Justices of the Peace Review Council

IN THE MATTER OF A HEARING ORDERED UNDER SECTION 11(15) OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, c. J.4, as amended,

Respecting the conduct of
Justice of the Peace Paul A. Welsh,
Justice of the Peace in the Central West Region

Before: The Honourable Justice J. David Wake
Her Worship Lorraine A. Watson, Justice of the Peace
Professor Emir Aly Crowne-Mohammed, Community Member

Hearing Panel of the Justices of the Peace Review Council

Reasons for Decisions

Presenting Counsel:
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REASONS FOR DECISIONS

I. Introduction

[1] Four unrelated complaints were received by the Justices of the Peace Review Council (the Review Council) concerning the conduct of Justice of the Peace Welsh. The Review Council established a Complaints Committee pursuant to s. 11(1) of the *Justices of the Peace Act* R.S.O. 1990, c. J. 4, as amended (hereinafter referred to as the "*Act*"). The complaint committee investigated each matter and ordered that a formal hearing into each complaint be held by a Hearing Panel pursuant to s. 11(15) of the *Act*.

[2] The Review Council established a Hearing Panel pursuant to s. 11.1 of the *Act* and as a result a hearing took place into all four complaints on September 10, 2009.

[3] An extensive Agreed Statement of Facts was delivered to the Review Council on September 9, 2009 and filed as Exhibit "B" the following day at the hearing itself. Included in Exhibit "B" were transcripts and recordings of two court proceedings from which two of the complaints arose.

[4] On September 10, 2009, the Hearing Panel heard from Justice of the Peace Welsh who elected to testify and who was extensively cross-examined by presenting counsel, Mr. Hunt. In addition, the Hearing Panel heard from fourteen character witnesses. A book of approximately seventy character letters was also submitted on behalf of Justice of the Peace Welsh by his counsel, Mr. Yachetti, as well as a brief on absolute discharges.

[5] At the conclusion of the evidence, both counsel made submissions and were granted permission to make further submissions in writing if they so desired. These have been received together with Books of Authorities. The Hearing Panel has considered all of the evidence and material filed at the hearing and the submissions and briefs submitted both at the hearing and subsequently.

[6] The Hearing Panel has also met subsequent to the hearing to listen to the recordings of the two court proceedings contained in Exhibit "B" referred to above.

II. The Complaints

[7] The particulars of the complaints were set out in the Notice of Hearing which was filed as Exhibit "A" in these proceedings. The particulars are attached to these Reasons as Appendix "A".

[8] We will provide a brief description below of each complaint which we propose to deal with in the following order:

A) The Watkins Complaint

[9] On January 11, 2008 Justice of the Peace Welsh presided over a matter in which Mr. Paul Watkins was charged with an offence under the *Building Code Act*, S.O. 1992, c. 23, as amended for failing to comply with a building inspector's order arising out of a window being built on the side wall of a detached garage on Mr. Watkins's property which was alleged to be contrary to the *Code*.

[10] Mr. Watkins was self-represented and it is alleged that Justice of the Peace Welsh's demeanour and comments during the course of the trial were inappropriate and incompatible with the execution of the duties of his office.

B) The Caplan Complaint

[11] Mr. Frederick Caplan is a barrister and solicitor who represented a person charged with speeding, contrary to s. 128 of the *Highway Traffic Act*, R.S.0., 1990, c. H. 8, as amended. Mr. Caplan sought to cross-examine a police officer for the officer's non-attendance at a previously scheduled date for the trial. It is alleged that, in questioning counsel as to why he sought to cross-examine the officer, Justice of the Peace Welsh demonstrated inappropriate demeanour and a lack of civility. After allowing cross-examination to take place, it is alleged that Justice of the Peace Welsh interrupted and restrained counsel's right to cross-examine and that Justice of the Peace Welsh exhibited a lack of impartiality by his own questioning of the officer. His refusal to recuse himself upon the request of counsel is alleged to have been improper, together with his conduct and demeanour during the course of the hearing which was alleged to be incompatible with the execution of the duties of his office.

C) The Complaint Regarding Extensions of Time for Paul Hrab

[12] Mr. Paul Hrab had been convicted of various *Provincial Offences Act* charges as a result of driving a motor vehicle while suspended and without insurance. The fines totalled $16,396.00.

[13] Paul Hrab's father, Mr. Steve Hrab, is a Hamilton police officer known to Justice of the Peace Welsh. On December 11, 2007 Steve Hrab appeared before Justice of the Peace Welsh on behalf of his son on four motions to extend the time for payment of these fines.

[14] The motions were granted for an initial period of one year, during which Paul Hrab would pay $100.00 per month on the outstanding fines, subject to renewal, extension or variance after than initial year.

[15] Approximately one year later, on December 5, 2008, Steve Hrab again appeared before Justice of the Peace Welsh on behalf of his son to request a further one year extension for payment of the outstanding fines. On this occasion Steve Hrab did not appear before Justice of the Peace Welsh with the supporting documentation. The motions were granted on the same terms as in the previous year. One of the motions was with respect to a fine imposed in Burlington.

[16] It was not the policy for Justices of the Peace in Hamilton to hear applications for fine extensions without supporting documentation and for matters outside the Hamilton jurisdiction, like the Burlington fine.

D) The Complaint Regarding the Certificate of Offence for Justice Zivolak

[17] On October 24, 2008 Justice of the Peace Welsh presided in the Intake Court in Hamilton. During the course of his duties he entered a conviction in respect of a "Red Light Camera System Certificate of Offence" for a vehicle registered to Martha B. Zivolak in relation to the offence of failing to stop at a red light.

[18] At all times Justice of the Peace Welsh was aware that Martha Zivolak was (and is) a judge of the Ontario Court of Justice and that her husband was a police officer. Justice of the Peace Welsh had first met Justice Zivolak when she was a "drug prosecutor" prior to her appointment as a judge.

[19] Justice of the Peace Welsh correctly assumed that Justice Zivolak was unaware of the Certificate of Offence which had been sent to her previous address.

[20] Justice of the Peace Welsh took the unusual step of contacting Justice Zivolak by e-mail to advise her of the existence of the ticket and suggested ways in which the fines could be reduced, including having her or her husband come to the Hamilton courthouse.

[21] Justice Zivolak was at a seminar and then on vacation but inquired on October 30, 2008 as to whether Justice of the Peace Welsh would be available on October 31, 2008. Justice of the Peace Welsh replied by e-mail that he was available but shortly thereafter sent a further e-mail indicating that he was going to reduce the fine by half to $90.00. Justice Zivolak left a voice message that this was not acceptable to her and that she would pay the fine in full. Justice of the Peace Welsh acknowledged this message by e-mail but stated that it was "no problem" and that he would reduce the fine to $90.00.

[22] The following day, Justice of the Peace Welsh attended the Provincial Offences administration court office and submitted a form indicating that he had accepted a "walk-in plea of guilt" and imposed a reduced fine of $90.00 which he personally paid to court staff, who were somewhat confused by the process followed by Justice of the

Peace Welsh.

[23] Later that morning Justice of the Peace Welsh e-mailed Justice Zivolak to advise her that he had paid the reduced fine and that she could reimburse him at her convenience.

[24] Justice Zivolak continued to leave telephone messages for Justice of the Peace Welsh that she wanted to pay the fine in full without reduction.

[25] Subsequently, Justice of the Peace Welsh was charged with one count of Obstruction of Justice contrary to s. 139 of the *Criminal Code* R.S.C. 1985, c. C-46, as amended in relation to this conduct. He entered a plea of guilty on April 28, 2009 and was granted an absolute discharge.

[26] At the outset of the hearing before this Panel, Justice of the Peace Welsh admitted that his conduct in relation to this complaint (regarding the certificate of offence for Justice Zivolak) amounted to judicial misconduct for which he offered an abject apology.

E. Pattern of Conduct

[27] It is alleged that in all of the complaints a pattern of conduct has been demonstrated indicating, or giving rise to, a perception of favour or bias, conflict of interest and lack of impartiality, that is inconsistent with Justice of the Peace Welsh's judicial duties.

III. Justice of the Peace Welsh's Background

[28] Justice of the Peace Welsh was 60 years of age at the time of the hearing. He is married and has two adult children. He served for 32 years as a police officer with the Burlington Police Department which became the Halton Regional Police Service, finishing with the rank of Sergeant. He was appointed as a Justice of the Peace on January 24, 2001.

IV. Available Dispositions

[29] Sub-paragraph 11.1(10) of the *Act* reads as follows:

> After completing the hearing, the Panel may dismiss the complaint, with or without a finding that it is unfounded or, if it upholds the complaint, it may,
>
> (a) warn the justice of the peace;
>
> (b) reprimand the justice of the peace;
>
> (c) order the justice of the peace to apologize to the complainant or to any other persons;

(d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;

(e) suspend the justice of the peace with pay, for any period;

(f) suspend the justice of the peace without pay, but with benefits, for a period of up to 30 days; or

(g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2. 2006, c. 21, Sched. B, s. 10.

V. The Test For Upholding a Complaint

[30] The terms "judicial misconduct" and "upholding a complaint" are not defined in the *Act*; however, we agree with presenting counsel that decisions of the Canadian Judicial Council and the Ontario Judicial Council that determine whether a judge has engaged in judicial misconduct are apposite to the test we have to apply in determining whether to "uphold" a complaint (pursuant to s. 11.1(10) of the *Act*) and, if so, whether to apply one or more of the dispositions set out in that subsection which mirrors the same dispositions available to the Ontario Judicial Council under subsection 51.6(11) of the *Courts of Justice Act*, R.S.O. 1990, c. C. 43 (C.J.A.).

[31] In *Re: Baldwin (2002)*, a Hearing Panel of the Ontario Judicial Council considered the meaning of judicial misconduct as informed by two decisions of the Supreme Court of Canada in *Therien v. Minister of Justice* [2001] 2 S.C.R. 3 and *Moreau-Bérubé v. New Brunswick* (Judicial Council), [2002] 1 S.C.R. 249. The Hearing Panel in *Re: Baldwin* stated that:

> 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.
>
> Paraphrasing the test set out by the Supreme Court in *Thierrien* and *Moreau-Bérubé*, the question under s. 51.6(11) is **whether the impugned conduct is so seriously contrary to the impartiality, integrity and independence of the judiciary that it has undermined the public's confidence in the ability of the judge to perform the duties of office or in the administration of justice generally** and that it is necessary for the Judicial Council to make one of the dispositions referred to in the section in order to restore that confidence.
>
> It is only when the conduct complained of crosses this threshold that the range of dispositions in s. 51.6(11) is to be considered. Once it is determined that a disposition under s. 51.6(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. (emphasis added)

We agree with the Hearing Panel in *Re: Baldwin* that this is the proper approach and threshold to be applied in judicial misconduct proceedings.

[32] Justice of the Peace Welsh has admitted judicial misconduct with respect to the complaint regarding the certificate of offence for Justice Zivolak. Therefore, aside from the disposition itself, we need not make any further findings in this regard. With respect to the remaining three matters we must examine the duty of impartiality.

[33] Similarly, if judicial misconduct is found, that same duty must be considered in determining the appropriate disposition to ensure that the public's confidence in the impartiality of the judicial system is maintained.

[34] The judicial duty of impartiality was expressed in *Ruffo (Re)* [2005] Q.J. No. 17953 (C.A.) at para. 148:

> Moreover, the presumption of impartiality that accompanies the judicial function serves a very precise objective, that of the integrity of the judicial system. This premise may not be questioned every time a person who comes before the court is dissatisfied with a decision. Judges may err in fact or in law and be corrected on appeal. This does not mean, however, that the error arose from a lack of impartiality.

[35] The Canadian Judicial Council, in an attempt to provide ethical guidance for federally appointed judges, published a document entitled *Ethical Principles for Judges* (Ottawa, Canadian Judicial Council, 1998) which has been adopted for the same purpose by the Ontario Court of Justice for its judges and justices of the peace.

[36] Under the topic of impartiality the document states the following:

PRINCIPLES

A. General

1. Judges should strive to ensure that their conduct, both in and out of court, maintains and enhances confidence in their impartiality and that of the judiciary.

3. The appearance of impartiality is to be assessed from the perspective of a reasonable, fair minded and informed person.

[37] It must be remembered that a finding of lack of impartiality, or reasonable

apprehension of bias, does not necessarily lead to a finding of judicial misconduct. In fact, in *Re: Douglas* (2006) O.J.C. a Hearing Panel of the Ontario Judicial Council reviewed the conduct of a judge and found that the judge had indeed demonstrated a reasonable apprehension of bias. Yet, the Hearing Panel concluded that the conduct fell short of establishing judicial misconduct.

[38] Finally, in addressing each of the complaints we must remain cognizant of the balance between judicial accountability and judicial independence in conducting these types of hearings. As stated in *Re: Baldwin*:

> When public confidence is undermined by a judge's conduct there must be a process for remedying the harm that has been occasioned by that conduct. It is important to recognize, however, that the manner in which complaints of judicial misconduct are addressed can have an inhibiting or chilling effect on judicial action. The process for reviewing allegations of judicial misconduct must therefore provide for accountability without inappropriately curtailing the independence or integrity of judicial thought and decision making.

VI. Standard of Proof

[39] In *Re Evans* (2004), a Hearing Panel of the Ontario Judicial Council adopted the requirement that a finding of professional misconduct required clear and convincing proof, based on cogent evidence. This requirement was also subsequently accepted in *Re Douglas, supra* at paragraph 10.

[40] In professional misconduct cases, various approaches have been made to the standard of proof – including the "shifting standard" set forth by Lord Denning in *Bater v. Bater* [1950] 2 All E.R. 458 (C.A.) who was of the view that the civil standard of proof (i.e. a balance of probabilities) had degrees of variance that were "commensurate with the occasion". In other words, the more serious the allegation, the closer the standard would move from the traditional civil standard of proof on a balance of probabilities to a point closer to the criminal standard of proof beyond a reasonable doubt.

[41] This approach was recently, and unanimously, rejected by the Supreme Court of Canada in *F.H. v. McDougall* [2008] 3 S.C.R. 41:

> [45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is improper to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.
>
> [46] Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test. 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.

VII. Evidence and Findings with Respect to the Complaints in which Misconduct is not Admitted:

A) The Watkins Complaint

[42] We have heard the recording of the trial and read the transcript concerning this matter. The Justice of the Peace tried to focus the complainant on the issue in the trial but the complainant was determined to raise irrelevant considerations concerning his neighbour's garage and the use to which his neighbour's property was being put as opposed to addressing the charge dealing with his own garage. It is clear that the Justice of the Peace was frustrated in his attempt to focus the complainant on the charge with respect to his own garage, and there was an unfortunate and gratuitous reference to the complainant and his neighbour behaving like school children.

[43] Nevertheless, in our view the justice of the peace's conduct did not amount to judicial misconduct as it could not be said that his conduct was 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 of the peace to perform the duties of his office or in the administration of justice generally.

[44] We find there is no basis for a finding of judicial misconduct in relation to this complaint and it is therefore dismissed.

B) The Caplan Complaint

[45] We have some sympathy for the situation Justice of the Peace Welsh found himself in at the outset of the proceeding which gave rise to this complaint. He was presiding over a busy court with many persons waiting to be heard. The matter involved was a speeding ticket which would normally be expected to consume a relatively brief period of time. There was no application in writing that would have given him any notice as to the nature of the relief being sought by counsel for the defendant. Nor would the relief have been readily apparent to him when the matter was called. Similarly, he had no transcript of the prior proceeding where the officer had not attended. He had to rely on the submissions of counsel to discern what had occurred previously, and what remedy was being sought.

[46] In these circumstances, we find that Justice of the Peace Welsh had the right to question counsel as to the basis for seeking to cross-examine the officer on a matter which, on its face, would appear to have had little relevance to the merits of the charge

itself.

[47] Counsel's reply that his right to cross-examine was a matter of "natural justice" was not particularly helpful. It did not assist Justice of the Peace Welsh in understanding the nature of the unique remedy being sought by the defence.

[48] It is clear from the transcript and the recording that there was a level of tension growing between Justice of the Peace Welsh and counsel. Following the quip about "natural justice", the tension was not alleviated by counsel's follow-up remark that: "If Your Worship wishes to prevent me from doing that cross-examination, no problem – just put it on the record".

[49] After ultimately permitting the cross-examination, Justice of the Peace Welsh clearly intervened inappropriately in his own questioning of the officer. Justice of the Peace Welsh claims that he intervened in an attempt to assist counsel in understanding police procedures based on Justice of the Peace Welsh's own previous experience; but in doing so, particularly in the context of the earlier evident tension between himself and counsel, he gave the impression that he had entered the fray which gave rise to a reasonable apprehension of bias.

[50] Nevertheless, as noted in *Re: Douglas, supra*, a finding of a lack of impartiality does not lead necessarily to a finding of judicial misconduct. In this matter, Justice of the Peace Welsh has acknowledged that he went too far in his questioning of the officer and that he has learned from this experience, and would make every effort to avoid a repetition in the future. Mr. Caplan has appeared before him in a subsequent careless driving matter without objection so it is reasonable to assume that any further matters involving him and Justice of the Peace Welsh will be conducted with the civility one would expect between counsel and a judicial officer.

[51] Finally, we note that this complaint and the Watkins complaint are the two complaints dealing with Justice of the Peace Welsh's conduct in court. We have found that there is no basis for the complaint in the Watkins matter. Stacked against this one remaining allegation of inappropriate demeanour and impartiality is the substantial body of character letters and testimonial evidence from persons in the Hamilton legal community that speak to Justice of the Peace Welsh's patience, politeness and understanding of legal and factual issues while presiding in court over *Provincial Offences Act* trials and bail hearings.

[52] Although he may have intervened excessively in this one instance, for the reasons stated above we do not think that, in all of the circumstances, his conduct amounted to judicial misconduct as that term has been defined by the jurisprudence.

[53] Accordingly, we would dismiss this complaint.

C) The Hrab Matter

[54] The essence of this complaint is that Justice of the Peace Welsh exercised favouritism in granting two extensions for the payment of fines to Paul Hrab because of

the intercession of his father, Steve Hrab, a police officer who was known to Justice of the Peace Welsh. The Notice of Hearing did not particularize the complaint in this way but cross-examination was certainly directed to the issue of impartiality and no objection was raised to that cross-examination.

[55] The particulars of the complaint centred around the confusion caused to court staff in processing the motions to extend payment in December 2008; since the extensions had been made without the original informations and one of the extensions had been made on a Burlington matter (outside of the justice of the peace's usual presiding area).

[56] We accept Justice of the Peace Welsh's evidence that he was unaware of the policy with respect to the Burlington matter and that he did not take care to have the original informations before him since it was, in his words, a "pre-existing extension" matter which he had granted the year before when the original documents were before him.

[57] Local Administrative Justice of the Peace Mitchell Baker looked into the matter and concluded that it was not a case of Justice of the Peace Welsh assigning himself to the Intake Court inappropriately to deal with these extensions, since he could have done them "over lunch" rather than in the Intake Court (according to the statement of that Local Administrative Justice of the Peace, filed in the Agreed Statement of Facts at Tab 29).

[58] On the state of the evidence before us, we are unable to find clear, compelling and cogent evidence from which we can draw a reasonable inference that the extension applications were handled inappropriately so as to lead to a finding of judicial misconduct.

[59] Justice of the Peace Welsh testified that he viewed Steve Hrab as an embarrassed father attending on behalf of his son and not as a police officer. There is nothing to contradict this evidence and we are prepared to accept it.

[60] This, of course, does not end the matter. It must still be determined whether Justice of the Peace Welsh's handling of this matter would give rise to a reasonable suspicion by a reasonable, fair minded and informed person that he was not impartial in the conduct of his duties.

[61] Factors relevant to this consideration are:

a) Favourable Extension Terms

On its surface, the terms of the extension agreement appear to be quite favourable to Paul Hrab. While this may be true, it might not in fact be the case if he were unemployed, saddled with other debts, and impecunious. It was on the basis of representations from Paul Hrab's father, Steve Hrab, on which Justice of the Peace Welsh testified that he had no reason to disbelieve, that the terms had been set. It might have been preferable if a recording had been made of the representations made by Steve

Hrab to Justice of the Peace Welsh in the intake court which could have corroborated Justice of the Peace Welsh's account of what took place. Neither Steve Hrab nor Paul Hrab were called as witnesses by either party at the hearing before us; nor was either apparently interviewed as part of the investigation to determine whether or not Paul Hrab's financial circumstances justified the terms of Justice of the Peace Welsh's extension order.

[62] A suggestion was made to Justice of the Peace Welsh in cross-examination that at the rate set for repayment it would take 13 years to pay the fines. While this is true the suggestion fails to take into account that the extensions were time limited to one year each and a review of Paul Hrab's financial circumstances would have to take place on each renewal. It is important to consider the restricted discretion which was available to Justice of the Peace Welsh in entertaining the application to extend the time for payment of the fines as set out in s. 66 of *The Provincial Offences Act* R.S.O. 1990, c. P. 33 which is the governing statutory authority for such an application. The relevant subsection reads as follows:

> (3) **Inquiries** – Where the defendant requests an extension of the time for payment of the fine, the court may make such inquiries, on oath or affirmation or otherwise, of and concerning the defendant as the court considers desirable, but the defendant shall not be compelled to answer.
>
> (4) **Granting of extension** – Unless the court finds that the request for extension of time is not made in good faith or that the extension would likely be used to evade payment, the court shall extend the time for payment by ordering periodic payments or otherwise.
>
> (6) **Further motion for extension** – The defendant may, at any time by motion in the prescribed form filed in the office of the court, request an extension or further extension of time for payment of a fine and the motion shall be determined by a justice and the justice has the same powers in respect of the motion as the court has under subsections (3) and (4).

[63] From the above, it was mandatory for Justice of the Peace Welsh to grant the extension (i.e. "shall extend the time for payment") unless he found that it was not made in good faith or that it was being used to evade payment.

b) Was it odd that Paul Hrab did not appear personally?

[64] In *Provincial Offences Act* matters it is not necessary for a defendant to appear personally unless ordered to do so by the court. It is not uncommon for a defendant to appear by counsel or an agent which can, and often does, include a family member.

c) Should Justice of the Peace Welsh have disqualified himself, as a former police officer from considering the applications of Steve Hrab, a police officer, who had a personal interest in that it involved his son?

[65] There is no evidence to support the suggestion that Justice of the Peace Welsh

purposely, or knowingly, scheduled himself into the Intake Court to facilitate the Hrab applications. In fact, the opposite is true at least with respect to the 2008 renewal application.

[66] This suggestion calls into question the ability of anyone appointed as a judicial officer from one part of the criminal justice system, be it crown, defence or police to fulfill their oath to remain impartial. We believe that it is generally accepted that persons can come to the bench from different forensic backgrounds and be true to that oath. To hold otherwise would mean that many persons with ideal skill sets would be automatically disqualified from appointment as a judicial officer.

[67] As a judicial officer, Justice of the Peace Welsh would be required to hear evidence from police officers in Provincial Offence matters, bail hearings and search warrant applications and make credibility findings in many cases with respect to that evidence. If he were required to disqualify himself in those cases by virtue of his previous employment, the scope of his duties would be greatly reduced and, in our view, needlessly so. In *Ethical Principle for Judges, supra*, under the heading of "Impartiality" and the sub-heading of "Conflicts of Interest", it is the judge's ***personal interest*** which is the focus on the issue of whether judges should disqualify themselves. The sub-heading reads as follows:

> E. Conflicts of Interest
>
> 1. Judges should disqualify themselves in any case in which they believe they will be unable to judge impartially.
>
> 2. Judges should disqualify themselves in any case in which they believe that a reasonable, fair minded and informed person would have a reasoned suspicion of conflict between a judge's personal interest (or that of a judge's immediate family or close friends or associates) and a judge's duty.
>
> 3. Disqualification is not appropriate if: (a) the matter giving rise to the perception of a possibility of conflict is trifling or would not support a plausible argument in favour of disqualification, or (b) no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a miscarriage of justice.

[68] There is no suggestion that Justice of the Peace Welsh had any personal interest in the fine extension applications.

[69] In commentary E.7 under the sub-heading of Conflict of Interest in the *Ethical Principles for Judges*, it is suggested that the interests of family members, close friends or associates "could give rise to a reasonable apprehension of conflicting interests and duty" but to "define these matters with greater precision, however, is another matter". The relationship between Justice of the Peace Welsh and Steve Hrab was not close. They had never been colleagues. Steve Hrab had simply appeared before Justice of the Peace Welsh on a few search warrant applications.

[70] Under commentary E.19 it is contemplated that a judge may sit on cases involving persons who had previously worked with the judge or even been former clients. That commentary reads as follows:

> Judges will face the issue of whether they should hear cases involving former clients, members of the judge's former law firm or lawyers from the government department or legal aid office in which the judge practised before appointment. There are three main factors to be considered. First, the judge should not deal with cases concerning which the judge actually has a conflict of interest, for example, as a result of having had confidential information concerning the matter prior to appointment. Second, circumstances must be avoided in which a reasonable, fair minded and informed person would have a reasoned suspicion that the judge is not impartial. Third, the judge should not withdraw unnecessarily as to do so adds to the burden of his or her colleagues and contributes to delay in the courts.

The following are some general guidelines which may be helpful:

a) A judge who was in private practice should not sit on any case in which the judge or the judge's former firm was directly involved as either counsel of record or in any other capacity before the judge's appointment.

c) With respect to the judge's former law partners, or associates and former clients, the traditional approach is to use a "cooling off period," often established by local tradition at 2, 3 or 5 years and in any event at least as long as there is any indebtedness between the firm and the judge and subject to guideline (a) above concerning former clients.

[71] After taking these guidelines into consideration, we are of the view that there was no obligation on Justice of the Peace Welsh to disqualify himself from considering these applications.

[72] After considering all of the factors referred to above, we have concluded that Justice of the Peace Welsh's conduct in this matter would not have given rise to a reasonable suspicion by a reasonable, fair minded and informed person that he had not been impartial.

[73] As a result this complaint is dismissed.

D) The Justice Zivolak Matter

[74] The reasons of the Hearing Panel with respect to this matter are delivered by Professor Emir Aly Crowne-Mohammed.

[75] At the outset, I should note that it is important for members of the public to know that these hearings are conducted with a view towards truth-seeking and restoring the public's confidence in the administration of justice. Hearing Panels are neither pre-disposed to protect, or punish, a judicial officer. Furthermore, each Panel member is, and

has been, independent in their decision-making.

[76] The facts that have given rise to these hearings are agreed with. As are the findings with respect to the Watkins Complaint, the Caplan Complaint and the Hrab Matter.

[77] With respect to the Justice Zivolak matter, Justice of the Peace Welsh has admitted judicial misconduct. Unlike the other three matters, no threshold inquiry needs to take place. The only matter to be decided is the appropriate disposition.

[78] In determining the most appropriate disposition to restore confidence in the ability of Justice of the Peace Welsh to continue in office and in the administration of justice generally, we must consider Justice of the Peace Welsh's guilty plea to the criminal charge of obstruct justice. An admission of criminal conduct by a judicial officer is extraordinary. Nevertheless, Justice of the Peace Welsh was granted an absolute discharge which is the lowest form of sanction available in a criminal proceeding. Deterrence or rehabilitation of the offender is not the central concern in deciding to grant a discharge. The discharge must not be "contrary to the public interest", and is normally granted to persons of good character (see, *R. v. Sanchez-Pino* [1973] 2 O.R. 314 (C.A.)).

[79] We acknowledge that the considerations for granting an absolute discharge in criminal proceedings differ, to some extent, from the factors relevant to the disposition upon which we must decide. For instance, in criminal proceedings the personal interest of the defendant is a consideration as to whether a discharge should be granted; however, that consideration is immaterial for the purposes of this inquiry. Yet, in both dispositions it is relevant to consider the impact of the decision on the public interest and the administration of justice. Therefore some examination of the submissions which resulted in the granting of an absolute discharge in the criminal proceedings would be useful in our deliberations.

[80] We note that the Crown Attorney who prosecuted the criminal charge acknowledged that Justice of the Peace Welsh's behaviour in this matter "was out of character according to his references". She further acknowledged that this conduct was "at the low end of the range in terms of obstruct justice offences which come before the court". She joined the defence in submitting that an absolute discharge be granted and the presiding judge agreed.

[81] Sub-paragraph 11.1(10) of the *Act* sets out the dispositions available to the Hearing Panel. The dispositions are arranged from the least serious (i.e. a warning) to the most serious (i.e. a recommendation to the Attorney General to remove the justice of the peace from office).

[82] The three 'least' serious dispositions are warnings, reprimands and apologies (11.10 (a) – 11.10 (c) of the *Act*). These dispositions are not appropriate in this instance. Justice of Peace Welsh had entered a plea of guilty to one count of Obstruction of Justice contrary to s. 139 of the *Criminal Code* R.S.C. 1985, c. C-46, as amended in relation to this conduct. Throughout those criminal proceedings, and the current hearings, Justice of

the Peace Welsh has implicitly, if not explicitly, been warned, reprimanded and apologized on numerous occasions.

[83] Even if those criminal proceedings had not taken place, and Justice of the Peace Welsh had still admitted to judicial misconduct, the Panel would not have restricted itself to ordering the dispositions set out in 11.10 (a) – 11.10 (c) in any event, due to the seriousness of the misconduct in question.

[84] On the other end of the spectrum are the 'more' serious dispositions – suspensions and removal from office (11.10 (e) – 11.10 (g) of the *Act*). We do not believe that we can recommend to the Attorney General that Justice of the Peace Welsh be removed from office. There was no element of corruption, implied or express, in Justice of the Peace Welsh's actions. Although he entered a plea of guilty to a charge of obstruct justice, we agree with the Crown Attorney who prosecuted that charge that the conduct involved was at the low end of the range of culpability for this offence. This was reflected in the absolute discharge granted by the court which took into consideration, at least in part, the public interest and the administration of justice generally. These factors, combined with the exceedingly strong testimonial evidence (both in writing and in person) that we have received in support of Justice of the Peace Welsh, allows us to conclude that the public's confidence would not be undermined by his continuation in office.

[85] Nor do we believe that a suspension is the appropriate disposition in this matter. Justice of the Peace Welsh has not been assigned since January 23, 2009 and, in any event, any further suspension would not remedy the underlying 'cause' of the judicial misconduct.

[86] This leads us to the middle of the dispositions – education or treatment (11.10 (d) of the *Act*). In the Panel's view, this disposition is the most appropriate remedy for the judicial misconduct in question. The 'cause' of the judicial misconduct in the Justice Zivolak matter stems from a failure to maintain the appropriate independence and impartiality expected of a judicial officer. The Rule of Law was undoubtedly impaired, and judicial education is needed for its repair.

[87] We believe that the public nature of these proceedings have, in many ways, served to humble and discomfit Justice of the Peace Welsh, in holding him to account for his conduct. We are confident that this conduct will not be repeated in similar situations. However, the continuing obligation to be independent and impartial is a broad concept which must be in the forefront of a judicial officer's mind at all times while in office. We believe that the public's confidence in Justice of the Peace Welsh would be strengthened if he were required to follow an appropriate course of study that reinforced the importance of judicial independence and impartiality.

[88] In accordance with 11.10 (d) of the *Act*, the Panel orders that Justice of Peace Welsh undergo specific judicial education or training, as a condition of continuing to sit as a justice of the peace, such education to be prescribed by the Associate Chief Justice Co-ordinator for Justices of the Peace, in the areas of judicial independence and

impartiality.

E) Pattern of Conduct

[89] In light of our earlier findings with respect to the Watkins Complaint, the Caplan Complaint and the Hrab Matter, we need not consider any further whether a pattern of conduct has been demonstrated indicating, or giving rise to, a perception of favour or bias, conflict of interest and lack of impartiality inconsistent with Justice of the Peace Welsh's duties of office.

Dated at the City of Toronto in the Province of Ontario, December 8, 2009.

HEARING PANEL: The Honourable Justice J. David Wake

Her Worship Lorraine A. Watson, Justice of the Peace

Professor Emir Aly Crowne-Mohammed, Community Member