

# **Justices of the Peace Review Council**

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

### **Concerning Two Complaints about the Conduct of Justice of the Peace Margot McLeod**

**Before:** The Honourable Justice Lisa Cameron, Chair  
Justice of the Peace Christine Smythe  
Dr. Michael Phillips, Community Member

**Hearing Panel of the Justices of the Peace Review Council**

## **REASONS FOR DECISION**

Mr. Matthew Gourlay  
Presenting Counsel

Mr. Eugene Bhattacharya and  
Ms. Mary C. Waters Rodriguez  
Counsel for Her Worship McLeod

## Overview

- [1] This proceeding is focused on allegations about the conduct of Justice of the Peace Margot McLeod, a member of the Ontario Court of Justice, arising from two separate complaints about her conduct.
- [2] Following an investigation, a complaints committee of the Justices of the Peace Review Council (JPRC) ordered a formal hearing into the two complaints under section 11.1 of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (“the *JPA*”).
- [3] On June 24, 2020, a Notice of Hearing setting out the allegations ordered to a hearing was filed as an Exhibit. The Notice of Hearing (“Exhibit 1”) alleges judicial misconduct on three occasions:
  - (1) Allegations related to four Reopening Applications submitted by one defendant, upon which Her Worship made handwritten comments;
  - (2) Her Worship’s conduct while she presided in a multi-tier Provincial Offences Court on June 19, 2018; and
  - (3) Her Worship’s conduct during the trial of a defendant, C. W., on September 19, 2018, regarding a charge of an illegal U-turn offence.
- [4] The Notice of Hearing also alleges that the incidents amount to a pattern of conduct by Her Worship toward defendants and the legal process that fails to uphold the integrity and impartiality of her judicial office and demonstrates a lack of patience, decorum, professionalism, dignity, restraint, tact, objectivity, fairness, respect and judgment.
- [5] It is also alleged in the Notice of Hearing that Her Worship’s actions, considered both individually and collectively, constitute judicial misconduct that harms the public’s confidence in the judiciary and the administration of justice and warrants a disposition or dispositions under section 11.1(10) of the *Justices of the Peace Act*.
- [6] Counsel jointly recommend that there should be a finding of judicial misconduct only in relation to the first occasion, from the written reasons made by Her Worship McLeod on the Reopening documents (Record of Reopening Applications).

## The Role of Presenting Counsel and the Hearing Panel

- [7] The Panel notes that the Procedures of the Justices of the Peace Review Council include the following provisions:

- 11.3 Rather than seeking a particular disposition, the duty of Presenting Counsel engaged to appear before a hearing panel is to see that the complaint against the justice of the peace is evaluated fairly and dispassionately to achieve a just result and to preserve or restore confidence in the judiciary.
- 16.14 The parties may rely on an Agreed Statement of Facts by filing same with the Registrar no later than 10 days before the date set for the commencement of the hearing. The recommended template for an Agreed Statement of Facts is included as “Appendix E” to these Rules of Procedure.
- 16.19 Given the important role of the Review Council in preserving public confidence in the judiciary, and recognizing that a three-person complaints committee that orders a hearing has concluded that the evidence could support a finding of judicial misconduct, a Hearing Panel has a responsibility to make its own determinations on the matters before it.
- (f) A hearing panel is not bound by joint submissions from the parties.

## **Standard of Proof**

- [8] Proof of judicial misconduct is to be established on a balance of probabilities.
- [9] Presenting Counsel bears the onus of establishing the allegations on a balance of probabilities. The Supreme Court of Canada held at paragraph 46 of *F.H. v. McDougall*, [2008] 3 S.C.R. 41, as follows:

46 ...evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test [*emphasis added*]. But again, there is no objective standard to measure sufficiency. In serious cases, like the present, judges may be faced with evidence of events that are alleged to have occurred many years before, where there is little other evidence than that of the plaintiff and defendant. As difficult as the task may be, the judge must make a decision. If a responsible judge finds for the plaintiff, it must be accepted that the evidence was sufficiently clear, convincing and cogent to that judge that the plaintiff satisfied the balance of probabilities test.

## The meaning of judicial misconduct

[10] The Supreme Court of Canada has set out three aspects of judicial conduct that are the foundations of public confidence in the judiciary and the administration of justice: impartiality, independence and integrity: *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 1; *Therrien (Re)*, [2001] 2 S.C.R. 3, 2001 SCC 35. A failure to uphold any of those foundations of judicial conduct requires consideration of the appropriate disposition to restore public confidence in the judiciary in general.

[11] In a JPRC hearing about the conduct of former Justice of the Peace Tom Foulds, the Hearing Panel gave the following description of the nature of judicial misconduct (*Re Foulds: Reasons for Decision* (JPRC, 2018)):

[35] In *Re: Douglas, supra*, at paragraphs 8 and 9, the Hearing Panel noted the following:

[8] Based on *Re: Baldwin* and *Re: Evans*, the test for judicial misconduct combines two related concerns: (1) public confidence; and (2) the integrity, impartiality and independence of the judge or the administration of justice. The first concern requires that the Hearing Panel be mindful not only of the conduct in question, but also of the appearance of that conduct in the eyes of the public. As noted in *Therrien*, the public will at least demand that a judge give the appearance of integrity, impartiality and independence. Thus, maintenance of public confidence in the judge personally, and in the administration of justice generally, are central considerations in evaluating impugned conduct. In addition, *the conduct must be such that it implicates the integrity, impartiality or independence of the judiciary or the administration of justice.*

[9] *Accordingly, a judge must be, and appear to be, impartial and independent. He or she must have, and appear to have, personal integrity. If a judge conducts himself, or herself, in a manner that displays a lack of any of these attributes, he or she may be found to have engaged in judicial misconduct.* (Italics added.)

[12] Public confidence should be viewed from the perspective of the “reasonable, fair-minded, informed member of the public” (*Re Baldwin*, OJC 2002).

[13] Furthermore, evidence of bad faith, ulterior motives or deliberate misconduct is not required for a finding of judicial misconduct. The Hearing Panel in *Re Welsh: Reasons for Decision* (JPRC, 2018) concluded as follows:

[53] As stated in our brief oral decision, we find on a balance of probabilities that His Worship Welsh’s behaviour constitutes judicial

misconduct, in light of the Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice and in light of the test set out by the Supreme Court of Canada in *Re Therrien and Moreau-Bérubé*. We found that His Worship's conduct was seriously contrary to the impartiality and integrity of the judiciary and it has undermined the public's confidence in the judiciary and in the administration of justice. We find that Justice of the Peace Welsh acted in a careless and negligent manner.

[14] The appearance of the judicial conduct and its impact on public confidence are central considerations in assessing allegations of judicial misconduct. As noted in *Therrien*, a Hearing Panel must be concerned with not only the conduct in question, but also the appearance of that conduct in the eyes of the public. The public will at least demand that a judge give the appearance of integrity, impartiality and independence.

[15] In *Therrien (Re)*, at page 74, starting at paragraph 107, the Court states:

107. By making these arguments, the appellant is inviting this Court to examine the very foundations of our justice system. The decision is, first and foremost, closely connected to the role a judge is called upon to play in that system and to *the image of impartiality, independence and integrity he or she must project and strive to maintain*. [Italics added.]

The Role of the Judge: "A Place Apart"

108. The judicial function is absolutely unique. Our society assigns important powers and responsibilities to the members of its judiciary. Apart from the traditional role of an arbiter which settles disputes and adjudicates between the rights of the parties, judges are also responsible for preserving the balance of constitutional powers between the two levels of government in our federal state. Furthermore, following the enactment of the Canadian *Charter*, they have become one of the foremost defenders of individual freedoms and human rights and guardians of the values it embodies: Beauregard, *supra*, at p. 70, and *Reference re Remuneration of Judges of the Provincial Court*, *supra*, at para. 123. Accordingly, from the point of view of the individual who appears before them, judges are first and foremost the ones who state the law, grant the person rights or impose obligations on him or her.

109. *If we then look beyond the jurist to whom we assign responsibility for resolving conflicts between parties, judges also play a fundamental role in the eyes of the external observer of the judicial system*. [Italics added.] The judge is the pillar of our entire justice system, and of the rights and freedoms which that system is designed to promote and protect. *Thus, to the public, judges not only swear by taking their oath to*

*serve the ideals of Justice and Truth on which the rule of law in Canada and the foundations of our democracy are built, but they are asked to embody them* [Italics added.] (Justice Jean Beetz, Introduction of the first speaker at the conference marking the 10th anniversary of the Canadian Institute for the Administration of Justice, observations collected in *Mélanges Jean Beetz* (1995), at pp. 70-71).

110. *Accordingly, the personal qualities, conduct and image that a judge projects affect those of the judicial system as a whole and, therefore, the confidence that the public places in it.* [Italics added.] Maintaining confidence on the part of the public in its justice system ensures its effectiveness and proper functioning. But beyond that, public confidence promotes the general welfare and social peace by maintaining the rule of law. In a paper written for its members, the Canadian Judicial Council explains:

Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. *Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.* (Canadian Judicial Council, *Ethical Principles for Judges* (1998), p. 14) [Italics added.]

111. *The public will therefore demand virtually irreproachable conduct from anyone performing a judicial function. It will at least demand that they give the appearance of that kind of conduct. They must be and must give the appearance of being an example of impartiality, independence and integrity. What is demanded of them is something far above what is demanded of their fellow citizens.* [Italics added.] This is eloquently expressed by Professor Y.-M. Morissette:

[translation] [T]he vulnerability of judges is clearly greater than that of the mass of humanity or of “elites” in general: it is rather as if his or her function, which is to judge others, imposed a requirement that he or she remain beyond the judgment of others.  
 (“Figure actuelle du juge dans la cité” (1999), 30 R.D.U.S. 1, at pp. 11-12)

In *The Canadian Legal System* (1977), Professor G. Gall goes even further, at p. 167:

*The dictates of tradition require the greatest restraint, the greatest propriety and the greatest decorum from the members of our judiciary.* [Italics added.] We expect our judges to be almost superhuman in wisdom, in propriety, in decorum and in humanity. There must be no other group in society which must fulfil this standard of public expectation and, at the same time, accept numerous constraints. At any rate, there is no question that a certain loss of freedom accompanies the acceptance of an appointment to the judiciary.

- [16] In the *Report of a Judicial Inquiry Re: His Worship Benjamin Sinai a Justice of the Peace* (2009), the Commissioner observed:

It is clear that justices of the peace are very important judicial officers. Although they are not required to have formal legal training before their appointment, their decisions regarding bail, the issuance of search warrants and *Provincial Offence* matters seriously impact the liberty and privacy of those who appear before them. Indeed, for the vast majority of society who have contact with the court system, their first and only contact would be to appear before a justice of the peace.

- [17] Many members of the public will form their opinion of the judiciary and of the administration of justice based upon their experience with a justice of the peace. A justice of the peace is expected to conduct himself or herself in a manner that will ensure the public's trust and confidence in the justice system, not in a manner that critiques and undermines the justice system or the persons who work in that system.

- [18] As Justice Hogan stated in the Commission of Inquiry into the conduct of His Worship Justice of the Peace Leonard Blackburn:

It is the justices of the peace who preside in court on matters such as parking tags, speeding tickets, by-law infractions, and *Provincial Offences*. These are the day to day type of "judicial" issues that confront most people. It is therefore quite probable that a great number of the public will form judgments of our justice system based on their experiences with a justice of the peace.

- [19] The Supreme Court of Canada has described how a failure to uphold one of the three pillars of justice by one member of the judiciary impacts on the judiciary as a whole. In *Moreau-Bérubé supra*, the Court states, at para. 58:

In some cases, however, the actions and expressions of an individual judge trigger concerns about the integrity of the judicial function itself. 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*. The harm alleged is not curable by the appeal process. (Emphasis added.)

- [20] Given the importance of preserving public confidence in the judiciary as a whole, a discretionary judicial decision is not immune from review for judicial misconduct even though an appeal right exists: *Moreau-Bérubé* at para. 58
- [21] Accordingly, the possibility of an appellate remedy for a particular judicial act does not automatically or necessarily divest the judicial discipline body of jurisdiction to review the conduct of a judicial officer. While higher levels of court provide a means of accountability for the decisions made by a justice of the peace, members of the judiciary must also be accountable for the manner in which they conduct themselves and discharge their duties.

## **Ethical Principles**

- [22] In determining whether there has been judicial misconduct, consideration must also be given to the ethical guidelines for judicial officers.
- [23] In the *Report of the Canadian Judicial Council to the Minister of Justice* (December 3, 2008) in relation to the conduct of the Honourable Justice Theodore Matlow, the Canadian Judicial Council held at paragraph 99:

While the *Ethical Principles* are not absolutes and while a breach will not automatically lead to an expression of concern by the CJC, much less a recommendation for removal from the Bench, they do set out a general framework of values and considerations that will necessarily be relevant in evaluating allegations of improper conduct by a judge.” Therefore, the fact that challenged conduct is inconsistent with or in breach of the *Ethical Principles* constitutes a weighty factor in determining whether a judge has met the objective standard of impartiality and integrity required of a judge and in determining whether the challenged conduct meets the objective standard for removal from the Bench.

- [24] Hearing Panels of both the Ontario Judicial Council and the Justices of the Peace Review Council have held that while principles of judicial office do not constitute a prescriptive code of conduct, they set out a general framework of values and considerations that will necessarily be relevant in evaluating allegations of improper conduct by a judicial officer. The fact that conduct complained of is inconsistent with principles of judicial conduct is a factor to be taken into account

in determining whether there has been judicial misconduct (*Re Foulds: Reasons for Decision*, (JPRC 2018)).

[25] Accordingly, this Panel is entitled to consider the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* in assessing whether the conduct complained of constitutes sanctionable conduct.

[26] The *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* inform the judiciary and members of the public of the high standard of conduct expected of justices of the peace. The preamble provides that:

The justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.

[27] The Principles also state:

1.1 Justices of the peace must be impartial and objective in the discharge of their judicial duties.

*Commentaries:*

Justices of the peace should maintain their objectivity and shall not, by words or conduct, manifest favour, bias or prejudice towards any party or interest.

1.2 Justices of the peace have a duty to follow the law.

*Commentaries:*

Justices of the peace have a duty to apply the relevant law to the facts and circumstances of the cases before the court and to render justice within the framework of the law.

1.3 Justices of the peace will endeavor to maintain order and decorum in court.

*Commentaries:*

Justices of the peace must strive to be patient, dignified and courteous in performing the duties of judicial office and shall carry out their role with integrity, appropriate firmness and honour.

1.2 Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and

efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

3.1 Justices of the peace should maintain their personal conduct at a level which will ensure the public's trust and confidence.

## **First Court Proceeding: Written Reasons on the Reopening Documents:**

[28] The allegations arising from Her Worship's written reasons on the reopening documents are set out in paragraphs 5 through 9 in the Notice of Hearing:

5. On December 18, 2018, a defendant filed four applications to reopen his convictions for the following offences:

- File No. 7184853B: "Drive-hand-held communication device"
- File No. 7184854B: "Fail to have or surrender insurance card"
- File No. 7184855B: "Fail to surrender permit for motor vehicle"
- File No. 7184856B: "Use or permit use of plate or validation not in accordance with Act or regulations".

6. In the affidavits filed in support of his applications, the defendant stated that he had been unable to attend his hearing because his girlfriend, who was "handling his tickets", was having a miscarriage.

7. Her Worship denied the applications on December 18, 2018 and, in doing so, wrote the following comments on the four Records of Reopening Applications (Exhibits A, B, C and D to the Agreed Statement of Facts files as Exhibit 2):

- File No. 7184853B: "can't blame a fetus for you not showing up to court".
- File No. 7184854B: "no shame – never blame girlfriend for your charges – MAN UP!!"
- File No. 7184855B: "are you competent enough to drive a car?? Don't blame your girlfriend for having a miscarriage for her not showing up to deal with YOUR TICKET".
- File No. 7184856B: "don't blame your girlfriend/don't blame her [*sic*] having a miscarriage".

8. Her Worship made written comments on public court documents that were intemperate, lacking in judgment and propriety, disrespectful, undignified, hostile, inappropriate, and insulting.
9. Further, Her Worship's conduct undermined, or could reasonably be seen to have undermined, the integrity and impartiality of her judicial office and public confidence in the administration of justice.

- [29] As set out in the Agreed Statement of Facts, a member of the court administration staff was uncomfortable when she read Her Worship's reasons on the applications. Although the reasons would not routinely be disclosed to an applicant/defendant, the staff person knew that if the defendant requested the reasons why his applications had been denied, she would either have to provide him with the documents or read Her Worship's reasons to him. She and another court staff person brought the written reasons to the attention of the Manager of Court Administration, who notified the Regional Senior Justice of the Peace.
- [30] The fact that Her Worship's reasons on the applications would not usually be provided or made more public does not determine whether her actions and comments constitute misconduct, rather goes only to the extent of the damage done. The comments were written on official court documents that would be seen by court staff. The comments raised concerns for court staff, their manager and the complainant, a senior judicial officer. The complainant was sufficiently concerned that she submitted a complaint to the Review Council.
- [31] That Her Worship's decisions on the applications are appealable that does not bar this Panel's review of her conduct in the course of exercising her discretion.
- [32] In the Agreed Statement of Facts, Her Worship acknowledges that in making such demeaning and gratuitous comments on the reopening applications, she failed to meet the standard of conduct expected of a judicial officer. She acknowledges that the comments were injudicious, inappropriate and hurtful. She agrees that she failed to uphold the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* by failing to remain dignified and courteous in performing the duties of judicial office. Her Worship agrees that her comments on the reopening documents constitute judicial misconduct.
- [33] This Panel finds that Her Worship's written comments constitute judicial misconduct. We find that the comments written by Her Worship as part of her reasons for denying the reopenings were insensitive, demeaning, hurtful, sarcastic, and wholly inappropriate for a judicial officer.
- [34] By way of explanation, Her Worship says that at the time when she wrote the comments, she was experiencing a stressful period in her life. She provides no

particulars of the stress she was under, or how it caused her to write the reasons she did on the applications.

- [35] The Panel notes that the reasons were made in the context of a written application that was considered in chambers as opposed to a public forum so that does limit the number or potential number of people directly affected by this conduct. However, this was not a situation where Her Worship was, for example, in a busy courtroom, or a challenging court proceeding, where comments were made 'in the moment'. Her Worship had the opportunity to think about what she was writing and to reconsider her actions. This was not a situation where there was a momentary lapse or loss of control.

## **Second Court Appearance: Conduct in Provincial Offences Court on June 19, 2018**

- [36] There are four categories of allegations set out in the Notice of Hearing arising from Her Worship's conduct in Provincial Offences Court on June 19, 2018:

1. (Potentially appealable) non-compliance with procedural and legal requirements, for example, failing to make proper plea inquiries and failing to allow the prosecutor an opportunity to make submissions on sentence.
2. Comments that were or could be perceived by members of the public, including the parties and court staff, as unprofessional and/or disrespectful toward defendants and court staff and/or showing a disregard for the formality of court proceedings, not taking the court or legal process seriously, and making jokes about how justice was being administered.

Those comments included: "Start the car"; "Get out of town, get out of dodge"; "What the heck Madame Clerk"; "...Thanks for telling me you can't hear me. So, I guess all you're listening to is whaa, whaa, whaa, whaa, whaa, whaa, whaa, whaa, guilty. Thank you, sir."; "No, no, listen, out, out, out. No, out. Don't care. What the heck..."; "It's just a boo-boo"; Another one of those Hussein": "I'm going to get my little stamperewski (ph) and stamp that baby. That's great."

It is alleged that, considered cumulatively, Her Worship's courtroom language and demeanour lacks the decorum, moderation, patience and integrity required of a judicial officer.

3. Comments about the character and innocence of defendants in the courtroom.

Her Worship made the following comments to a defendant:

Hi, is that your personal belongings there? It's probably a good idea to bring them up, all right. And just, it's not that I don't trust you. But it just always, always bring everything up when you're in court **because everybody in court is here because they've done something wrong, and you don't know what the person beside you has done.** You know, so always be safe... [Emphasis added].

It is alleged that Her Worship's comments could reasonably be understood to imply that other persons in the body of the court were thieves or otherwise untrustworthy, and that defendants in the courtroom were guilty, even though they had not yet had a trial. It is alleged that such remarks may have led members of the public, including the defendant to whom Her Worship was speaking, to perceive that Her Worship held beliefs about defendants which could prevent her from deciding cases impartially and with an open mind.

4. Encouraging or permitting defendants and a legal representative to participate in a factual fiction of non-attendance of defendants by leaving the courtroom or remaining seated in the body of the court (so that their tickets could be quashed *per* s.9 or 9.1 of the *Provincial Offences Act* which permits a justice of the peace to quash a ticket only if a defendant has not appeared at court). It is alleged that a reasonable observer, especially one informed of the law, could conclude that Her Worship was effectively endorsing or condoning a falsehood and that Her Worship failed to remain impartial, objective, principled, neutral, professional and dignified in the discharge of her judicial duties.

Section 9.1 provides as follows:

*Failure to appear at trial*

9.1 (1) A defendant is deemed to not wish to dispute the charge where the defendant has been issued a notice of the time and place of trial and fails to appear at the time and place appointed for the trial.

*Examination by justice*

(2) If subsection (1) applies, section 54 does not apply, and a justice shall examine the certificate of offence and shall without a hearing enter a conviction in the defendant's absence and impose the set fine for the offence if the certificate is complete and regular on its face.

*Quashing proceeding*

(3) The justice shall quash the proceeding if he or she is not able to enter a conviction.

The court record shows that in one instance, the following dialogue occurred:

Ms. H: Just for the record it's Henderson, initial A., appearing on behalf of the defendant. I'll leave the charge ending in 96B in your hands, Her Worship.

The Court: All right, well there's no section number on it.

Prosecutor: It's a careless though, Your Worship, and I don't think there's any prejudice to the defendant because they know what the offence was, and they've attorned to the jurisdiction by coming here today. There was also resolution discussions with regards to this matter. So, I'm prepared to go forward with the resolution discussion despite the minor issue on the ticket.

The Court: Minor issue is the section number of the *Traffic Act*. Okay, the only problem is I think there was – I just read in our list of current case law is that, is that if it's attorned and it's earlier –there's already been earlier discussions, but she didn't know about this. But the other thing too is those minor variations can be addressed in Court, so...

Prosecutor: I'd be asking for an amendment then, please.

The Court: All right. So, and what's the amendment?

Prosecutor: To add the section number.

Ms. H: Your Worship, however if I walk away right now then I'm not attorning to it.

The Court: Thank you.

Prosecutor: This just seems so unethical. We have a careless driver and...

The Court: Do you have any other issues?

Ms. H: No, Your Worship.

The Court: Okay. So, I didn't know –I didn't know why you were coming back. Anyway, so who else can we deal with?

...MATTER HELD DOWN.

The Court: All right. [The defendant has] been paged inside and outside the court. Early resolution meeting was sent April 13, 2018. There was a Russian interpreter and Ms. Henderson was here and is no longer here. There is a Summons; 96B is not proper before the Court and therefore it's Quashed...

- [37] None of the allegations arising from Her Worship's comments and actions in the courtroom on June 19th, 2018 are admitted by Her Worship to constitute judicial misconduct.

*Category One: Non-compliance with legal and procedural requirements*

- [38] With respect to the non-compliance with procedural and legal requirements, the Panel notes that these may be appealable matters. While Her Worship's conduct does not appear to have created any prejudice to a defendant, it did disadvantage and demonstrate a lack of respect for the Prosecution on some occasions. These short-comings and overly informal language do not reflect well on the importance and solemnity of the court proceeding and fail to encourage, from all participants, respect and confidence in the administration of justice. The manner in which Her Worship failed to fulfill her duty to apply the law and procedural requirements constitutes a failure to uphold the *Principles of Judicial Office*.

*Category Two: Inappropriate, unprofessional comments*

- [39] Regarding Her Worship's inappropriate commentary throughout the course of the day, we find that Her Worship's language and comments were flippant, inappropriate and unprofessional. The comment "get out of dodge" can be perceived to analogize the courtroom and the justice system to the 'Wild West'. "Start the car" can be perceived to send the message that if the defendant hurries and gets out of the courtroom, he or she can avoid consequences under the law. The audio recording of the proceeding indicates that some people in the courtroom were laughing after Her Worship's comments.
- [40] In the Agreed Statement of Facts, Her Worship admits that the tone and content of some of her remarks (e.g. "start the car," "get out of Dodge") could be perceived as flippant and insufficiently respectful of the process. She recognizes that such attempts at humour in court can be considered inappropriate.
- [41] A justice of the peace is a guardian of the courtroom. While a judicial officer may wish to make comments so that persons unfamiliar with the courtroom may feel more comfortable so they may better participate in the process, the judicial officer can do so in a manner that is polite, dignified and appropriate. Using language that is overly informal, unprofessional or makes light of the justice process is unnecessary and impacts negatively on the dignity of and respect for the administration of justice. As noted above, because of their role, justices of the

peace are held to a higher standard of behaviour by members of the public than people who do not hold judicial office.

- [42] We find that these comments when viewed on their own do not rise to the level of misconduct.

*Category Three: Comment that all people in the courtroom did something wrong, implying they are thieves*

- [43] With reference to Her Worship's comments about everyone in court being present because they have done something wrong and implying that they might be thieves, the panel in *Moreau-Bérubé* at para. 7, had this to say about serious, explicit comments made by Judge Moreau-Bérubé about a particular population/geographic group:

"The remarks were incorrect, useless, insensitive, insulting, derogatory, aggressive and inappropriate. That they were made by a judge makes them even more inappropriate and aggressive. My conclusion is therefore that the remarks made by Judge Moreau-Bérubé constitute and amount to misconduct on her part. By uttering those remarks, Judge Moreau-Bérubé exceeded what is considered appropriate judicial conduct and made comments denigrating the honesty of the residents of the Acadian Peninsula while she was presiding a trial."<sup>[1]</sup>

- [44] In that case, the comments led to removal of the judge from office. The comments by Her Worship McLeod were arguably not as pointed or extreme:

Hi, is that your personal belongings there? It's probably a good idea to bring them up, all right. And just, it's not that I don't trust you. But it just always, always bring everything up when you're in court **because everybody in court is here because they've done something wrong, and you don't know what the person beside you has done.** You know, so always be safe... [Emphasis added].

*Category Four: Creating and permitting a factual fiction*

- [45] This category of conduct is a serious one, i.e. acting upon a factual fiction in the face of the court. We are aware that the Agreed Statement of Facts indicates that Her Worship did so in an attempt to protect the rights of defendants who may not have understood the different streams of process in the *Provincial Offences Act* (sections 9, 9.1 and 54) for defendants who do not respond to a court process or do not appear for court as required, as compared with those who do. There has

been some judicial commentary on this disparity arising from the legislation and what might be perceived as an unfairness to those defendants who do attend court. We accept that Her Worship was well-intentioned.

- [46] As mentioned, Presenting Counsel submits that the quashing of a certificate of offence is an error of law that is subject to appeal and that the guarantee of judicial independence renders such conduct largely beyond the reach of judicial conduct proceedings. Indeed, both counsel appear to frame Her Worship's conduct in these instances as being properly the subject of an appeal or judicial review rather than disciplinary proceedings.
- [47] In his written submissions, Presenting Counsel refers to cases such as *Mississauga (City) v. Singh* (2003), [2003] O.J. No. 4324 (S.C.J.), at para. 9, affd [2004] O.J. No. 2066 (C.A.) and *York (Regional Municipality) v. Talabe*, [2011] O.J. No. 654 (Ont. S.C.J.), at paragraphs 15-16 in which justices of the peace decided to quash tickets in circumstances where the defendant attended court. For example, in *Talabe*, the trial justice of the peace refused to amend an error on a Certificate of Offence and instead quashed the Certificate. The reviewing Court held that the justice of the peace did not apply the correct test for demonstrable prejudice as articulated by the *Act*, and as such, committed an error in law. The Court granted the application for *mandamus*, quashing the decision of the justice of the peace, requiring Her Worship to correct the error on the Certificate of Offence and directing that the prosecution of the offence proceed.
- [48] Unlike the circumstances referenced in the cases provided by counsel, Her Worship did not simply make a decision with reasons based upon consideration of the law. In *Talabe*, for example, the trial justice of the peace made a ruling after considering the submissions of the parties and turning her mind to the relevant statutory provisions and considerations to be taken into account when determining whether an amendment to the Certificate should be made. The sole question in that case was whether the justice of the peace correctly applied the law in exercising her discretion not to amend the Certificate.
- [49] On the evidence before us, Justice of the Peace McLeod's conduct went beyond an application of the law to the circumstances. Her Worship played a role in manipulating or changing the factual circumstances before the court prior to making her decisions, i.e. in allowing, orchestrating or condoning a finding of a defendant/agent having failed to appear when that was not the case and then relying on that finding to make a judicial decision. In doing so, Her Worship also did not openly disclose what she was doing or why, including what test or provision(s) of the *Act* she was applying, nor did she provide a fair opportunity for submissions from the prosecutor.
- [50] In one instance, an agent made it clear to Her Worship that he would be feigning non-attendance and the prosecutor raised a concern on the record that such action was unethical. Mr. Bhattacharya submitted that when the agent indicated what he

would do, all Her Worship said was, "Thank you." Mr. Bhattacharya submits that there was no commentary by Her Worship that she agreed or disagreed. He noted that there was no legal objection made by the prosecutor at that time.

- [51] The Panel's finds that Her Worship raised no objection to the agent's behaviour, did not respond to the prosecutor's concern that what was occurring was unethical, and appeared to condone the fictional non-attendance.
- [52] It is pointed out in the Agreed Statement of Facts and by counsel that the prosecutor did not appeal or seek prerogative relief against any of Her Worship's decisions on June 19, 2018. In this Panel's view, a lack of objection by a party on a legal issue is not determinative of whether the judicial officer engaged in misconduct.
- [53] Her Worship's remarks as evidenced by the transcript show that she was aware of the differences under the law in relation to her review of the charging documents for attending versus non-attending defendants. She chose not to apply the law to the circumstances before the court, but instead chose to orchestrate and/or accept different, indeed fictional, circumstances (of non-attendance) in order to achieve a different result. A reasonable interpretation of the transcript and audio recording demonstrate that this would have been obvious to those in attendance and creates a strong impression of preferential treatment and disregard for the law and correct procedure. This was not merely a case of legal error.
- [54] We find that unlike the cases referenced by counsel, Her Worship went beyond deciding to quash tickets of defendants who attended court in a manner inconsistent with the provisions of the *Provincial Offences Act*. Her Worship permitted and set about creating a factual fiction of defendants failing to attend court that undermines the integrity of the administration of justice and the appearance of Her Worship's competence and integrity as a judicial officer. While Her Worship's decisions may indeed be reviewable by a higher court, we find that her conduct extended beyond errors of law and falls properly within the jurisdiction of judicial conduct proceedings.
- [55] Both counsel submit that Her Worship's conduct in these instances was not "so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the [justice] to perform the duties of office or in the administration of justice generally."
- [56] Mr. Bhattacharya submits that Her Worship acted in a human way and was well-intentioned. We agree that our consideration of these complaints about judicial conduct must be sensitive to the fact that justices of the peace are human and not immune to the adverse effects of stress or foibles. However, high standards of conduct and professionalism are expected and necessary for judicial officers. A justice of the peace is expected to conduct themselves at all times in a manner that strives to foster the public's trust and confidence in the justice system, not in a

manner that tarnishes its reputation or that of the persons who work in it. The case law is clear that the personal qualities and image that a justice of the peace projects do affect respect for the judicial system as a whole and, therefore, the confidence that the public places in it.

- [57] It is our view that Her Worship's conduct in encouraging or permitting defendants and a legal representative to participate in a factual fiction of non-attendance and then quashing the tickets as if those persons actually failed to attend court diminishes confidence in Her Worship when performing her duties on that occasion and generally, and adversely affected the integrity of the court.
- [58] Integrity relates to a justice of the peace's honesty, candour, strength of character and commitment to ethical principles. Because of the important role justices of the peace play in preserving the rule of law, justice of the peace must be ethical. Their actions must foster respect for their decisions and for the judiciary as a whole. Justices of the peace have a great deal of authority and are entrusted with power. Accordingly, they are expected to conduct themselves in accordance with high standards of professional conduct.
- [59] Her Worship's conduct gives rise to a reasonable perception that Her Worship intentionally took steps to manufacture the facts before her to circumvent and avoid applying the law to the circumstances before her and acted in a manner that undermined the appearance of her impartiality and integrity as a judicial officer.
- [60] Even though Her Worship may have been prompted by good intentions, her conduct leaves a strong impression of disregard for the role of a justice of the peace, the importance of acting with integrity, the rule of law and legal process, and prejudice against the prosecution.
- [61] Justices of the peace have a duty to follow the law and to render justice within the framework of the law. The Panel acknowledges that sometimes the law may create an unfairness to an individual defendant, or might be seen by the public to do so, which creates an uneasy tension for a judicial officer in fulfilling their duty.
- [62] Given their role, justices of the peace must discharge their duties in a manner that is, and is perceived to be, impartial and objective and that does not show favour, bias or prejudice towards any party, in this case, by a pretence of non-attendance, even if it was an ill-considered attempt to benefit a defendant presumed to be uninformed about the law. This conduct does not uphold the integrity of judicial office.

*Findings in Relation to Her Worship's Conduct in Provincial Offences Court on June 19, 2018*

- [63] We find that Her Worship's failure to comply with procedural and legal requirements when considered individually in isolation from her other conduct does not amount to judicial misconduct.
- [64] Subject to our findings below, we find that when considered in isolation from her other conduct, Her Worship's unprofessional and/or disrespectful comments during the court proceedings, showing a disregard for the formality of court proceedings, not taking the court or legal process seriously, and making jokes about how justice was being administered did not amount misconduct.
- [65] While the allegations of non-compliance with legal and procedural requirements and inappropriate comments do not alone support a conclusion that there should be findings of judicial misconduct, Her Worship McLeod's actions and comments in the courtroom that day provide us with context for our consideration of Her Worship's other behaviour, as was the case in *Re Winchester: Reasons for Decision* (JPRC, 2020). While varying in seriousness, Her Worship McLeod's behaviours while presiding in the courtroom have in common an element of disregard for the law, proper procedure, the integrity of judicial office, and the image of the court.
- [66] Against the backdrop of non-compliance with legal and procedural requirements and inappropriate, unprofessional comments showing disrespect for the justice system, we find that Her Worship's conduct in the manner in which she pretends and permits others to pretend that there were non-attendances, despite the fact the defendants did attend court, constitutes judicial misconduct.
- [67] Similarly, the following comments by Her Worship also constitute misconduct:
- “Hi, is that your personal belongings there? It's probably a good idea to bring them up, all right. And just, it's not that I don't trust you. But it just always, always bring everything up when you're in court because everybody in court is here because they've done something wrong, and you don't know what the person beside you has done. You know, so always be safe.”
- [68] A fundamental principle of our justice system is the right to be presumed innocent until and unless proven guilty. In the Agreed Statement of Facts, Her Worship now recognizes that her remarks could lead to an adverse inference that she was presuming that the defendants in court had done something wrong, contrary to the presumption of innocence.
- [69] Impartiality relates to the judicial capacity to apply the law to the facts and decide cases with an open mind, without bias for or against persons who appear before the judicial officer. Her Worship's remarks denigrate the innocence of defendants in the courtroom who would be appearing before her.

### Third Court Proceeding: Trial of C.W. September 19<sup>th</sup>, 2018

- [70] A key concern with respect to Her Worship's conduct during C.W.'s trial on September 19, 2018 arises from Her Worship's remarks near the beginning of the defendant's testimony:

“the only issue I have is from the testimony that you just provided today is that you're convicted of the charge. So what are we doing now? So what's the purpose of all the rest of this, it's just that you're a conscientious citizen who is assisting, attempting to provide...better regulatory signage... “

- [71] It is alleged in the Notice of Hearing that Her Worship failed to keep an open mind until all of the evidence was heard; that Her Worship's comments during the trial showed that she had already decided the outcome of the trial, or gave the appearance of having done so, before the defendant had even finished testifying and before he could present any closing submissions.

- [72] It is also alleged that in conducting the trial, Her Worship failed to maintain an appearance of impartiality and objectivity; failed to demonstrate appropriate judicial demeanour, judgment, patience, and professionalism in performing her judicial duties; and failed to properly assist and show respect for a self-represented defendant, the court process, and the administration of justice. Her Worship's comments to the defendant as he testified included:

The Court: Go ahead. You can read it all you want.

.....  
The Court: Yeah, but it doesn't matter. So keep going. Keep going, you know, go ahead.

.....  
The Court: No I don't need that, you just have a seat. Just do your stuff.

- [73] It is further alleged that even though the defendant expressed confusion about the trial process, Her Worship did not provide him with guidance on entering exhibits into evidence or when (and how) a defendant should deliver copies of exhibits to the prosecution. Viewed cumulatively, Her Worship failed in her obligation to assist a self-represented defendant by accurately explaining to him aspects of the trial process and ensuring that he understood his legal rights.

- [74] Her Worship does not hold the view that her comments or actions during the trial on September 19, 2018 constitute judicial misconduct.

- [75] It is this Panel's view that the fact that Her Worship made the “... you're convicted...” comment and that it came early on in the defendant's testimony created an unfortunate lens of perception for the remainder of the trial, made worse

by other comments and behaviours (some are noted above) that followed, reinforcing the perception that Her Worship had prejudged the matter.

- [76] In fairness to Her Worship, we note that the audio recording of the trial mitigates the seriousness of a reading of the transcript alone. Her Worship's tone is not as sarcastic as the transcript alone might suggest. Her demeanour overall is positive: calm and polite, although somewhat dismissive about the defence photographs and documentary evidence.
- [77] In every trial, a defendant has the right to be heard, to give full answer and defence before a decision is made by the presiding judicial officer. It is a fundamental principle that an adjudicating justice of the peace must respect the right of a defendant to be presumed innocent until proven guilty. Her Worship's comment to the defendant that "you're convicted" stands uncorrected or unaddressed and goes to the core of the judicial function. An adjudicator must be, and appear to be, open-minded throughout the process. This is critical to the public perception of and confidence in the judiciary and the administration of justice.
- [78] In his oral submissions, Mr. Bhattacharya argued that Her Worship was not expressing a predetermined outcome. He states that she was simply illustrating to the unrepresented defendant that the evidence that he was attempting to tender was not on point in terms of the defence that he may be advancing. Further, he submits that the defendant appeared to be "articulate, intelligent [and] educated". He asks the Panel to accept that the defendant understood Her Worship's comment "you're convicted of the charge" as indicating that "his evidence...was resulting potentially in a conviction". Mr. Bhattacharya refers to the audio recording and notes that the defendant confirms that his evidence about other signage was being presented altruistically and he appeared to be laughing when he says that.
- [79] The Panel does not accept Mr. Bhattacharya's view of the evidence. The apparent sophistication of a litigant and his or her comprehension of the legal process is not determinative of the appropriateness of judicial conduct. Further, the letter of complaint sent by C.W. to the Review Council, filed as Exhibit 3B, shows how he perceived the comments made by Her Worship:

I truly felt, that given this incident, from that point on, my case would not receive a fair hearing. In fact, at one point during my testimony Justice McLeod asked why I was going through all this material (material she declined to even look at) given I had already been *convicted* of the offence? She corrected herself when I said I thought I was on trial and had not yet been convicted, but I believe that truly indicted[sic] where things stood. I had been convicted before even completing my testimony.

- [80] Her Worship's remarks to C.W. create a reasonable perception of a mind closed to the remainder of the evidence that she might hear. The remarks indicate that she pre-judged the outcome of the trial before all evidence had been heard, in particular the testimony of the defendant. That was the perception of C. W. and possibly others in the courtroom.
- [81] This Panel sees no reasonable alternative to a finding of judicial misconduct in relation to the trial of C.W. It is not relevant to this characterization of the misconduct that the charge against the defendant may be less serious than some other provincially legislated or criminal charges.
- [82] The Notice of Hearing alleges that Her Worship's actions individually and collectively constitute judicial misconduct that harms the public's confidence in the judiciary and the administration of justice. On June 19, 2018, while presiding in court, Her Worship made the comment to the defendant that she should bring her belongings to the front of the court with her, "because everybody in court is here because they've done something wrong". Three months later, on September 19, 2018, Her Worship told C.W., while he was giving evidence in his defence, that he was convicted of the charge. We find that Her Worship's comments and behaviour, considered collectively, demonstrate a lack of impartiality and objectivity. A reasonable person would conclude that Her Worship lacks the capacity to hear and decide cases with an open mind based upon all of the evidence. Considered collectively, Her Worship's remarks constitute judicial misconduct that harms the public's confidence in the judiciary and the administration of justice.
- [83] The Notice of Hearing alleges that Her Worship's conduct constituted a pattern of conduct toward defendants and the legal process that fails to uphold the integrity and impartiality of judicial office and demonstrates a lack of patience, decorum, professionalism, dignity, restraint, tact, objectivity, fairness, respect and judgment. We conclude that the following comprises such a pattern of conduct and constitutes judicial misconduct:
- Writing the inappropriate reasons on the reopening applications;
  - Allowing and/or assisting in the manipulation of factual circumstances in the courtroom to create the fiction that defendants had not appeared in court, and making comments such as "start the car" and "get out of dodge" to facilitate the fiction of non-attendance;
  - Telling a defendant that she should bring her personal belongings with her because everyone in the courtroom has done something wrong; and,
  - Remarking that the defendant, C.W., was convicted before the evidence was completed.

[84] The Panel will reconvene to hear submissions from counsel on the appropriate disposition(s) to address the judicial misconduct, and invites written submissions on the matter from counsel.

Dated at Toronto this 11<sup>th</sup> day of January, 2021

**HEARING PANEL:**

The Honourable Justice Lisa Cameron, Chair

Justice of the Peace Christine Smythe

Dr. Michael Phillips, Community Member