself from the print version entitled “When courts don’t follow the law”. She was adamant that she never authorized the publication of the print version of the Article and was “not prepared, in any way, to speak to it”.<sup>40</sup>

[155] The original online Article published on March 14<sup>th</sup>, 2016 is attached as “Appendix B” and the print version of the Article published the following day on March 15<sup>th</sup>, 2016 is marked as “Appendix C” to these Reasons.

[156] In her affidavit sworn on December 4<sup>th</sup>, 2018, Her Worship explained her motivation in writing the Article: to prompt discussion and promote investigation into unacceptable practices.<sup>41</sup> At paragraph 11 of her affidavit, Her Worship stated that the Article most accurately describes her observations and experiences in bail court and “it speaks for itself”. However, Her Worship went on in the next paragraph to give six examples of some of the issues she encountered that she explained

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<sup>39</sup> Agreed Statement of Facts, Exhibit 3 and Transcript of Evidence of Her Worship, J. Lauzon in cross-examination on September 18<sup>th</sup>, 2019 at p. 96, ll. 14-18

<sup>40</sup> Ibid, p. 99, l. 19 to p. 100, l. 5

<sup>41</sup> Exhibit 8

compelled her to write the Article as a “last resort”. All of the examples relate to the policies and conduct of Crown counsel.

[157] The Panel agrees that to a large extent that the Article does speak for itself. However, Her Worship chose to testify and to explain her motivation and the choices she made in writing and publishing the Article. We have considered her evidence in deciding whether or not the Article is incompatible with judicial office and whether it constitutes misconduct.

[158] In order to determine if the first allegation of misconduct has been proven, we must consider the full context of the Article having regard to the language used, the tone, tenor, the role of a justice of the peace in the justice system, the fact that the Crown Attorneys appear in court as a party before Her Worship, and the likely impact on the administration of justice. By this we mean likely impact on the public’s perception of the justice system, the judiciary, and in particular, any appearance of bias against the Crown Attorneys it raised.

[159] In evaluating the Article, we have been guided by the five factors set out by the Québec Court of Appeal in *Ruffo*.<sup>42</sup> For our analysis we have reordered and distilled the five factors into three as follows:

- 1) The appropriateness of the Article at the time of publication;
- 2) The forum in which the Article was published, and the degree of visibility; and
- 3) The manner in which the Article was written, in particular, its fervency or tone.

### **Appropriateness of the Article at Time of Publication**

[160] In considering this factor we will first determine whether bail reform was being debated in the criminal justice community when the Article was published and then we will consider the steps Her Worship took to address issues in bail court before resorting to the publication of the Article. She testified she did so as a “last resort.”

[161] It is not controversial that in the years preceding the Article many people familiar with the criminal justice system were of the view that the bail system needed long overdue reform or recalibration.

[162] Justice Raymond Wyant began his December 2016 report “Bail and Remand in Ontario” with this observation:

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<sup>42</sup> *Ruffo* (2005), *supra* at para. 62

Several noteworthy reports have been released in recent years that are critical of the bail and remand system and which contain recommendations for improvement...Their common theme is that the criminal justice system in Canada is failing in the way it detains individuals accused of criminal offences ... Those failures, the authors point out, are varied and include charges that the police detain too many individuals accused of criminal offences and do not exercise their powers of release appropriately; that prosecution services through their policies and actions inappropriately oppose bail in too many instances; that police, judicial officers, both judges and justices of the peace, do not exercise appropriate discretion in releasing people awaiting trial and do not apply the *Criminal Code* release provisions appropriately...

//...//

At least one report described the bail and remand system as “broken”.

//...//

The potential reasons for what has happened over the years are varied and have been the subject of much discussion.<sup>43</sup>

[163] In his report, Justice Wyant listed thirteen references including Dr. Webster’s report entitled: “Broken Bail in Canada: How We Might Go About Fixing It”, published in June of 2015.<sup>44</sup> He also referred to the report of the John Howard Society of August 2015 entitled “Unlocking Change: Decriminalizing Mental Health Issues in Ontario”.<sup>45</sup> Her Worship’s Article is not referenced anywhere in the report.

[164] Given the widely acknowledged issues with the bail system in Ontario, it was not inappropriate for Her Worship to express her views as someone familiar with the issues, and to signal problems she observed firsthand with the approach to bail in Ontario. The issue is whether in doing so she failed to exercise caution and restraint and thereby crossed a line giving the appearance of bias and undermining public confidence on the judiciary.

[165] Former Chief Justice McLachlin in an interview in April 2017 about delays in the justice system remarked that judicial officers are a part of the justice system “and it’s important that judges, chief justices, in particular, speak out to address issues

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<sup>43</sup> Exhibit 6, Supplemental Book of Documents, at tab 6- “Bail and Remand in Ontario”: Raymond E. Wyant; Ministry of the Attorney General, Queen’s Printer for Ontario, 2017, at p. 4 (Wyant Report)

<sup>44</sup> Exhibit 10, Supplementary Book of Authorities of Presenting Counsel, Volume I, tab 2.

<sup>45</sup> The Report was commissioned by the Ministry of the Attorney General (MAG) and the Ministry of Community Safety and Correctional Services (MCSCS) for Ontario in partnership with the Province of Saskatchewan: see p. 5.



with that system when they see them”. However, she prefaced her comments on the responsibility to speak out by noting that there are limits on what a judge can say publicly in order not to enter the political fray or give the appearance of bias. “We have to be very careful what we say and how we say it”.<sup>46</sup> (Emphasis added.)

[166] Her Worship testified about her efforts to address the problem internally. She indicates in her affidavit that she wrote the Article only after exhausting every available avenue to prompt discussion and promote investigation into unacceptable practices that had become routine in bail court.

[167] She testified that there were two specific events that precipitated her decision to write the article: 1) a previous request that she not be scheduled to preside in bail court because of the toll it took on her health. The request was no longer being accommodated. This prompted her to write to Regional Senior Justice of the Peace Leblanc. In the letter she asked that she once again be exempted from presiding in bail court primarily “for health reasons”; and, 2) after the letter she continued to be scheduled in bail court. A meeting was scheduled with Regional Senior Justice of the Peace Leblanc and Regional Senior Justice Fraser to discuss the matter. She left that meeting feeling that Justice Fraser would not address her request not to preside in bail court. That is when she decided “[t]here’s is nothing left to do but to write”.<sup>47</sup>

[168] Her Worship states in her affidavit that her intention in writing the article was to protect the administration of justice by instigating “a hard cold look” at how the law was being interpreted and the prevalent behavior in bail court. “The article was a last resort to address court procedure that was unprofessional, unconstitutional and contrary to law.”<sup>48</sup>

[169] Her Worship testified much to the same effect. Asked whether publishing the Article was “a drastic measure” for her to take, she refused to adopt the characterization “drastic measure” but responded that publishing the Article was required in the circumstances; that it was “essential”, and “it had to be strong” “to get the message across”.<sup>49</sup>

[170] In her *viva voce* evidence she conceded that she did not consider approaching the Chief Justice of the Ontario Court of Justice with her complaints or frustrations. Having complained to the Associate Chief Justice Coordinator of Justices of the

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<sup>46</sup> Supplementary Book of Authorities of Presenting Counsel (Volume 2), tab 1: and Exhibit 9 referred to at footnote 13 above

<sup>47</sup> Exhibit 5 – tab 5 letter to RSJ Leblanc; Transcript of September 17<sup>th</sup>, 2019 at p. 130 I. 3 to p. 132 I. 6

<sup>48</sup> Exhibit 8: Affidavit of Her Worship Julie Lauzon, at paras. 1-3

<sup>49</sup> Transcript of Evidence of Her Worship J. Lauzon, September 17<sup>th</sup>, 2019, p. 138, I. 4-11; p. 142, II. 7-12; p. 145, I. 11 to p. 146, I. 4

Peace, she assumed that the Chief Justice was already aware of the issue. She did not consider the possibility of complaining to the Attorney General about the alleged behaviour of Crown counsel. Her Worship did acknowledge that complaining to the Law Society of Upper Canada (now the Law Society of Ontario) about the alleged lack of professionalism of some Assistant Crown Attorneys who appeared before her was an option, if she received approval from the Chief Justice, but it was her view that the problem was systemic, so she did not pursue that option.<sup>50</sup>

[171] In her affidavit, Her Worship wrote that her colleagues from other regions in the province made her aware that they were facing very similar situations. She also states that at that point she believed she had nowhere to turn to address the situation.

[172] Her Worship listed the various administrative judicial officers she approached to remedy her concerns. There is no evidence adduced at this hearing that Her Worship ever attempted to engage the AJPO, an Intervenor in these proceedings, with the same concerns that her colleagues in other regions shared so that the alleged widespread systemic issues faced by the justice of the peace bench could be addressed collectively.

[173] Justices of the peace are encouraged to speak out about systemic problems they encounter in the administration of justice. The Panel accepts that Her Worship was entitled to exercise her expressive rights to criticize systemic problems plaguing bail court. As the court noted in *Doré*, “criticism, even when expressed robustly, can be constructive”.<sup>51</sup> However, as discussed elsewhere in these Reasons, those rights do not exist in a vacuum and are not unfettered. The judicial function is unique. Society assigns important powers and responsibilities to judicial officers. Therefore, Justice of the Peace Lauzon was under an obligation to be mindful of her role as a justice of the peace and her duties as a judicial officer to maintain the integrity, impartiality and independence of her office while exercising her expressive rights to criticize problems in the administration of justice.

### **The Forum Selected and Degree of Visibility**

[174] Her Worship selected the National Post newspaper as the forum in which to express her views. She testified that she after her meeting with the Regional Senior Justice of the Peace and the Regional Senior Judge, she had come to a point where she

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<sup>50</sup> Ibid, at p. 150, l. 25 to p 151, l. 17, p. 165, l. 12 to p. 167, l. 14

<sup>51</sup> *supra*, at para. 69

decided she had to write publicly. She recalled that she probably wrote the Article first and then approached the National Post. They did not approach her.<sup>52</sup>

[175] It is not controversial that whether online or in print, the National Post is not a local or community publication, but a major publication with broad reach that goes well beyond the Ottawa area where Her Worship was assigned to preside.<sup>53</sup>

[176] We also note that the Article received other media attention in the days following publication in the National Post. In that regard, the Article had a relatively high degree of visibility.

[177] Her Worship testified that it was not possible in an opinion piece to give a fuller picture of the issues in bail court. Her aim was to highlight the problems that needed fixing. The suitability of the forum selected to express an opinion on a complex issue in a fair and balanced manner is discussed elsewhere in these Reasons.

## **Two Versions of the Article**

[178] The fact that there was a print version circulated the day after the online version was published speaks to the degree of visibility of the Article.

[179] In her testimony, Her Worship clarified that although she did not authorize the print version of the Article, she had “no issue with the format”, that is, that it was published in print. Her issue was with the content.<sup>54</sup>

[180] She initially took the position that she was not able to comment on an unauthorized version of her Article on the basis that it was not authorized by her.<sup>55</sup>

[181] Presenting Counsel prepared a comparison of the two versions of the Article which was marked as Exhibit 11 and referred to in submissions. The side by side comparison is attached as “Appendix D” to these Reasons.

[182] Of the fifteen differences noted, the majority involve a word being removed or changed without, in our view, materially altering the content, tone, or tenor of the piece. For example, the word “bail” was removed in the print version and the first sentence reads: “When courts don’t follow the law” instead of “When bail courts don’t follow the law”.

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<sup>52</sup> Transcript of Evidence of Her Worship J. Lauzon, September 18<sup>th</sup>, 2019, in cross-examination at p. 92, l. 16 to p. 93, l. 18

<sup>53</sup> Ibid, Submissions of counsel for Her Worship during cross-examination, p. 104, ll. 5-10

<sup>54</sup> Transcript of Evidence of Her Worship J. Lauzon, September 18<sup>th</sup>, 2019 at p. 105, l. 24 to p. 106, l. 16

<sup>55</sup> Ibid, p. 98, l. 1 to p. 100, l. 5

[183] It would have been apparent to any reader that in the Article, Her Worship was saying that the described events were Her Worship's experiences as a justice of the peace. The second sentence of the online Article reads: "A justice of the peace in Ottawa's main bail court explains how Canada's bail court is broken." In the print version, this second sentence became a smaller headline above the main headline. It identified the author's role as a sitting justice of the peace in Ottawa using the exact same words and identifying her by name.

[184] The word changes included: "serving" (print) instead of "sitting" (online); "this court" (online) instead of "my court"; "this courthouse" instead of "the courthouse". In one instance two sentences were joined in the print version, adding the word "and".

[185] The print version, which Her Worship disavows, contains two added sentences that were not in the online version that she approved: "The JP bench is regularly criticized because its members are not required to be lawyers. I suggest that this actually suits some parties" and "[t]he courts should be the first ones to recognize this and follow the law". Her Worship testified that she did not recall if she wrote the first addition regarding criticism of the justice of the peace bench. Similarly, she testified that she did not know if she wrote the second additional sentence.<sup>56</sup>

[186] When asked in cross-examination whether the print version accurately reflects her views, Her Worship denied that it did, but was unable to say why it did not reflect her views. She testified:

I am unable to tell you that. Like I said, I do not take ownership of the print version. It's not my version. So you can ask me, or you can ask somebody off the street to compare them, but it is not my version. It's not what I authorized. It's not what I submitted for print.<sup>57</sup>

[187] Throughout her cross-examination Her Worship steadfastly denied that the print version accurately reflected her views. When asked what was wrong with the print version, what fact, or point, or argument was wrong; how it did not reflect her views, she responded: It's not mine. It's not mine //...// [t]hat's what's wrong with it. //...// Anything in the print version that's not in the online version, does not reflect my views."<sup>58</sup>

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<sup>56</sup> Transcript of Evidence of Her Worship J. Lauzon, September 18<sup>th</sup>, 2019 at p. 111, l. 16 to p. 113, l. 10

<sup>57</sup> Transcript of Evidence of Her Worship J. Lauzon, September 18<sup>th</sup>, 2019, p. 117, l. 1, 18 to p. 118, l. 3

<sup>58</sup> Ibid, p. 118, ll. 9-18

[188] Later in her testimony, Her Worship acknowledged that she did in fact read both the online and the print articles around the time they were each published, and she said that she immediately noticed that there were significant differences.<sup>59</sup>

[189] Since Her Worship disavowed the print version of the Article, she was asked in cross-examination whether, with the benefit of hindsight, she appreciated that when a jurist speaks publicly, she runs the risk of losing control over her words. Her response was “no”, and that “the National Post can print whatever they like... That’s not my responsibility”.<sup>60</sup>

[190] Having closely examined both versions of the Article with the aid of Exhibit 11, the Panel finds that, except for the two additional sentences in the print form, there are no material differences between the two versions of the Article.

[191] We also note that the two additions to the print version appear in the exact same places as the two highlighted “corrections” that Her Worship noted in her email to Jesse Kline of the National Post bearing the subject line “Re: Edit on your column”. In each place is the notation “(One sentence removed here)”.<sup>61</sup>

[192] In any event, to the extent that there are any other differences that could be said to be material, and with which Her Worship takes issue, her evidence is that she took no steps whatsoever to correct any inaccuracies in the print version of her Article which she maintains was unauthorized. She explained herself in the following exchange:

Q. You didn’t ask the Post to publish a correction?

A. No

Q. You did not call up Mr. Kline and complain?

A. No.

Q. You were content to let words that were attributed to you not be corrected, even though they didn’t represent your views?

A. I didn’t think that there was anything I could do about that.

Q. So you did nothing, right?

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<sup>59</sup> Ibid, p. 119, l. 12 to p. 120, l. 4

<sup>60</sup> Ibid, p. 118, l. 19 to p. 119, l. 11

<sup>61</sup> Exhibit 7 – March 14<sup>th</sup>, 2016 email exchange between Justice of the Peace Lauzon and National Post (Jesse Kline)

A. Apparently.<sup>62</sup>

[193] The Panel finds that the fact Her Worship did not make any effort to correct any inaccuracies she noted in the print version speaks to the lack of care that she showed in disseminating her opinion to the National Post newspaper.

### **The Manner and Fervency of the Article**

[194] The manner and fervency factors from *Ruffo (2005)* address the specific content of the Article, as well as the overall tone and tenor of the piece. They are central to the issue of whether the conduct was incompatible with judicial office, and ultimately whether the Article constituted misconduct.

[195] In *Ruffo(2005)*, *supra*, at para. 62, the Court offered the following guidance in relation to judicial officers making public statement outside of a hearing in the courtroom “it is all a question of degree, and a judge must exercise great restraint in all circumstances”. In *Doré*, at para. 68, Justice Abella described this as “dignified restraint”.

[196] The exercise for the Panel is to consider the manner in which Her Worship expressed her opinion in the Article. Her choice of words, and the overall tenor and tone of the Article. The questions we need to ask are: Was the language dignified and restrained? Was it civil? Was it fair and balanced? Did it impair or diminish the perception of impartiality or integrity of the judiciary?

[197] The title of the Article is “Julie Lauzon: When bail courts don’t follow the law – A justice of the peace in Ottawa’s main bail court explains how Canada’s bail system is broken”.

[198] The analysis will begin with the structure of the Article. There are twelve unnumbered paragraphs. Although the Article must be read and assessed as a whole, the focus of the analysis is on the five paragraphs where Her Worship has used “strong” language, as she described it, to make the point that the bail system was broken: paragraphs 4-9-10-11 and 12.

### **Paragraph #1 – Broken Bail System**

[199] In the first paragraph, Her Worship observes that two reports have revealed “just how broken Canada’s bail system is”, and that this comes as no surprise to her as “a justice of the peace sitting in Ottawa’s main bail court”.

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<sup>62</sup> Ibid, p. 120, ll. 2-20

[200] In this paragraph, Her Worship states an opinion that is shared in formal reports critical of the bail system that were written both before and after the Article was published. It is factual and does not require further comment.

### **Paragraph #2 – Right to Bail and First Appearances by Video**

[201] In the second paragraph Her Worship speaks of the presumption of innocence and the right to reasonable bail. She also mentions that detainees at first appearance are paraded in front of a camera before a justice of the peace in handcuffs and shackles. Her Worship comments that the detainee is supposed to be consulted as to whether they wish to appear on camera or in person “yet this is generally not done”.

[202] The first sentence of this paragraph is neutral and factual in its description of the presumption of innocence and the right to reasonable bail. In the second part of this paragraph, Her Worship make her first reference to video appearances. In her evidence, she also referred to the video as “the Polycom”. Her Worship returns to the use of video appearances again in paragraph #10 where she refers to them as being “forced” and “rushed”. Our assessment of whether the references to the use of the video was fair or balanced will be addressed when considering paragraph #10.

### **Paragraph #3 – Remands and Consent Releases etc.**

[203] This paragraph is unremarkable. It describes in neutral language what often happens on a first appearance.

### **Paragraph #4 – The Law Goes out the Window; Cynicism and Bullying Kick in**

[204] In this paragraph Her Worship states: “It is at this point that the law goes out the window, and cynicism and bullying kick in. Here in Ottawa, generally speaking, the JP will be told that the person is being released and provided with the conditions that have already been typed into the system.”

[205] In this paragraph, as well as paragraphs 5-8, Her Worship addresses the issue of bail conditions and how in her opinion justices of the peace play a diminished role. Her Worship also states how unbalanced and unfair that part of the bail process is. The reason, she writes, is the Crown Attorney’s bullying behaviour and cynicism.

[206] In paragraph #5, Her Worship states: “Pity the JP who dares ask for a justification of those conditions.” She then explains that it is the justice of the peace who bears the responsibility to ensure that the conditions are reasonable, lawful, and appropriate and that conditions must be justified. She explained in her testimony

what she meant by the word “pity”. It was a reference to the push back that she asserts she got when she questioned the appropriateness of certain proposed bail conditions, even if the defence was in agreement with the Crown Attorney that the conditions should be imposed. She gives her view in the next paragraph as to why she received the reaction that she alleges she did.

[207] In paragraph #6, Her Worship indicates that some counsel are of the view that because the release conditions have been agreed to, they are effectively like a joint submission on sentence and should be accepted by the court.

[208] In paragraph #7, Her Worship explains the “monumental” differences between bail and sentencing. The first, she says, relates to the presumption of innocence at the bail stage, while the second relates to a more “level playing field” when negotiating sentence. With bails, she points out that only the Crown Attorney can consent to release. If the conditions proposed by defence counsel are not accepted by the Crown Attorney, the detainee may have to stay in custody and wait for a bail hearing.

[209] In paragraph 8, Her Worship sets out some of the conditions that she has observed detainees accept because, she says, they are desperate to be released. For example, an alcoholic agreeing to abstain, a homeless person agreeing to a \$1,000 promise.

### **Paragraph #9 – Dysfunctional Bail Courts and Bully Prosecutors**

[210] In this paragraph Her Worship, in addition to describing the courts as “dysfunctional and punitive bodies”, also alleges that she observed bullying or disrespectful conduct by three different prosecutors while she was presiding; behaviour that she asserts arose in reaction to her correct interpretation of bail law.

[211] In the first instance, Her Worship describes a prosecutor turning his back to her and telling defence lawyers that all deals were off the table as long as she was presiding. Although no names were mentioned, Her Worship acknowledged that she was referring to a particular Assistant Crown Attorney, Mr. Wightman, and that he would have recognized himself from the Article.<sup>63</sup>

[212] Her Worship maintained in her testimony that this incident occurred exactly as she described it. There was evidence before the Panel that Her Worship complained to the local administrative justice of the peace about the alleged incident; that the Ottawa Crown Attorney’s office investigated it; and that Ms. Bair, the Crown

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<sup>63</sup> Evidence of H.W. Lauzon, Transcript of September 17<sup>th</sup>, 2019, at p. 202, l. 14 to p. 204, l. 19



Attorney, wrote to Her Worship to inform her that the Crown Attorney involved, Mr. Wightman, denied having turned his back to her.<sup>64</sup>

[213] Her Worship acknowledged receiving correspondence from Ms. Bair about her investigation into the incident, but Her Worship said that she never opened it because she does not communicate directly with lawyers. She maintained that the incident did in fact happen as she described it.<sup>65</sup>

[214] After the publication of the Article, Mr. Wightman was scheduled to appear before Her Worship on a bail hearing of Cody Boast. The Crown Attorney brought an application that she recuse herself on the basis of a reasonable apprehension of bias. The Crown Attorney explained that this was as result of the reference to Mr. Wightman's conduct in the Article.

[215] In the second instance, Her Worship used the example of an Assistant Crown Attorney whom she alleged screamed at her and, as she described it, he "basically threw a temper tantrum after [she] questioned certain conditions".

[216] Her Worship, in her testimony, noted that although she did not name names, she was sure that the Assistant Crown Attorney she was referring to, Mr. Tallim, would recognize himself in the Article.<sup>66</sup> She would not concede that anyone else in the courtroom at the time of these incidents would also know the identity of the particular Crown Attorney, although she recalled that the courtroom was absolutely full at the time of the incident.<sup>67</sup>

[217] This particular incident was singled out in the media coverage that followed the initial publication of the Article.

[218] In paragraph #10, Her Worship returned to the issue of appearances by video which she described as "forced" and "rushed". She also said that there was a lack of respect for the justice of the peace bench and an absence of the rule of law. She states: "I can no longer call it a court of law, it is a disgrace. I am there to administer justice. It is not my job as a JP to sign off on release documents that are unlawful." (Emphasis added.)

[219] There was evidence before the Panel about a policy implemented to use video appearances with a view to facilitate the early release of as many detainees as possible.<sup>68</sup> Her Worship made no reference to this in the Article. Her Worship in her

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<sup>64</sup> Exhibit #5 "History" - Transcript of *R. v. Cody Boast*, tab 6 at pp.

<sup>65</sup> Ibid, at p. 10, ll. 14 to p. 1, l. 32

<sup>66</sup> Evidence of H.W. Lauzon, Transcript of September 17<sup>th</sup>, 2019, at p. 202, l. 14 to p. 204, l. 19

<sup>67</sup> Ibid, p. 70, l. 11, to 71, l. 15

<sup>68</sup> Exhibit #5 "History" - email from V. Bair to RSJP Swords dated *March 15<sup>th</sup>, 2016*, tab 2

evidence in-chief acknowledged why the use of the video was implemented: “It’s meant to be efficient, I understand that”. Yet, in cross-examination, she would not concede there was a good faith reason for using video appearances. In her view, the system was not made more efficient or faster as a result of the use of video appearances.<sup>69</sup>

[220] In our view, anyone unfamiliar with the criminal justice system would not have understood why appearances by video were implemented. In this regard, we conclude that the reference to forced and rushed video appearances was one sided. It was neither balanced nor fair.

[221] We note that Justice Wyant in his report advocated for the increased use of video appearances as a means of improving the efficiency of bail system without sacrificing the integrity of the process. He noted that “[m]any judges and justices of the peace don’t like it because they feel the accused should be in the courtroom”, but he concluded that “[c]onsultation and reflection on these issues is important and a balance needs to be struck...and stakeholders need to be open to change”.<sup>70</sup> (Emphasis added.)

[222] In paragraph #11, Her Worship states she was shocked “when prosecutors attempt to wrestle jurisdiction from the court through a variety of unacceptable tactics” (emphasis added) rather than pursue a right of appeal from a decision they disagree with. This, she testified, was a reference in part to applications for recusal, but also to “bullying” behaviour in general, as stated by her in paragraph 9 of the Article.

[223] Her Worship explained that she was referring to the Crown Attorney’s office bringing recusal applications rather than appealing her decisions. She made specific reference to comments made by the Crown Attorney during the course of the *Hoare* bail hearing. In an exchange with Her Worship, Her Worship recalled that Ms. Bair explained that bail reviews required resources the Crown Attorney’s office did not have.<sup>71</sup>

[224] In cross-examination, Her Worship conceded that the Crown Attorney has the right to bring recusal applications and that the Crown Attorneys argued those applications respectfully. In particular, she conceded that Ms. Bair’s submissions on recusal were fair and rational and connected to the issues at hand. <sup>72</sup>

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<sup>69</sup> Evidence of Her Worship Lauzon, Transcript of September 17<sup>th</sup>, 2019, at p. 96, ll. 3-22; at p.179, l. 2 to p. 181, l. 25

<sup>70</sup> Wyant Report, *supra*, Recommendation 19 - The Use of Video and Bail Triage

<sup>71</sup> Transcript of September 17<sup>th</sup>, 2019, p. 114, l. 15 to p. 115, l.15

<sup>72</sup> Transcript of September 18<sup>th</sup>, 2019, p. 30, l. 16 to p, 34, l. 15

[225] When asked if in writing the Article she thought that it might be fair to explain why the Crown Attorney respectfully requested her recusal and that they had the right to bring a recusal application, she said “no”.<sup>73</sup>

[226] The following exchange about this paragraph speaks for itself. Her Worship explains what she meant by unacceptable tactics and why, in her view, it was not necessary to include the countervailing perspective even though she was aware of it:

Q. //...// So no doubt about it right, Your Worship, you are accusing the Crown of using unacceptable tactics...

A. Yes

Q ... by which you mean illegal, cynical bullying, right?

A. Yes

Q. And you are accusing them of trying to interfere with the role of the court, right?

A. Yes

Q. To usurp the court's role?

A. And the court's responsibility, yes.

Q. And to some extent that serves their cynical purpose, right?

A. No. That is not what I said.

// ...//

Q. Okay. So the unacceptable tactics are ...

//...//

A. ... I could have gone on with other unacceptable tactics, but I kept it to the main ones ...the three at the bottom of page 2.

Let me see. Well, you know also... where I mention bullying, that's one. Yes, so the bullying and those three examples.

Q. Okay, thank you. And you do all that without even attempting to explain what their side of the story is, right?

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<sup>73</sup> Ibid, p. 33, l. 1 to p. 34, l. 24

A. I answered that already, but I didn't feel it was my duty to give a full ... it's an opinion article, and I didn't feel that I needed to, or that it was my duty to explain their side. They are in a better position to explain that ...//...// I already knew what their position was. I ... it was made clear to me what their positions were. (Emphasis added.)

Q. So you could have put it in your article then?

A. I wouldn't have seen the need to at all, or the necessity. They were free to speak out, Mr. Smith.<sup>74</sup> (Emphasis added.)

[227] Finally, in paragraph #12, Her Worship concludes by stating that bail conditions are not meant to “fix people” and to address all of their issues. The *Charter* and the *Criminal Code*, she notes, set out the legal rights and responsibilities for persons charged with an offence. “Unfortunately, Ottawa’s main bailout [sic] court, and others, have devolved into dysfunctional and punitive bodies, devoid of the rule of law.”

[228] The observation that bail conditions were never meant to be a court-imposed tool for self-improvement is one that finds favour in *R. v. Antic*, a case from the SCC decided in 2017, *infra*, at paragraphs 66-67(j).

[229] The second sentence of paragraph #12 dealing with the *Charter* and the *Criminal Code* is factual and not contentious.

[230] The last sentence emphasizes the central theme of the Article. It repeats the same language used at paragraphs 9, and 10: that bail courts “have devolved into dysfunctional and punitive bodies, devoid of the rule of law”.

[231] Her Worship testified that when she wrote this she was addressing the public, most of whom do not know about bail law at all. The language used was meant to signal that there was a huge issue that needed to be fixed.<sup>75</sup>

[232] The Panel’s analysis and assessment of the Article as a whole engages the questions that we set out at the beginning of our analysis:

- Having regard to the forum chosen, was Her Worship careful in the words used to express her opinion?
- Was the language used civil?
- Was the Article dignified, measured and restrained?

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<sup>74</sup> *Ibid*, at p. 49, l. 12 to p. 51, l. 23; also, p. 34. ll. 20-24; and Transcript of September 17<sup>th</sup>, 2019 at p. 181, ll. 16-25

<sup>75</sup> Transcript of September 17<sup>th</sup>, 2019, p. 118, l. 10, to p. 119, l. 21

- Was it fair and balanced?
- What was the overall tone and tenor of the Article?
- What effect did the Article have on the appearance of Her Worship's impartiality?
- What effect did the Article have in the public's confidence in administration of justice?

[233] We will now turn to whether Her Worship was careful in writing the Article and in choosing her words.

[234] Justice of the Peace Lauzon testified that in writing the Article, she chose every word carefully and considered the meaning of her words. She also impressed upon the representative at the National Post that it was important to her that every word in the Article be the correct one.<sup>76</sup>

[235] As noted above, the words or phrases Her Worship used to describe the court were the following: "a disgrace"; "dysfunctional and punitive", "devoid of law", a place where "the law goes out the window".

[236] The words she used to characterize the behaviour of prosecutors were the following: "cynical", "bullies", "screaming" and "tantrum-throwing", turning their back on the court and engaging in "unacceptable tactics". In short, rude, childish and unprofessional behaviour.

[237] Yet, when asked in cross-examination about the media coverage in the Ottawa Citizen the day after the Article was published in which the behaviour of prosecutors was described as tantrum throwing toddlers misbehaving at a Loblaws check-out, Her Worship found that reference insulting to the Crown Attorneys.<sup>77</sup>

[238] Justice of the Peace Lauzon agreed in cross-examination that "a portion of readers" might conclude from the Article that Crown lawyers do not follow the law. She testified that she did not intend that readers should conclude Crown lawyers do not follow the law. That, she testified was "a little bit of a harsh statement and a harsh conclusion". She "wanted people to know that the law in certain bail courts was not being followed".<sup>78</sup>

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<sup>76</sup> Transcript, September 17<sup>th</sup>, 2019 at p.91, ll. 10-21; and Transcript, September 18<sup>th</sup>, 2019 at p. 94, ll.2-22

<sup>77</sup> Transcript of September 18<sup>th</sup>, 2019 at p. 130, l. 12 to p. 131, l. 5

<sup>78</sup> Transcript of September 17<sup>th</sup>, 2019 at p. 195, l. 3 to p. 196, l. 8

[239] When she was asked if she thought at all about the reputations of the people she spoke about in the Article, Her Worship responded: "...in my view their reputation was already on the public record. I did not need to worry about that."<sup>79</sup>

[240] In addition to the words used in the Article, we considered Her Worship's testimony about whether she was aware of and exercised her duty to be careful with the manner she used to express herself and the overall tone of the Article. When Her Worship was asked if she agreed that when speaking, or writing in her capacity as a judicial officer, it is her duty to speak carefully, temperately, and judiciously. Referring to the Article, Her Worship responded: "[t]his is not a judgment". She made a clear distinction between writing an out of court piece and rendering a decision in court. When writing publicly, she described her duty as follows: "My duty is to address the issue accurately, factually and indicate what the issue is. That is the extent that I can answer your question, sir."<sup>80</sup>

[241] Later, she explained that she did not believe that a special duty existed for judicial officers when addressing the public out of court. She explained: "I think the bigger duty is to raise issues when there are issues that need to be addressed. I think that is my bigger duty".<sup>81</sup>

[242] Early in her cross-examination, Her Worship was asked if calling the court a disgrace was "temperate, careful or judicious". She responded that describing the court as "a disgrace" "is a very accurate depiction of what was going on at the time. Presenting Counsel repeated the question and this time Justice of the Peace Lauzon said: "My answer is it did not need to be."<sup>82</sup>

[243] Later in her testimony, when pressed again about whether she had any special duty as a judicial officer when addressing the public, Her Worship stated: "I think I did that", meaning that, in her view, she did speak carefully, temperately, and judiciously.<sup>83</sup>

[244] Her Worship testified that she deliberately did not seek any advice from anyone before deciding to write or publish the Article because it was very necessary from her perspective that she write publicly about her observations. It crossed her mind to run it past a few of her colleagues, but she explained that she did not want to be dissuaded from her decision to publish the Article. In her words: "... had I consulted with colleagues, I think most of them would have said, "Julie, you are going to be reprimanded, you are going before the JPRC if you do this". I pretty much expected

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<sup>79</sup> Transcript of September 18<sup>th</sup>, 2019 at p. 7, l. 25, to p. 8, l. 4

<sup>80</sup> Transcript of September 17<sup>th</sup>, 2019 at p. 169, l. 16 to p. 172, l. 24

<sup>81</sup> Ibid, p. 170, l. 4 to p. 173, l. 9

<sup>82</sup> Ibid, p. 42, ll. 7-2

<sup>83</sup> Ibid, p. 172, ll. 19-23

that that would be the response of people. // ... // ...they might have reminded me that this is where I would end up. I did not want that to interfere with my efforts to make efforts to fix this.”<sup>84</sup>

[245] We find that the words Her Worship used in the Article, combined with her testimony, support a conclusion that she failed in her duty to be careful in expressing her views in a public forum. Based on her evidence, she chose her words with purpose and was deliberate in her choice of words. However, she failed in her duty to take the necessary care to express herself in a dignified and restrained manner so as not to lose public confidence in her objectivity or compromise the integrity, independence and impartiality of her office. The words she used, we find, were neither judicious nor measured. They were neither civil nor dignified. Instead, they were accusatory, insulting, inflammatory, and personal. It would also be fair to conclude based on the manner in which the Article was written and Her Worship’s testimony that “strong” language was used because the Article was expressly designed by her to garner maximum media attention.

### **Balance and Fairness**

[246] The Panel further finds that Her Worship made no attempt to be fair or balanced in describing the reason why Canada’s bail system was “broken”, as she described it. There was no reference to the various roles played by the parties involved or the various interests that must be considered and balanced in any bail hearing.

[247] The overall tenor of the Article is that the root cause of the problems plaguing the bail court is the behaviour of prosecutors. In particular, she asserts that they:

- do not respect the justice of the peace bench;
- use unacceptable tactics to attempt to wrestle jurisdiction from the court;
- act like cynical bullies at bail hearings by forcing video appearances, and by demanding that unreasonable conditions be imposed on persons who are presumed innocent;
- are unprofessional because they behave like children when they do not get their way; and
- have no regard for the rule of law, specifically the *Charter* and the *Criminal Code*.

[248] Justice of the Peace Lauzon was asked in cross-examination if she considered informing the readers of the Article that it was the Crown Attorney’s job to protect the people of Ottawa. She responded that people would already know that. When

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<sup>84</sup> Ibid, p. 46, l. 10 to p. 47, l. 4

asked if it was fair for her to include only her side of the story or her observations, her response was: “I’m writing the article. I’m going to put down what my observations are and the effect it had on my judicial duties, yes.” In an exchange with Presenting Counsel in cross-examination about the Crown Policy Manual and why Her Worship did not explain the reason that Crown lawyers took the positions they did, she responded: That’s not an issue that needed to be dealt with. That’s not my issue... and it’s not the public’s issue”.<sup>85</sup>

[249] In the Article, Her Worship referred to applications to recuse as one of “a variety of unacceptable tactics” that prosecutors use in their attempt to wrestle jurisdiction from the court. Yet, in her evidence she conceded that such applications were legally brought and respectfully argued. This, we find, demonstrates Her Worship’s lack of care in writing the Article, as well as the absence of any attempt, in having it published, to be fair or balanced in describing the problems in bail court.

[250] Another example of the lack of balance in the Article is when Her Worship referred to “forced, rushed video appearances” and said how unfair this is to accused persons who have a right to appear in person.

[251] In cross-examination, it was put to Her Worship that there are policy reasons why the video (Polycom) was implemented: to save time and ultimately assist in facilitating earlier releases for detainees. Her Worship testified that she did not explain the countervailing point of view for using the Polycom because the Article was meant to be succinct and she did not feel it necessary “to address a matter that wasn’t really a big issue”.<sup>86</sup>

[252] She provided further rationale for the choices she made in writing the Article, particularly in terms of the perspective that she set out. She explained her view: “[T]his wasn’t a legal document that I was writing, right, with the pros and the cons. I was only underlining what the issues were”. She made it clear that this was *her* article and for that reason she wrote it from *her* perspective. Crown Attorneys, she retorted, were free to write their own response. (Emphasis added.)

[253] This response shows a lack of appreciation and regard not only for the need for a judicial officer who makes a public statement to be balanced and fair, but also for the need to consider whether it was appropriate or dignified for a member of the bench to make critical, disparaging allegations in the news media about prosecutors who appear as a party before her to have her adjudicate upon cases, and expect

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<sup>85</sup> Transcript September 17<sup>th</sup>, 2019 at p. 200, l. 2 to p. 201, l. 3, and Transcript of September 18<sup>th</sup>, 2019, at p. 83, l. 9 to p. 84, l. 11

<sup>86</sup> Ibid, p. 181 l. 5- to p. 182, l. 4



prosecutors to respond in the news media to disparaging allegations made against them by a presiding judicial officer.

[254] Her Worship said in her affidavit that her “intention was to protect the administration of justice by instigating a hard cold look at how the law was being interpreted and the prevalent behaviour in bail court.” She further said that her “intention was not to embarrass nor to pursue any animosity”.<sup>87</sup>

[255] She repeated this explanation in her testimony noting that in describing court as a “disgrace” she did not intend to bash the courts, but “only to lay out the facts of a situation that was unacceptable”. She was writing and criticizing the state of the law, the state of that court.

[256] In cross-examination she was asked if she considered that the Article packed a particular sting for some Crown counsel at the Ottawa courthouse. Her Worship initially agreed that “[s]omebody who had problematic behaviour towards me in court would feel probably a little bit slighted”. (Emphasis added.)

[257] When it was put to her that it appeared that she did in fact consider the Article to pack a particular sting to lawyers whom she said had acted improperly, she then stated:

Well, if that is the first time they felt the sting, then it was high time they felt it.

//...//

...when I give examples of the behaviour I observed, and I am sure they would recognize themselves, would they feel stung by reading that? Well, you would have to ask them.<sup>88</sup>

[258] Later in her testimony, Her Worship said: “I did not turn my mind very much to that, okay?” She stated that the people whose behaviour she described would recognize themselves but “by not naming them, there should not be a sting there”.<sup>89</sup> (Emphasis added.) She denied that she intended to insult or that she cast aspersions on Crown counsel when she described them as “bullies” and “cynics”.<sup>90</sup>

[259] It would be a fair inference from Her Worship’s testimony that she felt personally stung by what she perceived as inexcusable behaviour on the part of Mr. Wightman in a courtroom “absolutely full of people”. She recalled thinking that the incident was “the most embarrassing thing, I think, that anybody could possibly see”. She

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<sup>87</sup> Exhibit 8: Affidavit of Julie Lauzon

<sup>88</sup> Ibid, at p. 201, l. 16 to p. 202, l. 6

<sup>89</sup> Ibid, p. 204, l. 20 to p. 205, l. 18

<sup>90</sup> Ibid, p. 210, l. 2-21

returned to the alleged incident more than once in her testimony and described it as a “circus”.<sup>91</sup>

[260] By singling out certain individuals who were in Her Worship’s estimation disrespectful to her, and who she expected would recognize themselves in the Article, we find that the Article can fairly be characterized as highly “personal”.

### **On Speaking the Truth and the Appearance of Bias**

[261] Justice of the Peace Lauzon testified that “when it comes to telling the truth, it’s not always politically correct and it’s not always pretty. The main ...the fundamental aspect of speaking out is being truthful, and if that ruffles a few feathers as a consequence, the bottom line is, when you speak out, you need to be truthful, and have no other motive than to fix the problem.”<sup>92</sup>

[262] When asked in cross-examination whether she considered that the Article might cause an impression of bias or favouritism, she testified: “I don’t think I considered the issue”.

### **Impact on Public Confidence**

[263] Her Worship testified before this panel that she did not intend to undermine public confidence in the administration of justice. Quite the opposite. She said that she wanted to raise issues in order for the public to maintain confidence in the judicial system. Yet, she agreed in cross-examination that what she was saying in the Article was that the prosecutors were actually trying to subvert the process.<sup>93</sup>

[264] She also had this exchange with Presenting Counsel regarding the impact of her Article on public confidence:

Q: In fact, Your Worship, the point here, your point here is that the public should not have confidence in the bail courts, isn’t it?

A: At the state of where things were, as I described them in the article, why would they? (Emphasis added.)

Q. Are you agreeing with me then with my proposition that your point here is that the public should not have confidence in the bail courts?

A. That is not what I said. And, you know, you have to be careful in generalizing. I said something very specific here, that in my court, from

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<sup>91</sup> Ibid, p. 70, l. 11, to 71, l. 15; p. 222, l. 16 to p. 223, l. 22; p. 225, l. 10-19

<sup>92</sup> Transcript, September 17<sup>th</sup>, 2019, at p. 174, l. 11 to p. 178, l. 13

<sup>93</sup> Ibid at p. 28, ll. 11-14

everything that I saw ... that was not a court of law for me. I still did my best to do my job. (Emphasis added.)

Q. To be fair, you are talking about more courts than your own, right?

A. Yes.

Q. And...

A. But, I am not saying that all bail courts... I don't recall... I don't ... I hope I didn't say that all bail courts on every day, in every instance, are a disgrace.<sup>94</sup>

[265] Her Worship recognized that one has to be careful in generalizing. She maintained that when she referred to the court and being “a disgrace” and “devoid of law”, she was only referring to her court. She agreed that she was talking about more courts than her own, but not all bail courts on every day, in every instance. Firstly, the title of the Article itself suggests a widespread problem, not a personal account of a select few experiences in bail court on a particular day. It reads: “When bail courts don't follow the law”. Secondly, the very first sentence refers to “just how broken Canada's bail system is.” Third, the first sentence at paragraph nine of the Article, reads: “Ottawa's main bailout court, and many others throughout the country, have devolved into dysfunctional and punitive bodies.”<sup>95</sup> (Emphasis added.)

[266] The Panel finds that on a fair reading of the Article any reasonable reader would conclude that the Article purports that there was a widespread problem of lawlessness in bail courts throughout the country, not just in Ottawa.

### **Media's Response to the Article - Heightened “Visibility”**

[267] After the Article was published in the National Post, it garnered further media attention thereby expanding its reach and impact. This relates to the “visibility” factor or reach of the Article that was referenced in *Ruffo (2005)*, *supra*.<sup>96</sup> Two newspaper articles were written and published, the first by the Ottawa Sun on March 15<sup>th</sup>, 2016.<sup>97</sup>

[268] Some of the most provocative aspects of the Article were repeated, including that:

- 1) a justice of the peace was calling the Ottawa bail court a “disgrace”;

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<sup>94</sup> Ibid, at p. 43, ll. 5-22

<sup>95</sup> Exhibit 3 – Agreed Book of Documents, tab 3, National Post online Article “When bail courts don't follow the law”

<sup>96</sup> At para. 70 above

<sup>97</sup> Exhibit 12, Ottawa Sun Article

- 2) the bail system in Ontario was “devoid of the rule of law”;
- 3) bail courts across Ontario “have devolved into dysfunctional and punitive bodies;
- 4) “the law went out the window, and cynicism and bullying kick in”;
- 5) The Crown Attorney was engaging in inappropriate conduct as alleged by Her Worship; and,
- 6) that the Crown Attorney was using tactics that were unacceptable.

[269] Her Worship agreed that the points highlighted in the Ottawa Sun were important to her.<sup>98</sup> Readers of the Sun article could reasonably conclude that the Ottawa bail court was a disgrace because the Crown Attorneys were acting inappropriately.

[270] The second article was an editorial published on March 16<sup>th</sup>, 2016, in the Ottawa Citizen entitled, “Find out what’s going on with the bail system”.<sup>99</sup>

[271] That article begins with: “An Ottawa justice of the peace took the unusual step Tuesday of decrying – publicly in an opinion piece for the National Post – what she sees as dysfunction in the bail system, suggesting there’s a deep lack of respect for the rule of law”. Her Worship agreed that a reasonable reader would draw that conclusion from the Article.

[272] The article went on to portray the behaviour of Crown Attorneys that Her Worship described, but with more flourish characterizing it as “...more suited to a toddler denied Twizzlers at a Loblaws checkout than to justice system professionals”.

[273] It would be a fair assessment that the author of the report in the Ottawa Citizen understood that Her Worship’s Article meant to call out and ridicule the unprofessional behaviour of Crown counsel whom she described and that it was a rebuke they well deserved. The author of the report in the Ottawa Citizen, in our view, simply took the rebuke to the next level by embellishing Her Worship’s image of a professional adult throwing a tantrum by adding a few familiar visual descriptors. Justice of the Peace Lauzon testified that the description of Mr. Tallim as described in the Ottawa Citizen was in her view “offensive toward the Crowns”. She explained that it was something over which she had no control. The newspaper was “free to do that and it belongs to them”.<sup>100</sup>

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<sup>98</sup> Transcript of September 18<sup>th</sup>, 2019, at p. 123

<sup>99</sup> Exhibit 13, Ottawa Citizen article

<sup>100</sup> Transcript of September 18<sup>th</sup>, 2019 at p. 130, l. 12 to p. 131, l. 5

## Evidence of the Appearance of Bias

[274] The Panel heard from Ms. Kate Matthews, former President of the OCAA, a complainant in the matter.

[275] Ms. Matthews testified that the concern of the OCAA was that the Article did not accurately or fairly capture the role of an Assistant Crown Attorney in the bail courts, the pressures they are under and the decision-making on a day to day basis. There are various interests that Assistant Crown Attorneys need to consider: the interests of the public, public safety, the interests of the accused, and the Crown Attorneys' obligations to the administration of justice and to the bench.<sup>101</sup>

[276] In Ms. Matthew's view the Article "seemed to lay the blame for every failing of the bail court system at the feet of Crown Attorneys. It was very unbalanced, and there is very little we can do in terms of countering the tone, the tenor and the content of the article."<sup>102</sup> (Emphasis added.)

[277] Ms. Matthews explained that bail is very complicated. It is not a simple matter. Prosecutors receive a lot of training in bail and are told that it is a critical aspect of the criminal justice process. But it is difficult to do bail court with insufficient resources. "There is a lot of pressure to respect the right to get a bail hearing decided quickly. All of those pressures come to bear on a Crown who is doing bail court, and I felt that this article completely deflated us in everything we are trying to do."<sup>103</sup>

[278] She testified that she took the references by Her Worship painting prosecutors as "cynics" and "bullies", to mean they were not taking notice of the law and were not concerned with it. Ms. Matthews said that it was "terribly insulting".<sup>104</sup>

[279] Ms. Matthews also testified that Crown Attorneys take their jobs very seriously, along with the obligations that flow from it. To be described as toddlers having tantrums was "incredibly demeaning".<sup>105</sup>

[280] Regarding the reference at paragraph eleven (11) of the Article to prosecutors attempting to wrestle jurisdiction from the court, Ms. Matthews commented that: "the difficulty with this passage is that ... it is very one sided. The public ... anyone reading this article will only know this point of view, will have no information with respect to why the Crown may make decisions as they do, why they may decide to

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<sup>101</sup> Transcript of Evidence of Kate Matthews taken on October 9<sup>th</sup> 2019, at p. 39, ll. 15-21 and p. 40, ll. 19-22

<sup>102</sup> Ibid, at p. 39, l. 22 to p. 40, l. 2

<sup>103</sup> Ibid, p. 40, l. 23 to p. 41, l. 9; Evidence of Her Worship J. Lauzon, Transcript of September 17<sup>th</sup>, 2019 at p. 99, l. 6 to p. 100, l. 14

<sup>104</sup> Ibid, p. 42, ll. 3-15

<sup>105</sup> Ibid, p. 45, l. 13 to p. 46, l. 8

bring an appeal, whether they may not, what the law is with respect to appeals. It doesn't tell the full story" (Emphasis added.)

[281] Ms. Matthews explained that the fact that the three prosecutors whose behaviour Her Worship described were not named was actually worse in that it painted the entire Ottawa Crown Attorney's office with the same brush.

[282] She testified that the fact that the Article received ongoing media attention raised another concern, in that from the OCAA's perspective when a one-sided article is written by a sitting justice of the peace, people will pick up on it and accept as truth, accept as fact and so it grows and spreads.<sup>106</sup>

[283] Ms. Matthews explained why the OCAA did not respond to the Article in the media. It would be "very unseemly" for a provincial association of Crown Attorneys having essentially, a squabble or a battle with a sitting justice of the peace in the media. It could "be viewed as an attack on a sitting justice", which the OCAA has never done and would never do, in a public forum.<sup>107</sup>

[284] Ms. Matthews further observed that "this is not simple stuff, what was happening in the bail system. It is complicated, and it doesn't lend itself very easily to op-eds in a newspaper. She went on to say that she did not believe that there is an appropriate way in the media to be able to properly address the inflammatory parts of Her Worship's Article.<sup>108</sup>

[285] In cross-examination, Ms. Matthews was asked about an article she wrote responding to criticism of the Crown Attorneys on the issue of court delays.<sup>109</sup> She explained that she did respond to an article about court delay, but the difference in that case was that the article she was responding to was written by a lawyer in the defence bar, not a sitting justice of the peace. As well, the article was a legal publication whose target audience was the legal profession, not the general public.<sup>110</sup>

[286] On the issue of bias, Ms. Matthews testified that the concern that the Article by Her Worship raised was that "[Crown Attorneys] would never feel that [they] could have a fair and impartial hearing before this Justice, who so clearly, in my view, showed such great disdain for every Assistant Crown Attorney in the Ottawa Crown's office.

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<sup>106</sup> Ibid, p. 45, l. 2 to p. 46, ll. 15

<sup>107</sup> Ibid, p. 46, l. 16 to p. 47, l. 6

<sup>108</sup> Ibid, in chief: p. 47, ll. 7-10; in cross-ex.: p. 56, l. 19 to p. 57, 23

<sup>109</sup> Exhibit 15

<sup>110</sup> Ibid, p. 87, l. 20 to p. 90, l. 20; p. 92, l. 1 to p. 93, l. 1

I don't think you could feel that you could bring a hearing in front of her in a fair way."<sup>111</sup>

### **Recusal Application *after* Publication of the Article**

[287] On October 12<sup>th</sup>, 2016, over six months after the Article was published, Assistant Crown Attorney Mr. Wightman was scheduled to represent the Crown in the bail hearing in the matter of *R. v. Cody Boast (Boast)*. Mr. Wightman is one of the three Crown Attorneys whose alleged conduct Her Worship wrote about in the Article. Although she did not specifically name him, he knew, as did the Crown Attorney, Ms. Bair, that the reference was to Mr. Wightman. In the Article, Her Worship alleged that he had turned his back to her when she questioned certain proposed bail conditions and he made an announcement to defence counsel in the courtroom that there would no longer be any consent bails as long as Her Worship was on the bench.

[288] Ms. Bair appeared in court, with Mr. Wightman, on the *Boast* hearing. She requested the matter be held down briefly. It was her intention to ask that another justice of the peace preside over the matter, but Her Worship inquired about the reason for the request to have the matter held down. It was then that Ms. Bair explained:

...you are the presiding Justice of the Peace and Mr. Wightman and you have a history in that you have complained about him directly to my office in the past, and subsequently referred to the same matter in your article in the newspaper. So short of bringing a recusal application, we're hoping that the matter can be reassigned in some way.<sup>112</sup>

[289] What followed was a discussion about when Mr. Wightman had last appeared before Her Worship. Her Worship said she had no issue with Mr. Wightman, and she recalled that he had appeared before her since the publication of the Article. Her recollection did not accord with Mr. Wightman's. Mr. Wightman advised that in fact he had not appeared before Her Worship in any contested matter following the publication of the Article. Ms. Bair informed the court that that was by design.<sup>113</sup>

[290] During the *Boast* bail hearing Ms. Bair and Her Worship discussed the previous incident that was the subject of a complaint, and later described in Her Worship's Article. It is not disputed that Her Worship made a formal complaint through the Local Administrative Justice of the Peace about Mr. Wightman regarding the alleged incident that she recounted in her Article. That complaint in turn was brought to Ms.

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<sup>111</sup> Ibid, p. 47, ll. 11-23

<sup>112</sup> Exhibit 5, History Brief, Tab 6, Show Cause Hearing of Cody Boast, pp. 1, l. 5 to p. 2, l.12

<sup>113</sup> Ibid, p. 2, l. 20 to p. 3, l. 7

Bair's attention since she was Mr. Wightman's superior. The alleged incident was investigated. Mr. Wightman's recollection did not accord with that of Her Worship. He denied having turned his back to Her Worship. At the conclusion of the investigation Ms. Bair sent correspondence to Her Worship informing her about the results of her investigation. Her Worship, it appears, did receive the correspondence. She just chose not to read it. Sometime thereafter she wrote about the alleged incident in the Article.<sup>114</sup>

[291] With respect to the *Boast* hearing, Her Worship asked defence counsel what he had to say about the Crown Attorney "basically ...asking me to recuse myself from this bail hearing..." and after hearing that he would like an opportunity to prepare for legal argument on a recusal application, she then engaged in a lengthy exchange with Ms. Bair, confirming that the reason for the recusal application was because of an apprehension of bias. Her Worship then before hearing submissions in the matter stated: "... [B]ut it is my call isn't it? It's my call not to recuse myself. And I am not recusing myself."<sup>115</sup>

### **Good Faith Motivation**

[292] Justice of the Peace Lauzon has said that she was motivated to write the Article to effect positive change, not to "bash" the Court or insult Crown Attorneys, but "only to lay out the facts of a situation that was unacceptable".

[293] Her Worship also testified that in writing the Article she was effectively acting selflessly in order to effect change on behalf of all of her colleagues. She explained that: "I had basically everything to lose. I didn't do it for myself." In cross-examination she expressed herself more colloquially. She said that in writing the Article she "was prepared to take a hit for the team on this".<sup>116</sup>

[294] Even if the Panel were to accept, without deciding, that Her Worship's conduct was solely motivated by good intentions; that she believed that the Article would effect positive change in the bail system, we cannot decide the issue before us solely on the basis of good intentions. As noted in *Re McLeod*, Justice of the Peace Lauzon's actions must be considered against the objective standard of conduct that is expected of judicial officers.<sup>117</sup> The Panel must also consider the impact of Her Worship's conduct on public confidence in the judiciary in general.

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<sup>114</sup> Ibid, p. 8, l. 3 to p. 12, l. 20

<sup>115</sup> Ibid, p. 5, l. 27 to p. 12, l. 15

<sup>116</sup> Ibid, at p. 94, ll. 10-11, and Transcript of September 18<sup>th</sup>, 2019 at p. 57, l. 8 to p. 59, l. 6 and Transcript of October 10<sup>th</sup>, 2019 at p. 8, l. 12 to p. 9, l. 10

<sup>117</sup> *Re McLeod*, *supra*, at para. 53; *Re Zabel* OJC September 11<sup>th</sup>, 2017 at para. 34



[295] Counsel for Her Worship referred to Justice Abella's article entitled "Democracy Needs an Independent Judiciary" to underscore the significance of judicial independence. Counsel submitted that Justice of the Peace Lauzon felt that the conduct of the prosecutors, as described in the Article, undermined her judicial independence. We agree that judicial independence is critical for the proper functioning of the judiciary. But, Justice Abella also made the point that one of the risks to the independence of the judiciary is when public confidence in the court's integrity is undermined.<sup>118</sup>

[296] If Her Worship was motivated in part to write the Article in defence of her judicial independence, we find that she missed the mark entirely. The tone and tenor of the Article in fact risked the independence of the judiciary because it undermined public confidence in the integrity of the judiciary.

### **Conclusion on Misconduct.**

[297] On the totality of the evidence presented before us we are satisfied that Justice of the Peace Julie Lauzon engaged in misconduct when she submitted the Article entitled "When bail courts don't follow the law" for publication.

[298] We find that in writing the Article in the manner in which she did, Her Worship failed to consider her ethical obligations as a judicial officer: namely to remain, and appear to be, impartial and objective; to act in a manner that will uphold the integrity of her office; and to preserve confidence in the judiciary and in the administration of justice.

[299] The evidence supporting our finding of misconduct met and exceeded the standard that it be clear, convincing and cogent. In making our finding, we considered all of the factors referred to by the Court of Appeal of Quebec in *Ruffo* (2005), in particular: the forum in which the Article was disseminated, and the manner in which it was written. We also applied the test for judicial misconduct set out in *Re McLeod*.

[300] The overall tenor of the Article, we find, gave the appearance of a retributive personal attack on prosecutors rather than a serious, considered, and civil critique of the bail system and the importance of judicial independence.<sup>119</sup>

[301] The Article fell outside the public's reasonable expectation that judicial officers express themselves in a balanced, measured manner, exercising dignified restraint, and with the utmost integrity and professionalism.

[302] The Panel finds Her Worship's testimony in many respects difficult to reconcile. Of particular significance was her evidence about her understanding of her obligations

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<sup>118</sup> Exhibit 14; and Transcript of September 17<sup>th</sup>, 2019 p. 43, ll. 5 to p. 45, l. 5

<sup>119</sup> Transcript of September 17<sup>th</sup>, 2019, p. 197, l. 10 to p. 198, l. 6

as a judicial officer when engaging in public speech. On the one hand, she testified that there was no particular duty to be careful in writing the Article because it was not a court decision. This suggests that her understanding is that her role and duties as a judicial officer are limited to the courtroom and do not extend to her interactions in the community, such as expressing an opinion about the court for publication in a newspaper. On the other hand, she also testified that in submitting the Article for publication, she knew that she would likely come before this Panel, but nevertheless made the decision that she would “take a hit for the team on this”. This suggests that she did appreciate that her duties extended beyond the courtroom and that the Article fell below the standard of conduct expected of judicial officers.<sup>120</sup>

[303] We therefore find that Her Worship’s conduct cannot be characterized as a momentary lapse in judgement, or a decision simply borne of haste. We further find that she fully appreciated that in expressing her opinion in the manner she did, she was not upholding the high standards of personal conduct and professionalism required to preserve the impartiality and integrity of a judicial officer. Instead, she made a considered choice to step outside the parameters of permissible judicial speech.

[304] Balancing Her Worship’s right of expression with the duties of justices of the peace, as articulated in the *Principles of Judicial Office* and in the jurisprudence, we find that Justice of the Peace Lauzon exceeded, by far, the bounds of permissible speech for a judicial officer and in so doing, engaged in judicial misconduct.

[305] The Panel further finds that the issues raised in the Article and the complaints leading to these proceedings, do not represent a clash of two institutions: the executive versus the judiciary. The Article did not, in our view, have the effect of defending judicial independence; rather, it was a means for Her Worship to vent her personal views and professional frustrations in public.

[306] No matter the level of frustration, we find that Justice of the Peace Lauzon had a duty to remain civil and conduct herself with dignity and restraint both in court and in the community when publicly expressing her opinion about matters relevant to the administration of justice.

[307] Justice Abella, in *Doré, supra*, wrote about a lawyer’s obligations to act with civility and dignity even in the most trying circumstances. Mr. Doré, who the court found was unfairly provoked by a judge’s harsh words, wrote a “private” letter to the judge expressing his views about the judge.<sup>121</sup> The letter became the subject matter of a

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<sup>120</sup> *Ibid*, at p. 94, ll. 10-11, and Transcript of September 18<sup>th</sup>, 2019 at p. 8, l. 5 to p. 9, l. 5; p. 18, ll. 11-24; p. 42, ll. 17- 23; p. 46, ll. 10-15; p. 57, l. 8 to p. 59, l. 6; at p. 169, l. 13 to p. 173, l.

<sup>121</sup> at para. 68

complaint about Mr. Doré's conduct and ultimately a sanction imposed on Mr. Doré by the disciplinary council. The *Charter* value in that case, as in this one, is expression, and how it should be applied in the context of a lawyer's professional duties. Justice Abella's words are particularly apposite to this case:

... it is precisely when a lawyer's equilibrium is unduly tested that he or she is particularly called upon to behave with transcendent civility. On the other hand, lawyers should not always be expected to behave like verbal eunuchs. They not only have a right to speak their minds freely, they arguably have a duty to do so. But they are constrained by their profession to do so with dignified restraint. (Emphasis added.)

[308] The court concluded in *Doré*, that the criticism in the letter fell outside the public's reasonable expectations of a lawyer's professionalism. While his displeasure with how the judge treated him was justifiable, the extent of the response was not. As for Mr. Doré's right to expression, the court found that "in light of the excessive degree of vituperation in the letter's context and tone" ... the disciplinary council's conclusion as to a sanction was not "an unreasonable balance of Mr. Doré's expressive rights with the statutory objectives."<sup>122</sup>

[309] As in *Doré*, we find that the Article was not a justifiable response to Her Worship's displeasure with how bail courts were run. It created a reasonable perception that she lacked impartiality. This was damaging to her in her role as a judicial officer, the judiciary as a whole, and the good administration of justice. It also had the effect of undermining the public's confidence in the administration of justice and thereby risked diminishing respect for the rule of law.

[310] For all of these reasons, the first allegation in the Notice of Hearing is upheld and in our view it is appropriate that we make a finding of judicial misconduct. Regrettably, a disposition is necessary in the circumstances in respect of the first allegation.

## **PART IX: ANALYSIS OF ALLEGATION #2 – COMMENTS ABOUT ANOTHER JURIST**

### **Background**

[311] Paragraphs 12 through 17 inclusive of Appendix "A" to the Notice of Hearing outline what this panel has referred to as the second allegation against Justice of the Peace Lauzon. It deals with comments made in court by Justice of the Peace Lauzon in the course the AJN bail hearing over which she presided on February 26, 2015.

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<sup>122</sup> at paras. 69-71

[312] By way of background, on December 30, 2014, Justice of the Peace Lauzon had presided in a bail hearing with respect to another accused person, NP. She ordered NP's release on a recognizance with sureties and several conditions.

[313] The Crown Attorney applied to have the *R. v. NP* bail decision reviewed, and the review was conducted in the Superior Court of Justice by Madam Justice Ratushny on January 14, 2015. Madam Justice Ratushny reversed the release order and ordered NP's detention.

[314] During the AJN bail hearing, and submissions made by counsel, Justice of the Peace Lauzon was made aware of the Superior Court of Justice's reversal of her decision in the *R. v. NP* matter.

[315] In the course of delivering her oral decision in the AJN. bail hearing, Justice of the Peace Lauzon made the following comment, in reference to Madam Justice Ratushny's decision in the bail review of NP:

“Well this sounds like a post-conviction statement. There is no mention and there is no illusion [*sic*] to the presumption of innocence.”

[316] In paragraph 17 of Appendix “A” to the Notice of Hearing, the allegation is that, in making that comment, Justice of the Peace Lauzon could be perceived as making a statement that a Superior Court of Justice failed to understand or apply the presumption of innocence and the law of bail. The complainant also believes that it could be perceived as a statement manifesting a lack of respect both for the Superior Court of Justice and the concept of *stare decisis*. Finally, the allegation is that it could be perceived as a statement that undermines the integrity, impartiality and independence of the higher court and demonstrates a disrespect for the administration of justice.

[317] In submissions on the tertiary ground in the AJN. hearing, the Crown Attorney provided three cases to Justice of the Peace Lauzon. These were *R. v. B.S.*, [2007] ONCA 560, *R. v. E.W.M. (R. v. Mordue)* (2006), 215 O.A.C. 125, 223 C.C.C. (3d) 407, and Ratushny J's decision in *R v. N.P.*

[318] Immediately upon the completion of counsels' submissions, Justice of the Peace Lauzon rendered an oral decision, beginning with the comment that “Just so that you know the oral decision is probably not quite as coherent as the written decision for obvious reasons.”

[319] In her decision, Justice of the Peace Lauzon references all the case law provided to her by Crown counsel, including *R. v. B.S.*, *R. v. E.W.M.*, the seminal Supreme Court of Canada decision in *R. v. Hall*, 2002 SCC 64, as well as Madam Justice

Ratushny's decision in *R. v. N.P.* Justice of the Peace Lauzon also refers to a very recent decision of the Québec Court of Appeal, *R. c. Turcotte*, [2014] Q.J. 13532.

[320] In this hearing, in her examination-in-chief by her counsel, Justice of the Peace Lauzon responded that she did not intend any disrespect to Madam Justice Ratushny.<sup>123</sup> Similarly, in cross-examination by Presenting Counsel, Justice of the Peace Lauzon categorically denied that she meant any disrespect to Madam Justice Ratushny.<sup>124</sup>

## Analysis

[321] We will first address the jurisdictional issue raised by counsel for Her Worship who submitted that the Panel lacked jurisdiction to deliberate on this allegation as it was effectively a criticism of the particular result in the matter.

[322] Rule 4.4 of the JPRC's Procedural Rules limits the jurisdiction of the Council to the investigation and review of complaints or allegations about the conduct of a justice of the peace and clarifies that the jurisdiction does not extend to a particular result in any proceeding.

[323] There is an important distinction to be made between an allegation regarding the appropriateness of isolated comments within a Judgment, and an allegation that is critical of a jurist's reasoning process or the result in a particular matter. We find that the allegation falls within the first category and not the second; it is a complaint about conduct, not the ultimate result in the case.

[324] This Panel therefore concludes that the Panel does in fact have jurisdiction to consider the allegation.

[325] Turning to the merits, the Panel must be satisfied that there is clear and convincing proof based on cogent evidence which establishes judicial misconduct on a balance of probabilities.

[326] The Panel is satisfied, based on the assertions made by Justice of the Peace Lauzon in her testimony, which were not effectively challenged in cross-examination, that she did not mean, nor did she demonstrate, any obvious disrespect for Madam Justice Ratushny personally, the Superior Court of Justice, or the concept of *stare decisis*. Likewise, there is no objective basis on which to conclude that Justice of the Peace Lauzon was demonstrating a disrespect for the

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<sup>123</sup> Transcript of September 17<sup>th</sup>, 2019 at p. 136

<sup>124</sup> Transcript of September 18<sup>th</sup>, 2019 at p. 180

administration of justice during either the show cause hearing for N.P. or her decision in it.

[327] In determining whether judicial misconduct has been established, the Panel must determine whether the conduct so seriously compromised the impartiality, integrity and independence of the judiciary to the extent that it would undermine the public's confidence in the ability of the justice of the peace to perform the duties of her office and whether the public's confidence in the administration of justice generally has been undermined.

[328] The Panel concludes that Justice of the Peace Lauzon's comments in *R. v. AJN* do not meet the high standard that is required in order to find that judicial misconduct has occurred. In the course of a decision, given orally, she referenced several cases that had been provided to her. While her specific comments with respect to Madam Justice Ratushny's bail review decision in *R. v. NP* could be perceived as slightly arrogant and dismissive, they do not meet the high standard needed to characterize them as judicial misconduct.

[329] The second allegation of judicial misconduct relating to the comments Justice of the Peace Lauzon made in the course of the bail hearing in *AJN* is therefore dismissed.

### **Submissions on Disposition**

[330] The Panel will hear submissions on disposition from counsel commencing at 10:00 a.m. on July 16, 2020.

Dated at the city of Toronto in the Province of Ontario, May 7, 2020.

HEARING PANEL:

The Honourable Justice Feroza Bhabha, Chair

Regional Senior Justice of the Peace Thomas Stinson, Justice of the Peace Member

Ms. Margot Blight, Lawyer Member