

# **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 Paul Welsh**

**Before:** The Honourable Neil L. Kozloff, Chair  
Her Worship Justice of the Peace Kristine Diaz  
Ms. Jenny Gumbs, Community Member

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

## **REASONS FOR DECISION**

### **Counsel:**

Mr. Scott Fenton  
Mr. Ian Smith

Mr. Eugene Bhattacharya  
Counsel for His Worship Paul Welsh

Presenting Counsel

## **PUBLICATION BAN**

On November 28, 2018, this Panel made an order pursuant to Section 11.1(9) of the *Justices of the Peace Act*, R.S.O., c. J-4 as amended, that the names of the parties involved in the court proceedings – namely all persons who appear in any *Provincial Offence Act* (hereinafter “POA”) Certificate of Offence or Information that is a subject matter of this hearing – shall not be published, nor shall any information that might identify them be published. Names of witnesses have accordingly been redacted.

## **Majority Reasons:**

### **INTRODUCTION**

[1] A complaints committee of the Justices of the Peace Review Council, pursuant to Section 11(15)(c) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (hereinafter “the *Act*”), ordered that a formal hearing into a complaint regarding the conduct of Justice of the Peace Paul Welsh (hereinafter “His Worship Welsh”) be held by a Hearing Panel of the Review Council under Section 11.1 of the *Act*.

[2] The particulars of the complaint are set out in the Notice of Hearing (Appendix “A” to these Reasons).

[3] The particulars of the complaint begin by setting out the following:

1. It is a fundamental principle of the Canadian legal system that justices of the peace should perform their duties impartially, free from bias or favouritism. A basic precept pertaining to the judiciary is that justices of the peace should be neutral adjudicators, treating all parties equally and fairly, and remaining detached from the parties and matters before them;
2. A justice of the peace is expected to uphold a high standard of conduct and to follow the administrative processes and procedures that are in place in a courthouse that ensure that legal matters are considered in a consistent and fair manner, so that the parties and the public will know that matters before the justice of the peace are being adjudicated upon fairly, and in accordance with the facts and the law. The appearance of judicial impartiality, integrity and independence are important to maintain public confidence in the administration of justice.
3. Public confidence in the administration of justice depends on compliance by a justice of the peace with the law and established court processes, the creation of a proper record, consistency in the manner in which court matters will be addressed by a justice of the peace, transparency in the process through a means of demonstrating how and why decisions have been rendered that apply and uphold the proper administration of justice.

[4] The particulars of the complaint then make reference to the procedures in place at the Hamilton Courthouse regarding various “in-writing applications:

A. *Provincial Offence Act* “In-Writing” Application Procedures in Hamilton

1. The Hamilton *Provincial Offences Act* office has instituted procedures for applications which do not require a formal court appearance. These applications include requests to reopen trials and applications for an extension of time to pay a fine ... A defendant who seeks the relief above is required to attend at the POA office at the Hamilton Courthouse with their application materials. POA office staff pull the original documentation from the trial record ... and place it and all supporting documents provided by the applicant, before a justice of the peace sitting in Intake Court. The justice of the peace then considers whether to grant the application on the basis of a completed application record, properly filed.
2. The POA does not permit a reopening of a trial application following a conviction for a Part III offence (i.e. a POA offence commenced by Information as opposed to a Part I Certificate of Offence). Rather a defendant convicted of a Part III offence must file a Notice of Appeal. An experienced justice of the peace who presides in Intake Court would or should know that a trial reopening cannot be granted in relation to a conviction for a Part III offence under the POA.

[5] Next, the particulars of the complaint set out the specific allegations of the conduct complained of:

B. April 2017 Application for Reopening of Trial:

1. On April 12, 2017, a law clerk allegedly attended before His Worship in Intake Court at the Hamilton Courthouse. The law clerk did not first file any documents regarding any intended trial reopening application with the staff of the POA office. During this appearance, the law clerk allegedly informally raised a potential reopening application with His Worship on behalf of the defendant A.L., for which the law clerk did not have the documents completed, including a sworn affidavit of A.L. for a reopening application or the Certificate of Offence respecting the underlying conviction of A.L. for Careless Driving under the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (“HTA”).
2. The following day, April 13, 2017, His Worship was presiding in Courtroom 204 at the Hamilton Courthouse. In the hallway outside of the courtroom, the law clerk provided His Worship with the sworn application of A.L. to reopen his trial following A.L.’s conviction on a charge of Careless Driving. Again, the law clerk did not first attend at the POA office to file the trial reopening materials with the POA office

staff in accordance with the procedures of the Hamilton Courthouse. Instead, the law clerk handed the application materials directly to His Worship in the hallway. The law clerk also did not append the Certificate of Conviction to the application and, as such, the application was not complete.

3. In the hallway of the courthouse, His Worship signed and, thereby, granted the trial opening application in the absence of the original Certificate of Conviction. POA staff were later informed that the trial opening application had been granted in this fashion.

C. June 2017 Application for Reopening of Trial:

1. On May 17, 2017, a defendant, J.M.W., was scheduled to appear for trial in (*sic*) on a charge of Operate a Vehicle without Insurance contrary to the HTA (*sic*), which is a Part III offence under the POA. The defendant J.M.W. failed to appear in court for her trial and was convicted *in absentia* of the charge.
2. On May 31, 2017, the defendant J.M.W. attended at the POA office at the Hamilton Courthouse and requested to reopen her trial. POA staff advised J.M.W. that because Operate a Vehicle without Insurance is a Part III offence under the POA, it was not legally possible to reopen the trial. The defendant J.M.W. was advised that it would be necessary to appeal her conviction.
3. On June 14, 2017, His Worship was presiding in Courtroom 100, conducting bail hearings. A lawyer, M.P., approached His Worship in the hallway outside of court with an application to reopen the defendant J.M.W.'s trial regarding her conviction for Operate a Vehicle without Insurance. The lawyer M.P. did not first attend at the POA office to file any trial reopening application materials in accordance with the established procedures at the Hamilton Courthouse. Rather, M.P. handed the reopening application materials directly to His Worship in the hallway. The application materials were legally null and void as a trial reopening was not legally available for a Part III offence.
4. His Worship granted the application for the trial reopening, a decision made outside of the courtroom, in circumstances where: (i) the underlying Information was not before His Worship as required; (ii) the trial reopening application was not permitted under the POA as a matter of law; and (iii) no reopening application materials were previously filed with the POA office staff. Later, POA office staff had to notify the defendant J.M.W. that the trial opening application granted by His Worship was legally ineffective.

#### D. October 2017 Extension of Time to Pay Fines

1. On October 3, 2017, the same lawyer, M.P. who acted for the defendant J.M.W. in the June 2017 application to re-open, required an extension of time to pay fines imposed against him personally, as a result of M.P.'s convictions under the HTA and the *Compulsory Automobile Insurance Act*.
2. On that day, His Worship was performing duties in the Intake Court. The lawyer M.P. appeared before His Worship in Intake Court, with applications for extensions of time to pay the fines. The lawyer did not first attend at the POA office to file his materials with the POA office staff in accordance with the established procedures of the Hamilton Courthouse. Instead, M.P. provided His Worship with the application materials directly.
3. As a result, none of the underlying original Informations or Certificates of Offence respecting the underlying convictions and fine orders that were the subject of M.P.'s applications were before the Court. Notwithstanding, His Worship granted the applicant M.P.'s applications for extensions of time to pay the fines.
4. Further, His Worship failed to make an audio recording in the Intake Court of the appearance by M.P. before His Worship on October 3, 2017.

[6] Finally, the particulars of complaint set out the basis upon which the conduct complained of is alleged to be judicial misconduct:

#### E. Generally:

1. His Worship engaged in a pattern of behaviour in which he failed to follow the well-established administrative processes and procedures in place at the Hamilton Courthouse for persons applying for trial reopenings and for extensions of time to pay fines.
2. As a result of His Worship's failure to follow the established administrative processes and procedures, His Worship rendered decisions on matters without having all the required legal documentation before him to properly adjudicate and support such judicial decision-making. In respect of the June reopening respecting the applicant J.M.W.'s application for a trial reopening, His Worship made a judicial decision in the absence of a proper record and in circumstances where it was not permitted by law.
3. His Worship's conduct, in accepting and deciding the above-noted applications outside of the court and in an informal, off-the-record fashion, in the absence of a proper record and without complying with

the administrative processes and procedures provided for in the Hamilton Courthouse, demonstrated actual preferential treatment or favouritism, and/or gave rise to a perception of preferential treatment or favouritism, towards the applicants described in paragraphs 6 to 16 above.

4. His Worship demonstrated a pattern of disregard for the administration of justice, negatively impacting the public's confidence in the integrity, independence and impartiality of the judiciary in general, and in His Worship as a judicial officer.
5. His Worship demonstrated a pattern of inappropriate conduct that violated the independence, impartiality and integrity of his judicial office.
6. His Worship's actions were, or could be perceived by a reasonable, fair-minded person as judicial misconduct.
7. The act or acts as set out in paragraphs 6 to 21 above, could be found to constitute judicial misconduct that warrants a disposition under section 11.1(10) of the *Justices of the Peace Act*.

[7] A first appearance/set-date took place on April 27, 2018. The Notice of Hearing was filed as Exhibit 1.

[8] On November 28, 2018, the hearing was convened. Presenting Counsel made some opening remarks. The Panel was provided with an AGREED BOOK OF DOCUMENTS which was filed as Exhibit 2.

[9] Presenting Counsel called four witnesses on November 28 and 29, 2018, after which he announced that he had completed his case.

[10] Before counsel for His Worship Welsh was called upon, the hearing was adjourned (pursuant to the request of the panel) to January 31, 2019 so that Justice of the Peace Kelly and Justice of the Peace Baker – who were respectively the Regional Senior Justice of the Peace and the Local Administrative Justice of the Peace for Hamilton at the material times – could be interviewed with regard to their involvement (if any) in these matters, including whether and when they received or were made aware of (any of) these allegations at the time they arose, whether they spoke to or otherwise addressed (any of) these allegations with His Worship Welsh, and what (if any) response His Worship Welsh made in connection therewith.

[11] On June 28, 2019, the hearing resumed. Justice of the Peace Kelly and Justice of the Peace Baker both testified. Counsel for His Worship Welsh advised that there would be no evidence from His Worship Welsh nor any witnesses called on his behalf.

[12] On August 22, 2019, oral submissions were made by counsel – written submissions including Books of Authorities having been provided by both counsel in the interim – and the hearing was adjourned to November 5, 2019 for a decision by the Hearing Panel.

[13] The Hearing Panel has considered all of the evidence heard and materials filed during the hearing as well as the written and oral submissions of counsel and the authorities provided by counsel.

[14] These are the Reasons for Decision of the majority of the Hearing Panel.

## **THE EVIDENCE CALLED BY PRESENTING COUNSEL**

[15] Presenting Counsel called Jaime Stephenson in relation to the AI Reopening Application, MP and JMW in relation to the JMW Reopening Application, MP in relation to the MP Motions for Extension of Time to Pay Fines, and Wendy Mason with regard to the relevant procedures in place for dealing with matters such as these at the John Sopinka Courthouse at the material times and with regard to the actions she took in relation to these various applications.

### **A. The AI Reopening Application**

#### **JAIME STEPHENSON**

[16] Jaime Stephenson is a criminal defence lawyer who practises primarily in the City of Hamilton. From 2015 to 2017 – and at the material times – she was the President of the Hamilton Criminal Lawyers’ Association.

[17] On October 22, 2016, her client – AI – was charged with Careless Driving contrary to section 130 of the *Highway Traffic Act*. The matter proceeded under Part I of the *Provincial Offences Act* (hereinafter “POA”). Ms. Stephenson’s office had been retained on the matter, and had requested that a date be set down for trial. However, her office was never notified of the trial date and, in the result, on March 14, 2017, AI was convicted *in absentia*.

[18] On April 12, 2017, AI received notice of the conviction. That same day, Ms. Stephenson’s clerk, Michelle Perry, attended at the John Sopinka Courthouse in relation to the Record of Reopening Application for another client of Ms. Stephenson’s: DM. Ms. Perry indicated to the justice of the peace sitting in the Intake Court (office) – His Worship Welsh – that she had another similar matter but that the client (AI) had not yet signed the affidavit in support of his application.

[19] The following day – April 13, 2017 – Ms. Perry re-attended at the John Sopinka Courthouse where she “ran into” His Worship Welsh. He was presiding that day in courtroom 204 but their meeting took place out of court. He approved the Record of Reopening Application for AI (Exhibit 2 Tab A.1) which she had in her hand, ticking off the box under “ORDER OF THE JUSTICE” that reads

“Conviction struck out. Clerk of the Court is directed to deliver an Early Resolution Meeting Notice to the defendant/representative.”

[20] When Ms. Perry attended at the POA office to file AI’s documents, she was advised that the clerk would be making a complaint.

[21] On April 25, 2017, Ms. Stephenson wrote a letter (Exhibit 2 Tab A.4) on Hamilton Criminal Lawyers’ Association letterhead that was addressed and hand delivered to PROVINCIAL OFFENCES OFFICE HAMILTON, 45 Main Street East Suite 408 Hamilton, ON L8N 2B7 Attention: Wendy Mason (Manager of Provincial Offences at City of Hamilton), on behalf of the association. The letter indicates that Regional Senior Justice of the Peace Kelly was (to be) hand delivered a copy.

[22] In her letter, Ms. Stephenson advised that counsel setting POA matters for trial (by filing a Notice of Intention to Appear) were not receiving notice of trial in all instances, and that as a result some clients were being convicted *in absentia*. Ms. Stephenson also reported “on a personal note” regarding the details of Ms. Perry’s attendances before His Worship Welsh on the DM and AI Record of Reopening Applications – including the fact that Ms. Perry had been told that the clerk would be making a complaint – and assured Ms. Mason that:

At no time, was the justice of the peace courtering (sic) favour to my assistant or my office. He was simply assisting her with something that had previously been discussed when he was sitting in Intake.

[23] Ms. Mason responded to Ms. Stephenson the same day by letter on City of Hamilton letterhead (Exhibit 2 Tab A.5). Wendy B. Mason, Manager – Hamilton POA is printed below her signature. That letter also indicates that Regional Senior Justice of the Peace Kelly was (to be) hand delivered a copy.

[24] After addressing the issue regarding Notice of Trial to representatives (as distinguished from defendants), Ms. Mason wrote:

In addressing the 2<sup>nd</sup> issue, I would like to suggest that our protocol indicates that when a reopening is being filed, that the documentation is received at the Provincial Offences Office, Affidavit is sworn and we then pull the original ticket and send all documents to be processed in the Intake Court. In the instance you mention, the protocol was not followed and it was not addressed through the Intake Court nor did the Justice of the Peace who processed this reopening request have the original ticket before them. POA staff deliver and pick up reopenings from the Intake Court multiple times each day. (Emphasis added)

I have notified His Worship Kelly on prior occasions when this protocol is not being followed. As a result, I am also copying my response to you with His Worship Kelly. (Emphasis added)



## B. The JMW Reopening Application

### JMW

[25] On June 7, 2016, JMW was charged with Owner Operate Motor Vehicle on a Highway No Insurance contrary to section 2 (1) (a) of the Compulsory Automobile Insurance. She was issued a Summons to Defendant (Exhibit 2 Tab B.12) under section 22 of Part III of the POA requiring her to appear in courtroom 300 at 45 Main St. E. Hamilton Ont. (The John Sopinka Courthouse) on July 25, 2016 at 1:30 p.m.

[26] An Information (Exhibit 2 Tab B.11) was sworn on July 4, 2016, returnable in courtroom 300 at 45 Main St. E., Hamilton Ont. on July 25, 2016 at 1:30 p.m.

[27] JMW testified that she was properly insured at the time of the charge, and that she had been told by the (charging female police) officer to bring proof of insurance to the police station. Her evidence in that regard is supported by what is written – (apparently by the charging police officer at the time of issue) along the right side of the SUMMONS TO DEFENDANT, namely: “72 HRS TO SHOW”, albeit JMW did not recall reading that at the time it was issued.

[28] JMW testified that when on the following day – June 8, 2016 – she brought proof of insurance to the police station, a male police officer told her to bring it to court.

[29] It is apparent from page 2 of the Information that neither JMW nor anyone on her behalf appeared in courtroom 300 at 45 Main St. E., Hamilton Ont. on July 25, 2016 at 1:30 p.m. in answer to the summons, albeit JMW was unable to recall whether or not she had appeared when she testified.

[30] It is also apparent from page 2 of the Information that the matter was then adjourned to August 31, 2016 at 1:30 p.m. – at which time neither JMW nor anyone on her behalf appeared – and that it was then scheduled for an *ex parte* trial on May 17, 2017 at 9:00 a.m.

[31] JMW testified that on September 25, 2016 she went to Early Resolutions Court, bringing with her proof of insurance. She said that a woman sat down with her, that she showed the woman her documents including proof of insurance, that she was told the charge would be dropped, and that she was thereafter under the impression that “everything was settled.”

[32] It is apparent on the face of the Information that on May 17, 2017 JMW was tried *in absentia*, convicted, and fined \$5,000.00.

[33] JMW testified that on March 11, 2017 she had moved to a new address. On May 25, 2017 – when she checked the mail box at her old address – she found a notice from the court for a fine for not having insurance on June 7, 2016.

[34] JMW testified that on May 26, 2017 she brought the notice to the courthouse and was told her only recourse was to appeal.

[35] JMW testified that on May 31, 2017 she brought her proof of insurance to the POA office on the 4<sup>th</sup> floor of the courthouse to “try and reopen the case”, and was told that she can only appeal and was provided with “the paperwork to appeal”. At that point, she called lawyer MP to get his assistance.

[36] JMW testified that she brought the appeal paperwork to MP, relied upon him to bring the appropriate application, and that she thought he would “take care of it.”

## **MP**

[37] MP is a criminal defence lawyer who has practised for some 23 years, primarily in the Hamilton area. He has appeared “from time to time” before His Worship Welsh.

[38] MP testified that (following discussions with him) JMW prepared a Record of Reopening Application (Exhibit 2 Tab B. 13) and an Affidavit (Exhibit 2 Tab B.14) which he commissioned on June 13, 2017.

[39] On June 14, 2017, MP attended at the John Sopinka Courthouse on another matter. When that matter broke for lunch, he tried to get to the Intake office, but it was closed for lunch.

[40] MP testified that he ran into His Worship Welsh (who was presiding in courtroom 100 that day) in the hallway, that he explained to His Worship Welsh what he was trying to do, and that His Worship Welsh asked to see the documents, reviewed what documents MP had, and signed the Order (Exhibit 2 Tab B. 13).

[41] MP said that he was unaware at the time that there was no legal ability to “reopen” a Part III conviction.

[42] MP explained that he had not attended the POA office to obtain the documents (i.e. Exhibit 2, Tabs B.13 and B.14); rather, he had downloaded them.

[43] MP estimated the length of his interaction with His Worship Welsh was “between 5 and 10 minutes to review the paperwork” which he said included the application, affidavit, JMW’s insurance pink slip, and a letter from her broker confirming she was insured. He testified that he did not recall seeing Exhibit 2, Tab B.11 (the Information)

[44] MP testified that after His Worship Welsh had signed the Order (of the Justice in Ex. 2, B.13) he took it to the POA office and filed it.

[45] On June 19, 2017 Lorraine Ophoven, Coordinator of Court Services, Provincial Offences Office, Hamilton wrote a letter to JMW with a copy to MP (Exhibit 2 Tab B.16):

On the 13<sup>th</sup> of June 2017 our office received a reopening application for Information 16-1754 (Drive No Insurance) granted by His Worship Welsh. Unfortunately, the Justice of the Peace errored (sic) in this process as a Part III charge cannot be reopened; it must be dealt with by way of an appeal. Our office will not be processing this reopening.

I am enclosing an appeal package for you to complete and file at 45 Main Street, Hamilton, ON Suite 106.

[46] MP said that he had never received a copy of that letter because it was mailed to his old office address.

[47] JMW testified that when she received Ms. Ophoven's letter she called MP, who subsequently brought a successful appeal of the conviction.

### **C. The MP Motions for Extension of Time to Pay Fine**

#### **MP**

[48] MP testified that on October 3, 2017 – in his personal capacity – he brought a number of Motions for Extension of Time to Pay Fine (Exhibit 2 Tabs C.19, C.20, and C.21) to the Intake Court (at the John Sopinka Courthouse) where His Worship Welsh was presiding.

[49] His Worship Welsh made the order MP was seeking in relation to all of the Motions for Extension of Time to Pay Fine (Exhibit 2 Tab C.22).

[50] When MP then attended at the POA office, he was told he needed the ICON INQUIRY SUBSYSTEM OUTSTANDING PAYMENTS UPDATE document pertaining to him (Exhibit 2 Tab C.23, indicating an inquiry made on October 3, 2017 at 10:54:26) and told to take that document along with his other documents back to the Intake Court.

[51] It would appear that His Worship Welsh then made a second, virtually identical order granting what MP was seeking in relation to all of the Motions for Extension of Time to Pay Fine (also at Exhibit 2 Tab C.22).

[52] Exhibit 2 Tab C.24 is the ICON INQUIRY SUBSYSTEM CASE CASH RECEIPTS document pertaining to MP. It indicates an inquiry made on October 4, 2017 at 14:54:02. The following is handwritten on the document:

Application for extension was received from intake

Application was approved but not submitted through POA office as they were not on standard yellow form

All Informations and certificates are filed in suspension drawer and were not part of this extension process.

[53] MP was shown Exhibit 2, Tab C.26, which is the Intake Court Sign-In Sheet for October 3, 2017. When it was suggested to MP that his name is not on it, MP explained that when he attended the Intake office, there was no one else there and that His Worship Welsh “came out to see me.”

## **THE TESTIMONY OF WENDY MASON**

### **Examination-in-Chief**

[54] Wendy Mason (hereinafter “Ms. Mason”) has been the manager of the POA office in Hamilton for some 19 years.

#### *The Procedures in Place at the John Sopinka Courthouse in 2017*

[55] She explained the procedures in place at the Hamilton Courthouse when a defendant who has been convicted of a POA Part I offence without a hearing applies to re-open:

- The applicant attends the front counter of the POA office and provides the relevant information to a customer service representative (CSR).
- The original Certificate of Offence is pulled.
- The appropriate paperwork (Record of Reopening Application and Affidavit) is provided to the Appellant to complete.
- The Affidavit is sworn (by a Commissioner of Oaths who is available for the purpose).
- The appellant is told to call in a week (to get the result of their application).
- The documents are taken to the Intake desk (by office staff) and placed in the Intake basket to be dealt with by the justice of the peace assigned to Intake Court that day.
- Once they have been dealt with, the documents are picked up by

office staff and returned to the POA office.

- The appellant calls in (a week later) to find out the decision on their application.

[56] Ms. Mason clarified that the original Certificate of Offence is never given to the appellant; rather, it is appended (by office staff) to the completed Record of Reopening Application and Affidavit and delivered (by office staff) to the Intake basket where a justice of the peace assigned to Intake that day deals with it.

[57] She explained that it is important that the original Certificate of Offence accompany the completed Record of Reopening Application and Affidavit because it verifies their contents.

[58] Blank Record of Reopening Application and Affidavit forms can be obtained from the POA office (these are “the standard yellow forms”) or copied (for example by counsel, in which case they would not be yellow).

[59] Ms. Mason asserted that it is not common that these applications are brought directly to the justice of the peace office (i.e. by the applicant) rather than to the POA office. In such cases, the justice of the peace will (should) call down (to the POA office) and “we will oblige.” She added that it is “not the practice to sign these documents in the hallway.”

[60] She explained that POA Part III offences (as distinguished from POA Part I offences) are commenced by Information (as distinguished from Certificate of Offence). The person charged is issued a Summons to Defendant by the charging officer.

[61] A reopening under section 11 of the POA is not available (for persons convicted of POA Part III offences *in absentia* after an *ex parte* trial). They must proceed by way of an appeal.

[62] Ms. Mason testified that the justices of the peace assigned to the (two) Intake Courts at the John Sopinka Courthouse – notated as INH1 and INH2 on the various Hamilton/Tri-Counties Justice of the Peace Schedules included in Exhibit 2 – deal with both criminal and POA matters.

[63] With regard to the sign-in process in place for individuals attending the Intake Courts, she opined that the purpose was two-fold:

1. To maintain a record of the matters heard;
2. To permit the justice of the peace to call the next matter.

[64] Ms. Mason explained that audio recordings are made in respect of those

proceedings in the Intake Court where an Information is sworn by an officer. When asked what (other) matters were being recorded in Intake Court, she responded that in the case of Record of Reopening Applications the applicant is not “normally” there. She did not know if “these” are recorded, nor did she know what matters (other than Informations sworn by an officer) are typically recorded.

[65] Ms. Mason explained the procedures in place at the Hamilton Courthouse when a defendant – by motion in the prescribed form filed in the office of the court – requests an extension (or further extension) of time for payment of fine(s) under section 66(6) of the POA:

- The applicant attends the front counter of the POA office and provides the relevant information to a customer service representative (CSR);
- The CSR pulls the original Certificate(s) of Offence and/or Information(s);
- The applicant completes the Motion(s) for Extension of Time to Pay Fine document(s);
- The Certificate(s) of Offence and/or Information(s) are “married up” with the Motion(s) for Extension of Time to Pay Fine;
- The applicant is told to call in a week for the result of their application;
- The documents are taken to the Intake desk (by office staff) and placed in the Intake basket to be dealt with by the justice of the peace assigned to Intake that day;
- Once they have been dealt with, the documents are picked up by office staff and returned to the POA office;
- The appellant calls in (a week later) to find out the decision on their application.

[66] It is the practice (in Hamilton) for Motions for Extension of Time to Pay Fine to be dealt with by Justices of the Peace *ex parte*.

[67] Ms. Mason identified an email she wrote – apparently to her staff – dated July 15, 2011 with the subject line “Extensions of Time to Pay” (Exhibit 3). It reads (in part):

Defendants will no longer be permitted to attend the intake office with a

request for an extension of time to pay. The exception will be if they have had an extension denied. The attached form has been prepared by Her Worship Lillian Ross for distribution to the defendant when completing their extension form. The number to call for the justice of the peace's decision has been included... Please provide this form to all defendants requesting an extension effective Monday July 18<sup>th</sup>.

[68] Ms. Mason clarified that this practice was in effect at the material time in October of 2017.

[69] She indicated that justices of the peace will occasionally call down (to the POA office) for relevant documents.

[70] Ms. Mason identified a document entitled "INTAKE INSTRUCTION MANUAL", updated March 2018 (Exhibit 4). The manual was created post-2000 and was in existence in 2017. The relevant sections are "EXTENSIONS" AND "REOPENINGS".

[71] EXTENSIONS sets out the procedures to be followed by POA staff dealing with Motions for Extension of Time to Pay Fine. REOPENINGS sets out the procedures to be followed by POA staff dealing with Record of Reopening Applications.

[72] With regard to REOPENINGS, Ms. Mason clarified that when an applicant attends the POA office and presents a completed Record of Reopening Application and completed Affidavit, a CSR will then pull the relevant underlying charging document. If that document is an Information (rather than a Certificate of Offence), the CSR will refuse to process the application and advise the applicant that their matter must proceed by way of an appeal.

[73] She explained that the staff determines if the matter has proceeded by a Part I Certificate of Offence or a Part III Information by checking on ICON.

#### **A. The AI Reopening Application**

[74] Ms. Mason testified that it is not the practice for a justice of the peace assigned to a criminal court to approve Record of Reopening Applications, as was done with the AI application on April 13, 2017. His Worship Welsh was assigned to and presiding in criminal courtroom 204 on April 13, 2017.

[75] Ms. Mason said that her staff made her aware that a law clerk named Michelle had delivered the AI Record of Reopening Application to the POA office front counter without the corresponding (original) Certificate of Offence attached.

[76] Subsequently Ms. Mason received the letter (Exhibit 2 Tab A.4) from Jaime Stephenson and wrote in her responding letter (Exhibit 2 Tab A.5) that the protocol was not followed with respect to AI's application i.e. the original Certificate

of Offence was not married up to the application documents and the relevant information had not been previously entered into Excel.

## **B. The JMW Reopening Application**

[77] His Worship Welsh was assigned to and presiding in criminal courtroom 100 on June 14, 2017 when he approved the JMW Record of Reopening Application.

[78] The underlying Information was not attached to the application documents when they were delivered to the POA office.

[79] Moreover, since this matter had proceeded by way of a POA Information, it could not be “reopened” and His Worship Welsh had erred in so doing.

[80] Ms. Mason was advised of this shortly after. She testified that she spoke to the Local Administrative Justice of the Peace or the Regional Senior Justice of the Peace about it and instructed Lorraine Ophoven to write the letter to JMW advising her to file an appeal (Exhibit 2 Tab B.16)

## **C. The MP Motions for Extension of Time to Pay Fine**

[81] Ms. Mason testified that the motions brought by MP for extension of time to pay fines were not processed through the POA office. The relevant POA office documents (Certificate of Offence and Information) were not attached.

[82] When this was brought to her attention, she was concerned that the normal protocol had been by-passed i.e. the motions had not first been brought to the POA office and had not been married up with the relevant Certificate of Offence/Information before being sent to Intake. Also, MP had not signed the Intake Court Sign-In Sheet (Exhibit 2 Tab C.26)

## **Cross-Examination**

[83] Under cross-examination, Ms. Mason acknowledged that the INTAKE INSTRUCTION MANUAL (Exhibit 4) was prepared for POA office staff, that its contents had changed over the years, and that it was never “shared” with His Worship Welsh.

[84] She agreed that there is nothing in the form entitled EXTENSIONS OF TIME TO PAY SECTION 66 OF THE PROVINCIAL OFFENCES that was prepared by Her Worship Lillian Ross for distribution to defendants and which is attached to the email sent by Ms. Mason to her staff on July 15, 2011 (Exhibit 3) that “prohibits” in person attendances at Intake by defendants or their representatives.

[85] Ms. Mason also agreed that counsel can go directly to the Intake office for any purpose.



[86] When counsel suggested that the INTAKE COURT SIGN-IN SHEET (Exhibit 2 Tab C.26) was to “process the order of persons heard”, Ms. Mason responded “and for security” and referred to the “*Billingham* protocol”, albeit she was uncertain if that protocol mandated that everyone had to sign in.

[87] With regard to the JMW reopening application, Ms. Mason reiterated that she had spoken to the Regional Senior Justice of the Peace about it and instructed that the letter from Lorraine Ophoven to JMW (Exhibit 2 B.16) be sent.

[88] With regard to the AI reopening application, Ms. Mason agreed that the POA office received the relevant documents after they had been dealt with by His Worship Welsh (via Ms. Stephenson’s clerk) and there was no duplication of work even if things were not done according to procedure.

[89] With regard to the MP extension application(s), Ms. Mason acknowledged that the relevant documents were picked up at the Intake office by her staff and “eventually” arrived at the POA office to be processed.

[90] Ms. Mason also agreed that while the “normal” process had not been followed, if – as in this case – the applicant is present at the time the order is granted, there would be no need for her staff to advise said applicant of the result, thus saving her staff work even if things were “done in a different order”.

[91] Counsel referred Ms. Mason to “Summer Newsletter” from Regional Senior Justice Nicklas and Regional Senior Justice of the Peace Farnand (Exhibit 5). It was apparently sent to all of the judges and justices of the peace in the region that includes Hamilton on August 21, 2018.

[92] Section 4 of the said document – entitled “Court Collapse and Offers of Assistance” – reads in part:

I understand that for the Justices of the Peace, if no formal court sittings require help, that Intake Court should be offered assistance including any and all matters ordinarily dealt with there.

We sincerely appreciate the cooperative nature in which you all assist your colleagues across the region.

[93] Ms. Mason said she was unaware of this particular newsletter, albeit she was aware that “Courts go down and justices of the peace may assist Intake.” She agreed that there was “nothing sinister” about His Worship Welsh being originally assigned to a criminal court, going down, and providing assistance to Intake. Asked if she agreed that it was the practice in her courthouse for justices of the peace to assist Intake Court, she replied that it “makes sense”.

## **The Allegations against His Worship Welsh**

[94] Asked if she knew who had filed the complaint against His Worship Welsh, Ms. Mason replied, “I did.” Asked if she had complained in respect of all three matters, she said “Yes.”

[95] Asked if she had ever discussed any of these matters with His Worship Welsh, she replied, “No.”

## **Re-Examination**

[96] Under re-examination, Ms. Mason clarified that she initially complained about His Worship Welsh’s handling of the JMW reopening application by letter dated June 19, 2017, the same day as the letter sent from Lorraine Ophoven to JMW. Her second letter of complaint was dated October 5, 2017 and was in relation to the His Worship Welsh’s handling of the MP extension application. The complaint regarding His Worship Welsh’s handling of the AI reopening application in April of 2017 was not the subject of a formal (letter of) complaint and “only came out during the course of the investigation.”

## **THE TESTIMONY OF HIS WORSHIP BRETT KELLY**

[97] His Worship Kelly (hereinafter “Kelly”) was appointed a justice of the peace on September 30, 2009. Since that time, he has presided mostly in the Niagara Region and is now based in Cayuga.

[98] From January 30, 2015 until January 30, 2018, Kelly served as the Regional Senior Justice of the Peace for the region that includes the Hamilton courthouse.

[99] The contents of the transcript of the interview of Kelly conducted by Mr. Fenton on January 29, 2019 were adopted as true by the witness and marked as Exhibit 6. The salient contents of the interview are set out below:

1. Kelly was the Regional Senior Justice of the Peace during the relevant (2017) period.
2. With regard to the two occasions (April 13, 2017 and June 14, 2017) on which it is alleged that His Worship Welsh signed reopening applications, Kelly stated:

I do recall the June event and Wendy Mason came to my office

...

And informed me that this had occurred.

And, and I said exactly what you said – well, there’s, you can’t

do a reopening on a Part III, it has to go through appeal and then brought back (sic). And I do recall we had a conversation with respect to this, and ... I said that it would be up to her to consider whether or not to make a complaint to the JPRC.

At least that's, that's my recall, in terms of how I was dealing generally, with these types of things when they were coming to my attention at that point in my tenure.

Um because many times it's, in many events, it's, it's futile to have conversations with the justice of the peace and Ms. Mason pretty much had indicated that she would be taking that path.

3. Asked if he had spoken to His Worship Welsh directly about the subject matter of Ms. Mason's concern regarding the June reopening, Kelly replied, "I did not."
4. Asked if he had ever had any communications with His Worship about that matter, he replied, "I have not."
5. Mr. Fenton asked Kelly if – when a justice of the peace does something that is not in accordance with expectations – it is appropriate for the Regional Senior Justice of the Peace to speak to the justice of the peace. Kelly responded:

If there's an ongoing concern. There have been times when I've spoken to justices of the peace ... just to sort of check in and make sure that, and, and, and sometimes, you know, it doesn't pan out the way it was initially described. And in other a, cases, it's futile to have that conversation. It's not really within our job description to delve into these types of things...

... if it's indicated to me that there's a complaint, or a potential complaint to be made to the JPRC, then I would be hands off.

6. Kelly recalled that he spoke with Ms. Mason about her complaint very soon after the events in June, and that her complaint was with respect to the fact that "it had occurred in the hallway without going through the process of doing whatever paperwork is necessary at the window and then having it go down to the intake ...that he was being approached in the hallway by people and ... *in this instance*, doing something which it (sic) didn't exist in law." (Emphasis added)
7. Asked about the "normal" practice for reopening a POA matter, Kelly stated,

Well, the person charged would go to the POA office, fill in the paperwork, and then return it to the office where it can be married

up with a certificate or whatever other information is inside or contained within the POA file...

And so what we're looking f-, and, you know, when did the person become aware of the conviction, is ... a, a key point that we have to consider. And then, so we require whatever paperwork may be there with the Part I certificate, to see when the conviction was actually entered.

8. Kelly said he was "not aware" of any other justices in the Hamilton Courthouse signing reopenings or other types of POA applications such as extensions for (payment of) fines in the hallways of the courthouse.
9. Kelly stated that it was his understanding (after his June meeting with Ms. Mason) that she was likely to file a complaint with the JPRC.
10. Asked if during their meeting Ms. Mason mentioned any other instances of His Worship signing applications that were similar in nature, Kelly replied: "Maybe in general, but not specifically ... that I can recall."

[100] Under cross-examination, Kelly recalled meeting with Ms. Mason "at some point regarding her concerns about circumstances involving applications that were not going through the normal open process".

[101] Kelly was shown the letter written by Ms. Stevenson (Exhibit 2, Tab 4) and the response to it by Ms. Mason (Exhibit 2, Tab 5), both dated April 25, 2017, both of which indicate that copies of the correspondence were delivered to him.

[102] Kelly said he recalled seeing Ms. Stevenson's letter, "but not that well." He also recalled that "Ms. Mason may have brought up this issue with me at that time just in my office, but not in written correspondence."

[103] With regard to the Mason response, Kelly testified that he believed he recalled her mentioning the issue and then receiving the correspondence.

[104] Kelly was asked about the last paragraph of Ms. Mason's response to Ms. Stevenson in which she writes:

"I have notified His Worship Kelly on prior occasions of this protocol not being followed".

[105] Kelly stated that he had no specific "memory of discussing with Ms. Mason issues involving protocols regarding openings."

[106] Kelly stated that he had worked in the Intake Court in Hamilton from time to time during 2017 - 2018, and that he had never had the experience of a lawyer or a paralegal coming into the Intake Court with documentation for (a) reopening.

Asked if he was aware of any justice of the peace (other than His Worship Welsh) having paralegals or lawyers go to the Intake Court with the (re)opening applications, Kelly replied: “No, that’s not how they are supposed to do it.”

[107] Kelly stated that he was not aware of any written rules or standards of practice or protocols issued to justices of the peace with regard to how they are to function in the Intake Court.

[108] Kelly said it was possible to decide an application for extension of time to pay fines without the record of payments because there is a section (on the application) that “says I have ... paid this much already towards those fines which would give you an indicator...In other instances, you would see past extensions that were either granted or denied, and you’d be able to then track the amount of money that’s been paid from extension to extension ... if the amount paid from the previous extension is the same a year later indicating that you have not made any payments, that would influence a decision.”

[109] Kelly agreed that applications for reopening and for extension of time to pay fines are considered *ex parte*, and that “there is no requirement that they be recorded because there is no member of the public in front of you.”

[110] Kelly clarified that he had only recalled the conversation he had with Ms. Mason in April of 2017 when it was brought to his attention in cross-examination. Asked if he had taken any steps to contact His Worship Welsh about it, he said he had not, nor did he consider doing so at that time.

[111] Kelly was aware that in the April 2017 correspondence between Ms. Stevenson and Ms. Mason, they were referring to His Worship Welsh – and that it was His Worship Welsh who had signed the reopening for Ms. Stevenson’s clerk – albeit His Worship Welsh is not named in either letter. He added that he did not recall any discussion with Ms. Mason about whether His Worship Welsh should “be advised ... or talked to ... about that particular situation”.

[112] Kelly reiterated that “at that point, whenever I was receiving complaints about justices of the peace, at that point in my tenure as the RSJP, I would refer them to the brochure from the Justice of the Peace Review Council and say, ‘Well, if this is something that you wish to pursue, that for you to – that’s for you.’ There are other instances where I would have conversations with justices of the peace on other matters. On something like this, I would say this is the route to take if you think this is a matter to be taken ...”

[113] Kelly opined that when justices of the peace attend the Intake Court to assist (for example, after having completed their regular list) “they should start the computer even though they may not be doing – even if they are only doing basket motions. If they are only do (sic) basket motions, they may not start the computer, but there may be a record.”

[114] Kelly agreed that when a justice of the peace was going to assist in Intake, so advising the administration and starting the computer would constitute best practices... “especially if they’re going to meet with members of the public.”

[115] Kelly clarified that when he said during his January 29, 2019 interview that “many times ... in many events it is futile to have conversations with the justice of the peace”, it was obvious to him (at the time of the June 2017 conversation with Ms. Mason) in this instance that this was going to be going to the Review Council.

[116] Kelly said that there would have been no way for him to “look into it” without getting in to a “he said, she said” and that “we were getting into a grey area for the RSJP in terms of any investigatory role.” He went on:

But the statement about it sometimes being futile because in the past I’d had conversations with justices of the peace regarding some of their behaviours, and they would correct their behaviour for about two weeks and then go right back to it. And so I was – it was an expression of frustration that had been, you know, sort of, my experience particularly at the end of three years at being an RSJP.

[117] On re-examination, Kelly was asked how – when he was the RSJP – he distinguished between cases where he said “here’s the brochure, do what you think is right” and cases where he would have a conversation with the particular justice of the peace:

Well, if it’s the type of thing where the colleague is having trouble managing a court, or causing the court to sit for excessive, you know, excessive amounts of time, and if there were instances of, I guess, comments being made to staff in court that – so where the justice of the peace is being not inappropriate in a way, but there being – I don’t know what the word is. I’m just going to say somewhat hostile to the actions of the staff then I would – perhaps I would have a conversation with them or something like that, letting them know that, you know, the staff feel imposed upon ... Because ... there may be some corrective steps that we’re able to take.

[118] Asked to generalize about the kinds of cases where he would say “here’s the brochure”, Kelly replied, “Where I think the conduct is – where I feel the conduct is something that may be reportable.”

[119] Asked why he thought it was important to start the computer when he got to Intake Court, Kelly replied:

Because you need to have a record of any interaction that you may have with a member of the public. For me, that’s my safety net, so that if something does occur during the interaction, you can either, you

know, that may result in an appeal of some sort. You may – just as an example, you may, if you’re swearing an Information, you may forget to confirm the process, but it will be on the record...

As well, people may feel that they have not been dealt with fairly or appropriately, and the record is there to protect you, so the record can be reviewed by members of the Judicial Review Council (sic).

[120] Kelly added that the record also “protects the person that’s come before me.”

[121] Finally, Kelly said that if he encountered someone with something to be dealt with at lunchtime outside the Intake Court, he would tell that person to come (back) at 1:30 when the Intake Court opens, sign in and then come in to see the justice of the peace when called.

### **THE TESTIMONY OF HIS WORSHIP MITCHELL BAKER**

[122] His Worship Baker (hereinafter “Baker”) was appointed a justice of the peace on March 29, 1995 and has since presided in Hamilton.

[123] Baker served two terms as the Local Administrative Justice of the Peace, including during the relevant period in 2017.

[124] The contents of the transcript of the interview of Baker conducted by Mr. Fenton on January 29, 2019 were adopted as true by the witness and marked as Exhibit 7. The salient contents of the interview are set out below:

1. With regard to the allegation made by Ms. Mason regarding a reopening application signed by His Worship Welsh on April 13, 2017, Baker stated: “No one spoke to me, either officially, unofficially, on the record or off the record.”
2. With regard to the allegation made by Ms. Mason regarding a reopening application signed by His Worship Welsh on June 14, 2017, it was never brought to Baker’s attention either officially or unofficially.
3. With regard to an allegation with respect to the seeking of fine extensions by MP in October of 2017, he never heard about any concerns or complaints made by the POA office about that.
4. Asked if signing reopening applications “outside the normal course of procedures and in the hallways of the courthouse was “consistent with how matters are handled in the John Sopinka Courthouse, he responded: “I would say they are not.”
5. Asked if he could suggest ways in which he would have sought to address

that matter if it was brought to his attention, Baker replied:

It would've been brought to my attention and I would have spoken to His Worship Welsh, either in court time or 8:30 to 4:30 or afterwards, really saying, "What in the world were you thinking? And we're not doing that anymore."

6. Asked if that would be trying to sort of nip the problem in the bud as opposed to letting it fester into a complaint, Baker explained:

That, like I'm not even sure I want to go that far, even using the word nipping in the bud. The one thing I have to remember, and I think we all have to remember, is we're all independent judicial officers. Everything that we do should be done in an Intake, Court in that function, and if there are people present, then it should be recorded...that would be my standard operating procedure.

7. Baker told Mr. Fenton that if someone came to the Intake Court seeking a reopening of a ticket,

then either I or my clerk would direct you to the POA office, so the entire file is brought down. And I can't tell you what's in the file because they can all be different, but all I can tell you is, I wouldn't act on anything without having the original Part I certificate with me ... I would want to see what happened, when it happened, because there are also other rules that you can only reopen for a certain number of days after you become aware of the conviction...That's why having all of the, the paper work, becomes ... important.

8. With regard to the fact that none of these matters were brought to his attention, Baker expressed some frustration:

I'm a little bit frustrated, although Ms. Mason may have gone to the Regional Senior Justice of the Peace, or even the Regional Senior Judge, which would clearly be her ... right to do so, and although, as local admin, I would never take on such (sic) the role of manager ... but we always, but we do have certain shepherding responsibilities, and I would meet with Ms. Mason at least once a month ... And so there certainly would have been ample opportunity for her to bring to my attention, if she wanted to bring it to my level ... anything that's going on.

9. Baker said that he had never seen His Worship Welsh do any of the things noted.

He certainly never told me if he had done them ... And if I would



have heard, either through him, saying, guess what I did, last night, you know, I'd whack him up one side of the head and down the other, saying you know, what were you thinking?

10. Baker said there had been occasions during his tenures as the Local Administrative Justice of the Peace when there were "behaviours" or attitude in court and or late court starting or early court ending that were brought to his attention, and there would always be a conversation. None of them involved His Worship Welsh.
11. In response to an offer from Mr. Fenton to speculate, Baker said that if he had been given the opportunity to speak to His Worship Welsh about these practices...of him signing applications outside of court, he believed that his approach of saying to him, "Well listen you can't do that, please do it this way" would have been effective.
12. Baker noted that "we have a standard operating procedure here, which probably isn't written down ...So what it is, is that my court goes down early ... People are then supposed to come down to Intake and ... give assistance.

[125] Under cross-examination, Baker said there was no specific written practice direction regarding "how a justice of the peace is to run the Intake Court".

[126] With regard to the practice of justices of the peace offering assistance to the Intake Court if and when their assigned court matters were completed, Baker said that the practice went back a number of years to when Justice Ebbs was the Associate Chief Justice/Coordinator of Justices of the Peace.

[127] With regard things being done "not on the record, outside of the actual Intake Court, without a document ... doing things in a hallway", Baker testified as follows:

1. if he had been made aware of what His Worship Welsh was doing at the time, he would "perhaps ask, Why are you doing that?", albeit he would have had no authority (as a local administrative judge) to say "you shouldn't, you can't, or you will not do it again";
2. the Court is where the justice of the peace is;
3. the practice of signing things in a hallway is folly because, from the perspective of risk management, the record is your best friend; and
4. if an independent judicial officer makes a decision, "it is what it is. I don't think it's wrong. I just don't think it's necessarily the best practice."

[128] He then agreed with the following suggestions:

1. if the occasion presented itself where he could assist or educate a colleague regarding best practices, he would do so in order to educate and correct the behaviour;
2. he could have done so with His Worship Welsh had he been informed by Ms. Mason regarding the nature of her concerns;
3. had he known, he would have said something (to His Worship Welsh); and
4. it is his belief that had he had that discussion with His Worship Welsh at the time, it may have corrected the problem.

[129] Under re-examination, Baker clarified that the record is for the protection of everybody, meaning both the justice of the peace and the applicant (or legal representative).

## **POSITIONS OF THE PARTIES**

### **Presenting Counsel**

[130] Presenting Counsel submits that it would be open to the Hearing Panel to conclude that the specific averments of judicial misconduct set out in the Notice of Hearing have been established on a balance of probabilities, which is the requisite standard of proof.

[131] Specifically, it is the position of Presenting Counsel that the Hearing Panel has heard evidence from which it could conclude ... “that His Worship Welsh compromised the independence, impartiality, and integrity of the judicial office of the justice of the peace by: (i) failing to follow established practices intended to enhance the proper and fair administration of justice; (ii) failing to ensure that he executed his judicial duties on the basis of a complete record; (iii) executing judicial acts in a manner that preferred, or created a perception that he preferred, the interests of particular litigants; and (iv) demonstrating a pattern of disregard for the administration of justice.”

[132] Presenting Counsel further submits that it would be open to the Hearing Panel to conclude... “that the conduct of J.P. Welsh, whether measured by discrete acts of misconduct and/or measured by his acts of misconduct considered cumulatively, was sufficiently serious to give rise to a perception among reasonable people that he compromised the principles of judicial independence, integrity and impartiality that governed his office.”

## **Counsel for His Worship Welsh**

[133] Counsel for His Worship Welsh submits that the impugned conduct is 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 judge to perform the duties of office or in the administration of justice generally and that it is necessary for the Review Council to make one of the dispositions referred to in the section in order to restore that confidence”.

### **APPLICABLE PROVISIONS OF THE ONTARIO *PROVINCIAL OFFENCES ACT***

[134] Under *PART I – COMMENCEMENT OF PROCEEDINGS BY CERTIFICATE OF OFFENCE*, Section 11 of the *Ontario Provincial Offences Act* provides:

*11. Reopening – (1) Application to strike out conviction* – A defendant who was convicted without a hearing may, within 15 days of becoming aware of the conviction, apply to a justice to strike out the conviction.

*(2) Striking out the conviction* – Upon application under subsection (1), a justice shall strike out a conviction if satisfied by affidavit of the defendant that, through no fault of the defendant, the defendant was unable to appear for a hearing or for a meeting under section 5.1 or the defendant did not receive delivery of a notice or document relating to the offence.

*(5) Certificate* – A justice who strikes out a conviction under subsection (2) shall give the defendant a certificate of the fact in the prescribed form.

[135] Under *PART III – COMMENCEMENT OF PROCEEDING BY INFORMATION*, Section 21(1) of the *Ontario Provincial Offences Act* provides:

*21. (1) Commencement of proceeding by Information* – In addition to the procedure set out in Parts 1 and 11 for commencing a proceeding by the filing of a certificate, a proceeding in respect of an offence may be commenced by laying an information.

[136] Under *PART VII – APPEALS AND REVIEW - Appeals Under Part III*, Section 116 of the *Ontario Provincial Offences Act* provides:

*116. (1) Appeals, proceedings commenced by Information* – Where a proceeding is commenced by information under Part III, the defendant or the prosecutor or the Attorney General by way of intervention may appeal from,

(a) a conviction;

- (b) a dismissal;
- (c) a finding as to ability, because of mental disorder, to conduct a defence;
- (d) a sentence; or
- (e) any other order as to costs.

(2) *Appeal Court* – An appeal under subsection (1) shall be,

- (a) where the appeal is from the decision of a justice of the peace, to the Ontario Court of Justice presided over by a provincial judge; or
- (b) where the appeal is from the decision of a provincial judge, to the Superior Court of Justice.

(3) *Notice of Appeal* – The appellant shall give notice of appeal in such manner and within such period as provided by the rules of court.\*

\*Rule 5 requires that the notice of appeal must be filed within 30 days after the date of decision appealed from.

## **PRINCIPLES OF JUDICIAL OFFICE**

[137] In determining whether there has been misconduct, consideration is given to the ethical guidelines for judicial officers.

[138] The Canadian Judicial Council in their decision in the *Report of the Canadian Judicial Council to the Minister of Justice Concerning the Honourable Justice Theodore Matlow* (December, 2008 at paras. 94-100) and Hearing Panels of the Justices of the Peace Review Council have held that while the principles of judicial office do not constitute a prescriptive code of conduct, they do set out a general framework of values and considerations that will necessarily be relevant in evaluating allegations of improper conduct by a justice of the peace. The fact that conduct complained of is inconsistent with or in breach of the Principles constitutes a factor to be taken into account in determining whether there has been judicial misconduct. (See *Re Justice of the Peace Tom Foulds* (JPRC, 2018 at para. 21)

[139] This Hearing Panel is entitled to take the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice* into account in assessing whether the conduct complained of constituted sanctionable conduct.

[140] 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 includes the following:

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.

[141] The *Principles* also include the following:

- 1.1 Justice 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.

- 2.4 Justices of the peace have a duty to maintain their professional competence in the law.

## **APPLICABLE LEGAL PRINCIPLES**

### **Assessment of the Evidence and Burden of Proof**

[142] The standard of proof for establishing judicial misconduct is the balance of probabilities.

[143] With regard to the standard of proof, there is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge. Similarly, evidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test:

*F. H. v. McDougall* [2008] 3 S.C.R. 41

[144] The question for the Panel may therefore be phrased as follows:

Is there credible, cogent and compelling evidence to satisfy the Panel that, on a balance of probabilities, there was judicial misconduct?

See also *Law Society of Upper Canada v. Neinstein*, 2010 ONCA 193

## The Test for Judicial Misconduct

[145] Judicial misconduct is not defined in the *Justices of the Peace Act*. Two of the leading cases that established the applicable test to guide judicial discipline panels in determining whether there has been judicial misconduct are *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 1 and *Therrien (Re)*, [2001] 2 S.C.R. 3, 2001 SCC 35.

[146] In *Moreau-Bérubé v. New Brunswick (Judicial Council)* at para. 58, the Supreme Court of Canada explained that in the disciplinary process, we must consider the alleged conduct and whether it affects public confidence in the judiciary as a whole:

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.

[147] In *Therrien (Re)*, [2001] 2 S.C.R. 3, 2001 SCC 35, the Court set out the relevant principles to apply in considering whether there has been judicial misconduct. The judiciary must project and maintain be impartiality, independence and integrity:

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. 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 (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. 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. 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)

(Emphasis added.)

[148] The Hearing Panel *In the Matter of a Complaint Respecting the Honourable Lesley M. Baldwin* (OJC, 2002) (hereinafter *Re: Baldwin*) observed that judicial misconduct is also not defined in the *Courts of Justice Act*. Accordingly, that Hearing Panel conducted a legal analysis, the salient portions of which are set out below:

“Judicial misconduct” is not defined in the *Courts of Justice Act*.

Presenting Counsel, Mr. Hunt, has submitted, in our view correctly, that a determination of judicial conduct must be made by way of a legal analysis.

One source for such analysis would be the *Principles of Judicial Office* – a document prepared under the auspices of the Chief Justice of the Ontario Court of Justice.

This document is not a set of rules. Rather, it is a guide to assist judges in addressing ethical and professional dilemmas – as well as in assisting the public to understand the reasonable expectations which the public may have of judges in the performance of judicial duties and in the conduct of their professional lives.

At page 4, under the heading *The Judge in the Community*, it notes, under 3.2:

Judges must avoid any conflicts of interest in the performance of their judicial duties.

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Both counsel also refer to *Ethical Principles for Judges* published by the Canadian Judicial Council.

It, too, is a set of principles which addresses ethical issues for judges as



they live and work in their communities.

Under the heading *Impartiality* the “Statement” reads:

Judges must be and should appear to be impartial with respect to their decisions and decision-making.

The third “General Principle” under that heading states:

The appearance of impartiality is to be assessed from the perspective of a reasonable, fair-minded and informed person.  
(Emphasis added)

Under the heading *Judicial Independence*, the “Statement” is:

An independent judiciary is indispensable to impartial justice under law. Judges should, therefore, uphold and exemplify judicial independence in both its individual and procedural aspects.

Commentary number five under that heading states as follows:

Given the independence accorded judges, they share a collective responsibility to promote high standards of conduct. The rule of law and the independence of the judiciary depend primarily upon public confidence. Lapses and questionable conduct by judges tend to erode that confidence ... Public acceptance of and support for court decisions depends upon public confidence in the integrity and independence of the bench. This, in turn, depends upon the judiciary upholding high standards of conduct.

Paraphrasing the test set out by the Supreme Court in *Therrien* and *Moreau-Berube*, 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.

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Having reviewed the specific details of the complaint from the perspective of the “reasonable, fair-minded, informed member of the public”, in the context of the *Principles of Judicial Office*, and

the test set out above, the Council concludes there has been no misconduct.

[149] All of the foregoing applies equally to justices of the peace, as the reasons for decision in the *Matter of a Hearing Concerning a Complaint about the Conduct of Justice of the Peace Donna Phillips* (JPRC 2013) make clear:

[12] Justices of the peace are judicial officers. All are members of the Ontario Court of Justice and perform significant judicial duties which impact on the people of Ontario. They preside in Provincial Offences Court judging cases involving alleged violations of Provincial Statutes such as: the *Highway Traffic Act*, the *Liquor License Act*, and the *Environmental Protection Act*. Justices of the peace conduct judicial interim release hearings and preside over criminal court assignment courts.

[14] In the *Report of a Judicial Inquiry Re: His Worship Benjamin Sinai*, released March 7, 2008, the Commissioner made the following comments regarding the important role that justices of the peace occupy in relation to the public perception of the judicial system:

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.

[15] 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 such matters 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.

*Report of a Judicial Inquiry Re: His Worship Benjamin Sinai* (2008)

[16] All judicial officers are held to a high standard of conduct. Of necessity, this involves doing or refraining from doing things that a regular citizen is not only permitted to do, but encouraged to do. Examples of forbidden conduct are: engaging in partisan political activity, which is the democratic birth right of all Canadians excluding judicial officers, or actively engaging in fund raising activities. These are small prices to pay

for the maintenance of our collective judicial integrity and independence. These principles are well-known to all judicial officers and form part of our compact with the public we serve. All judicial officers are expected to conduct themselves with honor and integrity.

[17] As a general rule, judicial misconduct may capture both judicial and extra-judicial conduct. In *Re: Baldwin*, the court considered the issue as follows:

In *Moreau-Berube v. New Brunswick* (Judicial Council), the Supreme Court discussed the tension between judicial accountability and judicial independence. Judges must be accountable for their judicial and extra-judicial conduct so that the public has (sic) confidence in their capacity to perform the duties of office impartially, independently and with integrity...

*Re: Baldwin* (2002) O.J.C.

[150] It is noteworthy that in setting out the test for judicial misconduct, the panel in *Re: Baldwin* addresses both the purpose and the parameters of judicial misconduct proceedings:

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... 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)

## **FINDINGS REGARDING THE VARIOUS ALLEGATIONS**

[151] We find that the impugned conduct set out in the Notice of Hearing has been established by the evidence on a balance of probabilities. Indeed, we do not take counsel for His Worship Welsh to be arguing otherwise.

[152] The issue for us 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 His Worship Welsh to perform the duties of his office or in the administration of justice generally and that it is necessary for the Justice of the Peace Review Council to make one of the dispositions referred to in the section in order to restore that confidence.

[153] We propose to begin by considering the impugned conduct in chronological order.

### **The AI Reopening Application**

[154] The evidence establishes that previous to the date of this application – April 13, 2017 – the Hamilton *Provincial Offences Act* office had instituted procedures for applications which do not require a formal court appearance, including requests like the AI application to reopen trials like this one (and applications for an extension of time to pay a fine), namely that:

1. A defendant who seeks the described relief is required to attend at the POA office at the Hamilton Courthouse with their application materials;
2. POA office staff pull the original documentation from the trial record and place it and all supporting documents provided by the applicant, before a justice of the peace sitting in Intake Court; and
3. The justice of the peace can then consider whether to grant the application on the basis of a completed application record, properly filed.

[155] This application was brought by Ms. Stephenson’s paralegal without her having attended at the POA office with her materials; therefore, there was no opportunity for POA office staff to pull the original documentation from the trial record and place it and all supporting documents before His Worship Welsh.

[156] Accordingly, His Worship Welsh did not consider the application on the basis of a completed application record.

[157] It is readily apparent on the evidence that “best practices” for a justice of the peace presiding in the Intake Court would include the following:

1. Every applicant who attends the Intake Court – including lawyers and paralegals (and police officers) as well as members of the public – must sign in;
2. Every such attendance in the Intake Court must be recorded;
3. Anybody who attends the Intake Court (1) without having previously attended at the POA office with their application materials, and (2) without the POA office staff having previously pulled the original documentation and supporting documents, and (3) without the said documentation having been previously placed before the justice of the peace, must be directed to attend at the POA office for said purposes.

[158] Needless to say, “best practices” would preclude consideration of such applications in the hallways or cafeteria of the Courthouse, or indeed anywhere

other than in the Intake Court.

[159] There is no basis for a finding on the evidence before us that procedures regarding how *ex parte* applications are to be considered and/or best practices regarding how a justice of the peace is to run the Intake Court at the Hamilton Courthouse have ever been reduced to a written practice direction.

[160] There is no basis for a finding on the evidence before us that such procedures and/or best practices were ever communicated to His Worship Welsh by Ms. Mason, His Worship Kelly, His Worship Baker or anyone else at any time before His Worship Welsh was informed of the complaint made by Ms. Mason.

[161] Nonetheless, we find on the evidence in respect of his conduct on April 13, 2017, a lack of adherence on the part of His Worship Welsh to what were at the time and are generally accepted procedures and protocols for dealing with such matters in the Intake Court at the Hamilton Courthouse – as confirmed by the evidence of Kelly and Baker – regardless of the fact that there was (and is) no written protocol in respect thereof.

[162] It is not apparent to us how His Worship Welsh could have thought it possible (or indeed how it was or would have been possible for His Worship Welsh) to judicially consider the AI reopening application, in light of the applicable provisions of the *Provincial Offences Act*, without an examination of all of the original documentation and supporting documents.

[163] However, it is our considered view that the impugned conduct of His Worship Welsh in this instance did not amount to judicial misconduct because 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 office or in the administration of justice generally.”

[164] Accordingly, we find there is no basis for a finding of judicial conduct in relation to this allegation and it is therefore dismissed.

### **1. The JMW Reopening Application**

[165] As with regard to the AI Reopening Application, the evidence establishes that previous to the date of this application (June 14, 2017):

1. the Hamilton *Provincial Offences Act* office had instituted procedures for applications which do not require a formal court appearance, including applications like this one to reopen trials;
2. this application was brought (on behalf of JMW) by MP:
  - without a prior attendance by MP at the *Provincial Offences Act* office,

which would have headed off the attendance by MP before His Worship (and ended the matter) because MP would have been told by the POA office staff that the conviction having been registered against JMW on a Part III Information, an appeal was required;

- without the requisite original documentation having been previously placed before His Worship (which would have made it apparent to His Worship that the application could not be granted in law);
3. His Worship Welsh failed to follow best practices when he considered this application absent the original materials and when he considered this application outside the Intake Court without requiring MP to sign in and without recording the proceedings.

[166] There is no basis for a finding on the evidence before us that the said procedures and/or best practices were ever communicated to His Worship Welsh by Ms. Mason, His Worship Kelly or His Worship Baker before June 14, 2017 or indeed at any time before His Worship Welsh was informed of the complaint made by Ms. Mason.

[167] That said, as with the AI application we find on the evidence in respect of his conduct on June 14, 2017 a lack of adherence on the part of His Worship Welsh to what were at the time and are generally accepted procedures and protocols for dealing with such matters in the Intake Court at the Hamilton Courthouse.

[168] The fact that the application to reopen was with respect to a conviction registered on a Part III Information meant that what His Worship Welsh was asked to do by MP, and what he ultimately did, was a nullity.

[169] That of course reflects negatively on both MP as a lawyer and His Worship as a justice of the peace. It goes without saying that we are concerned here with His Worship Welsh's conduct and judgment, not MP's.

[170] Nonetheless, there was never any danger of an injustice being done, as it was inevitable that the matter would be corrected as soon as the documentation came back to the POA office for processing.

[171] In the result, it is our view that the impugned conduct of His Worship Welsh in this instance did not amount to judicial misconduct because 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 office or in the administration of justice generally."

[172] Accordingly, we find there is no basis for a finding of judicial conduct in relation to this allegation and it is therefore dismissed.

## 2. The MP Motions for Extension of Time to Pay Fines

[173] As with regard to the AI Reopening Application and the JMW Reopening Application, the evidence establishes that:

1. the Hamilton *Provincial Offences Act* office had instituted procedures for applications previous to the date of this application (October 3, 2017) which do not require a formal court appearance, including motions like MP's for extensions of time to pay fines;
2. the procedures then in place at the Hamilton Courthouse when a defendant – by motion in the prescribed form filed in the office of the court – was requesting an extension (or further extension) of time for payment of fine(s) under section 66(6) of the POA were:
  - The applicant attended the front counter of the POA office and provided the relevant information to a customer service representative (CSR)
  - The CSR pulled the original Certificate(s) of Offence and/or Information(s)
  - The applicant completed the Motion(s) for Extension of Time to Pay Fine document(s)
  - The Certificate(s) of Offence and/or Information(s) were “married up” with the Motion(s) for Extension of Time to Pay Fine
  - The applicant was told to call in a week for the result of their application
  - The documents were taken to the Intake desk (by office staff) and placed in the Intake basket to be dealt with by the justice of the peace assigned to Intake that day *or by a justice of the peace who was assisting his colleague(s) in the Intake Court* (Emphasis added)
  - Once they had been dealt with, the documents were picked up by office staff and returned to the POA office.
  - The appellant was to call in (a week later) to find out the decision on their application.

3. It is apparent that on this occasion:

- a. MP did not attend the front counter of the POA office and provide the relevant information to a customer service representative (CSR);
- b. the original Certificate(s) of Offence and/or Information(s) were never pulled and never married up with the corresponding Motion(s) for Extension of time to pay fines; and
- c. His Worship Welsh purported to judicially consider the Motions without all of the necessary documentation being before him.

[174] There is an insufficient basis to conclude on the evidence before us that His Worship Welsh deliberately showed favour to MP.

[175] It is apparent that in considering MP's Motions as he did, His Worship executed judicial acts in a manner that could enable a reasonable, fair-minded, and informed person to perceive that he preferred the interests of MP.

[176] We are satisfied that he acted thoughtlessly and without consideration of the consequences.

[177] Ultimately, we are not convinced that 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.

[178] Accordingly, we find there is no basis for a finding of judicial conduct in relation to this allegation and it is therefore dismissed.

## **FINDING REGARDING THE CUMULATIVE EFFECT OF THE IMPUGNED CONDUCT**

[179] There are a number of factors that are common in regard to each of these matters.

[180] First and foremost, they were *ex parte* applications. Only the applicant or his/her legal representative were present. That placed the onus of ensuring that everything was before the court that needed to be considered squarely on the justice of the peace (His Worship Welsh).

[181] Second, His Worship Welsh considered each of these *ex parte* applications on the basis of incomplete documentation, which is directly attributable to a failure on the part of His Worship to adhere to the practice in place at the Hamilton Courthouse for dealing with such applications.



[182] Third, there is no record of these applications because they were conducted outside of the Intake Court and because they were not recorded.

[183] Fourth, it is reasonable to infer from the evidence that His Worship was previously acquainted with Ms. Stephenson, her paralegal, and MP.

[184] We do not have the benefit of His Worship's explanation for his conduct in any of these matters.

[185] We are left to make our findings based only on the evidence we have heard and the reasonable inferences that may be drawn from the facts that we find.

[186] What appears to be the case in all three instances is that His Worship was attempting to accommodate the individual appearing before him by "saving" that individual the trouble of doing what was necessary and appropriate – namely attending at the POA office in order to ensure that proper process was followed and all of the proper documentation was before the presiding justice of the peace in order for the judicial officer to judicially consider each of these *ex parte* applications on their merits.

[187] We are not prepared to find that His Worship was deliberately partial, biased, and/or showed favour to Ms. Stephenson, her paralegal, and/or MP.

[188] We are, however, of the view that in dealing with these matters as he did, His Worship did not *appear* to be impartial and/or unbiased from the perspective of a reasonable, fair-minded, and informed person.

[189] Put another way, we find that His Worship's actions in all of these cases were ill-considered, inappropriate, and short-sighted.

[190] We have found no basis for a finding of judicial misconduct in relation to each of the allegations considered individually.

[191] We find no basis for a finding of judicial misconduct in relation to all of the allegations considered collectively.

[192] As a result, this complaint is dismissed.

Date: October 2, 2019

The Honourable Justice Neil Kozloff, Chair  
Justice of the Peace Kristine Diaz

## Minority Reasons:

[1] It is my view that the acts of His Worship Welsh as set out in Appendix A of the Notice of Hearing, paragraphs 6 to 21, would be perceived by reasonable, fair minded members of the public to constitute judicial misconduct.

[2] On reviewing the evidence, the submissions of Presenting Counsel and Responding Counsel, the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, and the law, I conclude that it is evident that, His Worship's conduct gives rise to a perception by the members of the public that he compromised the principles of judicial independence, integrity and impartiality that governed his office.

[3] In his submissions, Responding Counsel indicates that there was "no established protocols or practice in writing that were binding upon His Worship at the time in respect to his conduct ...", that none of the individuals that were subject to these applications were deliberately seeking out his assistance and there was no opportunity for preferential treatment since some meetings were by chance.

[4] I am not satisfied that His Worship's conduct can be excused by a lack of written protocols. There was evidence at the hearing of the proper process to be followed for applications for reopenings and extensions of time at the courthouse, and that those processes were well-known by both court staff and justices of the peace.

[5] A member of the public who wants to apply for a reopening or an extension of time to pay a fine must go through court staff and the proper procedures that are in place for the transparent and fair administration of justice by justices of the peace. A member of the public would not be able to approach a justice of the peace in the hallway of the courthouse and succeed in having an application considered in the absence of the original court documents and a proper record. Nor could a member of the public skip the sign-in process for Intake Court and have an application approved by a justice of the peace in the absence of the original court documents.

[6] I find that the evidence establishes that:

- 1) His Worship, in the incident of April 13, 2017, did not respect the expected procedure and practices of his office, both written and unwritten;
- 2) His Worship, in the incident of June 14, 2017, did not respect the formal law, thus effecting a nullity in law; and,

- 3) His Worship, in the incident of October 3, 2017 did not respect the expected procedures and practises of his office, both written and unwritten.

[7] I also find that Justice of the Peace Welch's actions and conduct showed:

- 1) an absence of adherence, on his part, to generally accepted procedures and protocols, some of which may be unwritten;
- 2) a flagrant failure, on his part, to follow the law regarding the Part III matters, applying the remedy to request an appeal; and,
- 3) an egregious appearance of favouritism, or bias, on his part, towards an individual fellow officer of the court.

[8] I conclude that the evidence establishes, to the requisite standard of proof, that His Worship conducted himself in such a way as to create a perception of preferential treatment or favouritism for the applicants.

[9] I agree with Presenting Counsel "that the evidence establishes that his conduct measured by discrete acts of misconduct and/or measured by his acts of misconduct considered cumulatively, was sufficiently serious to give rise to a perception among reasonable people" that the judicial principles of independence and impartiality were compromised. This can be perceived as demonstrating favouritism.

[10] As a member of the public, I agree with the statements of the Supreme Court of Canada in *Therrien (Re)*, [2001] 2 S.C.R. 3, 2001 SCC 35, that justices of the peace "*must give the appearance of being an example of impartiality, independence and integrity*" and they must "*strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality, and good judgment.*"

[11] Justices of the peace should maintain their conduct at a level which will ensure the public's trust and confidence. The failure to do so affects public confidence in that individual, in the judiciary in general, and in the justice system itself.

[12] The evidence establishes that the conduct of His Worship Welsh gave rise to the appearance of bias and favouritism and, especially when his acts are considered cumulatively, constitutes judicial misconduct.

[13] I conclude that a “reasonable, fair-minded, informed member of the public”, would conclude that His Worship’s acts failed to give the appearance of being an example of impartiality, independence and integrity and that his conduct did not ensure the public’s trust and confidence in him as a justice of the peace, in the judiciary in general or in the justice system itself. I conclude that the actions of His Worship constitute judicial misconduct. These acts of judicial misconduct require that a disposition be made under section 11.1(10) of the *Act* in order to restore public confidence in the judicial officer and the judiciary.

Date: October 2, 2019

Ms. Jenny Gumbs, Community Member