

Justices of the Peace Review Council

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

Concerning a Complaint about the Conduct of Justice of the Peace Adele Romagnoli

Before: The Honourable Justice Diane M. Lahaie (Chair)
Justice of the Peace Bruce Leaman
S. Margot Blight, Lawyer Member

Hearing Panel of the Justices of the Peace Review Council

REASONS FOR DECISION

Mr. Owen M. Rees
Conway Baxter Wilson LLP/s.r.l.

Presenting Counsel

Mr. Mark Sandler and Ms. Amanda Ross
Cooper, Sandler, Shime and Bergman

Counsel for Her Worship Adele Romagnoli

OVERVIEW

[1] Mr. Hans Saamen, Director of Prosecutions for the Regional Municipality of York, filed a complaint, dated July 6, 2015, against Justice of the Peace Adele Romagnoli (“the complaint”). The complaint arose from allegations involving Her Worship’s conduct in or relating to the Provincial Offences Courthouses (“the Tannery”) in Newmarket and in Richmond Hill, Ontario. None of the allegations relate to Her Worship’s responsibilities in relation to Criminal Court. Rather, the allegations pertain to Her Worship’s duties in Provincial Offences Court.

[2] Upon reviewing the complaint, a complaints committee of the Justices of the Peace Review Council (“the complaints committee”) made an interim recommendation to the Regional Senior Justice that Her Worship be reassigned to a location other than that where the complaint arose pending the final disposition of the complaint. Her Worship did not oppose that recommendation. The Regional Senior Justice accepted the interim recommendation and reassigned Her Worship to a different location.

[3] Following the investigation of the complaint, the complaints committee ordered that the complaint regarding the conduct of Her Worship Romagnoli be referred to a Hearing Panel of the Review Council for a formal hearing under section 11.1 of the *Justices of the Peace Act*, R.S.O. 1990, c. J. 4, as amended (“the Act”). The Notice of Hearing was filed as Exhibit 1.

[4] The role of a Hearing Panel is to determine whether the evidence presented in the hearing does or does not result in a finding of judicial misconduct such that the

complaint should be dismissed or one or more of the range of dispositions set out under section 11.1 (10) of the *Act* are required in order to restore public confidence in the judicial officer and in the judiciary.

[5] The Review Council's Procedures state that 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.

[6] Three weeks were set aside for the hearing of this complaint. Following a pre-hearing conference before the Honourable Justice Downes of the Ontario Court of Justice, the parties were able to narrow the issues. In advance of the hearing, on February 26, 2018, the Hearing Panel received an Agreed Statement of Facts which was prepared by Presenting Counsel, Mr. Owen Rees and counsel for Her Worship Romagnoli, Mr. Mark Sandler. The Agreed Statement of Facts was filed as Exhibit 2A in these proceedings. Much of the content of this Agreed Statement of Facts is reproduced in these Reasons, as the facts and principles set out therein are accepted by the Hearing Panel.

[7] There were three categories of allegations of misconduct in the Notice of Hearing which will be referred to in these Reasons as follows:

Allegation 1: Failure to know, maintain competence in, and apply the law

Allegation 2: Adjourning matters before rejecting joint submissions and failing to render decisions and dispose of cases promptly

Allegation 3: Bias (actual or perceived) against prosecutors and police

[8] Presenting Counsel put forward no evidence in relation to Allegations 2 and 3. He advised that in light of the information provided by Her Worship and his interviews of various witnesses, he would not be seeking a finding of misconduct arising from Allegations 2 and 3. In Presenting Counsel's view, there was no prospect that such a finding could be made in relation to these allegations.

[9] The Hearing Panel reviewed the Agreed Statement of Facts and requested that the transcripts of court proceedings related to Allegation 1 be filed as part of the public record. These transcripts were provided to the Hearing Panel for its review and filed as Exhibit 3 at the hearing.

[10] Having reviewed the transcripts, the Agreed Statement of Facts and the submissions of counsel, the Hearing Panel agreed that in the specific instances under review, Her Worship's failure to know, maintain competence in and apply the law, when viewed cumulatively, amounted to judicial misconduct.

[11] The Hearing Panel provided its conclusions in this regard in brief oral reasons, indicating that its written reasons would follow. These are those reasons. Presenting Counsel and counsel for Her Worship Romagnoli were provided with additional time to present submissions on the issue of compensation for legal costs incurred by Her Worship in connection with the hearing. The submissions were received and have been reviewed by the Hearing Panel. The Hearing Panel has also included its recommendation on the issue of compensation within these reasons.

GENERAL PRINCIPLES AND ANALYSIS OF THE FACTS

Allegation 1: Failure to know, maintain competence in, and apply the law

[12] Justices of the peace have a duty to follow the law. Section 1.2 of the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* (“the *Principles*”) recognizes this duty. Its commentary explains that 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”.

[13] Justices of the peace also have a duty to maintain their professional competence in the law, including the capacity to acquire, possess, retain and maintain knowledge and skills in the substantive law, procedure and court processes. Section 2.4 of the *Principles* recognizes this obligation.

[14] Justice of the Peace Romagnoli admits and this Hearing Panel finds that Her Worship failed to know, apply and maintain competence in the law in relation to three areas of law: joint submissions on penalties; the sufficiency of the inclusion of an upper-tier municipality on a certificate of offence in red light camera offences under subsection 205.15(1) of the *Highway Traffic Act*;¹ and imposing a sentence of a negative fine. The following is a brief analysis of each subcategory of Her Worship Romagnoli’s failings.

¹ R.S.O. 1990, c. H.8

a. Joint submissions on penalty

[15] When the prosecution and defence agree to make a joint submission on the appropriate penalty, the law requires justices of the peace to give effect to those joint submissions unless the proposed penalty is contrary to the public interest or would bring the administration of justice into disrepute.²

[16] Her Worship Romagnoli failed to apply this principle in sixteen proceedings between July 9, 2014 and June 11, 2015,³ when she did not accept joint submissions as to penalty. All of the joint submissions concerned fines under the *Provincial Offences Act*.⁴

[17] In rejecting these joint submissions, Her Worship at times referred to the decision of the Ontario Court of Justice in *York (Regional Municipality) v. Benatar*, [2014] O.J. No. 3607 (C.J.) ("*Benatar*"). *Benatar* concerns s. 59(2) of the *Provincial Offences Act*, which allows the court to impose a fine less than the minimum in exceptional circumstances where the minimum fine would be unduly oppressive or

² *R. v. Anthony-Cook*, 2016 SCC 43

³ Exhibit "3" of the Hearing respecting Justice of the Peace Romagnoli: *R. v. Wong*, [2014] O.J. No. 6407 (CJ); *R. v. Mirza*, [2014] O.J. No. 6408 (CJ); *R. v. Grosse*, December 2, 2014 (File No. 6020122Z); *R. v. Mitri*, December 9, 2014 (File No. 4960-6004202Z); *R. v. Chmiel*, December 10, 2014 (File No. 9763334B); *R. v. Distefano*, December 15, 2014 (File No. 6053187Z); *R. v. Giampaolo*, March 2, 2015 (File No. 9360574Z); *R. v. Beelik*, June 8, 2015 (File No. 9378800Z); *R. v. Yakobov*, June 16, 2015 (File No. 4960-4280441B-00); *R. v. Davids*, June 17, 2015 (File No. 4960-3246101B); *R. v. Alakoozi*, August 18 and October 15, 2015 (File No. 4960-9362601z); *R. v. Newhook*, September 3, 2015 (File No. 4960-14-3238360B); *R. v. Sun*, September 3, 2015 (File No. 4960-451100B); *R. v. Yip*, September 3, 2015 (File No. 4960-3241498B); *R. v. Manicone*, September 3, 2015 (File No. 4960-5998896Z); *R. v. Zdrade*, September 3, 2015 (File No. 4960-9382688Z).

⁴ R.S.O. 1990, c. P.33

otherwise not in the interests of justice. This decision directs justices of the peace, when considering whether s. 59(2) applies, to hold a brief hearing with evidence.

[18] Justice of the Peace Romagnoli misunderstood *Benatar* in that she believed that the prosecution was required to call evidence in order to justify an increased penalty above the statutory minimum. As none of the cases at issue involved a proposal for a penalty below the minimum fine, *Benatar* was not relevant.

[19] The municipal prosecutor successfully appealed three of the decisions in which Her Worship Romagnoli rejected joint submissions: *R. v. Wong*, *R. v. Mirza* and *R. v. Chmiel*. The decisions of Justice Chisvin allowing the appeals in *R. v. Wong* and *R. v. Mirza* were released on February 19, 2015. The decision of Justice Johnson allowing the appeal in *R. v. Chmiel* was released on July 17, 2015. All of the appeal decisions held that Her Worship Romagnoli should have accepted the penalty proposed by the joint submission.

[20] Although Justice Chisvin explained on appeal that, if the court decides to depart from a joint submission, it should provide reasons for doing so and that Her Worship should accept a joint submission unless it is contrary to the public interest or brings the administration of justice into disrepute, Her Worship continued to rely on her misinterpretation of *Benatar* in her reasons explaining why she was departing from a joint submission.

[21] Her Worship advised that it was her view at the time that, given a number of other cases in which the set fines had been accepted by the prosecution as part of a joint submission, it was unfair to impose a higher fine in the absence of evidence or

submissions that demonstrated aggravating circumstances in support of the higher fine. Her Worship continued to rely on the inapplicable *Benatar* decision.

[22] In the Agreed Statement of Facts, Her Worship acknowledged that, on an accurate interpretation of the jurisprudence on joint submissions, she was incorrect in requesting evidence to demonstrate why a fine in excess of the set fine was reasonable in the circumstances.

[23] During the *Alakoozi* hearing on August 18, 2015, the prosecutor referred to the appeal decision in *R. v. Mirza*. Her Worship told the prosecutor that she was aware of the case and that the prosecutor did not need to go over it. Her Worship invited the prosecutor and defence to call evidence on sentencing and the prosecution advised Her Worship of the appeal decision in *R. v. Chmiel* and offered to provide her with a copy of the decision. Rather than accepting the joint position on penalty, Her Worship Romagnoli reserved her decision and a discussion followed about providing written submissions.

[24] On October 15, 2015, the parties returned before Her Worship for sentencing. Rather than accepting the parties' joint position on penalty, Her Worship imposed a penalty to reflect the set-fine for the offence.

[25] A joint submission on penalty in a quasi-criminal case may be explained by a negotiation that takes into consideration the withdrawal of other charges. Accordingly, it is only in exceptional cases, in which the proposed joint submission as to penalty falls outside any reasonable outcome, that the court should intervene.

[26] In the Agreed Statement of Facts, Her Worship advised that she ceased relying on the *Benatar* decision as she now realizes that she had misinterpreted its application to joint submissions.

[27] During the preparation for this Hearing, Her Worship Romagnoli spent time discussing the existing jurisprudence with her counsel, Mr. Sandler. She also undertook legal training with The Honourable Stephen Goudge, a former Justice of the Ontario Court of Appeal, who indicated in a letter to the Hearing Panel that Her Worship Romagnoli fully understands the validity of the concerns regarding the law on joint submissions and the *Benatar* decision.

b. Refusing to apply the law that has established that the Regional Municipality of York is a designated area for red light camera offences.

[28] A certificate of offence under Part I of the *Provincial Offences Act* must contain the essential information related to the offence. However, the certificate is not required to state the lower-tier municipality in which the offence occurred. It is an error for a justice of the peace to quash a certificate of offence which describes the location of the offence as an upper-tier municipality such as the Regional Municipality of York.

[29] In ten decisions between September 19, 2014 and June 11, 2015, Her Worship Romagnoli failed to follow binding authority on this issue in red light camera cases, finding that the certificate was not complete and regular on its face when it specified the Regional Municipality of York, rather than the specific towns or locations in which the offences occurred.

[30] In the Agreed Statement of Facts, Her Worship claimed that this failure arose from her overly narrow understanding of *stare decisis*. Her Worship has since reviewed the cases on point, discussed this matter with Mr. Sandler and sought guidance on the issue from Mr. Goudge.

[31] Her Worship maintained that she did not understand that she was not only bound by an appellate decision reversing her ruling in an individual case, but also by a decision of a higher court that settled a question of law that was before her. Her Worship explained that she previously understood incorrectly that a Superior Court of Justice decision on judicial review bound the individual justice of the peace to whom it applied, but no one else.

[32] In *R. v. Taylor Kim*⁵, for example, Her Worship quashed the charge for failing to specify a location. In the Agreed Statement of Facts, Her Worship claimed that when she decided the case, she was not aware of any binding authority to the contrary. None was provided to her. The same day, in the matter of *R. v. Tran*⁶, Her Worship asked the defendant if he wished to raise any issue about the fact that the certificate did not set out a town or city. Justice of the Peace Romagnoli proceeded with the guilty plea when the defendant chose not to make it an issue.

[33] When Her Worship presided over *R. v. Rugero Carlo*⁷, the defendant indicated he wanted to enter a guilty plea. Her Worship told the defendant the certificate of offence had no municipality. The prosecutor advised Her Worship of the

⁵ *R. v. Taylor Kim* (September 19, 2014)

⁶ *R. v. Tran* (September 19, 2014)

⁷ *R. v. Rugero Carlo*, Court File No. 997-14-30080445.

Ontario Superior Court of Justice's decision in *Regional Municipality of York v. Giovanni Di Vito*, [2014] O.J. No. 4566, which held that the "place of the offence, being "Region of York" on certificate of offence # [number omitted] is complete and regular on its face for the place of the offence". Her Worship said "I have had a brief review of the Order and it is not binding on this court. It is an Order for another justice – directing another justice to do something in particular and so it is not for the entire court so it just basically focussing on one other justice and it is not for myself." Her Worship asked the defendant further questions as to whether he had any concerns about the certificate. The defendant said "no" and entered a guilty plea. Her Worship imposed a fine.

[34] Later, in the same court tier on that date, Her Worship quashed the certificate of offence in *R. v. Perelman*⁸ without providing reasons.

[35] According to Her Worship, she believed, at the time, that the decision of the judge of the Superior Court of Justice in *Regional Municipality of York v. Giovanni Di Vito*⁹, directed to another justice of the peace, was not binding on her. In the Agreed Statement of Facts, Justice of the Peace Romagnoli acknowledged that she should have recognized that there was no basis upon which to disregard this Superior Court decision.

[36] Her Worship's decision in *R. v. Perelman* was appealed. Justice Howden of the Superior Court of Justice ruled that a certificate of offence with the words

⁸ *R. v. Perelman* (October 3, 2014)

⁹ *York (Regional Municipality) v. DiVito*, [2014] O.J. No. 4567

“Regional Municipality of York” is complete and regular on its face¹⁰. Howden J. endorsed the record to indicate that justices of the peace are bound by this Order.

[37] Mr. Saamen forwarded Justice Howden’s endorsement to Justice of the Peace Linda Kay by email dated December 12, 2014. Her Worship Kay advised the Complaints Committee during its investigation that she had forwarded the endorsement to Justice of the Peace Romagnoli on December 16, 2014. Forensic analysis located the email in an email folder in Justice of the Peace Romagnoli’s email account.

[38] Forensic analysis determined that:

- a. The message was marked by Outlook as “Read”;
- b. The message was moved from Her Worship’s inbox to her archived emails on the network drive, which Her Worship advised is an email folder she does not ordinarily use;
- c. The email was “last modified” on December 16, 2014;
- d. The last modified date may indicate when Outlook marked the email as “read” or when it was moved to Her Worship’s archived email folder. An email message may be marked as “read” by Outlook when it is opened or when it is displayed in the Reading Pane, whether or not the recipient actually reads the message.

¹⁰ *The Regional Municipality of York v. Dmitry Perelman and 2160611 Ontario Ltd.*, Court File No. CV-14-120584-00 (SCJ).

[39] Forensic analysis could therefore not confirm that Her Worship had opened the email attachment. Her Worship's evidence in the Agreed Statement of Facts is that she did not speak with Justice of the Peace Kay about the issue.

[40] Further, Her Worship advised that she had no recollection of receiving the email from Justice of the Peace Kay, or reading Justice Howden's endorsement at the time.

[41] Having reviewed the evidence, Presenting Counsel suggested that the Hearing Panel should not infer that Justice of the Peace Romagnoli reviewed the email or Justice Howden's endorsement at the time it was sent.

[42] On January 5, 2015, Her Worship Romagnoli decided *R. v. Ho Shin*.¹¹ She struck the guilty plea in that matter, as the defendant was not in a position to admit that he was travelling on the road (Yonge Street) specified on the certificate. The *Perelman* decision was not raised before Her Worship.

[43] Justice of the Peace Romagnoli decided the *R. v. Vandenberg*¹² matter on March 23, 2015. Mr. Vandenberg's matter was adjourned to permit him to obtain independent legal advice on the issue of the designated area of the offence as it appeared on the certificate. The *Perelman* decision was not raised before Her Worship.

¹¹ *R. v. Ho Shin*, Court File No. 4960-997-14-30160205-00

¹² *R. v. Vandenberg*, Court File No. 4960-997-14-30150236

[44] On April 15, 2015, Mr. Saamen re-forwarded the *Perelman* endorsement to Justice of the Peace Kay, asking that it be provided to Her Worship. There exists no evidence that Justice of the Peace Romagnoli received a copy of the endorsement at that time.

[45] On June 11, 2015, Her Worship rendered decisions in *R. v. Follest*¹³ and *R. v. Tricker*.¹⁴ She asked both defendants if they had any concerns that the charging documents did not set out a town or a city. She adjourned Mr. Follest's case to permit him time to consult with counsel, and accepted Ms. Tricker's plea of guilt.

[46] Following the *Perelman* decision, Her Worship did not quash any certificates of offence based on her erroneous understanding of the law, although she continued to raise the issue with the defendants who appeared before her.

[47] Justice of the Peace Romagnoli acknowledged in the Agreed Statement of Facts that, had she been aware of Justice Howden's endorsement, she would not have continued to raise the issue with the defendants who appeared before her.

[48] Her Worship states that she now understands that Justice Howden's endorsement binds her and other justices of the peace, and that there is no longer to be any issue as to whether such certificates are complete and regular on their face where the place of offence is noted to be the Regional Municipality of York.

¹³ *R. v. Follest*, Court File No. 4960-997-14-30082325-00

¹⁴ *R. v. Tricker*, Court File No. 4960-997-14-30050167-00

[49] Her Worship discussed her conduct with both Mr. Sandler and, as part of her training done in advance of this Hearing, with Mr. Goudge, who confirmed in a letter to the Hearing Panel that Her Worship now fully understands that decisions of a higher court, whether by appeal or judicial review, create legal norms that she is obliged to follow whether or not the appeal or the judicial review is of her own decision.

c. Imposing a sentence not known to law (negative fines)

[50] Many offences prosecuted under the *Provincial Offences Act* are punishable by fine. Minimum fines may be reduced where the conditions of s. 59(2) are met. A negative fine which requires the state to reimburse the defendant, however, is not an available disposition under the *Provincial Offences Act*.

[51] Justice of the Peace Romagnoli imposed a negative fine to offset court costs in three decisions rendered between January 6, 2014 and July 9, 2014: *R. v. Lavadan*¹⁵; *R. v. McLean*¹⁶ and *R. v. Kotler*.¹⁷

[52] Her Worship explained that she imposed negative fines in order to offset the mandatory court costs of \$5.00 which are imposed on conviction. In the case of *R. v. McLean*, for example, Her Worship imposed a negative \$5.00 fine in order to offset the court administration cost for Ms. McLean, who was a student who failed to validate a public transit ticket.

¹⁵ *R. v. Lavadan*, [2014] O.J. No. 3612

¹⁶ *R. v. McLean* (October 1, 2014)

¹⁷ *R. v. Kotler*, Court File No. 4960-5631023Z-00

[53] While Her Worship Romagnoli acknowledged that she supports creative sentencing to ensure that penalties can be appropriately tailored to the needs of each defendant, the Hearing Panel was advised that Her Worship now accepts that her approach to this issue constituted a legal error and that she would no longer impose negative fines.

[54] The Hearing Panel accepts the joint recommendation of Presenting Counsel and counsel for Her Worship Romagnoli that the conduct described in the three categories set out above, viewed cumulatively, amounts to misconduct.

[55] As indicated above, Presenting Counsel did not proceed with Allegations 2 and 3 in the Notice of Hearing.

Allegation 2: Adjourning matters before rejecting joint submissions and failing to render decisions and dispose of cases promptly.

[56] A justice of the peace has a responsibility to conduct court business with due diligence and dispose of all matters before him or her promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the courts. Section 2.3 of the *Principles* requires justices of the peace to deliver reasons for judgment in a timely manner. Subsection 13.1(3) of the *Act* imposes the additional requirement that a justice of the peace deliver reasons within six months in the case of a judgment, or in any other case, within three months, unless the Chief Justice of the Ontario Court of Justice extends the time in which the decision may be given.

[57] On two occasions, Her Worship failed to render decisions promptly. The cases of *R. v. Newhook*¹⁸ and *R. v. Sun et al.*¹⁹, were both adjourned for over nine months. In *Newhook*, Her Worship accepted a guilty plea and then adjourned sentencing. In *Sun et al.*, Her Worship reserved her decision as to whether she would accept the anticipated guilty pleas. In both cases, a joint submission on penalty was proposed.

[58] In the Agreed Statement of Facts, Her Worship advised that these cases were adjourned during a time of considerable personal stress. In August 2015, Her Worship had become aware of the complaint being made by Mr. Saamen. According to Justice of the Peace Romagnoli, she was concerned about addressing these cases while the complaints process was ongoing. As a result, Her Worship adjourned the matters for much longer than was appropriate, without providing an explanation to the parties in court.

[59] The prosecution in *Newhook* applied to the Superior Court of Justice for an order of *mandamus* requiring Justice of the Peace Romagnoli to deliver her decisions in *Newhook* and the related matters within 30 days. Her Worship did so and rejected the joint submissions on the same rationale as earlier expressed. Her Worship now acknowledges that this was incorrect as the penalties proposed in each of the joint submissions presented did not fall outside the range of reasonable outcomes available in the circumstances.

¹⁸ *Supra*, note 3

¹⁹ *Supra*, note 3

[60] The Hearing Panel notes Mr. Goudge's view following his discussions with Justice of the Peace Romagnoli that this transgression would not be repeated, and that Her Worship appreciates how such delay could give rise to a problematic public perception.

[61] Having reviewed all of the evidence, both Presenting Counsel and counsel for Justice of the Peace Romagnoli took the position that the evidence relating to this category of allegations did not establish misconduct as the delay was identified in only two proceedings and constituted an error which was corrected by the Superior Court of Justice. Further, Her Worship acknowledges the error and undertakes not to repeat it.

Allegation 3: Bias (actual or perceived) against prosecutors and police

[62] Justices of the peace must be impartial and objective in the discharge of their judicial duties and must also maintain an appearance of impartiality. This well-established principle is set out in section 1.1 of the Council's *Principles* and in the Canadian Judicial Council's *Ethical Principles for Judges*.

[63] In the Agreed Statement of Facts, Justice of the Peace Romagnoli acknowledged that on some occasions, she interacted with paralegals during court recesses. In particular, she joined various paralegals for conversation or coffee while at the courthouse. During these occasions, Her Worship generally wore her court vest (typically with a suit jacket), but not her gown.

[64] The Agreed Statement of Facts states that during these occasions, Her Worship did not socialize exclusively with paralegals. On some occasions, court clerks, prosecutors and/or police officers would be present as well. On one occasion, Her Worship emailed a case of interest to a paralegal with whom she had spoken. The case did not relate to any current matter the paralegal had before Her Worship.

[65] The Agreed Statement of Facts states that while none of the out of court interactions described above demonstrate any actual bias on the part of Her Worship, these interactions may have contributed to a perception of a lack of impartiality. In the Agreed Statement of Facts, the Hearing Panel received Her Worship's acknowledgment that the complaint against her has sensitized her to the perceptions created by her social interactions. Her Worship also confirmed that she no longer joins paralegals, prosecutors or police for lunch or coffee.

[66] Mr. Goudge noted that he had lengthy discussions with Her Worship about the apprehension of bias and partiality that can be created by social interaction, selectively providing case law, and eating lunch with and otherwise differentially treating the parties who come before her. Mr. Goudge was of the view that the fundamental importance of the appearance of impartiality in the role Her Worship plays is now not lost on Justice of the Peace Romagnoli.

[67] In the Agreed Statement of Facts, Her Worship further acknowledged that her conduct in court on several occasions could have given rise to the perception that her expectations for prosecutors were unduly high or demanding.

[68] There were instances where Her Worship failed to ensure that both parties had the full opportunity to make submissions. Several instances related to prosecutors' challenges to Her Worship's decision to strike a guilty plea. In the Agreed Statement of Facts, Her Worship acknowledged that the failure to provide both parties with the full opportunity to make submissions or provide case law raised concerns of procedural fairness that could contribute to a perception of differential treatment of the parties.

[69] Her Worship further acknowledged that raising the prospect of holding a party in contempt is a serious matter. According to the position of Justice of the Peace Romagnoli set out in the Agreed Statement of Facts, the benefit of reflection has caused her to regret that she did so on the occasions set out in the Notice of Hearing.

[70] Her Worship acknowledges that there were also instances in which her conduct could have given rise to the perception that she treated prosecutors differently than the defence with respect to adjournment requests. In the cases of *R. v. Maria Campoli*²⁰ and *R. v. Gerald Hefferon/R. v. Igor Abramov*²¹, Justice of the Peace Romagnoli denied a prosecution adjournment request, holding that some evidence was required to substantiate the request, while allowing defence motions to adjourn on the same day without such a requirement.

[71] In the Agreed Statement of Facts, Her Worship acknowledged that her decision-making in this regard was problematic and addressed the perception that it

²⁰ *R. v. Maria Campoli* (March 23, 2015)

²¹ *R. v. Gerald Hefferon* (March 25, 2015); *R. v. Igor Abramov* (March 25, 2015)

may have left. She explained that her decisions related to the disparate positions of the defence and the prosecution. In the two defence adjournment requests (*Hefferon* and *Abramov*), Her Worship noted that each was in the context of a first trial. Each had an agent attend and provide an oral explanation for the adjournment request; counsel was not available in one instance and the accused was not available in the other. Given the consequences to a defendant of being convicted *in absentia*, Her Worship took a procedurally more lenient approach to the requests on their behalf. Nonetheless, Her Worship recognized that she must be sensitive to any perception of inappropriate differential treatment.

[72] Further investigation by Presenting Counsel led to his conclusion that, in relation to some of the particulars under this allegation, there was no reasonable prospect of a finding of misconduct. His view was that the remaining particulars under this allegation, set out above, revealed errors, short of misconduct. Justice of the Peace Romagnoli's acknowledgement of her failings and the steps taken by her through her discussions with Mr. Goudge have satisfied the Hearing Panel that the remedial objective of this process has been adequately addressed. Presenting Counsel did not seek a finding of misconduct arising out of this allegation and the Panel agrees.

Approach to Disposition

[73] Having determined that Her Worship's conduct in relation to Allegation 1 rises to the level of judicial misconduct in that there was a failure to know, apply and maintain competence in the law in the three areas of law alleged in the Notice of Hearing, specifically in regards to joint submissions on penalty: refusing to apply the

law that has established that the Regional Municipality of York is a designated area for Red Light Camera offences and imposing sentences not known to law (negative fines), the Hearing Panel must determine the appropriate disposition or combination of dispositions required in the circumstances in order to restore the public's confidence in the judiciary and the administration of justice.

[74] Section 11.1(1) of the *Act* provides that:

11.1(10) After completing the hearing, the panel ... if it upholds the complaint ... 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; suspend the justice of the peace without pay, but with benefits, for a period of up to 30 days;
- f) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2.

[75] Presenting Counsel and counsel for Her Worship jointly submit that the appropriate penalty is a reprimand pursuant to s.11.1(10)(b) of the *Act*, together with an order pursuant to s.11.1(10)(d) that Her Worship take specified measures, namely,

mentoring with an appropriately qualified person. The mentoring should consist of at least two sessions, and should address the topics of joint submissions, binding and non-binding precedents, procedural fairness, and avoiding the perception of unfairness or differential treatment.

[76] The Panel notes the comments of the Hearing Panel that presided in a hearing into the conduct of Justice of the Peace Foulds²²:

5. Even though Presenting Counsel consents to the disclosure of the requested information to His Worship and both counsel urge the Panel to release the information requested without any form of qualification or restriction as to its further dissemination, the Panel must independently consider the request for disclosure before it. As the Supreme Court of Canada observed in *Ruffo v Conseil de la Magistrature*, [1995] 4 S.C. R. 267 at para. 72, the judicial discipline process “does not resemble litigation in an adversarial proceeding; rather, it is intended to be the expression of purely investigative functions marked by an active search for the truth.” Presenting Counsel presents his or her view but the Panel has its own responsibility to reach its determinations on the matter before it.

[77] The approach to be taken in determining the appropriate disposition was described as follows by the Honourable Justice Dennis O'Connor *In the Matter of a Complaint Respecting The Honourable Madam Justice Lesley M. Baldwin*, (OJC, 2002):

The purpose of judicial misconduct proceedings is essentially remedial. The dispositions in s. 51.6(11) should be invoked, when necessary in order to restore a loss of public confidence arising from the judicial conduct in issue.

Once it is determined that a disposition under s. 56.6(11) is required, the Council should first consider the least serious – a warning – and move sequentially to the most serious – a recommendation for removal – and order only what is necessary to restore the public confidence in the judge and in the administration of justice generally.

²² *Re Foulds: Motion for a Temporary Stay/ Adjournment of the Disciplinary Hearing* (JPRC, 2017)

[78] While this passage speaks of the approach to be undertaken in cases involving judges, the same approach applies to the determination of the appropriate disposition among those set out in the *Act* for misconduct involving a justice of the peace.

[79] As the Supreme Court of Canada noted in *Therrien (Re)*, 2001 SCC 35 at paras. 110 and 111:

110. ... 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. 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)

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.

[80] Previous decisions of the Council have identified ten relevant factors to be considered when assessing the appropriate disposition under s. 11.1(10):

- a. Whether the misconduct is an isolated incident or evidenced a pattern of misconduct;
- b. The nature, extent and frequency of occurrence of the acts of misconduct;
- c. Whether the misconduct occurred in or out of the courtroom;
- d. Whether the misconduct occurred in the judge's official capacity or in his or her private life;
- e. Whether the judge has acknowledged or recognized that the acts occurred;
- f. Whether the judge has evidenced an effort to change or modify his or her conduct;
- g. The length of service on the bench;
- h. Whether there have been prior complaints about this justice of the peace;
- i. The effect the misconduct has upon the integrity of and respect for the judiciary; and,
- j. The extent to which the justice exploited his or her position to satisfy his or her personal desires²³.

Aggravating Factors

[81] The Hearing Panel is of the view that the repeated nature of Her Worship's conduct in failing to be diligent in her knowledge and application of the law, despite it

²³ *Re: Massiah: Decision on Disposition* (JPRC, 2015), at para 16, citing *Re: Chisvin* (OJC, 2012); *Re Foulds: Decision on Disposition and Compensation for Legal Costs Following a Finding of Judicial Misconduct* (JPRC, 2018); *Re Phillips: Decision on Disposition Following a Finding of Judicial Misconduct* (JPRC, 2013)

having been brought to her attention on certain occasions, is an aggravating factor. This was not an isolated incident but a persistent pattern of conduct.

[82] Her Worship's failure of diligence resulted in the law being misapplied in Her Worship's courtroom on several issues, in multiple cases, over the course of almost a year.

Mitigating Factors

[83] Her Worship Romagnoli has presided as a justice of the peace since 1992 (that is, for approximately 26 years). Her Worship served as the Local Administrative Justice of the Peace for the Newmarket Court for over nine years. She assisted in establishing and implementing multiple initiatives:

- a. Under the direction of Justices Gorewich and Wong, she implemented the transfer of responsibility to the justices of the peace in Newmarket for Criminal First Appearance/Assignment Court;
- b. In July 2002, she took part in the launch of the WASH court, as part of the Integrated Justice Project;
- c. Beginning in 1999, she became responsible for setting up the training and mentoring of new justices of the peace;
- d. From 1998 to 1999, she liaised with Senior Prosecutor Karen McCleave to transfer provincial offences matters to the municipality, which included the creation of a new scheduling regime and facilities;
- e. In 1997, she assisted with the set-up and operation of the Telewarrant Centre in the Newmarket Courthouse;

- f. From 1995 to 1999, she was a member of the Local Courts Management Committee (LCMAC) for the Newmarket Court. She acted as a liaison with the judiciary, Crown and defence counsel, the police bureau, court managers and staff, as well as managers and directors of the various court services, reporting to the Regional Senior Justice of the Peace;
- g. Her Worship assisted with mentoring current and past Regional Senior Justices of the Peace in Toronto and Newmarket.

Her Worship's length of service and positive contributions to the justices of the peace bench are impressive.

[84] There have been no prior findings of misconduct made against Her Worship.

[85] Her Worship has acknowledged the misconduct by way of an Agreed Statement of Facts, obviating the need for a lengthy hearing.

[86] Her Worship has demonstrated an effort to modify her conduct, retaining Mr. Stephen Goudge, Q.C., formerly a justice of the Ontario Court of Appeal, to provide her with education and mentoring prior to the completion of the hearing.

[87] Her Worship did not exploit her position to satisfy her personal desires and there were no resulting personal gains.

Disposition

[88] The joint submission from counsel is generally accepted.

[89] The Hearing Panel finds that, in order to restore public confidence in this justice of the peace and in the judiciary generally, the appropriate disposition in this matter is:

- a. A formal reprimand of Justice of the Peace Romagnoli. This formal censure is intended as a clear indication of this Hearing Panel's disapproval of her conduct.
- b. As a condition of Her Worship continuing to sit, an order that Justice of the Peace Romagnoli receive additional judicial education or training as deemed appropriate by the Chief Justice of the Ontario Court of Justice, which reinforces Her Worship's duty to maintain professional competence in the law; teaches her the law governing joint submissions; teaches her the application of *stare decisis* and the effect of binding and non-binding precedents; and reinforces her duty to remain impartial and avoid any perception of unfairness of differential treatment.

As Her Worship has continued to preside throughout the proceedings arising from this complaint, it is appropriate that she may continue to preside while receiving this additional education.

COMPENSATION FOR LEGAL COSTS

[90] Justice of the Peace Romagnoli has requested, pursuant to s. 11.1(17) of the *Act*, that this Hearing Panel make a recommendation that she be compensated in the amount of \$32,124.00 in legal fees and disbursements in the amount of \$83.85, for a total amount of \$36,394.87 incurred in connection with the hearing.

[91] Pursuant to the Hearing Panel's authority as set out in Sections 11.1(17) of the *Act*, a recommendation may be made that Her Worship be compensated for the

costs of her legal services incurred as a result of the Hearing. The finding of misconduct does not preclude compensation.

[92] Mr. Sandler submits that he has reduced the hourly rate charged to Her Worship from his ordinary hourly rate for legal services. Section 11.1(18) of the *Act* states: “The amount of compensation recommended under subsection (17) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.” The fact that Mr. Sandler has reduced his rate in recognition of the limit imposed by section 11.1(17) does not affect the Panel’s decisions as to whether it should grant the request or whether the full amount requested should be recommended.

[93] In *Errol Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191, the Divisional Court held that there is no presumption against a recommendation for compensation where a justice of the peace is found to have committed misconduct given the public interest nature of judicial misconduct proceedings and the importance of an independent judiciary. The purpose of such proceedings is to restore public confidence in the judiciary and not to punish the individual justice of the peace.

[94] In *Massiah*, the Divisional Court set out the following guiding principles for Hearing Panels considering the issue of whether to recommend compensation for the costs associated with a hearing at paragraphs 56 and 57:

[56] ...adjudicative bodies, dealing with the complaints against judicial office holders, ought to start from the premise that it is always in the best interests of the administration of justice, to ensure that persons, who are subject to such

complaints, have the benefit of counsel. Consequently, the costs of ensuring a fair, full and complete process, ought usually to be borne by the public purse, because of the interests of the public, first and foremost, that are being advanced and maintained through the complaints process. Again, this reflects the public interest nature of the process.

[57] All of that is not to say that, in every case where a judicial office holder is subject to a successful complaint, that judicial office holder can expect that his or her legal expenses will be compensated. It is a decision that must be made separately in each case and only after a consideration of the particular circumstances of the case viewed in the context of the objective of the process. Chief among those circumstances will be the nature of the misconduct and its connection to the judicial function. For example, misconduct that is more directly related to the judicial function may be more deserving of a compensation order than conduct that is less directly related. In contrast, 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. Further, misconduct where there are multiple instances may be less deserving of a compensation recommendation than would a single instance of misconduct. Similarly, repeated instances of misconduct may be less deserving of a compensation recommendation than one isolated incident.

[95] The factors provided by the Divisional Court in *Massiah* were applied in *Re: Foulds: Decision on Disposition and Compensation for Legal Costs Following a Finding of Misconduct* (JPRC, 2018), *Re: Keast: Reasons for Decision – Compensation for Legal Costs* (OJC, 2018) and *Re: Bisson: Reasons for Decision on Disposition and Compensation for Legal Costs Following a Finding of Judicial Misconduct* (JPRC, 2018).

[96] Mr. Sandler submits that the circumstances strongly favour a recommendation that Her Worship's legal costs incurred in connection with the hearing be compensated.

[97] Presenting Counsel agrees with Her Worship's legal submissions regarding costs. He also submits that the rates and disbursements sought and the total quantum are reasonable and appropriate.

[98] In the circumstances before this Panel, the misconduct was directly connected to the judicial function. That factor renders Her Worship more deserving of a compensation order than conduct that is less directly related.

[99] Any person, including an experienced justice of the peace, ought to have known the misconduct was inappropriate. *Stare decisis* and the requirement to give proper reasons for rejecting submissions are fundamental principles in the justice system. Such misconduct is less deserving of a compensation decision.

[100] The misconduct included multiple instances over almost a year. Where there are multiple instances, the justice of the peace is less deserving of a full compensation recommendation than if there was a single instance of misconduct.

[101] There have been no prior findings of misconduct. Where there has not been a previous finding of misconduct, the justice of the peace is more deserving of a compensation recommendation.

[102] The conduct of the hearing is a factor. There was significant work done by Presenting Counsel and counsel for Her Worship that saved considerable time. The hearing was scheduled to take approximately three weeks. The efficiency by which the matter proceeded, through an Agreed Statement of Facts and joint submissions of counsel, resulted in a reduction from approximately three weeks to two days. There

were no costs associated with steps that the Panel views as unmeritorious or unnecessary.

[103] Taking all of these factors into account, the Hearing Panel is of the view that Her Worship should be compensated in the amount of \$30,000.00 plus HST and disbursements, for a total amount of \$33,994.75. The reduction reflects the multiple instances of misconduct over a significant period of time and the fact that, as an experienced justice of the peace, Her Worship should have known the basic legal concepts reviewed above. As well, the Panel is of the view that it is excessive to charge legal fees for the delivery of a document. Consequently, the fee charged for this service is not approved. A recommendation to the Attorney General will be made accordingly.

Dated this 29th day of August, 2018

HEARING PANEL:

The Honourable Diane M. Lahaie, Chair

Justice of the Peace Bruce Leaman

S. Margot Blight, Lawyer Member