

JUSTICES OF THE PEACE REVIEW COUNCIL

(Toronto, Ontario)

**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 Respecting
Justice of the Peace Julie Lauzon**

Before: The Honourable Justice Feroza Bhabha, Chair
 Regional Senior Justice of the Peace Thomas Stinson,
 Justice of the Peace Member

 Margot Blight, Lawyer Member

**Reasons for Decision on Disposition
and
Reasons for Decision on Her Worship's Application for Compensation**

Mr. Ian Smith and Mr. Andrew GuaglioPresenting Counsel
Mr. Lawrence Greenspon and Mr. Graham BebbingtonCounsel for Her Worship

MAJORITY REASONS FOR DECISION ON DISPOSITION

(Justice Feroza Bhabha and Margot Blight)

A. INTRODUCTION AND OVERVIEW

1. In written Reasons delivered on May 7, 2020, this Hearing Panel upheld the first allegation in the Notice of Hearing against Her Worship, Julie Lauzon. We unanimously found that Justice of the Peace Lauzon committed judicial misconduct when she authored and submitted an Article for publication entitled, “When bail courts don’t follow the law” (the “Article”). We dismissed the second allegation relating to comments Her Worship made during the course of a bail hearing about another jurist’s respect for the presumption of innocence.
2. In our *Reasons for Decision*, we found that Her Worship used the power and prestige of her office to make disparaging comments about Crown counsel and the bail courts in Canada and, in so doing, failed to uphold the fundamental principles of judicial office. In particular, we found that she failed to uphold the integrity and impartiality of her office.
3. The function of the Justice of the Peace Review Council (the “JPRC”) is remedial whether at the investigation stage of a complaint and even following a finding of judicial misconduct. Our paramount objective in imposing a disposition is to protect and restore the integrity of the judiciary as a whole, not to punish Her Worship personally.¹ The Divisional Court explained in *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 how the objective in this process differs from other circumstances:

[34] On this issue, I start with the observation that the objective to be achieved through a disposition recommended by a body, that is considering a discipline issue involving a person holding judicial office, is different than is the objective to be achieved, for example, in sentencing an accused person or suspending the privileges of a person who holds a license to engage in an activity. In the latter situation, the sentencing objectives are principally offender centric. In other words, in that situation, the focus is chiefly, but not exclusively, on the accused person.

¹ See : *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 at para.68 ; *Re Barroilhet* (2009) at paras. 9-10

[35] The objective is different when considering a disposition involving the holder of judicial office. The objective in such cases is principally directed at maintaining or restoring public confidence in the integrity of the judiciary. This object is described in *Ruffo v. Conseil de la magistrature*, 1995 CanLII 49 (SCC), [1995] 4 S.C.R. 267 where Gonthier J. said, at para. 68:

The Comité's mandate is thus to ensure compliance with judicial ethics in order to preserve the integrity of the judiciary. Its role is remedial and relates to the judiciary rather than the judge affected by a sanction.

4. If the Hearing Panel finds that a disposition is required in the circumstances, there is a broad range of available dispositions under s. 11.1 (10) of the *Justices of the Peace Act* (the “JPA”). In *Phillips* (2013), the Hearing Panel, citing *Douglas* (2006, OJC) and *Re Baldwin* (2002, OCJ) approved and followed the progressive discipline approach to judicial misconduct.²
5. This approach starts with consideration of the least serious disposition or combination of available dispositions that could achieve the objective of restoring public confidence in the judicial officer, where possible, as well as the judiciary, and only moves towards the other end of the spectrum if the nature and seriousness of the misconduct, among a myriad of other factors, support a disposition in the upper range of the available options.

B. THE AVAILABLE DISPOSITIONS UNDER THE JPA

6. Section 11.1(10) of the *JPA* sets out the various dispositions that may be imposed. The panel may,
 - a) warn the justice of the peace;
 - b) reprimand the justice of the peace;
 - c) order the justice of the peace to apologize to the complainant(s) or any other person;
 - d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to it as a justice of the peace;
 - e) suspend the justice of the peace with pay, for any period;
 - f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or

² In the Matter of a Hearing Ordered Under S. 11.1 of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, re Justice of the Peace Donna Phillips, at para. 17

- g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2.

- 7. Section 11.1(11) of the *JPA* provides that the Hearing Panel “may adopt any combination” of the dispositions set out in s. 11.1(10). However, a decision to recommend to the Attorney General that the justice of the peace be removed from office cannot be made in combination with any of the other dispositions provided for in s. 11.1(10).
- 8. As noted, previous JPRC Hearing Panels have adopted the progressive approach when determining the appropriate disposition in a particular case.³ These Panels have imposed the dispositions in s. 11.1 (10) of the *JPA* ranging from the least serious to the most serious explaining which dispositions fall into each of the ranges.
 - i) Least serious: warnings, reprimands, and orders for apologies;
 - ii) Mid-range: education and treatment;
 - iii) Serious: suspension with pay for any period of time; a suspension without pay for a period of up to one month; and finally, the most extreme: recommendation for removal from office.

C. COUNSELS’ SUBMISSIONS ON DISPOSITION

Position of Counsel for Her Worship

- 9. Mr. Greenspon, counsel for Her Worship, submitted that in the particular circumstances, no disposition is required.
- 10. Firstly, counsel submitted that the *JPA* does not mandate that any of the available dispositions be imposed. Section 11.1(10) only sets out the dispositions that a Hearing Panel “may” impose. Therefore, a disposition “should be invoked [only] when necessary”.⁴

³ See: *Re Welsh* 2009, *Re Massiah* 2012; *Re Phillips*, *supra*, and

⁴ *Re Douglas* (OCJ 2006) at paras. 8-9

11. Secondly, in support of his submission, counsel asked the Panel to consider that “the complaint process, the hearing, the *Reasons for Decision* of the Panel on the evidence, and the publicity surrounding all of these stages of the judicial discipline process have had “significant effects” on Justice of the Peace Lauzon. In essence, his submission was that she has been sufficiently punished and that it is not necessary for the Panel to impose a further sanction.
12. In the alternative, counsel submits that “if this panel finds a sanction is deemed necessary, a reprimand is the appropriate sanction”.
13. Counsel for Her Worship specifically recommended against a disposition that included an apology. He submitted that any consideration of an order to apologize would not be an appropriate order “given the lack of remorse on the part of Justice of the Peace Lauzon.”⁵
14. Finally, counsel submitted that this is not a case in which a recommendation for removal from office is warranted.

Submissions of Presenting Counsel

15. Without recommending a specific disposition, Presenting Counsel submitted that, based on the Panel’s findings, the many aggravating factors, including Her Worship’s conduct during the proceedings and the absence of mitigating circumstances such as an acknowledgment of the misconduct, or an expression of genuine remorse, the Panel could reasonably conclude that there is a sufficient basis to impose a disposition at the more severe end of the spectrum of the available dispositions: either a suspension with or without pay or a recommendation for removal from office.

⁵ Submissions by Mr. Greenspon, Transcript of July 16, 2020 at pg. 144, L.3 to L. 12

D. PLACING THE MISCONDUCT ON THE SPECTRUM

16. Determining where Her Worship's conduct falls within the spectrum of judicial misconduct from least serious, mid-range to most serious was not a difficult task. We were guided by the relevant case law and our own findings in our *Reasons for Decision*, dated May 7, 2020.
17. In our *Reasons for Decision*, we found that Her Worship's misconduct was serious in several respects, including the fact that it was planned and carefully thought out. The impact was significant in that the initial publication in the *National Post*, a publication with broad reach, subsequently received additional media coverage in other news outlets.
18. Her Worship was the sole author of the Article. She chose a forum with a high degree of visibility in which to express and disseminate her opinions about the administration of justice and the Crown Attorneys who appeared before her. She testified that she chose both her words and the forum with intention and purpose. She also testified that she knew and expected that in writing and publishing the Article she would find herself before the JPRC. Yet, she forged ahead regardless. She sought no advice from anyone about the content of the Article neither from her colleagues nor her family because she did not want to be dissuaded. She testified that she wanted to bring attention to a pressing problem for which she was prepared to "take a hit for the team", knowing that she had everything to lose.⁶
19. The Panel found that the Article had the effect of undermining public confidence in the administration of justice and betrayed her ethical obligation to remain impartial.
20. The Panel further found that the Article was personal and retributive in that Her Worship intended to exact retribution on a number of Crown Attorneys in particular: those whom she believed had shown her or her office disrespect.

⁶ Evidence of Justice of the Peace Lauzon, Transcript, September 18th, 2019, at p. 57, l. 9 to p. 58, l. 22, and September 17th, 2019, at p. 94, ll. 8-11,

21. A significant amount of time has passed since the Article was published. Yet, there is no evidence that Her Worship has taken the opportunity to reflect further on the Article and her ethical obligations when expressing opinions in a public forum about the administration of justice. She testified that in writing the article she “didn’t feel like [she] was using any kind of authority... [she] was just speaking as a person who was in those courts”.⁷
22. There is no evidence before us that Justice of the Peace Lauzon has engaged in further education or sought out a judicial mentor to better understand her ethical obligations. If anything, she has remained consistent in maintaining that she expressed herself appropriately in the Article.⁸ This is evident from her affidavit evidence, her testimony before this Panel, as well the submissions of her counsel. She remains convinced that she did not breach any of her ethical obligations in writing the Article. She maintains that it was necessary, and, in fact, the publication of the Article had a salutary effect on bail law; she believes the Article was the catalyst for the changes to bail law beginning with the Wyant report⁹ and culminating in the Supreme Court decision in *Antic*.¹⁰
23. Her Worship’s testimony also revealed that she continues to harbour disdain bordering on contempt for Crown counsel.¹¹ This speaks to Her Worship’s lack of respect for her ethical obligation to appear to be and to remain impartial.¹²

⁷ Ibid, at p. 8, l. 5 to p. 9, l. 5, p. 18, ll. 19- 24

⁸ Evidence of Justice of the Peace Lauzon, Transcript, September 17th, 2019 p. 149, ll. 6-8 and Transcript September 18th, 2019 at p. 140, ll. 11 to 19; p. 142, l. 21 to p. 143, l. 143

⁹ It became apparent during these proceedings that Her Worship credits her Article as the catalyst for changes in the bail system prior to *Antic*. Justice of the Peace Lauzon she believes that within two months of the Article Chief Justice Maisonneuve of the Ontario Court of Justice commissioned the Wyant Report and that this was a direct result of the Article. There was no evidence to support this belief. The Wyant Report appears to have been a joint partnership between the province for Ontario (Ministry of the Attorney General) and the province of Saskatchewan. See: Evidence of Justice of the Peace Lauzon, Transcript September 17th, at p. 85, ll. 17-20; p. 91, l. 23 to p. 92, l. 2, p. 132, ll. 19-22, and Transcript September 18th, 2019, p. 55, l. 24 to 57, l. 6 and Wyant Report at p. 5, paras. 2-3.

¹⁰ Evidence of J.P. Lauzon, Transcript, September 17th 2019, at p. 57, l. 3 to p. 59, l. 17, p. 75, ll. 17-19

¹¹ Evidence of J.P. Lauzon, Transcript, September 17th, 2019, pp. 32, 63, 98, 114, 145, 185, and 229

¹² Evidence of J.P. Lauzon, Transcript, September 18th 2019, at p. 21, l. 2 to p. 25, l. 1; p. 59, l. 11 to p. 61, l. 25

24. For all of these reasons, the Panel finds that a reprimand is a wholly inadequate disposition. It fails to properly reflect the seriousness of the misconduct, nor can it, standing alone, restore public confidence in Her Worship, the judiciary, and the administration of justice.
25. Similarly, we find that the mid-range dispositions available such as counselling, education and or an apology are also inadequate alone or in combination, to fully restore public confidence in Her Worship, the judiciary and the administration of justice. In any event, Her Worship specifically requested that the Panel not impose an apology as a disposition, or part of one, given her lack of remorse. In the circumstances, we conclude that for an apology to be meaningful, it should be sincere, and we are not convinced that would be the case for Her Worship.
26. We therefore find ourselves considering the options at the most serious end of the spectrum: suspension with or without pay in combination with other dispositions, or a recommendation for removal from office.
27. Restoring public confidence in the judiciary as a whole must be the paramount principle guiding our decision. We cannot emphasize enough that our objective, and the objective of the judicial discipline process, is decidedly not to punish Her Worship personally.
28. The question we have asked is whether the lesser disposition of a suspension with or without pay alone or in combination with any other dispositions can achieve the objective of restoring public confidence in Her Worship and the judiciary. If so, then this lesser disposition or combination of dispositions is the most appropriate one.
29. It is at this juncture that the majority of the Panel parts ways with our esteemed Panel member, Regional Senior Justice of the Peace Thomas Stinson. He is of the view that a suspension without pay in combination with a reprimand can adequately restore public confidence in Her Worship and the judiciary. With respect, we disagree.
30. Firstly, we take a different view of some of the factors that His Worship Stinson has characterized as neutral or mitigating.

31. Secondly, His Worship Stinson emphasizes that this was a single act of misconduct, but in our view, he has failed to consider Her Worship's lack of insight into her misconduct and unwillingness to acknowledge that her ethical obligations as a judicial officer extend beyond the courtroom and into the community. The dissenting decision also suggests that the focus should be on Justice of the Peace Lauzon's behaviour rather than her actual beliefs. His Worship Stinson appears to accept that Justice of the Peace Lauzon continues to harbour *animus* towards Crown counsel but that this should not be a significant factor in determining whether public confidence in her can be restored by a less serious disposition. We fundamentally disagree with this approach. In *Zabel*, the Panel stated: "Perceptions matter. It is a long-standing principle that "justice should not only be done but should manifestly and undoubtedly be seen to be done".¹³ Justice of the Peace Lauzon published her beliefs and expressed them in her testimony; beliefs that betray a bias and undermines her impartiality and integrity. We note that in imposing a one month suspension, the Panel in *Zabel* made a point of explaining that they were satisfied that Justice Zabel did not actually hold the beliefs associated with the Trump campaign and that he was "an entirely fair-minded and impartial judge who is dedicated to the highest ideals of his calling".¹⁴ Appearances and expressed beliefs do matter especially in the context of hearing of this nature. The biased beliefs that Justice of the Peace Lauzon continues to hold about Crown counsel speak to the absence of any likelihood of *genuine* remediation or rehabilitation.

32. Thirdly, His Worship Stinson rightly points out that in imposing a disposition, the Panel should not lose sight of the fact that judicial officers are human beings and that mistakes will be made. However, in our view, the question is the gravity of the misconduct and how it can be adequately addressed in order to restore public confidence in the integrity of the judiciary. With that in mind, how can the actions and comments of Her Worship be meaningfully addressed given the remedial nature of our objective?

¹³ (OJC, 2017), at paras. 33- 34 and 60

¹⁴ Ibid, at para. 59

33. The challenge for the Panel is determining a disposition that will restore the loss of faith in Her Worship's ability to uphold the impartiality and integrity of her judicial role in carrying out her judicial functions when she does not acknowledge that she erred at all.
34. In our view, the fact that Justice of the Peace Lauzon has not engaged with the media since the publication of the Article is not indicative of genuine efforts at remediation. Neither the JPRC process nor the Panel's finding of misconduct were intended to have the effect of silencing Her Worship or denying her the right to express herself ever again, as long as she holds judicial office. Judicial officers are not relegated to the status of "verbal eunuchs" upon appointment. They are free to express themselves, as long as they do so with "dignified restraint" and in accordance with their ethical obligations.¹⁵
35. It is also worth noting that in responding to the first allegation, Her Worship brought a *Charter* application alleging that the complaints process and the JPRC proceedings had the effect of breaching her freedom of expression. This reinforces Her Worship's view that not only did *she* not err or engage in misconduct in writing and publishing the Article, it is *she* who is the aggrieved party.
36. We agree that while judicial officers are held to a very high standard of conduct, the standard ought not be one of perfection. That is precisely why mitigating circumstances such as a demonstration of insight, acknowledgement of the misconduct, engagement in mentoring or education, or an apology can and have resulted in dispositions short of a recommendation for removal from office even where the misconduct was serious. Insight or contrition can indeed go a very long distance in restoring the public's faith in the jurist, the judiciary and the administration of justice. This is because it balances human fallibility with the potential for rehabilitation. It also can serve to restore faith in the judicial officer and by extension, the judiciary and the administration of justice.
37. With respect, it is the majority view that His Worship Stinson's analysis places too much weight on the absence of complaints by individual members of the public and ignores the fact

¹⁵ See: *Doré v. Barreau du Québec* [2012] S.C.R. 395, at para 68 (per Abella, J) and The Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice (the "Principles of Judicial Office")

that both the Ministry of the Attorney General and the Public Prosecution Service represent the state and, by extension, the public interest. The dissent also does not take into account the unchallenged evidence of Ms. Kate Matthews, then President of the Ontario Crown Attorney's Association (the "OCAA"), the representative of all Ontario's Crown Attorneys, regarding the significant impact of the Article on members of her association many of whom called or sent emails from all parts of the province complaining about the Article to their executive.

38. Finally, His Worship Stinson also makes the point that the majority of the Panel ought to exercise care and restraint in imposing a disposition that recommends removal because it would have a chilling effect on judicial independence. However, in *Moreau- Bérubé* Justice Arbour writing for the Supreme Court of Canada observed that:

When a disciplinary process is launched to look at the conduct of an individual judge, it is alleged that an abuse of judicial independence by a judge has threatened the integrity of the judiciary as a whole. //...// While it cannot be stressed enough that judges must be free to speak in their judicial capacity, and must be perceived to speak freely, there will unavoidably be occasions where their actions will be called into question. This restraint on judicial independence finds justification within the purposes of the Council to protect the integrity of the judiciary as a whole. (Emphasis added)

39. The Canadian Judicial Council (the "CJC") in *Re Bienvenue* also addressed the issue, noting that:

...the role of ensuring compliance with judicial ethics does not have the effect of undermining the principle of judicial independence.... //... The mandate of a disciplinary authority is to ensure compliance with judicial ethics in order to preserve the "integrity of the judiciary", as Gonthier, J. put it in *Ruffo*... [referring to the] to a disciplinary committee ... Its role is remedial and relates to the judiciary rather than the judge affected by the sanction. (Emphasis in original.)

40. As we will explain, there are a host of reasons that have regrettably and unavoidably led us to the conclusion that even though this was a single act of misconduct in the context of an otherwise unblemished career, the public's faith in the judiciary and the administration of justice will only be further eroded, much less restored, if the Panel were to impose a disposition

that would have the effect of only suspending Her Worship from exercising her judicial duties for a period of one month, with or without pay, together with a reprimand.

E. DECISION ON DISPOSITION

41. Our task has been an onerous one. Regrettably, for the reasons set out in this decision, the majority of this Panel is not satisfied that one of the lesser dispositions under s. 11.1(10)(a) to (f) or a combination of those dispositions is sufficient to restore public confidence in Her Worship, the judiciary or the administration of justice.
42. The Panel recognizes that the threshold is indeed a high one, as it should be, for the most extreme of dispositions and that restraint must be exercised where at all possible. We therefore do not arrive at this decision lightly.
43. We find that the serious nature of the misconduct, which was reinforced by Her Worship's testimony, is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has irreparably undermined public confidence in Justice of the Peace Lauzon's ability to perform her duties. We further find that the erosion in confidence in Her Worship has rendered her incapable of performing the duties of her office. In the result, the most severe disposition, a recommendation to the Attorney General that Her Worship be removed from office is necessary to restore public confidence in the judiciary and the administration of justice.

F. ANALYSIS

44. In this part of our Reasons, we will set out the factors pertinent to this case and the caselaw we considered persuasive that guided us in the conclusion we reached as to the appropriate disposition.
45. We begin with the Hearing Panel's decision in *Phillips*. The Panel relied on the list of ten factors identified by the Ontario Judicial Council ("the OCJ") in their decision in *Re Chisvin*. The factors are in effect a compilation of many of the mitigating and aggravating factors that are useful in determining the appropriate disposition that would restore public confidence in

cases where a judicial officer has been found to have engaged in misconduct. The ten factors cited in *Re Chisvin* are:

- i) Whether the misconduct was an isolated incident or part of a pattern of conduct;
- ii) The nature, extent and frequency of occurrence of the act(s) of misconduct;
- iii) Whether the misconduct occurred in or out of the courtroom;
- iv) Whether the misconduct occurred in the judicial officer's official capacity or in his or her private life;
- v) Whether the judicial officer has acknowledged or recognized that the acts occurred;
- vi) Whether the judicial officer has evidenced an effort to modify his or her conduct;
- vii) The length of service on the bench;
- viii) Whether there have been prior complaints about this judicial officer; and
- ix) The effect the misconduct has on the integrity of and respect for the judiciary; and
- x) The extent to which the officer has exploited his or her position to satisfy his or her personal desires.

46. In subsequent decisions, the following additional factors have also been identified and found relevant to the Hearing Panel's analysis:

- i) Whether there were multiple complaints;
- ii) Whether the acts constituting judicial misconduct were also the subject of a criminal sanction;
- iii) Whether there was an element of corruption to the misconduct;
- iv) Whether the justice of the peace demonstrated an understanding of the seriousness of the misconduct;
- v) Whether the justice of the peace acknowledged the misconduct or otherwise demonstrated remorse; and
- vi) Whether the judicial officer has properly complied with the disciplinary process.

47. In assessing the impact or weight we should give to the mitigating and aggravating factors in this case, this Panel has been also been guided by previous decisions of the JPRC, as well as

decisions of the OJC, and the CJC. In particular, our focus was on cases where, as in this case, the misconduct was found to be serious.

48. While each case must be decided on the unique facts reflecting not only the impugned conduct, but the particular circumstances of the judicial officer, for reasons that we have outlined, we found the *Zabel* decision to be particularly instructive in that that there was a finding of serious misconduct relating to a single, isolated incident of a judicial officer who chose to exercise his expressive rights inappropriately.¹⁶
49. Invariably, in all of the cases we reviewed where the disposition imposed was at the extreme end of the spectrum but fell short of a recommendation for removal from office, there were significant mitigating circumstances. Among these, the most significant factor was an acknowledgment of the misconduct by the jurist and an apology which demonstrated sincere remorse.
50. In some cases, even an acknowledgment or sincere apology for the misconduct was found to be insufficient to restore confidence in the judiciary resulting in a recommendation for removal from office. *Camp* was one of those cases.¹⁷
51. The CJC considered comments that Justice Camp made during the cross-examination of a vulnerable complainant in a sexual assault trial. The Council found that that the conduct “was manifestly serious and reflected a sustained pattern of beliefs or a particularly deplorable kind, regardless of whether he was conscious of it or not”. The CJC found that such misconduct “adds to the perception that the justice system is [fueled] by systemic bias and it therefore courts the risk that in other sexual assault cases, unpopular decisions will be unfairly viewed as animated by that bias, rather than by the application of legal principles and sound reasoning and analysis”. The CJC found it aggravating that Justice Camp repeated some of his insensitive comments in his Judgement which was some time after the initial comments were made.¹⁸

¹⁶ *Re Zabel* (OCJ 2017)

¹⁷ *Re Camp, Report of the Canadian Judicial Council to the Minister of Justice* (March 8, 2017)[*Camp*, Report to the Minister]

¹⁸ *Supra*, at para. 50

52. After the fact, Justice Camp engaged in significant remedial efforts that included an apology, as well as intensive educational sessions with experts to address his shortcomings. However, the Council found that even a single highly prejudicial or offensive comment might be sufficiently grave to seriously undermine public confidence in a judge and the judiciary. Ultimately, the CJC found that Justice Camp's "serious remedial efforts" were insufficient to restore public confidence and they recommended that he be removed from office.¹⁹
53. *Moreau-Bérubé*, is another example of a circumstance where even a prompt and sincere apology was insufficient to merit a disposition that allowed the Justice to remain on the bench.
54. Justice Moreau-Bérubé who presided in New Brunswick made disparaging and discriminating remarks in court about the residents of the Acadian Peninsula. The very same evening she recognized her misconduct and she in fact informed the Judicial Council about her "terrible mistake". She issued an apology in court three days later.
55. The New Brunswick Judicial Council concluded that a reasonable and well-informed person would conclude that the misconduct of the judge had undermined public confidence in her and would have a reasonable apprehension that she would not perform her duties impartially. The recommendation was that she be removed from office.
56. On a judicial review before the Court of Queen's Bench, the Council's decision was reversed, and that decision was upheld in the Court of Appeal. However, the Supreme Court of Canada restored the Council's decision finding that "in light of the sweeping and generalized nature of Justice Bérubé's derogatory comments, it would be difficult to call the conclusion reached by the Council patently unreasonable".²⁰
57. In both *Flynn* and *Matlow* the misconduct involved comments made to the media. In *Flynn* there was an acknowledgment of the misconduct, and in the case of *Matlow*, an unreserved, if belated, apology. Both resulted in dispositions that fell short of recommendations for removal from office, notwithstanding the seriousness of the conduct.

¹⁹ Supra, at paras. 37-42

²⁰ At para. 71

58. Justice Flynn responded to a journalist seeking comment about a land transaction that Justice Flynn and his wife had participated in. He responded to explain the residents' point of view, but in so doing the Council found that his comments "could easily be interpreted as a sign of indifference to the rule of law which would be inappropriate coming from a judge, *had he not attenuated them in his letter to the Council.*" (Emphasis added)
59. Justice Flynn acknowledged his remarks and through counsel he acknowledged that he had erred. The Council ultimately found that Justice Flynn retained his independence and impartiality. This Panel finds that the same cannot be said of Her Worship, given: 1) the absence of any insight into or acknowledgment of her misconduct and 2) the continuing *animus* she displayed against Crown Attorneys during these proceedings. That gives rise to a reasonable apprehension of bias, if not actual bias.
60. In *Matlow*, the issue was Justice Matlow's course of conduct in opposing a land development proposal in which he had a personal stake. It was not an isolated incident. The Committee concluded that Justice Matlow's conduct went "beyond a simpler failure to act in a reserved manner and reflects an unacceptable disregard for the impact of his involvement with the news media on public confidence in the integrity, impartiality and independence of the judiciary". The Committee characterized Justice Matlow's conduct as "exceedingly serious impropriety amounting to judicial misconduct." In particular, the Committee held that his comments about the absence of the rule of law demonstrated "a singular lack of good judgment". Based on his comments, the Committee held that it was "difficult to conclude that a perception of impartiality on the part of Justice Matlow could thereafter exist in *any* matter involving the City.
61. The Committee recommended that Justice Matlow be removed from office based on his expressive acts and other misconduct relating to the development project. However, a majority of the CJC disagreed with some of the Inquiry Committee's conclusions as to some aspects of the misconduct but agreed that he had used intemperate language which was inappropriate and that negatively affected the perception of impartiality in the judicial role.

62. The majority disagreed with the Committee’s recommendation for removal; instead the CJC directed Justice Matlow to: 1) apologize to numerous individuals; 2) attend a seminar on judicial ethics; and 3) obtain a favourable opinion from the Advisory Committee on Judicial Ethics before participating in any public debate.
63. In its decision to depart from the Committee’s recommendation, the majority placed significant reliance on the support for and confidence in Justice Matlow from the local community. As well, after the Committee’s decision, when he was before the Council, Justice Matlow made a statement in which he apologized “without reservation” for his errors of judgment and inappropriate conduct and promised never to repeat similar conduct. The majority accepted these expressions of regret as sincere.²¹ The majority also considered that Justice Matlow’s misconduct occurred in the context of his then 27-year career with no evidence of any prior inappropriate behaviour.
64. Justice Matlow’s unreserved apology, as noted, came very late in the process. However, the Council gave significant weight to the apology, as well as the community support Justice Matlow received. These are important distinguishing features that are notably absent in this case.
65. There is no evidence before this Panel that Justice of the Peace Lauzon enjoys broad-based support from the bar or the community. At the first stage of these proceedings, she proffered affidavits from two judicial colleagues that speak to her passion for the rule of law, her motivations as they understood them, and their own experiences in a bail court pre-*Antic*.²²
66. Finally, in the case of *Zabel*, the misconduct in issue involved an expression by a judicial officer in court, not to the media, that created an apprehension of bias. Justice Zabel wore a “Make America Great Again” hat in court the morning after the 2016 U.S. presidential election. He gave evidence that he did so thinking he would add a bit of humour by starting the day with the hat, which was very ill-fitting. He also stated that the hat was in celebration of a historic night in the United States and then went on to make further comments while in court about his

²¹ *Re Matlow* at paras. 179-183

²² See Presenting Counsel’s Book of Documents on Disposition, Tabs 1 and 3

support for Trump, contrasting that with his colleagues' views about the results of the election. The incident garnered media attention (and dozens of complaints), though it was not designed to have that effect. This distinguishes the Zabel case from this one in that Justice of the Peace Lauzon sought out media attention in a news outlet with national reach.

67. Other distinguishing aspects of the *Zabel* case are that Justice Zabel apologized in court six days later and in the proceedings before a Hearing Panel of the Ontario Judicial Council, he admitted that his actions amounted to judicial misconduct and apologized a second time.
68. In addition to Justice Zabel's sincere apology, he also provided dozens of letters of support from both defence and crown counsel attesting to his impartiality and otherwise good reputation. The "bipartisan" support Justice Zabel received from the bar is yet another feature that distinguishes that case from this one.
69. The Hearing Panel found that Justice Zabel's misconduct was serious and that it contravened the fundamental principle that judges must not express political views; that the administration of justice must remain separate from and above the fray of political debate.
70. Given the gravity of the conduct, the Hearing Panel held that the choice was between suspension for 30 days, possibly combined with other sanctions, and a recommendation for removal: the two most serious dispositions available.
71. After considering both the mitigating and aggravating factors identified in *Re Chisvin*, the Hearing Panel imposed a one-month suspension without pay, as well as a reprimand.
72. Among the many mitigating factors the Hearing Panel considered were that Justice Zabel:
 - 1) Admitted the misconduct;
 - 2) Publicly apologized shortly after the incident (though it found the apology to be wanting) and he did so again before the Council;
 - 3) Profoundly regretted his conduct;
 - 4) Posed no risk of committing similar misconduct in the future;
 - 5) Showed an effort to change or modify his conduct by engaging in one on one education with a Superior Court Justice acting as his mentor; and

- 6) Had served for 27 years with distinction and adduced substantial evidence concerning his exemplary reputation among both the bench and bar (both Crown and defence), which the Hearing Panel found to be the most significant factor.

73. The Hearing Panel concluded that despite the fact that Justice Zabel committed serious misconduct giving rise “to a perception by many that he was a Trump supporter and that he agreed with Trump’s views and policies, he did not actually hold any of the discriminatory views that the complainants associated with the Trump campaign.” The Hearing Panel was satisfied that “members of the vulnerable groups need have no fear about mistreatment they would receive from Justice Zabel”. This finding also distinguishes the Zabel case from this one. We are unable to conclude that Crown counsel need have no concerns about receiving a fair hearing when appearing before Justice of the Peace Lauzon.

G. MITIGATING AND AGGRAVATING FACTORS IN THIS CASE

i) The nature and extent of the misconduct

74. In our Reasons for Decision holding that Justice of the Peace Lauzon engaged in judicial misconduct, we made a number of findings that relate to the nature and extent of the misconduct, including that Justice of the Peace Lauzon:

- failed to uphold the Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice and in so doing engaged in serious misconduct that undermined public confidence in the administration of justice;
- inappropriately used the power and prestige of her judicial officer to express opinions about bail court and other participants in the justice system;
- made disparaging comments and allegations of misconduct against Crown Attorneys that were insulting and inflammatory;
- was motivated in part to exact retribution against parties she felt had aggrieved her;
- took little care or restraint in the manner she wrote the Article, or in choosing the very public forum to disseminate her opinion;
- made little effort to be fair or balanced in her critique or observations;

- conducted herself in a manner that was undignified for a judicial officer.²³

75. As to the extent of the misconduct, the Article was disseminated in the *National Post*, a news outlet with national reach. It was published both in print and online formats. Following the publication of the Article, there were other news outlets that also reported on the Article. It therefore had a detrimental impact on the integrity of the judiciary and the administration of justice.

ii) Whether the misconduct was an isolated incident or part of a pattern of conduct

76. The Panel's finding of misconduct was based on the publication of the Article, in particular, the manner and forum in which Her Worship chose to express herself and Her Worship's evidence about the Article. The Panel expressly did not consider Her Worship's conduct following the Article or during these proceedings. In fact, counsel for Her Worship implored the Panel not to consider any conduct other than the Article, submitting that it would in fact be inappropriate to do so when considering the issue of the alleged misconduct that lead to the complaints.²⁴

77. Considered in that light, the publication of the Article was an isolated incident, and this is a mitigating factor. There was no evidence of any pattern of prior or other inappropriate conduct that was the subject matter of a complaint before the Panel.

78. However, Presenting Counsel submits that it is open to this Panel to find that the evidence shows continuing bias by Her Worship since the publication of the Article and in that regard, the misconduct cannot be characterized as an isolated event, but part of a pattern of misconduct.

79. While the Panel agrees that Her Worship's conduct since the publication of the Article is relevant at this stage of the proceedings, in our view that conduct is more appropriately considered under the rubric of other factors such as whether there has been any insight into

²³ Reasons for Decision, paras. 142-145 and para 303.

²⁴ Submissions of Counsel for Her Worship, Transcript October 9th 2019, p. 8, l. 10 to p. 9, l. 15

and acknowledgement of the seriousness and gravity of the conduct, whether there has been any effort to change or modify the impugned conduct, and whether there has been any sincere expression of remorse.

iii) Did the misconduct occur in or out of the courtroom; and

iv) Did the misconduct occur in official capacity or private life

80. In our view, given the subject matter of the Article and the context in which it was published, these two factors ought to be considered together. The misconduct occurred on the pages of the *National Post*, a widely-circulated news outlet. It did not occur in the courtroom.

81. Generally, misconduct that occurs outside a courtroom will be considered less aggravating because the judicial officer was likely not acting in her official capacity. However, the particular circumstances of this case call for a more nuanced analysis.

82. Her Worship was not simply expressing herself as a private citizen on a matter unrelated to the administration of justice. She clearly identified herself as a justice of the peace. She relied on her office to add authority to opinions she expressed about bail court and the administration of justice. She described practices in her courtroom and gave very specific examples of her personal experiences *as a justice of the peace in bail court* when describing the conduct of Crown counsel.

83. As she testified, her aim was to shed light on her view of her personal experiences *in the courtroom*, so that the public would know that bail court was “devoid of the rule of law” and a “disgrace” and that something had to be done about it.

84. This Panel found that Justice of the Peace Lauzon inappropriately used the power and prestige of her judicial office to exact retribution on Crown Attorneys who she thought were disrespectful to her. In the circumstances of this case, we find that the misconduct is so closely tied to Her Worship’s official role that it is more closely related to instances of misconduct that

occurred in court, rather than in the course of her private life. The hybrid context of the misconduct, we find, is an aggravating circumstance.

v) Whether the judicial officer has acknowledged or recognized that the acts occurred

85. Counsel for Her Worship submitted that she has acknowledged from the outset that she authored the Article and it was she who was responsible for authorizing its publication. She did, however, take issue with the print version of the Article which she maintained she did not approve. Her Worship struggled to explain why she disavowed the print version. The Panel found no material differences between the two versions.²⁵

86. In our view, authorship of the Article is not the deep issue when considering the application of this factor to this case. The caselaw has interpreted this factor as an acknowledgment or recognition of the conduct in the broader sense, not in the strict criminal law sense of an acknowledgment of the *actus reus*.

87. There was never any doubt that Justice of the Peace Lauzon wrote the Article and submitted it to the newspaper. She identified herself by name as a sitting justice of the peace in Ottawa so that the Article would get noticed and be taken seriously. In a follow up piece by another newspaper, Her Worship's photograph accompanied that article. The Panel finds that it is too simplistic an approach to submit that it is a mitigating factor that Justice of the Peace Lauzon admitted she wrote the Article.

88. What is more relevant in assessing this factor is Her Worship's testimony. She did not acknowledge or concede that she acted inappropriately, or that she engaged in any misconduct. When asked if in writing the Article she had a duty to avoid appearing partial, she testified that she was unable to speak to that since a reader's impression of her Article is subjective. Her Worship maintained that effectively all she did was to present the unvarnished truth under a spotlight for all to see. In her view, it was an exercise in logic not emotion. If the Article

²⁵ See Reasons for Decision, paragraphs 178-193

“ruffle[d] a few feathers”, then that was a collateral consequence. Justice of the Peace Lauzon also added that “if it upsets certain people, well, probably there is an issue to begin with.”²⁶

89. Justice of the Peace Lauzon continues to maintain that position at this stage of the proceedings. Counsel for Her Worship submitted that the absence of any acknowledgment of the misconduct “just shows that she’s maintaining the position that she took in the first place.”²⁷

90. Counsel urged this Panel not to “dress up” the absence of a mitigating factor by considering it as an aggravating factor “in an attempt to increase the sanction”. Effectively, the Panel was asked to view this as neutral factor in the analysis. We agree that the absence of a mitigating factor is not equivalent to an aggravating factor and it would be an error to treat it as such.

91. As we noted in our *Reasons for Decision*, Her Worship’s evidence was often contradictory and difficult to reconcile. While she steadfastly maintained that she did nothing inappropriate, she also testified that she knew when she wrote the Article that she would be before the Council, but that she was “prepared to take a hit for the team on this”. She also testified that: “I wasn’t concerned about what would happen to me. I hadn’t even thought of this whole possibility of a hearing. That had not even crossed my mind.”²⁸

92. For our purposes, at this stage of the process what is relevant is whether there is any insight into or acknowledgment or recognition from Her Worship firstly, of the misconduct, and secondly, of the seriousness of the misconduct. There is none.

93. Her Worship stands by her decision to publish the Article. In her testimony in cross-examination she explained: “***I still feel one hundred percent that I needed to do what I did. That is not going to change***” (Emphasis added).²⁹

²⁶ Evidence of JP Lauzon, Transcript, September 17th, 2019, p. 174, l. 11 to p. 175, l. 24

²⁷ Submissions of Mr. Greenspon, Transcript, July 16th, 2020, at p. 97, l. 16 to p. 104, l. 3

²⁸ Evidence of JP Lauzon, Transcript, September 17th, 2019 p. 150, ll. 5-23, to p. l. p. l. and Transcript of September 18th, 2019, p. 28, ll. 2-14, p. 57, ll. 9-22

²⁹ Evidence of Her Worship, Transcript September 17th 2019, p. 149, ll. 6-8; p. 159, l. 1 to p. 160, l. 22, and p. 168, ll. 2-17

94. Where a judicial officer acknowledges the misconduct, however late in the process, the Panel imposing a disposition must take that into account as a significant factor in mitigation. In *Matlow*, Justice Matlow made an apology “without reservation” *after* the Committee recommended his removal from the Bench. The CJC found that his expressions of regret were sincere and placed considerable weight on the apology and the character references that were in evidence before the Council. Both those factors played a significant role in the Council’s decision not to uphold the recommendation of the Committee.³⁰
95. The absence of acknowledgment of the misconduct, while not aggravating, can be significant because it is directly relevant to other factors that the Panel is obliged to consider in imposing the appropriate disposition. Those factors are:
- a) whether there is any indication of an effort to modify the conduct that led to the complaint, and
 - b) whether there is a risk that the conduct will be repeated.
96. The Panel therefore concludes that the absence of any acknowledgment of the misconduct is properly considered in assessing the appropriate disposition.³¹

vi) Whether the judicial officer has evidenced an effort to change of modify her conduct

97. Mr. Greenspon’s submission that Her Worship maintains the position she took in the first place is responsive to the next inquiry. It is fair to conclude that Her Worship does not believe that there is any need to modify her conduct or her understanding of her ethical obligations because she does not accept that in writing the Article she crossed a bright line and engaged in judicial misconduct in the first place. Her testimony shows that she stands by her position that the Article was appropriate and necessary.

³⁰ See *Re Matlow*, Report of the Canadian Judicial Council to the Minister of Justice (Dec. 3, 2008) at paras. 179 - 181 [*Matlow* (Report to the Minister)]

³¹ See *Re Bienvenue*, Report of the Canadian Judicial Council to the Minister of Justice (June 1996) [*Bienvenue* Report to the Minister]] at pp. 27-28, 34, 55 and 61.

98. Her Worship testified that since the Article was not a judgment, different considerations applied. In her estimation, she *did* exercise care in expressing her opinions about the dysfunction she described in bail court and that, adopting Presenting Counsel's words, she did so carefully, temperately and judiciously. Her Worship also went on to explain that she did not think judicial officers have any special duty when they speak or write publicly. She testified that "there is a bigger duty to raise issues... when there are issues that need to be addressed. That is a much bigger duty".³²
99. Evidence of an effort to appreciate or modify conduct is a factor previous Panels have found to be to be particularly relevant and extremely mitigating. As noted, where such evidence is adduced, it allows the Panel to assess whether there is any insight or understanding of the conduct that led to the complaint in the first place. This in turn allows the Panel to assess the likelihood of a reoccurrence of the misconduct. Evidence of this nature therefore goes to the core of the Panel's task at this stage: determining the most appropriate disposition that both recognizes the nature and severity of the misconduct, but that would also have the effect of restoring the public's faith and confidence in the ability of the justice of the peace to fulfill her judicial role, if possible, and in the judiciary itself.
100. Counsel for Her Worship submitted that if a disposition is required at all, a reprimand is the most appropriate disposition. In making this submission he sought to assure the Panel that there is no likelihood of this type of conduct repeating itself and emphasized the following factors the Panel ought to consider:
- a) The complaint and hearing processes have already had the effect of sanctioning Her Worship given the attendant publicity it has drawn. In effect, she has been punished sufficiently and nothing more is required;

³² Evidence of Her Worship, Transcript, September 17th 2019 at p. 170, l. 4 to p. 173, l. 9; p. 174, l. 5 to p. 176, l. 9, p. 181, ll. 21-25, p. 208, l. 19 to p. 209, l. 4

- b) Justice of the Peace Lauzon’s intention in writing the Article, which was to promote change in the bail system, has been realized since the Supreme Court of Canada’s decision in *R. v. Antic* which post-dates the Article;³³
- c) There has been a significant passage of time since the Article was published during which Her Worship has continued to preside; and finally
- d) Her Worship has refrained from speaking to the media since the publication of the Article despite repeated requests to do so.

101. Firstly, we will address the submission that enduring the JPRC process has already served to sufficiently sanction Her Worship, such that no further disposition is required. The aim of these proceedings is restorative in relation to the judiciary as a whole, not punitive of the individual justice of the peace. Our paramount objective is to exercise restraint in imposing the least onerous disposition required to restore the public’s confidence in Her Worship as a judicial officer, if possible, and the whole of the judiciary.

102. Secondly, we observe that while we have the submissions of counsel, the Panel has not been offered any evidence of the impact of these proceedings on Her Worship. As well, counsel for Her Worship has reminded the Panel that however difficult this process has been for Justice of the Peace Lauzon, “she [still maintains] the position she took in the first place”, that is, that she did nothing wrong in writing and publishing the Article.

103. Thirdly, counsel also made the submission that in essence, *Antic* has had the fortunate effect of addressing, and rectifying the issues Her Worship critiqued in the Article. Therefore, there will be no need going forward to address bail issues since they have been satisfactorily addressed.

104. However, counsel also made the submission that the Panel ought to review *R. v. Zora* [2020] S.C.J. No. 14 which was decided after our *Reasons for Decision*, to consider Justice

³³ 2017 SCC 26

Martin's comments about Crown counsel's conduct and the continuing problems in the bail system. He reminded this Panel that it was "some three years after *Antic*, and there was still a problem being outlined in the bail courts by the Supreme Court of Canada." These two submissions are contradictory.

105. The thrust of Mr. Greenspon's submission regarding the *Zora* decision was that the Panel ought to consider *Zora* as an endorsement of Her Worship's characterization of the crown's conduct as she described it in the Article and that this should be a factor for the Panel to consider in imposing a less severe disposition or any disposition at all. With respect, we disagree that *Zora* is a vindication of Her Worship's decision to write the Article in the manner she did.

106. There are significant differences in the choice of language and the overall tone of the *Zora* decision. Notably, neither Justice Martin, nor Justice Hill, who is quoted in the *Zora* decision, used sweeping or inflammatory expressions such as "devoid of the rule of law", or "a disgrace" in describing bail courts in Canada. Neither Justice Hill, in *R. v. Singh*,³⁴ nor Justice Martin singled out particular prosecutors, nor did they cast aspersions about Crown counsel or their motivations in taking the positions they did. Instead, there was an acknowledgment of the culture of risk aversion, the systemic nature of the problems in bail court, and also "the collaborative effort of all system participants to reduce delay".³⁵ They emphasized that justices of the peace are entitled to question bail conditions and that it is inappropriate for such inquiries to be met with hostility on the part of Crown counsel. The observations Justice Hill made in *Singh* and that Justice Martin made in *Zora* are not new, they simply confirm the many difficult and persistent issues with bail courts both before and after *Antic*.³⁶

³⁴ 2018, ONSC 5336, [2018] O.J. 4757 at paras. 23-26. Justice Hill upheld the decision of the Justice of the Peace who rejected the proposed "joint submission" for the release of Mr. Singh and ordered his detention, instead. Hill, J. cited, Justice Wagner's comments in *Antic* cautioning against the routine second-guessing by justices of the peace of joint proposals for release while noting that they not only have the discretion, but the obligation to do so where appropriate.

³⁵ Ibid at para. 26; and *Zora*, *supra*, at paras. 77-78 and 100-101

³⁶ See: *R. v. Tunney*, 2018 ONSC 961, 43 C.R. (7th) 221 (Di Luca, J.) at para. 29

107. Mr. Greenspon also submitted that Her Worship has refrained from responding to media requests for interviews, though no evidence was called to this effect. We took this submission as a suggestion that she has modified her behaviour, and that there is little risk of the conduct reoccurring.

108. We wish to emphasize that at no point leading up to, during these proceedings or since the finding of misconduct has Her Worship ever been discouraged from speaking to the media. As we noted at paragraph 31 above, like any member of the judiciary, Justice of the Peace Lauzon has been and remains free to speak publicly, including to the media, so as long as she exercises caution and restraint and remains cognizant of her ethical obligations as a judicial officer.

vii) Number of Complainants

109. There were three parties who filed complaints, all relating to the Article;

- 1) Mr. James Cornish, Assistant Deputy Attorney General (for Ontario), Criminal Law Division, The Ministry of the Attorney General;
- 2) Mr. Brian Saunders, Director of Public Prosecutions, on behalf of the Public Prosecution Service of Canada; and
- 3) Ms. Kate Mathews, then President of the Ontario Crown Attorney's Association (OCAA), on behalf of the Association.

110. Ms. Matthews was the only witness who testified on behalf of a complainant at this Hearing. She recalled that she and the Vice President of the OCAA fielded calls and emails from members of the association from across the province who expressed dismay, concern, and frustration with the publication and contents of the Article.

viii) The length of service on the bench

111. Her Worship was appointed in May of 2011. The Article was published in March of 2016, less than five years later. She has been presiding for over nine years. In this respect, her circumstances are different from Justice Zabel or Justice Matlow, both of whom had 27 years of unblemished service on the bench.

112. Her Worship was neither a newly-appointed Justice of the Peace, nor did she have decades of service on the bench. We find that the length of service on the bench to be a neutral factor in this case.

ix) Prior Complaints

113. Presenting Counsel was required under the JPRC Procedures to file with the Panel any complaints whether dismissed or otherwise where the justice of the peace was asked to respond to a complaint. There was one such instance.

114. Counsel for Her Worship resisted the introduction of the complaint on the basis of issue estoppel submitting that it was not strictly speaking a prior complaint because it was ultimately dismissed. Counsel submitted that introducing it into these proceedings would be prejudicial to Her Worship. As the Committee noted in its decision, the complaints process can be remedial.

115. The Panel ruled that the prior complaint is admissible. The JPRC procedures specifically allow for the admission of such complaints. We noted that the complaint postdated the subject misconduct and is unrelated in subject matter and context. It originated from a decision that Her Worship made in court in the course of executing her judicial function. It is not relevant to our task. Rather than being prejudicial, if anything, it shows that Justice of the Peace Lauzon is prepared to take remedial steps when she deems it necessary and appropriate.

116. Accordingly, we gave the prior complaint no weight.

x) The extent to which the judicial officer has exploited her position to satisfy her personal desires.

117. Her Worship swore an affidavit attesting to the fact that in writing the Article she did not mean to embarrass anyone or to stir up any animosity. She repeated that in her testimony. This is yet another aspect of Her Worship's evidence that was difficult to reconcile. In the Article she described Crown counsel as "cynical" "bullies" who were given to throwing a "temper

tantrum” when she would not go along with joint submissions. She described them as engaging in “unacceptable tactics” such as “wrestl[ing] jurisdiction from the court”. They were the reason “the law goes out the window” and why the courts had “devolved into dysfunctional and punitive bodies, devoid of the rule of law”; “a disgrace”. Yet, in her testimony, Her Worship was only prepared to concede that some of the Crown counsel who had issues with her might feel a little slighted by the Article

118. In her evidence, Her Worship further explained the circumstances that led her to write the Article when she did. She found sitting in bail court personally and professionally frustrating and stressful. She testified that she made several efforts to speak to court administrators about the untenable situation, but those efforts went unheeded. She then attempted to make arrangements so that she would not have to sit in bail court. Those efforts were not successful. That is when she decided she needed to shed light on the situation by writing and publishing the Article. Although she testified that she had exhausted all other avenues, in cross-examination that turned out not to be the case. There were some options she did not pursue.³⁷

119. In our *Reasons for Decision*, we did not make a specific finding that there was a primary or secondary motivation in writing the Article. We accept that part of Her Worship’s motivation was a misguided attempt to express frustration with the way bail courts were run and to promote change.³⁸

120. In our *Reasons for Decision*, we found that the Article was also an opportunity to vent personal frustrations, to even the score for the slights she perceived and the outright disrespect she said she had to endure in court day after day. In that respect, in writing the Article in the manner and tone in which she did, we found that Her Worship did use the power and prestige of her office to satisfy her own personal desires, specifically the desire for retribution. This is an aggravating factor.

³⁷ Evidence of Her Worship, Transcript, September 17th 2019 at p. 163, l. 5 to p. 167, l. 17

³⁸ The Panel heard evidence that there are a plethora of reports that predate the Article voicing the need for reform. Her Worship’s call to action was not the first to shed light on a problem, nor the last to sound the alarm.

xi) The effect of the misconduct on the integrity of and respect for the judiciary

121. This is indisputably the single most aggravating factor. It is the one that speaks loudest for the need to restore public confidence in the judiciary and the administration of justice.
122. In the Article, Justice of the Peace Lauzon described prosecutors as the “bullies” responsible for subverting the court process and causing it to be “devoid of the rule of law” and therefore, “a disgrace”. The intent and impact of the Article was to undermine public confidence in the administration of justice, and bail courts in particular, suggesting that bail courts throughout Canada were in a state of lawlessness and that the problem was widespread.³⁹
123. Finally, the Panel heard from Ms. Kate Matthews, past President of the OCAA. Ms. Matthews testified about the impact of the Article on members of her Association and, in particular, the perception the Article gave of Her Worship’s bias against Crown counsel. She testified that: “no one [Crown counsel] would ever 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. I don’t think that you could feel you could bring a hearing in front of her in a fair way.” (Emphasis added)
124. Ms. Matthews’ concerns about Her Worship’s lack of impartiality were borne out. In our view, the integrity and respect for the judiciary were first undermined by the Article, and again by Justice of the Peace Lauzon’s testimony and conduct during these proceedings.
125. We have endeavored to keep separate the effect of the Article on the integrity of and respect for the judiciary and the impact of Her Worship’s after-the-fact conduct on the integrity and respect for the judiciary. Her Worship’s conduct in these proceeding is therefore addressed in more detail at paragraphs 129-140 and 146 of these Reasons.

³⁹ Panel’s Reasons for Decision, at para. 145

xii-xiii) Corruption/Criminal sanction

126. The subject matter of the complaint and the finding of misconduct are confined to the writing and publication of the Article. As such, there are two potentially aggravating factors that in our view have no application to the circumstances of this case: 1) there was no element of corruption in the misconduct, and; 2) the misconduct was not the subject of any criminal sanction. The absence of these aggravating factors is not mitigating. An analogy could be made from the criminal context. It is the difference between an ordinary theft and a theft carried out by an employee. In the case of the ordinary theft perpetrated by a stranger, the lack of a trust relationship between the perpetrator and the victim is not a mitigating factor, whereas in the second example, the fact of a trust-relationship is an aggravating factor.

127. This approach appears to be the same approach that the Hearing Panel of the OJC took in *Zabel* where the misconduct related to expressive rights. There is no indication that the Panel considered the absence of corruption or a criminal sanction to be mitigating circumstances.⁴⁰

xiv) Compliance with the Disciplinary Process/Conduct during the proceedings

128. Counsel for Justice of the Peace Lauzon took the position at the disposition hearing that Her Worship's conduct during these proceedings is not a relevant factor in determining the appropriate disposition. He submits that it would, in fact, be a serious error of law for the Panel to take it into consideration. He submitted that our focus should be strictly confined to the misconduct related to the Article.⁴¹

129. This contradicts the position counsel took when the Panel heard submissions at the conduct stage of the proceedings. Counsel submitted then that it would be inappropriate for the Panel to consider Justice of the Peace Lauzon's conduct during these proceedings in deciding whether she engaged in misconduct by writing the Article. Mr. Greenspon submitted that examples of Her Worship's conduct during the course of the proceedings:

⁴⁰ See *Re Zabel* (2017) at paras. 41 and 45-54

⁴¹ Submissions of Counsel for JP Lauzon, Transcript, July 16th 2019, p. 105, ll. 3-6

*are considerations for the Panel in determining the severity of the misconduct in this case, if and when we get to it ...///... Those types of things should not ... be part of your deliberations when you are determining whether or not there is a finding. They would, if there is a finding of misconduct... and I would urge you to consider them at that point if we get there.*⁴² (Emphasis added)

130. We agreed with counsel's initial position and refrained from considering Her Worship's conduct after she wrote the Article, including during these proceedings, in determining whether a finding of misconduct should be made.
131. In *Camp*, the CJC considered the relevance of after-the-fact conduct, noting that: "[a]n important consideration is whether a judge's conduct after the fact is sufficient to restore public confidence".⁴³
132. In *Massiah*, former Justice of the Peace Errol Massiah asserted on an application for judicial review that the Hearing Panel punished him for failing to admit his guilt. In finding that the Hearing Panel's recommendation for removal from office was reasonable, the Divisional Court rejected that argument, determining that the Panel was entitled to conclude, based upon Justice of the Peace Massiah's evidence and his manner during the hearing, that he showed no insight into his misconduct and, therefore, the Panel could not have any faith that the misconduct would not be repeated.⁴⁴
133. We therefore find that the manner in which a judicial officer conducts herself during the proceedings is an appropriate consideration in determining the matter of disposition. This factor can be either mitigating, as it was in *Camp*, or aggravating, as it was in *Bienvenue* and *Massiah*.⁴⁵
134. Counsel for Her Worship made the submission that no disposition is required at all because Justice of the Peace Lauzon has already been sufficiently sanctioned by having to respond to

⁴² Submissions of Counsel for JP Lauzon, Transcript, October 9th 2019, at p. 14, l. 10 to p. 21, l. 5

⁴³ *Camp* (Report to the Minister), at para. 25

⁴⁴ See *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 at paras. 37 to 41 and 45 to 47. Application for appeal to the Court of Appeal for Ontario and to the Supreme Court of Canada denied.

⁴⁵ See *Re Massiah* 2015, at paras. 64-65 ; *Bienvenue* (Report to the Minister), supra, at p. 51, and p. 61

the complaint and the attendant publicity that this case has drawn. Firstly, we repeat that a disposition is meant to be remedial in relation to the integrity of the judiciary, not punitive towards the judicial officer who engaged in misconduct. Secondly, Her Worship has not adduced any evidence of the personal impact of the complaint or the proceedings. The only objective measure, therefore, that can assist in assessing counsel's submission regarding the impact on Her Worship is her evidence and demeanour during these proceedings.

135. We intend to highlight some of Her Worship's testimony and manner we find relevant to the issue of the appropriate disposition.

136. Firstly, in cross-examination, Her Worship testified that she did not regret the manner in which she wrote the Article. Presenting Counsel then put to her a letter she signed that was addressed to the Complaints Committee in response to the Committee's invitation to her during the investigation stage to respond to the complaints. In the letter, Her Worship expressed her regret for her actions in writing and publishing the letter.⁴⁶ In the letter, she acknowledged that the language she used in the Article could have been more tempered. During the hearing, while she acknowledged her signature on the last page of the three-page letter, she disavowed the expression of regret or that it may have been imprudent to write the Article without first getting advice about it. Justice of the Peace Lauzon testified that she did not read the previous pages of the letter she instructed her counsel send to the Complaints Committee, nor did fully understand some of language used. For example, she testified that the word "tempered" is not in her vocabulary. When asked what she understood it to mean, she testified she associates the word "tempered" with tempered glass.⁴⁷

137. Her Worship, previously in her testimony, explained that prosecutors expected that she would simply sign proposed consent release orders put before her. Instead, it was her practice to carefully scrutinize each condition on all proposed consent release orders because it was her

⁴⁶ See Letter signed by JP Lauzon dated September 15, 2017, Exhibit #9

⁴⁷ Testimony of Justice of the Peace Lauzon, Transcript, September 17th 2019, at p. 138 l. 4 to p. 153, l. 20

name on the order and “no lawyer would sign a document if they weren’t in agreement with it”.⁴⁸

138. We do not accept Her Worship’s testimony that she simply neglected to read the letter to the Committee before signing it. It was an important document prepared in response to complaints about her conduct as a judicial officer in a judicial discipline process with potentially serious consequences. We find that the letter was sent to the Committee in the hope of avoiding a hearing. In that regard, we find that Her Worship’s testimony calls into question her own credibility. It indicates that she attempted to mislead the Committee by suggesting she was contrite when she in fact she had no regrets at all. This is highly problematic. It calls into question Her Worship’s integrity, which is something a judicial officer should guard jealously especially when responding to the Committee about alleged misconduct. As in the *Massiah* case, it raises concerns about Her Worship’s ability to adjudicate on matters with integrity and impartiality, given her evidence during this hearing, including her attack on her own credibility in her letter to the Complaints Committee.⁴⁹ This is an aggravating factor. Unfortunately, there were other instances where Her Worship’s manner and testimony during these proceedings also raised concerns about her integrity and impartiality.

139. Secondly, in her affidavit sworn on December 4th, 2018 that was filed at the Hearing into the first allegation, Her Worship maintained that the Article “speaks for itself”.⁵⁰ However, she went on to explain: “My 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 behaviour in bail court. //...// ***My intention was neither to embarrass nor to pursue any animosity***”(Emphasis added). Yet, in her cross-examination before this Panel in September of 2019, some three and a half years after she published the Article, and nine months after she swore the affidavit, she was asked if she considered that the Article packed a particular sting for some Crown counsel at the Ottawa courthouse. Her Worship agreed that “[s]omebody who ***had problematic behaviour towards me in court would probably feel a little bit slighted***”

⁴⁸Ibid, at p. 103, l. 1 to p. 104, l. 20

⁴⁹ See *Massiah v. Justices of the Peace Review Council*, *supra*, at paras. 40 and 41

⁵⁰ See Exhibit 8 in these proceedings

(Emphasis added). When it was put to her that it appeared that she had in fact considered that the Article packed a particular sting to the specific (but unnamed) lawyers she singled out as having acted improperly, she gave the following response:

“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. (*Emphasis added*)

140. These responses contradict the statements in the Affidavit attesting to Her Worship’s altruistic motivations for writing the Article. In our *Reasons for Decision*, we found that there was a retributive aspect to the Article. Justice of the Peace Lauzon’s testimony before us also demonstrated to the Panel that notwithstanding the passage of time, or the supposed remedial effect of the *Antic* decision, Her Worship continues to give the appearance of harboring animosity towards prosecutors.⁵¹ She would not concede that some Crown initiatives, such as the use of video appearances, were good faith efforts to ensure persons in custody were released more expeditiously. In response to a question put to her on cross-examination, she responded, in part: “... you’re assuming that people [in the Crown’s Attorney’s office in Ottawa] are of good faith”.⁵²

141. Third, Her Worship was combative with Presenting Counsel during cross-examination and the Panel had to instruct her on a few occasions to respond to questions properly put to her.⁵³ On at least two occasions, she accused Presenting Counsel of being disrespectful to her by either making faces or shaking his head. None of the Panel members observed the behaviour attributed to Presenting Counsel. There was no objection by Counsel for Her Worship about Presenting Counsel’s conduct or the appropriateness of his questions.

⁵¹ Affidavit of Justice of the Peace Lauzon, exhibit 8, paras. 2-4, 11-12, 21; Evidence of JP Lauzon, Transcript of September 17th, 2019, p. 201, ll. 4-11

⁵² Evidence of Justice of the Peace Lauzon, Transcript of September 17th, 2019, p. 180, l. 2 to p. 181, l. 4

⁵³ Ibid, p. 176, l. 10 to p. 178, l. 3; p. 185, l. 8 to p. 186, l. 24, p. 194, l. 19 to p. 195, l. 2, p. 216, l. 1 to p. 217, l. 19; also p. 149, l. 9 to p. 154, l. 22, p. 157, l. 9 to p. 158, l. 10, p. 160, l. 11 to p. 161, l. 2, p. 216, l. 1 to p. 217, l. 24.

142. In one instance, Her Worship told Presenting Counsel that he reminded her of Vicki Bair, the Crown Attorney at the Ottawa Crown Attorney's office. As the record demonstrated, Her Worship had many grievances with Ms. Bair relating, in part, to applications that she recuse herself both before and after the publication of the Article.⁵⁴

143. The Panel finds that Her Worship's conduct during these proceedings fell below the dignity expected of a judicial officer. It also demonstrated an enduring animosity for and lack of impartiality towards Crown counsel at the Ottawa Crown's office.

Comparisons between this case and *Zabel* and *Matlow*

144. When we consider and compare the many mitigating circumstances in *Zabel* with the circumstances in this case, we find that the same disposition, a suspension without pay, is incapable of restoring the public's confidence in Her Worship, the judiciary or the administration of justice. The many mitigating circumstances in *Zabel* included:

- an early apology for the single act of misconduct;
- engagement in mentorship with a senior judge who praised Justice Zabel for his efforts;
- many dozens of letters of support from both defence and crown counsel, attesting to Justice Zabel's lack of bias; and
- an unblemished career of over 27 years.

145. We have also carefully considered the *Matlow* decision of the CJC. We acknowledge that in many respects, Justice Matlow's conduct was more serious because it involved a course of conduct that lasted over a period of many months, and that it was for personal gain unconnected to the judicial function. Those circumstances ordinarily would justify a disposition beyond the mid-range of dispositions. However, we note that in *Matlow*, the Council found the letters of community support and the unreserved and sincere apology to be very significant mitigating factors that persuaded the Committee that public confidence in Justice Matlow could be restored. In the result, the CJC reversed the Committee's decision for removal and made an order mandating education and an apology, amongst other measures.

⁵⁴ Evidence of Justice of the Peace Lauzon, Transcript of September 18th, 2019, p. 23. l. 21 to p. 24, l. 18

146. Admittedly, the *Matlow* and *Zabel* decisions are difficult to reconcile. Justice Matlow's conduct was in many ways more serious than Justice Zabel's which involved a single brief and isolated incident. They both had decades of service without any complaints. Yet, the Ontario Judicial Council imposed a one month suspension in circumstances where Justice Zabel was remorseful and undertook remedial measures before the Hearing.

147. Community support and an unreserved apology are significant mitigating circumstances that are absent in this case. Nor does Her Worship have decades of service without incident.

148. Having regard to both the aggravating and mitigating circumstances in this case, we posed a number of questions to determine the least serious disposition that could be imposed, including the following:

- can the public's confidence in Her Worship and the judiciary be restored by the least serious disposition in circumstances where Justice of the Peace Lauzon is unwilling to acknowledge the wrongfulness of her misconduct, and in fact remains steadfastly of the view that it ultimately enhanced the administration of justice?
- can the public's confidence in Her Worship and the judiciary be restored by the least serious disposition when her testimony revealed that, despite the significant passage of time, she still does not appear to understand or choose to accept that she has an ethical obligation to remain impartial and objective and that her ethical obligations exist while she is performing her judicial duties, as well outside the courtroom and in the community?⁵⁵ And finally,
- can the public's confidence in Her Worship and the judiciary be restored by the least serious disposition when she has demonstrated that she continues to harbour *animus* towards Crown counsel?

⁵⁵ See: The Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice, sections 1.1 and 3.1

149. There has been a significant passage of time since the Article was published. This has provided Her Worship with ample opportunity to reflect on the ethical obligations expected of a jurist when expressing opinions in the media. Unfortunately, Her Worship's testimony during these proceedings confirmed that the perceptions and concerns about her lack of impartiality that gave rise to the complaints in the first place still persist.

150. In *Camp*, the CJC held that in gauging public confidence, the focus should be on what a reasonable member of the public would conclude, i.e. a thoughtful person with knowledge of the circumstances of the case.⁵⁶ By that measure, the majority of the Panel finds that a reasonable and informed person who had read the Article, was apprised of the role of a justice of the peace and the allegations, and heard and observed Her Worship testify during the course of these proceedings, would conclude that Her Worship's misconduct and her testimony and manner in these proceedings leads to the conclusion that her ability to discharge the duties of office is irreparably compromised such that she is incapable of executing judicial office. Her Worship's misconduct and refusal to accept that such conduct and attitude held by a justice of the peace towards Crown Attorneys is inappropriate is so manifestly and profoundly destructive of the judicial role and the impartiality, integrity and independence of the judiciary that public confidence requires her to be removed from office. Public confidence in Her Worship, in the judiciary and in the administration of justice have been irreparably undermined.⁵⁷

151. The majority of the Panel concludes that public confidence in Justice of the Peace Lauzon or the judiciary cannot be restored by the imposition of a lesser disposition such as a suspension, or a suspension with a reprimand. Her misconduct has rendered her incapable of performing the duties of her office. Regrettably, restoration of the public's confidence in the judiciary and the administration of justice can only be achieved by a recommendation for removal from office.

⁵⁶ At para. 45

⁵⁷ See [*Bienvenue* (Report to the Minister)], *supra* at p. 61; *Massiah v. Justices of the Peace Review Council*, *supra*, paras. 45-47

DISPOSITION ORDER

152. For the reasons explained in this decision, the majority of Panel hereby makes a recommendation to the Attorney General that Justice of the Peace Lauzon be removed from office for cause under s. 11.1(10) (g) and s. 11.2 (2) (ii) of the *JPA*. She has become incapacitated or disabled from the due execution of her office by reason of conduct that is incompatible with the due execution of her office.

DISSENTING REASONS FOR DECISION ON DISPOSITION (Regional Senior Justice of the Peace Thomas Stinson)

INTRODUCTION

153. On May 7, 2020, this Hearing Panel unanimously upheld the first allegation contained in the Notice of Hearing against Justice of the Peace Julie Lauzon and made a finding of misconduct. This finding was in respect of the language used by Justice of the Peace Lauzon in an article written for the *National Post* and published by it on March 14, 2016. The second allegation in the Notice of Hearing was unanimously dismissed.

154. I have had the opportunity to read the Reasons of my fellow Panel members. I am aware that they have concluded that the appropriate disposition in this case is to recommend to the Attorney General that Justice of the Peace Julie Lauzon be removed from office, pursuant to subsection 11.1(10)(g) and section 11.2 of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4 (the “*Act*”).

155. Respectfully, I am unable to agree with my fellow members of the Hearing Panel that removal from office is the appropriate disposition in this case.

THE TEST FOR CONSIDERATION

156. After a finding of judicial misconduct, a Hearing Panel is required to decide what disposition, or combination of dispositions, will achieve the result of restoring public

confidence in the judicial officer specifically, if possible, as well as in the judiciary and the administration of justice generally.

157. Subsection 11.1(10) of the *Act* sets out the possible dispositions:

(10) After completing the hearing, the Panel may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may,

- (a) warn the justice of the peace;
- (b) reprimand the justice of the peace;
- (c) order the justice of the peace to apologize to the complainant or to any other person;
- (d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- (e) suspend the justice of the peace with pay, for any period;
- (f) suspend the justice of the peace without pay, but with benefits, for a period of up to 30 days; or
- (g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2.

158. Other than a recommendation for removal from office, which must stand alone, any of the other sanctions, from clauses (a) to (f) inclusive, may be imposed in combination.

159. Each available disposition must be considered within the context of what is commonly referred to as the ladder principle. The Hearing Panel must consider imposing the least serious disposition first, and only upon rejecting that as inappropriate, would we move on to consider more serious dispositions. We must impose only that disposition or those dispositions required to restore public confidence in the justice of the peace, in the judiciary and in the administration of justice without going any further than is necessary. These principles are outlined in many judicial misconduct decisions, including those of the Ontario Judicial Council in *Re Baldwin* (OJC, 2002) and *Re Zabel* (OJC, 2017).

160. Another important reason for this Hearing Panel to act cautiously can be found in the words of the Hearing Panel of the Ontario Judicial Council in *Re Baldwin*, cited with approval in *Re Douglas* (OJC, 2006):

It is important to recognize, however, that the manner in which complaints of judicial misconduct are addressed can have an inhibiting or chilling effect on judicial action. The process for reviewing allegations of judicial misconduct must therefore provide for accountability without inappropriately curtailing the independence or integrity of judicial thought and decision-making. [emphasis added]

Almost identical language is used in *Re Welsh* (JPRC, 2009) at paragraph 38.

161. As well, in *Baldwin*, the Ontario Judicial Council quotes from the decision of Gonthier J. in *Therrien v. Minister of Justice*, [2001] 2 S.C.R. 3 at paragraph 147:

Thus, before making a recommendation that a judge be removed, the question to be asked is whether the conduct for which he or she is blamed is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office. [emphasis added]

162. The same test was adopted by Arbour J. at paragraph 51 of *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249.

163. A cautious approach to determining the appropriate disposition is echoed in the language of section 11.2 of the *Act*, which sets out a very high standard that must be reached before a recommendation for dismissal can be reached. It reads as follows:

11.2 (1) A justice of the peace may be removed from office only by order of the Lieutenant Governor in Council.

(2) The order may be made only if,

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

(b) a hearing panel, after a hearing under section 11.1, recommends to the Attorney General that the justice of the peace be removed on the ground that he or she has become incapacitated or disabled from the due execution of his or her office by reason of..... [emphasis added]

- (ii) conduct that is incompatible with the due execution of his or her office...

AGGRAVATING AND MITIGATING FACTORS

164. Both aggravating and mitigating factors in any specific case must be considered by the Hearing Panel. Another Ontario Judicial Council decision, *Re Chisvin* (OJC, 2012) sets out factors for consideration which have now been codified in the Justices of the Peace Review Council Procedural Rules, at section 17.3. These ten factors are as follows:

- 17.3 Factors that may be relevant to an assessment of the appropriate sanction for judicial misconduct include, but are not limited to:
 - i. Whether the misconduct is an isolated incident or evidences a pattern of misconduct;
 - ii. The nature, extent and frequency of occurrence of the act(s) of misconduct;
 - iii. Whether the misconduct occurred in or out of the courtroom;
 - iv. Whether the misconduct occurred in the judge's official capacity or in his private life;
 - v. Whether the justice of the peace has acknowledged or recognized that the acts occurred;
 - vi. Whether the justice of the peace has evidenced an effort to change or modify his conduct;
 - vii. The length of service on the bench;
 - viii. Whether there have been prior findings of judicial misconduct about this justice of the peace;
 - ix. The effect the misconduct has upon the integrity of and respect for the judiciary; and
 - x. The extent to which the justice of the peace exploited his or her position to satisfy his or her personal desires.

165. At this point, I will review the *Chisvin* factors to determine whether each should be considered as aggravating or mitigating in determining the appropriate disposition for Justice of the Peace Lauzon.

CHISVIN FACTOR #1: *Whether the misconduct is an isolated incident or evidences a pattern of misconduct*

166. While two incidents complained of reached the hearing stage, the Hearing Panel only found misconduct with respect to one, which dealt with the publication of the opinion article Justice of the Peace Lauzon wrote for the *National Post* and the language and tone used by her in the opinion article. Thus, there is no pattern of misconduct, and this would be a mitigating factor in Justice of the Peace Lauzon's case.

CHISVIN FACTOR #2: *The nature, extent and frequency of occurrence of the act(s) of misconduct*

167. While Justice of the Peace Lauzon's article received a great deal of publicity, this was only one act of misconduct. This would be a mitigating factor in her favour.

CHISVIN FACTOR #3: *Whether the misconduct occurred in or out of the courtroom*

168. While the misconduct occurred outside the courtroom, it dealt with matters inside her courtroom. This would be a neutral factor in Justice of the Peace Lauzon's case.

CHISVIN FACTOR #4: *Whether the misconduct occurred in the judge's official capacity or in his private life*

169. While the misconduct occurred outside of court, as noted above, the content of Justice of the Peace Lauzon's article was entirely related to her official work as a judicial officer. This would be an aggravating factor.

CHISVIN FACTOR #5: *Whether the justice of the peace has acknowledged or recognized that the acts occurred*

170. Justice of the Peace Lauzon has always acknowledged being the author of the online *National Post* article, though she testified that minor changes made to it in the print version were not hers. However, Justice of the Peace Lauzon has expressed no remorse for having written the article, the specific tone and content of which this Hearing Panel found to be at the root of her judicial misconduct. With both positive and negative factors, this factor would be neutral.

CHISVIN FACTOR #6: *Whether the justice of the peace has evidenced an effort to change or modify his conduct*

171. There have been no further articles or opinions written by Justice of the Peace Lauzon in the more than four years since the *National Post* article was published in March 2016. This is a mitigating factor in favour of Justice of the Peace Lauzon.

CHISVIN FACTOR #7: *The length of service on the bench*

172. Justice of the Peace Lauzon was appointed in May 2011. She had served for almost five years before writing the article for the *National Post*, and she has continued to serve for more than four years since then. While many of her colleagues who have found themselves before the Justices of the Peace Review Council have served much longer on the bench, she was not a newly-appointed member of the court at the time of her misconduct. I would view her length of time on the bench as a neutral factor.

CHISVIN FACTOR #8: *Whether there have been prior findings of judicial misconduct about this justice of the peace*

173. There have been no prior findings of judicial misconduct against Justice of the Peace Lauzon. This is a mitigating factor in her favour.

CHISVIN FACTOR #9: *The effect the misconduct has upon the integrity of and respect for the judiciary*

174. In my view, this is the most aggravating factor. As the Hearing Panel held, Justice of the Peace Lauzon committed judicial misconduct as a result of the manner in which she expressed her opinions in the *National Post*. These are articulated in paragraphs 142 to 145 of our *Reasons for Decision* dated May 7, 2020.

175. In these paragraphs, we used very strong language.

176. In paragraph 144, we stated: “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.”

177. In paragraph 145, we further stated:

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.

178. We concluded:

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.

179. This specific *Chisvin* factor requires us to examine the effect of the misconduct.

180. The publication of Justice of the Peace Lauzon’s article in the *National Post* received much publicity, and there were subsequent editorials written by other newspapers.

181. Nevertheless, only three formal complaints were made to the Justices of the Peace Review Council. All came from Crown Attorneys: one from the Assistant Deputy Attorney General, one from the Director of Public Prosecutions on behalf of the Public Prosecution Service of Canada; and the third from the President of the Ontario Crown Attorneys’ Association on behalf of the Association.

182. No letters of complaint were received from members of the public.

183. So while I am in no way retreating from the Hearing Panel’s collective comments in paragraph 145 of our *Reasons for Decision* that Justice of the Peace Lauzon’s actions in writing the article undermined public confidence in the administration of justice, I do believe that the relatively muted response from the public, notwithstanding the extensive publicity that Her Worship’s comments received, should now be taken into account when determining the appropriate sanction to impose.

184. Nevertheless, as I stated earlier, this is clearly an aggravating factor.

CHISVIN FACTOR #10: *The extent to which the justice of the peace exploited his or her position to satisfy his or her personal desires*

185. Unlike several other misconduct cases, there was no personal benefit or gain to Justice of the Peace Lauzon, or to a member of her family, as a result of her writing the opinion piece. At most, there could be an implied sense of personal satisfaction from venting her opinions in the article.

186. I would therefore regard this as a neutral factor.

SUMMARY OF AGGRAVATING AND MITIGATING FACTORS

187. Based on an analysis of the *Chisvin* factors with respect to Justice of the Peace Lauzon, there are some that are aggravating and several others that are mitigating. This could imply, therefore, that neither a particularly lenient nor a particularly harsh disposition would necessarily be appropriate in this case.

188. I am not suggesting that removal of office should only be recommended in situations where all ten *Chisvin* factors are found to be aggravating. However, in Justice of the Peace Lauzon's case, where the *Chisvin* factors are relatively balanced between mitigating and aggravating, I do not think it appropriate that removal of office should be this Hearing Panel's recommendation unless there are other clearly compelling reasons that lead to that conclusion.

189. Not only the *Chisvin* factors need to be considered. Other judicial misconduct cases can provide guidance, advice and wisdom with respect to what may be the appropriate sanction or sanctions to be imposed on Justice of the Peace Lauzon.

RELEVANT CASE LAW

190. While no other judicial misconduct case matches the exact fact scenario of this one, there are several other cases, involving both judges and justices of the peace, that are helpful in considering the appropriate disposition in this matter. Among these cases, some but not all of which involve public comments and actions by judiciary, are *Re Bienvenue* (CJC, 1996), *Re*

Camp (CJC, 2017), *Re Flynn* (CJC, 2002), *Re Foulds* (JPRC, 2018), *Re Kowarsky* (JPRC, 2011), *Re Matlow* (CJC, 2008), *Moreau-Bérubé*, 2002 SCC 11, *Re Phillips* (JPRC, 2013) *Re Winchester* (JPRC, 2020) and *Re Zabel* (OJC, 2017). I will summarize what I believe to be the salient points from those decisions that are most relevant and persuasive when considering what the appropriate disposition should be for Justice of the Peace Lauzon.

Bienvenue

191. Justice Jean Bienvenue of the Superior Court of Quebec presided over the *Théberge* trial in 1995. Several of his actions during and immediately after that trial, including meeting with members of the jury after they rendered their verdict, and making truly shocking comments about women and Jewish people during the sentencing hearing, resulted in over fifty complaints by individuals and groups to the Canadian Judicial Council. In a 4 to 1 decision (*Re Bienvenue*, CJC, 1996) the Canadian Judicial Council recommended his dismissal from office.

192. Two aspects of the *Bienvenue* majority decision are worth noting. First, the Judicial Council felt that it was the combination – the totality – of his actions that warranted his dismissal. As the majority stated at page 60:

If the judge’s meeting with the jury after the verdict had been an isolated occurrence, we would merely have expressed our disapproval of this violation of paragraph 65(2)(b) and (c) of the Act, on the assumption that such an occurrence would not happen again.”

193. It would seem possible that had Mr. Justice Bienvenue committed only one egregious act, as opposed to several, the Council would have recommended a less drastic sanction than his removal from office.

194. Second, considering specifically his comments regarding women and Jews, the Council concluded: “In addition – the evidence could not be any clearer – Mr. Justice Bienvenue does not intend to change his *behaviour* in any way.” [Emphasis added]

195. It is important to note that the Council references Mr. Justice Bienvenue's *behaviour*, and not his *beliefs*.
196. As was acknowledged by her counsel during his submissions on disposition, Justice of the Peace Lauzon has not expressed any remorse for writing the *National Post* article. But her four subsequent years of unblemished conduct on the bench indicate that – notwithstanding her *beliefs* – she will not continue with the *behaviour* that she manifested in writing the article.
197. Unlike many other judicial officers accused of misconduct, Justice of the Peace Lauzon was not the subject of an order from her Regional Senior Judge that she not be assigned work pending the outcome of a hearing. This procedure is contained in subsections 11(11) and 11(12) of the *Act*, and has been used in cases such as *Foulds*, *Phillips*, and *Winchester*, among others. A similar procedure with respect to judges not being temporarily assigned work pending a judicial misconduct hearing was invoked in the *Zabel* case.
198. I am not suggesting that if a justice of the peace is permitted to continue to work during the intervening period between a complaint being made and a misconduct hearing occurring that that justice of the peace is then somehow immunized from a Hearing Panel recommending his or her removal from office. I acknowledge that this is precisely what occurred in the *Moreau-Bérubé* case. However, it would appear that *Moreau-Bérubé* is a rare example of a judicial official being removed from office when he or she had not been placed on a leave of absence pending the hearing. An important distinction, as well, is that Justice Moreau-Bérubé was re-assigned to preside for a time in a different part of New Brunswick while the complaint process unfolded. In this case, Justice of the Peace Lauzon was not transferred to another part of the province during this process. She has continued to preside in the Ottawa courts and others in the East Region of the Ontario Court of Justice throughout the entire time period since she wrote her article.
199. In fact, even in some cases where a justice of the peace was not assigned work pending the outcome of the misconduct hearing, such as *Winchester*, the Hearing Panel did not ultimately recommend dismissal from office.

Camp

200. Sexist attitudes by a judge were also a key ingredient in the findings of misconduct by the Canadian Judicial Council against Justice Robin Camp of the Federal Court of Canada, as outlined in *Camp* (CJC, 2017). Its Inquiry Committee found that, out of 21 specific allegations of misconduct made against Justice Camp with respect to his conduct in the *Wagar* trial, 17 had been fully made out and two others partially made out. These included, as outlined in paragraph 10 of the *Camp* decision, that he had “made comments or asked questions evidencing an antipathy towards laws designed to protect vulnerable witnesses, promote equality, and bring integrity to sexual assault trials” and further that he “relied on discredited myths and stereotypes about women and victim-blaming”.

201. An interesting comment on the issue of remorse is found in paragraph 42 of the Council’s decision in *Camp*:

Whether or not the Judge is sincerely remorseful or personally rehabilitated is not determinative of the matter. Even if we were to agree that the Judge is fully rehabilitated, we agree with the Committee that, in all the circumstances, the Judge’s efforts at remediation must yield to a result that more resolutely pursues the goal of restoring public confidence in the integrity of the judicial system.

202. So if a judge showing remorse is not determinative, should the opposite situation also not be determinative? The fact that Justice of the Peace Lauzon has shown no remorse is not an aggravating factor. It is simply an absence of a mitigating factor. This distinction was also made by the Hearing Panel in the *Phillips* decision at paragraph 24: “Her lack of acknowledgment or contrition is not an aggravating factor. It is simply a lack of a mitigating factor.” It should therefore be inappropriate for this Hearing Panel to treat a lack of remorse as the factor that pushes it over the line into a recommendation for dismissal from office.

203. Notwithstanding its discussion of remorse, an important part of the majority decision of the Council in *Camp*, which recommended removal from office, can be found in its conclusion, at paragraph 50: “In this instance, the Judge’s misconduct was evidenced over a continued period during the trial. Some of the Judge’s most egregious comments were repeated in his reasons for decision, issued much later.”

Flynn

204. In the introductory summary of its decision in *Flynn* (CJC, 2002), the Inquiry Committee succinctly stated its conclusion to the Canadian Judicial Council:

The members of the Committee disapprove the communication and statements made by Mr. Justice Bernard Flynn reported in the article in the newspaper *Le Devoir* on February 23, 2002 and conclude that in keeping with his duty to act in a reserved manner he should have refrained from making public comments about the transaction involving his wife. They consider these statements to be inappropriate and unacceptable. However, in the Committee's opinion, the conduct of Mr. Justice Bernard Flynn does not mean he has become incapacitated or disabled from the due execution of the office of judge....and for this reason it does not recommend that Mr. Justice Bernard Flynn be removed from office.

205. In some ways, the facts of *Flynn* are quite similar to those that this Hearing Panel is dealing with in respect of Justice of the Peace Lauzon, in that they involved one set of remarks being published in a widely circulated newspaper. The *Flynn* case could be considered as more serious than our present case in that Justice Flynn's comments were on a topic in which he had a personal interest, as well as an indirect financial interest. Accordingly, the tenth *Chisvin* factor, that of satisfying a personal desire, is engaged in *Flynn*, where it is not engaged in this matter concerning Justice of the Peace Lauzon.

206. I do note, however, that an important mitigating feature in the *Flynn* case was the judge's acknowledgment to the Inquiry Committee, as set out in paragraph 11, that in retrospect it would have been preferable for him not to have spoken to the journalist.

Foulds

207. In the case of *Foulds* (JPRC, 2018), the Hearing Panel concluded that Justice of the Peace Foulds had actively and inappropriately involved himself in matters relating to a criminal prosecution when His Worship was a close friend or romantic partner of the complainant in the criminal matters. The many actions of Justice of the Peace Foulds included, among other things, initiating conduct with Crown counsel who had carriage of the case.

208. The pattern of inappropriate conduct resulted in the Hearing Panel finding that the justice of the peace's actions were an abuse of office and constituted judicial misconduct. His Worship had been on an administrative suspension as a result of these allegations. When combined with an earlier finding of misconduct from 2013 against Justice of the Peace Foulds, the Hearing Panel concluded that nothing short of a recommendation for removal from office would suffice.

Kowarsky

209. In *Re Kowarsky* (JPRC, 2011), the Hearing Panel noted with approval that Justice of the Peace Kowarsky had taken the step of voluntarily arranging to have his assignments adjusted to accommodate the complainant, a court clerk. This was recognized by the Hearing Panel in his matter as being a step that aided in restoring public confidence in Justice of the Peace Kowarsky. While, as discussed earlier, Justice of the Peace Lauzon's presiding schedule was not altered after she wrote the *National Post* article, she had, prior to writing it, asked for and had obtained a temporary re-adjustment to her duties so that she was not having to preside in Ottawa's main bail court, the eventual subject of her opinion piece.

Matlow

210. An Inquiry Committee of the Canadian Judicial Council recommended that Justice Theodore Matlow, an Ontario Superior Court justice, be removed from office. However, a majority of the members of the Canadian Judicial Council, in their subsequent report to the Minister of Justice, concluded that removal from office was not necessary.

211. Both the Inquiry Committee's and the Canadian Judicial Council's decisions are lengthy and detailed. On numerous occasions between 2002 and 2005, Mr. Justice Matlow expressed his opposition to a development proposal (the "Thelma Project") that impacted the street on which he lived, by means of various media interviews, criticism of City of Toronto personnel, and political lobbying. The Inquiry Committee found, in paragraph 59, that "Justice Matlow was deliberately promoting public controversy respecting the Thelma Project for the purpose of furthering his and his neighbours' personal opposition to the Thelma Project." As well, he

presided in a Divisional Court panel that considered a similar development project that involved the City of Toronto.

212. The Inquiry Committee in *Matlow* was careful to make clear that a judge is entitled to make public comments. We have strived, in our *Reasons for Decision*, to make similar comments with respect to Justice of the Peace Lauzon. The Matlow Inquiry Committee's concerns, similar to ours, were that in making such comments, as it expressed at paragraph 148, the judicial official "must be careful to act and speak in a restrained manner in order to ensure conduct that is in conformity with the ethical duties of a judge." At paragraph 163, it stated that the comments made by Mr. Justice Matlow were found to have "displayed intemperance and their potential for negative impact is great."

213. The Inquiry Committee was also very concerned that Mr. Justice Matlow did not express sufficient remorse for his actions, as he stated (at paragraph 166) "I guess I can concede that I wish I had not used the same language that I did." He went on, though, to say: "But the thoughts and the sense of them, and the truth of what I was saying, still remains intact."

214. In paragraph 195 of the Inquiry Committee's decision, Mr. Justice Matlow stated: "I knew I was about to do something that likely most other judges would not do. But I thought that I do not have to be like every other judge, and I do not have to measure what I do by the standards of every other judge."

215. The Inquiry Committee comes to its recommendation at paragraph 206:

While some of the foregoing conclusions are such that standing alone an individual conclusion would not constitute conduct that is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering Justice Matlow incapable of executing his judicial office, taken together there can be no doubt that such is the impact." [emphasis added]

216. In formally recommending his removal from office, in paragraph 207, the Inquiry Committee cites, among other things, "the breadth and extent of Justice Matlow's failure to conform to generally accepted ethical standards for judges" as well as "the numerous aspects

of Justice Matlow's conduct" which resulted in his misconduct and his failure in the due execution of his office. [emphasis added]

217. The Inquiry Committee's recommendation was overturned, though not unanimously, by the entire Canadian Judicial Council.

218. The full Council makes some interesting points, including determining, at paragraph 135 of the majority's decision, that the Inquiry Committee "erred in importing a purely objective standard into the question of whether Justice Matlow ought to have recused himself in the other cases involving the City".

219. Also, at paragraph 179 of the majority decision, the full Council takes into consideration, among other factors, Justice Matlow's oral statement to it that "I promise you today, in the most binding way that I can conceive, that if I am permitted to remain in office as a judge, I will never repeat conduct similar, in any way, to the conduct that might be found offensive by you. I will, without exception, conform to your views."

Moreau-Bérubé

220. The judicial and disciplinary history of this matter is somewhat complicated. Justice Moreau-Bérubé of the New Brunswick Provincial Court, made derogatory comments in court about Acadians. She apologized in court three days later. The New Brunswick Judicial Council received several complaints, and its inquiry panel held that while the judge's comments did constitute judicial misconduct, she was still able to perform her judicial duties, though she was apparently re-assigned to preside in another part of the province. Despite its inquiry panel's decision, the full Council concluded that her remarks had constituted a reasonable apprehension of bias and a loss of public trust and recommended her removal from office. Justice Moreau-Bérubé then filed an application for judicial review, and the New Brunswick Court of Queen's Bench quashed the Council's decision. The Court of Queen's Bench's decision was upheld by the New Brunswick Court of Appeal. Upon further appeal to the Supreme Court of Canada, [2002] 1 S.C.R. 249, the appeal was allowed and the decision of the New Brunswick Judicial Council which recommended dismissal from office was restored.

221. However, the Supreme Court's decision is primarily in the field of administrative law, concerned about issues of the appropriate standard of judicial review of tribunal decisions. This is summarized by Arbour J. stating, at paragraph 73:

I find nothing patently unreasonable in the Council's decision to draw its own conclusions with regard to whether the comments of Judge Moreau-Bérubé created an apprehension of bias sufficient to justify a recommendation for her removal from duties as a Provincial Court judge. Even on a standard of reasonableness simpliciter, I would find no basis to interfere with the Council's decision.

222. While the Supreme Court of Canada did overturn the decision of the New Brunswick Court of Appeal, [2000] N.B.J. No. 368, the comments of the majority of the Court of Appeal, at paragraph 47, remain important to consider: "Absent other evidence, an isolated incident should not be determinative of fitness to be a judge."

Phillips

223. The misconduct of Justice of the Peace Phillips, which resulted in a recommendation, outlined in *Re Phillips* (JPRC, 2013), that she be removed from office was the result of a single incident which involved deliberately misleading a police officer in the course of an investigation. The Panel concluded, at paragraph 26, that "it is such a basic concept that judicial officers are expected to obey the law that it is difficult to fathom how remedial education could address the restoration of public confidence."

Ruffo

224. In its report to the provincial government in *Re Ruffo*, [2005] Q.J. No. 17953, the Quebec Court of Appeal upheld a decision of a Committee of Inquiry of the Conseil de la magistrature du Québec that recommended the removal from office of Justice Ruffo of the Court of Quebec. There were several concerns regarding her performance, including failing to disclose a personal friendship with an expert witness with whom she met during a trial, and her criticism of the Conseil in a television interview. Previous incidents were also considered by the Court of Appeal, including occasions where Justice Ruffo knowingly rendered decisions contrary to the law, received payment for lectures, and allowed her name and image to be used in a

television commercial. The full list of her ethical breaches is contained at paragraph 412 of the Court of Appeal's decision.

225. From the Court of Appeal's review of the Committee of Inquiry's decision at paragraph 65, the Committee's view was that it was the cumulative effect of all these incidents that led it to recommend dismissal. This is confirmed at paragraph 85 of the Court of Appeal's decision where the Court stated:

In the opinion of the Committee of Inquiry, the faults alleged against Judge Ruffo go to the very core of the judicial function and, because of her prior record of conduct-related matters, it has become clear that a reprimand is no longer an appropriate, credible or effective measure to sanction her conduct. It therefore suggests that the procedure to remove Judge Ruffo be set in motion. [emphasis added]

Welsh (2009)

226. In *Re Welsh* (JPRC, 2009), four different instances of possible misconduct were reviewed. On one of them, the Hearing Panel found misconduct. It dealt with Justice of the Peace Welsh altering the amount of a fine for a red light camera ticket levied against a judge and paying it on her behalf. This incident also resulted in Justice of the Peace Welsh being criminally charged with obstruction of justice, a charge to which he pled guilty and received an absolute discharge. Notwithstanding the seriousness of this incident, the Hearing Panel determined that removal from office was not the appropriate disposition. At paragraph 84, it stated: "We do not believe that we can recommend to the Attorney General that Justice of the Peace Welsh be removed from office. There was no element of corruption, implied or express, in Justice of the Peace Welsh's actions." The disposition imposed was for Justice of the Peace Welsh to undergo remedial education.

Welsh (2018)

227. In a further matter before the Justices of the Peace Review Council, the Hearing Panel in *Re Welsh* (JPRC, 2018) found that Justice of the Peace Welsh committed judicial misconduct by unilaterally altering a return date for an individual who had earlier that day appeared before him in a case management court. The date was changed without the knowledge of the defendant

or his counsel. When, not surprisingly, the defendant, Mr. Silverthorne, did not appear on the new return date, a bench warrant for his arrest was issued, and a new charge of failing to appear was laid. Mr. Silverthorne was subsequently arrested and spent 24 days in custody on this new charge. As the Hearing Panel put it in paragraph 48: “In this instance, His Worship’s improper practice and failure to follow proper procedure resulted in a significant deprivation of liberty for Mr. Silverthorne: 24 days.”

228. Notwithstanding what Presenting Counsel referred to, in paragraph 51, as a “cavalier disregard” towards Mr. Silverthorne, the Hearing Panel ultimately concluded that the appropriate disposition in this matter was a combination of a reprimand, an apology, further education and a suspension without pay for a period of 10 days.

Winchester

229. In this recent decision rendered by another Hearing Panel of the Justices of the Peace Review Council on February 19, 2020, Justice of the Peace Claire Winchester was found to have committed judicial misconduct when she closed bail court early in the afternoon of June 27, 2018 even though she was aware that there was a young defendant waiting who would likely be able to be released on bail. As a result of this, the young man spent time in custody awaiting his bail hearing, and his *Charter* rights to reasonable bail and liberty were infringed.

230. Notwithstanding this, the Hearing Panel determined, on July 24, 2020, that the appropriate disposition was a combination of a reprimand, an apology to be given to the young defendant, and a suspension without pay for a period of five days.

231. The *Winchester* Hearing Panel made two important findings, in paragraph 10 of its decision, based on the submissions of Presenting Counsel and counsel for Justice of the Peace Winchester. First, removal from office of Her Worship was not warranted “as there is no suggestion that there was any irremediable compromise of personal integrity that would justify removal.” Second, “the applicable caselaw supports the proposition that cases of misconduct that involve errors in judgment without an element of dishonesty or unscrupulousness are more likely to receive a disposition geared towards rehabilitation.”

Zabel

232. In a relatively recent matter that received a great deal of publicity, Justice Bernd Zabel of the Ontario Court of Justice found himself before the Ontario Judicial Council in *Re Zabel* (OCJ, 2017) as a result of 81 complaints being filed after he wore a “Make America Great Again” baseball cap into his courtroom on the day after President Donald Trump’s election victory in 2016.

233. The reaction of many of the complainants is summarized in the Hearing Panel’s decision at paragraph 20:

The common theme of all these complains is that Justice Zabel’s conduct represented an unacceptable expression of partisan political views by a judge. Most complainants indicate a heightened concern as they perceive many of the things Trump said during his campaign to indicate misogynistic, racist, homophobic, and anti-Muslim attitudes. The complainants state that Justice Zabel has associated himself with those views by his conduct and that women and members of various vulnerable groups would reasonably fear that they would not be treated fairly and impartially by Justice Zabel.

234. Within a very few days of the incident, Justice Zabel re-assessed the appropriateness of his actions, and he apologized in court. At his disciplinary hearing, he admitted that his actions were contrary to the standard of conduct expected of a judge and that his conduct constituted judicial misconduct warranting the imposition of one or more sanctions.

235. Shortly after the complaints were received by the Ontario Judicial Council, Justice Zabel was suspended with pay by his Regional Senior Justice on the recommendation of an OJC Complaints Subcommittee, pending resolution of the matter.

236. In reviewing the *Chisvin* factors, the *Zabel* Hearing Panel stated, in paragraph 45, that there were both aggravating and mitigating aspects to Justice Zabel’s conduct.

237. The aggravating features were that the judicial misconduct occurred in a courtroom and that it breached the fundamental principle that judges must not express political views.

238. The mitigating features were Justice Zabel’s apology, though the Hearing Panel noted, at paragraphs 49 and 50, that it had concerns over its adequacy. It also noted, in paragraph 53, what it considers to be the most significant mitigating factor, namely Justice Zabel’s long record of exemplary conduct as a judge, as shown in the more than 60 letters of support submitted to the Hearing Panel.

239. Its conclusion is set out in paragraph 66: “After giving careful consideration to our difficult decision, we have come to the conclusion that a recommendation for removal from office is neither appropriate nor necessary in the circumstances of this case” and paragraph 67: “In this case a judge with a lengthy and stellar record of service committed a single aberrant and inexplicable act of judicial misconduct...We add that absent the strong evidence of Justice Zabel’s long record of impeccable service as a fair and impartial judge, the result may well have been different.”

CONCLUSIONS FROM THE CASE LAW

240. A summary of the relevant case law leads to several conclusions.

241. First, a single act of misconduct (unless the behaviour itself verges on criminal, as in *Phillips*) has most frequently *not* led to a recommendation of dismissal from office. This has occurred in *Flynn*, *Kowarsky*, *Winchester*, *Welsh* (2018), and *Zabel*.

242. Second, even multiple acts of misconduct do not necessarily lead to a recommendation of dismissal from office: *Matlow*, *Welsh* (2009), *Massiah #1* (2012).

243. Third, multiple acts of misconduct are often viewed as almost being a prerequisite for a recommendation of removal: *Bienvenue*, *Ruffo*.

244. It is also worth noting that a recommendation for removal from office – that last and highest rung on the disciplinary ladder – is a much larger step than any of the others. It strikes at the very heart of judicial independence. As the Supreme Court of Canada stated in *Valente v. The Queen*, [1985] 2 S.C.R. 693 at 694, security of tenure for judges “is the first of the essential conditions of judicial independence.”

245. In similar fashion, in *Re Massiah #2* (JPRC, 2015), the Hearing Panel made the following comment, at paragraph 14:

Counsel for His Worship, in his written submissions, argued, and we accept, that security of tenure for justices of the peace, as for judges, is the first of the essential conditions of judicial independence. Removal from the bench is the most serious disposition and must only be imposed in circumstances where the judicial official's ability to discharge the duties of office is irreparably compromised such that he or she is incapable of executing judicial office.

246. To this end, as Justice of the Peace Lauzon has only been found to have committed one act of judicial misconduct, as that misconduct involved neither a whiff of criminality nor a hint of any personal gain, and as the misconduct has not been repeated in the subsequent four years, I conclude that a recommendation by this Hearing Panel for her removal from office would be a marked departure from the existing jurisprudence in this field.

247. Two further comments from other judicial misconduct cases should be considered.

248. First, the Canadian Judicial Inquiry Committee in *Re Certain Judges of the Nova Scotia Court of Appeal* (the "*Marshall Report*") in 1990 unanimously defined the test for removal as this: "The standard, in our view, must be an objective one based in part, at least, on conduct which could reasonably be expected to shock the conscience and shake the confidence of the public as opposed to conduct which is, and often must be, unpopular with part of that public. [emphasis added]"

249. Keeping this statement in mind, I would again refer to my earlier comments with respect to the reaction of the public to Justice of the Peace Lauzon's article, and conclude that the public appeared to have been neither particularly shocked nor overly shaken by her comments.

250. Second, in *Re Obakata* (2003), a judicial inquiry into the conduct of a justice of the peace, Justice Mocha stated, at page 6, an important principle:

It must be remembered that judicial officers are human beings with all the frailties that entails. Mistakes will be made. The question is the gravity of the misconduct and

whether it is a correctible error. The magnitude of the misconduct and its effect must be weighed in light of the circumstances in which it is committed.

251. Again, I stress that Justice of the Peace Lauzon, in the years since writing the article, has made no public comments at all.

252. I conclude that Justice of the Peace Lauzon has not become incapacitated or disabled from the due execution of her office, nor do I conclude that her conduct in writing the article that she did was so heinous that it is incompatible with the due execution of his or her office. The requirements of section 11.2 of the *Act* have therefore not been met.

RECOMMENDATION

253. I recognize that I have spent a great deal of time outlining why I do not believe that dismissal from office is the appropriate disposition in the case of Justice of the Peace Julie Lauzon. It is incumbent on me, however, to state what I believe the disposition should be.

254. In coming to my conclusion, I take into account two judicial comments with respect to judicial reprimands. First, from *Re Ruffo*, [2005] Q.J. No. 17953 at paragraph 19: “A reprimand is a very serious punishment for a judge.” Second, this decision quotes Justice Sopinka in *Ruffo v. Conseil de la magistrature*, [1995] 4 S.C.R. 267 at paragraph 2: “A reprimanded judge is a weakened judge: such a judge will find it difficult to perform judicial duties and will be faced with a loss of confidence on the part of the public and litigants.”

255. In accordance with the ladder principle, it would be inappropriate to impose a harsher sanction on Justice of the Peace Lauzon.

256. In my opinion, a combination of a reprimand and a suspension of duties, without pay, for a period of thirty days, would be a proportionate disposition to impose in this case. This disposition would drive home the seriousness of the misconduct of Justice of the Peace Lauzon and would be sufficient to restore the confidence of the public in the integrity of the judiciary as a whole and in the administration of justice.

UNANIMOUS REASONS FOR DECISION ON APPLICATION FOR COMPENSATION

257. These reasons deal with Justice of the Peace Lauzon's request that the Panel recommend to the Attorney General that she be compensated in full for costs incurred for legal services in connection with her response to the Complaints Committee during the investigation stage and the Hearing process that followed.
258. Justice of the Peace Lauzon seeks compensation for legal costs in the total amount of **\$202,481.31**, including HST and disbursements.
259. She was represented by two different counsel at different stages of the proceedings. She was initially represented by Mr. Domenic Lamb and more recently by Mr. Lawrence Greenspon.
260. The Panel has had the benefit of written submissions from Messrs. Lamb and Greenspon, as well as from Presenting Counsel.
261. Both Messrs. Lamb and Greenspon, on behalf of Her Worship, seek compensation in full for all of the legal costs incurred in representing Justice of the Peace Lauzon throughout these proceedings.

Mr. Lamb's Invoices

262. Mr. Lamb represented Her Worship beginning in April 2017, shortly after the complaints were filed with the Review Council, up until the time the Hearing was initially set to commence on January 14, 2019.
263. On the eve of the first hearing dates, in an Affidavit filed by Mr. Lamb dated January 12, 2019, he indicated that there had been an irreparable breakdown in the relationship between Her Worship and himself.
264. Mr. Lamb has submitted two invoices. Both invoices show an hourly rate of \$350.00 reduced to \$225.00 to reflect his understanding of the approved government rate.

265. The first invoice covers the period from April 2017 to May of 2018, when the matter was before the Complaints Committee. The total amount on this invoice for fees is \$29,160.00 plus HST of \$3, 790.80 for a total of \$32, 950.80 There are no disbursements noted on this invoice.
266. The invoice reflects 129.60 hours of work that was primarily devoted to reviewing materials and to preparing responses to the JPRC Complaints Committee in respect of a number of complaints. Of the eleven original complaints, the Committee ordered a Hearing in respect of four of the complaints. Mr. Lamb's formal response to the remaining complaints was dated September 15, 2017 and marked as Exhibit 9 at the Hearing. As a result of the *Antic* decision, Presenting Counsel chose not to proceed on two of the allegations contained in the Notice of Hearing. The Panel upheld one of the two remaining allegations; the allegation relating to the Article.
267. Mr. Lamb's second invoice covers the six month period from June 2018 to January 2019. It does not include any work he completed at the complaints stage of the proceedings. The total amount sought is \$27,450.00 in fees plus HST on the legal fees of \$3,568.50 and disbursements of \$2,199.43 plus HST on disbursements in the amount of \$285.93 for a total of \$33,503.86.
268. Mr. Lamb's invoice reflects 122 hours of work on the file in the timeframe indicated, approximately 85 hours of which were spent preparing the *Charter* application.
269. The total amount that Her Worship requests in respect of costs incurred for Mr. Lamb's legal fees is \$56,610 + HST on legal fees of \$7,359.30 and \$2,199.43 in disbursements and HST on disbursements of \$285.93 for a total of **\$66,454.66**.

Mr. Greenspon's Statement of Account

270. Justice of the Peace Lauzon retained Mr. Greenspon in January of 2019. He represented Her Worship at the Hearing and at the disposition stage, which included seven hearing days in total.⁵⁸ The disposition hearing which was the last hearing date took place via Zoom on account

⁵⁸ September 16-18 2019; October 9-11 2019 and July 16th 2020

of the pandemic. Written submissions on compensation were filed following the disposition hearing.

271. Mr. Greenspon has submitted a statement of account in the amount of \$115, 612.50, which reflects his fees and that of two junior associates who worked on the file at different times, plus HST on the legal fees of \$15,029.63 and disbursements of \$4,811.85 plus HST on the disbursements of \$752.67 for HST for a total of **\$136, 026.65**.
272. Mr. Greenspon's statement reflects an hourly rate of \$450.00 for his services, reduced from \$550 and \$175.00 for his junior associates.⁵⁹
273. Presenting Counsel took no position on whether the Panel should make a recommendation for compensation for costs but submitted that it would be open to the Panel to conclude that either partial or full compensation is appropriate. Presenting Counsel highlighted a number of considerations that could result in a recommendation for partial compensation.
274. For the reasons explained in this decision, the Panel recommends that Justice of the Peace Lauzon receive partial compensation in the amount of \$112,011.28 for all of her legal costs and disbursements, not including HST.

Background

275. Initially, there were multiple allegations before the Complaints Committee. However, the Committee conducted an investigation and, based upon the JPRC's procedural rules and the law, determined which allegations should be ordered to a hearing. The Notice of Hearing set out four allegations. Ultimately, Presenting Counsel only proceeded with two of the allegations. The circumstances giving rise to the two allegations of misconduct and the Panel's findings were addressed in our *Reasons for Decision* released on May 7th, 2020.

⁵⁹ S. 11.1(18) of the *JPA* provides that the amount of compensation recommended under subsection 17.1 shall be based on the rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

276. The Panel upheld the allegation of misconduct relating to the Article in the *National Post*. The Panel dismissed the second allegation of misconduct. This allegation related to comments Justice of the Peace Lauzon made during a bail hearing about another jurist who had overturned Her Worship's order for release in another matter.
277. The first allegation relating to the Article was the more serious of the two allegations and was the focus of much of the Hearing. Her Worship brought a *Charter* Application on the basis that the complaints process under the JPRC violated her right to Freedom of Expression. That application was unsuccessful. The Panel found the application did not raise any novel issue and the Supreme Court of Canada's decision in *R. v. Doré* was binding authority on the issue of freedom of expression in the context of ethical obligations that bind lawyers and by extension judicial officers.
278. Justice of the Peace Lauzon also brought an application alleging that the complaint process and the proceedings that followed were an Abuse of Process. That application was also unsuccessful. The Panel found that there was no evidentiary foundation to support the application and it therefore lacked any merit.
279. In response to the first allegation, counsel for Justice of the Peace Lauzon filed seven affidavits of justices of the peace and planned to call four of them as witnesses at the Hearing. Presenting Counsel did not concede the relevance of this testimony but did request that two of the witnesses be available for cross-examination. The Panel heard from three justices of the peace, who testified about their experiences in bail courts in the jurisdictions where they preside. This testimony took up the equivalent of a full hearing day. In our *Reasons for Decision*, the Panel placed no weight on this evidence on the basis that it was not relevant to the issue before us.

ISSUE ON THIS APPLICATION

280. The narrow issue for this Panel is, having regard to the particular circumstances of this hearing and the context in which the Article was written, whether to recommend that Justice of the Peace Lauzon receive compensation for her legal costs and, if so, in what amount.

THE APPLICABLE LEGAL FRAMEWORK

281. Under the s. 11.1(17) of the *Justices of the Peace Act* (the “JPA”), a Justice of the Peace, following a hearing before a Hearing Panel, may make an application for a recommendation that there be an order for compensation for legal costs incurred in the complaints process as well as those incurred as a result of the hearing.
282. The Panel must consider whether Justice of the Peace Lauzon should be compensated in whole or in part for her costs for legal services incurred in relation to the complaint process, including the Hearing. If the Panel is of the opinion that Justice of the Peace Lauzon should be compensated for her legal costs, it shall make a recommendation to the Attorney General to that effect, indicating the amount of the compensation recommended. The Attorney General has discretion as to whether to pay compensation in accordance with the recommendation.
283. The guiding case on how this Panel should approach the issue of compensation for costs is *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 (Div. Court). However, the Panel has also considered other cases subsequent to *Massiah* in which the Panel made recommendations for compensation either partially or in full.
284. Justice Nordheimer in *Massiah* set out a number of guiding principles. The first of these is that the decision maker should start from the premise that the costs of ensuring a fair, full and complete process ought usually to be borne by the public purse. This is because it is the public interest that is being advanced and maintained by the complaint process and because it is in the best interests of the administration of justice that the judicial officer subject to the complaint has the benefit of legal counsel.
285. This premise rests on the principle objective of the complaint process, which is to restore and maintain public confidence in the integrity of the judiciary, not to punish the judicial officer holder. The premise also operates irrespective of whether there has been a finding of misconduct.
286. However, the court made it clear in *Massiah* that compensation for legal costs in cases of successful complaints is not automatic. The decision whether to recommend compensation

must be made after due consideration of the particular circumstances of the case, taking into account the objective of the process.

287. The following circumstances or factors are relevant when a Panel is considering a recommendation for compensation:

- a) The nature of the misconduct and its connection to the judicial function. Misconduct more directly related to the judicial function may be more deserving of a compensation order than conduct that is less directly related;
- b) Conduct that any person ought to have known was inappropriate will be less deserving of a compensation decision than would conduct that is only determined to be inappropriate as a result of the ultimate decision in a particular case;
- c) Misconduct where there are multiple instances may be less deserving of a compensation recommendation than would a single instance of misconduct;
- d) Repeated instances of misconduct may be less deserving of a compensation recommendation than an isolated incident; and
- e) Costs associated with steps which the decision-maker views unmeritorious or unnecessary.

288. The success or failure of applications brought before the Panel, as well as decisions made during the course of the hearing that abbreviated or prolonged the hearing are also relevant to the issue of compensation for legal costs.

Application of the *Massiah* Factors to this Case

289. The Panel began with the premise that there should be a recommendation for payment of legal costs incurred.

a) Nature of the misconduct and its connection to the judicial function

290. The misconduct Justice of the Peace Lauzon engaged in related to writing and publishing the Article in a newspaper with wide reach. The Panel found that the misconduct was a serious

breach of the high standard of judicial conduct such that it fell at the most extreme end of the spectrum of available sanctions.

291. The misconduct did not take place in a courtroom, nor did it occur while Justice of the Peace Lauzon was otherwise fulfilling her duties as a judicial officer. However, given the content and context of the Article, Justice of the Peace Lauzon traversed her judicial role into her personal life. In this regard, the circumstances of this case have some similarity with the Ontario Judicial Council's decision in *Re John Keast*.⁶⁰ Justice Gillese found that the situation in which the misconduct took place blurred the lines between Justice Keast's judicial and personal lives. This was because Justice Keast's personal situation related to a Children's Aid Society ("CAS") matter and, as a judge, Justice Keast routinely heard CAS matters. This factor makes the application less deserving of compensation.

b) Patently Inappropriate Conduct

292. In our view, any judicial officer who was aware of and respected her ethical obligations would have known or ought to have known that it was inappropriate for a judicial officer to express her opinions in the manner Her Worship did and in the forum she chose. The language Justice of the Peace Lauzon used to describe the bail courts was derogatory and eroded public confidence in the judiciary and the administration of justice. The language she used to describe Crown counsel was insulting, inflammatory and gave the appearance of bias. As Justice Gillese put it in *Re Keast*, "[a]ny person ought ... to know that it is inappropriate to use derogatory language when describing individuals and institutions." (Emphasis added)

293. In this case, Justice of the Peace Lauzon herself acknowledged in her testimony that she knew that in writing the Article, she would come before the Council, but she still proceeded nonetheless. This factor makes the application less deserving of compensation.

⁶⁰ In the Matter of a Hearing Under Section 51.6 of the Courts of Justice Act, R.S.O., c. C. 43, as amended, at paras. 33-34

c) Single instance or multiple instances

294. The Article was a single isolated instance of misconduct. This factor makes the application more deserving of compensation.

d) Prior Instances of Misconduct

295. There are no prior findings of misconduct against Her Worship. This factor makes the application more deserving of compensation.

e) Conduct of the Hearing

296. Justice of the Peace Lauzon seeks full compensation for all costs associated with the response her counsel submitted to the Complaints Committee. In that response, she expressed some regret for expressing herself in the manner she did. Yet, at this Hearing, she categorically resiled from that expression of regret and claimed that the language in the response is not language she uses, understands or is comfortable with. This is conduct that is less deserving of compensation.

297. The Panel takes into account that some of the steps taken by Mr. Greenspon had the effect of streamlining or abbreviating the Hearing. However, there were some steps or strategic decisions that undermined those efforts and that had the opposite effect. This factor makes the application less deserving of compensation.

298. For example, in addition to the evidence of Her Worship, counsel for Justice of the Peace Lauzon called three justices of the peace whose evidence occupied the equivalent of a full day's hearing. Presenting Counsel did not admit the relevance of the evidence. Instead of obtaining a decision on the admissibility of the evidence in advance, counsel chose to lead it subject to the Panel's determination at a later time. Each of the justices of the peace who testified recounted their backgrounds and own personal experiences in bail court in various jurisdictions in Ontario, some in considerable detail. None of the justices of the peace assisted in writing the Article, nor did they have any input whatsoever. Ultimately, the Panel placed no weight on the affidavit material, or the testimony of the three justices of the peace who testified.

The Panel finds that calling these witnesses unnecessarily prolonged the Hearing by at least one full day.

299. A great deal of the submissions in this matter were devoted to the *Charter* argument as well as the Abuse of process application. The *Charter* application failed. The Panel found that the case of *Doré* was dispositive of the issue. The Abuse application had no evidentiary foundation, it lacked merit and was dismissed on that basis. These steps prolonged the hearing and make the application less deserving of compensation.

Change in Counsel and Impact on Costs

300. This is a factor that does not appear to have arisen or considered by previous Panels. The Panel recognizes that solicitor and client relationships sometimes break down. No fault can or should be assigned, however, the decision to change counsel on the eve of a hearing can have a significant impact on the legal costs of a proceeding. In this case, Mr. Lamb's second invoice was primarily devoted to preparation of the *Charter* argument that was ultimately argued by Mr. Greenspon. Mr. Greenspon naturally had to familiarize himself with the file and some of the Mr. Lamb's efforts had to be duplicated. This is a factor that in the Panel's view makes the application somewhat less deserving of compensation.

CONCLUSION

301. The Panel started with premise that the public ought to bear the costs of ensuring a full, fair and complete complaint process for the reasons articulated in *Re Massiah*. However, having considered the context in which Article came about, and weighing the circumstances of this case against the objective of the process and the factors identified in the caselaw, we have determined that the following factors, and the first three in particular, militate against a recommendation for a full compensation of the legal costs:

- The nature and seriousness of the conduct and Her Worship's acknowledgment that she knew she was crossing an ethical line for which she could face disciplinary consequences;
- The Article was not directly connected to Justice of the Peace Lauzon's judicial function in that she was not in court or performing the ordinary functions of her

office. By writing about bail court in a national newspaper, however, she chose to blur the lines between the professional and personal spheres of her life; and

- The conduct of the hearing, in particular: Her Worship resiling from the position she initially took in her response to the Complaints Committee and the prolonged, but appropriate, cross-examination arising from that, the unsuccessful *Charter* application, the unmeritorious Abuse application and the preparation and filing of seven affidavits and the *viva voce* testimony of three of the affiants whose evidence the Panel found was not relevant to the finding of misconduct, and finally;
- The change in counsel and timing thereof that increased the legal costs incurred.

302. Finally, we also weighed these factors against Justice of the Peace Lauzon's unblemished judicial record.

RECOMMENDATION

303. For these reasons, the Panel recommends to the Attorney General that Justice of the Peace Lauzon receive partial compensation for her legal costs and disbursements in the amount of \$112,010.68, plus HST.

304. The Panel recommends that \$47,199.43 including legal fees and disbursements, plus HST incurred by Her Worship be allocated in compensation for Mr. Domenic Lamb's legal services and disbursements. The remaining balance of \$64, 811.25 plus HST are for costs incurred for Mr. Lawrence Greenspon's legal services and the related disbursements.

Dated at the City of Toronto in the Province of Ontario, November 27, 2020.

HEARING PANEL:

The Honourable Justice Feroza Bhabha, Chair

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

Margot Blight, Lawyer Member