

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 Claire Winchester**

Before: The Honourable Justice Martin Lambert, Chair
Her Worship Kristine Diaz, Justice of the Peace Member
Ms. Leonore Foster, Community Member

REASONS FOR DECISION

Counsel:

Mr. Matthew Gourlay
Presenting Counsel

Mr. Donald Bayne
Ms. Michelle O'Doherty
Counsel for Her Worship

INTRODUCTION AND HISTORY OF THE PROCEEDINGS

- [1] The Justices of the Peace Review Council, pursuant to paragraph 11(15)(c) of the *Justices of the Peace Act* R.S.O. 1990, c.J.4, as amended (the “Act”), ordered that a complaint regarding the conduct of Justice of the Peace Claire Winchester be referred to a Hearing Panel of the Review Council, for a formal hearing under Section 11.1 of the *Act*.
- [2] The hearing process began on January 22, 2019 when the Notice of Hearing was filed as Exhibit 1. Attached to this decision as Appendix A is a copy of the Notice of Hearing setting out the particulars of the complaint. In very general terms, the complaint arises from Her Worship’s conduct on:
 - (a) May 23, 2018, when she left Intake Court early in L’Orignal resulting in a member of the public not having an opportunity to have his bail conditions varied; and,
 - (b) June 27, 2018, when she closed Bail Court early in Cornwall “depriving an accused person of his right to reasonable bail, fair treatment in accordance with the law, due process, and ultimately his right to liberty.”
- [3] It is alleged that Her Worship’s conduct on both occasions amounted to “a pattern of conduct that was inappropriate and/or demonstrated bias and partiality, and which, considered cumulatively and/or individually, leads to the conclusion that [her] conduct is incompatible with the due execution of office and/or constitutes a failure to perform the duties of office.”
- [4] The Hearing Panel convened on March 8, 2019 to hear Her Worship’s motion to change the location of the hearing from Toronto to either Ottawa or Cornwall. We dismissed that motion orally on May 15, 2019 and provided written reasons on November 25, 2019.
- [5] At the commencement of the hearing on October 15, 2019, the Hearing Panel heard a motion brought by Her Worship for an order that some of the allegations in the Notice of Hearing were outside the jurisdiction of the Hearing Panel. The motion was dismissed with brief oral reasons on October 16, 2019 and with written reasons released on November 22, 2019.
- [6] The Hearing Panel then heard evidence and submissions on October 16, 17 and December 2, 3 and 4, 2019.
- [7] Presenting Counsel called three witnesses: Regional Senior Justice of the Peace Linda Leblanc (RSJP Leblanc), Her Worship Louise Rozon and Ms. Marla Belanger, who was the court clerk on June 27, 2018. In addition, two Agreed Statements of Facts were filed providing the evidence of His Worship John Doran

(Exhibit 3) and Sgt. Dave Maclean (Exhibit 2) of the Cornwall Police Service that would have been anticipated if they had been called as witnesses.

- [8] Her Worship Winchester testified and also called two witnesses: Her Worship Emmanuelle Bourbonnais and Her Worship Linda Pearson.

LEGISLATIVE FRAMEWORK AND THE LAW

- [9] Section 11.1 (10) of the *Justices of the Peace Act* states:

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

(a) warn the justice of the peace;

(b) reprimand the justice of the peace;

(c) order the justice of the peace to apologize to the complainant or to any other person;

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

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

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

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

- [10] The burden of proof is on Presenting Counsel and that burden of proof is on a balance of probabilities. In *F.H. v McDougall*, Justice Rothstein had this to say about the burden of proof in these types of proceedings:

[40] Like the House of Lords, I think it is time to say, once and for all in Canada, that there is only one civil standard of proof at common law and that is proof on a balance of probabilities. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof. I am of the respectful opinion that the alternatives I have listed above should be rejected for the reasons that follow.

[11] Justice Rothstein went on to say at paragraphs 45 and 46:

[45] To suggest that depending upon the seriousness, the evidence in the civil case must be scrutinized with greater care implies that in less serious cases the evidence need not be scrutinized with such care. I think it is inappropriate to say that there are legally recognized different levels of scrutiny of the evidence depending upon the seriousness of the case. There is only one legal rule and that is that in all cases, evidence must be scrutinized with care by the trial judge.

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

[12] It is therefore up to Presenting Counsel to establish on a balance of probabilities that judicial misconduct occurred on May 23, 2018 and/or on June 27, 2018.

Test for Judicial Misconduct

[13] What is judicial misconduct? Judicial misconduct is not defined in the *Justices of the Peace Act*. Two of the leading cases that establish 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.

[14] In *Therrien (Re)*, the Court set out the relevant principles to apply in considering whether there has been judicial misconduct. The judiciary must project and maintain 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.)

- [15] In an OJC hearing about the conduct of Justice Norman Douglas (*Re Douglas*, OJC 2006), the Hearing Panel described the test for judicial misconduct as follows:

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

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

[Emphasis added.]

- [16] Public confidence should be viewed from the perspective of the “reasonable, fair-minded, informed member of the public” (*Re Baldwin*, OJC 2002).
- [17] Evidence of bad faith, ulterior motives or deliberate misconduct is not required for a finding of judicial misconduct. The Hearing Panel in *Re: Welsh* (JPRC, 2018) concluded as follows:

[53] As stated in our brief oral decision, we find on a balance of probabilities that His Worship Welsh’s behaviour constitutes judicial misconduct, in light of the Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice and in light of the test set out by the Supreme Court of Canada in *Re Therrien and Moreau-Bérubé*. We found that His Worship’s conduct was seriously contrary to the impartiality and integrity of the judiciary and it has undermined the public’s confidence in the judiciary and in the administration of justice. We find that Justice of the Peace Welsh acted in a careless and negligent manner.

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

[19] Further, the possibility of an appellate remedy for a particular judicial act does not automatically or necessarily divest the judicial discipline authority of jurisdiction to review the same conduct. In *Moreau-Bérubé v. New Brunswick* (Judicial Council), at para. 58, the Supreme Court of Canada explains:

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.

[20] In *Re Baldwin* (OJC, 2002), the Hearing Panel observed the following commentary in the Canadian Judicial Council's *Ethical Principles for Judges*:

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.

Ethical Principles

[21] In determining whether there has been misconduct, consideration must also be given to the ethical guidelines for judicial officers.

[22] In the *Report of the Canadian Judicial Council to the Minister of Justice* (December 3, 2008) in relation to the conduct of the Honourable Justice Theodore Matlow, the Canadian Judicial Council held at paragraph 99:

While the *Ethical Principles* are not absolutes and while a breach will not automatically lead to an expression of concern by the CJC, much less a recommendation for removal from the Bench, they do set out a general framework of values and considerations that will necessarily be relevant in evaluating allegations of improper conduct by a judge."

Therefore, the fact that challenged conduct is inconsistent with or in breach of the *Ethical Principles* constitutes a weighty factor in determining whether a judge has met the objective standard of impartiality and integrity required of a judge and in determining whether the challenged conduct meets the objective standard for removal from the Bench.

[23] Hearing panels of both the Ontario Judicial Council and the Justices of the Peace Review Council have held that while principles of judicial office do not constitute a prescriptive code of conduct, they set out a general framework of values and considerations that will necessarily be relevant in evaluating allegations of improper conduct by a judicial officer. The fact that conduct complained of is inconsistent with the *Principles of Judicial Conduct* is a factor to be taken into account in determining whether there has been judicial misconduct (*Re Foulds*, (JPRC 2018)).

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

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

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

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

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

Commentaries:

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

2.2 Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, to the interests of justice and the rights of the parties before the court.

- 2.5 The primary responsibility of justices of the peace is the discharge of their judicial duties.

THE MAY 23, 2018 ALLEGATION

- [27] On May 23, 2018, Her Worship was assigned to preside in L'Original, which is about an hour and a quarter drive from her residence in Cornwall. She was assigned to preside in Case Management Court and Bail Court in the morning. These two assignments were in the same building.
- [28] Upon completing Bail Court, Her Worship was to make her way over to the Intake Court, which is at a different location. The expectation is that the assigned justice of the peace will go to the Intake Court at the conclusion of Bail Court, if done early, or at 2:00 p.m. If Bail Court goes later, then the justice of the peace is to go to Intake Court whenever bails are done with the expectation that he/she will remain there until 4:00 p.m., which is the posted court closing time.
- [29] Her Worship testified that on the date in question, Case Management and Bail Courts ended at around 12:30 p.m. at which time she had lunch and walked around to stretch her knee which was causing her pain. There is no doubt that Her Worship has had longstanding pain in one of her knees. She then went to Intake Court shortly after 2:00 p.m., and discovered there was no work waiting for her. Unbeknownst to her, an accused person had been directed to attend Intake Court at 3:45 p.m. to vary bail conditions. By that time, however, Her Worship had left the Intake Court, and was unavailable to assist the accused. This prompted a complaint to RSJP Leblanc from a member of the Courts Services Division.
- [30] As a result of that complaint, RSJP Leblanc met with Her Worship the next day in Cornwall. Shortly after the meeting, RSJP Leblanc sent an email to Regional Senior Justice Legault ("RSJ Legault") reporting on the conversation. RSJP Leblanc reported that Her Worship Winchester advised her that she had gone to Intake Court and, because there appeared to be no work and no-one waiting, she decided to leave shortly after 2:00 p.m. Her Worship indicated to RSJP Leblanc that it was "boring" as there was no work to do and she was thankful that she did not go to L'Original very often. Her Worship also suggested that she should be called on her cell phone if she was required. RSJP Leblanc indicated that when she reminded Her Worship of her obligation to remain until the end of Intake Court, Her Worship Winchester said that the judges would not have to "put up with this". Her Worship did not suggest to RSJP Leblanc that she left court because of problems with her knee.
- [31] In her written response to the investigating complaints committee of the Review Council (Exhibit 5A), Her Worship admitted that she left court early and that she was wrong to do so, as she had not informed anyone of her departure. She acknowledged that she was not sick and, though in pain, she could have stayed

until the end of the day. She indicated in her response that the reason she left early was because of pain in her knee as a result of having to go up and down a steep set of stairs in the morning. The knee pain was an ongoing issue for her at that time and she said that she was concerned about the one and a quarter hour drive to her residence that she was facing. She admits that she did not provide RSJP Leblanc with this explanation for why she left early and says that she did not do so because "it would have been moot." She used similar wording in her evidence during the hearing.

- [32] We have difficulty accepting Her Worship's evidence in the circumstances. It would have been a more reasonable explanation if, when RSJP Leblanc spoke to her about leaving Intake Court, she had told RSJP Leblanc of her knee problem, given that her knee issue was well-known and that it was also well-known that the stairs at the L'Original building were quite steep.
- [33] Her Worship testified that she did not tell RSJP Leblanc about her knee problem because RSJP Leblanc would not have had any sympathy for her. Her Worship also testified that there was a discrepancy or conflict between the direction to stay until 4:00 p.m. given to justices of the peace by the RSJ and RSJP and the Justices of the Peace Manual, which provides that travel time may be included in a presiding day in northern and non-urban areas. Her Worship seemed to be belatedly suggesting that this was part of her reasoning for leaving early on May 23, 2018. She indicated that this is one issue that she and other justices of the peace had wanted to raise at the regional meeting of April 30, 2018 but were afraid to do so.
- [34] In her evidence, Her Worship denied leaving early because she was bored and admitted that her suggestion about being called on her cell phone if required "was not one of my best ideas." Finally, she admits making the comment to RSJP Leblanc that "judges would not put up with that" but says she meant that judges would not put up with the discrepancy about being told to stay until 4:00 p.m. and the direction in the Judges' Manual.
- [35] With all due respect, we prefer the evidence of RSJP Leblanc with respect to what was said on May 24, 2018. While she did not make notes of the conversation, RSJP Leblanc sent an email to RSJ Legault which, in our view, properly summarized the conversation in a timely manner in light of the evidence which we heard. We find that while Her Worship left principally because she was bored, it may be that she also had pain in her knee. We do not accept that a reason for leaving was a conflict between what is contained in the Justices of the Peace Manual and the direction given to all justices of the peace by the RSJ and the RSJP, in various emails and at the April 30, 2018 regional meeting, that they were expected to stay until 4:00 p.m. The directives were clear that such assignments had to be respected and there was never an indication that one could close court early because of travel time. To put it bluntly, this after-the-fact explanation is simply not valid.

- [36] We should also note that both justices of the peace who testified on Her Worship's behalf indicated that they would have called or told someone if they had had to leave an assignment early for whatever reason. In cross-examination, Her Worship reluctantly agreed that it may have been more wise to call RSJP Leblanc.
- [37] Having said that, while we conclude that Her Worship acted inappropriately in inexcusably leaving her assigned duties in Intake Court before the end of court hours on May 23, 2018, we are not satisfied that, given all of the evidence that we have heard on the particular facts and circumstances of this case, Her Worship's conduct constituted judicial misconduct. While there was an instance of neglect of duties, it was not so seriously contrary to the integrity of the judiciary that it undermines the public's confidence in the judiciary or in the administration of justice generally. A reasonable, fully-informed person would not find that the integrity of the judiciary was undermined in these circumstances.
- [38] Our decision should not be taken to mean that leaving court early and neglecting one's assigned judicial duties can never amount to judicial misconduct. The evidence that we heard indicates that up to now, there may have been a lack of clarity about whether such conduct can constitute judicial misconduct. Given our finding that Her Worship's conduct was clearly inappropriate, the expectations of justices of the peace to fulfill their judicial assignments have now been made clear. A Hearing Panel in the future may well find judicial misconduct when a judicial officer neglects his or her duties.
- [39] Further, while we conclude that there was no judicial misconduct on May 23, 2018 and therefore the allegation of a "pattern" of judicial misconduct cannot be established, Her Worship's actions on May 23, 2018 and her subsequent conversation with RSJP Leblanc provide us with some context in which to consider her conduct on June 27, 2018.

THE JUNE 27, 2018 ALLEGATION

- [40] In *R. v. Hall*, SCC 2002, Mr. Justice Iacobucci started his judgment with the following words at paragraph 47:
- At the heart of a free and democratic society is the liberty of its subjects. Liberty lost is never regained and can never be fully compensated for; therefore, where the potential exists for the loss of freedom for even a day, we, as a free and democratic society, must place the highest emphasis on ensuring that our system of justice minimizes the chances of an unwarranted denial of liberty.
- [41] It is with those words in mind that we consider the events of June 27, 2018.
- [42] Paragraph 2 (B) of the Notice of Hearing provides as follows:

“You failed to fulfill and uphold your judicial duties on June 27, 2018 when presiding in Bail Court in Cornwall, you closed court early in circumstances where you knew a defendant was in the building and you had been informed by the Assistant Crown Attorney that the defendant was releasable, thus depriving an accused person of his right to reasonable bail, fair treatment in accordance with the law, due process, and ultimately his right to liberty. These events came to the attention of the Regional Senior Justice following an apparent attempt by the defendant to take his own life while in police custody on the night of June 27, 2018”.

- [43] We have already made an order prohibiting the publication of the name of the defendant and refer to him as “JJ” in these Reasons. At the relevant time, JJ was 19 years of age and he first faced an allegation of assault which was alleged to have occurred on March 4, 2018. In accordance with a Promise to Appear on which he had been released, JJ first appeared in court on the assault charge on April 26, 2018 and, after a number of appearances, that charge was adjourned to May 31, 2018. On April 28, 2018, JJ was arrested for allegedly breaching his Undertaking given to an Officer-in-Charge and he was again released by the police on a Promise to Appear in court on May 31, 2018. On May 31, 2018, all of his charges were adjourned to June 28, 2018. In the meantime, five new charges were laid on June 18, 2018, which included one charge of failing to attend for fingerprints and four charges of breaching his Undertaking. As a result of these charges, a Warrant in the First Instance was issued for his arrest and that warrant was executed on June 27, 2018, which explains why he was in bail court that day. Her Worship had issued the Warrant in the First Instance on June 18, 2018 but that is of no moment as she would not be expected to remember that, given the number of matters that she would deal with in Intake Court and the passage of time.
- [44] The Warrant in the First Instance was executed the morning of June 27, 2018 by the Cornwall Police Service and JJ was taken to the courthouse. He was never brought into the bail court, however, because Her Worship refused to wait for the Informations to be located and brought before the court. She decided that the matters would be dealt with the next morning as she was “not willing to wait here until everybody finds their way through the system”. It is interesting to note that Her Worship would not concede in cross-examination in this hearing that JJ was arrested that day, even though this can be the only logical inference.
- [45] As in most jurisdictions in Ontario, Cornwall has a Bail Protocol. For our purposes, the relevant portions of the Bail Protocol are as follows:

Additions to the bail docket will **be accepted until 2:00 p.m.** All prisoners should be in the courthouse by 1:30 p.m., together with the Crown brief.

All police services are to contact the cell block with the time of arrival of the prisoner. All prisoners should be in the courthouse by 1:30 p.m.,

together with the Crown brief so that the Crown and duty counsel can review the file for either a release or a full bail hearing at 2:00 p.m. **In exceptional circumstances**, if the prisoner will be arriving after 2:00 p.m., they are to give the cell block **a reason for the delay. The exception is no later than 2:30 p.m. A reminder that if 2:30 p.m. becomes the norm, we will return to a strict cut-off of 2:00 p.m.** [Emphasis added.]

- [46] Her Worship's position is that the protocol, as she understood it, was not only directed to the police agencies but was directed to all stakeholders, and that she was obligated to close court at 2:00 p.m. if the Informations were not before her. Both Her Worship Rozon and RSJP Leblanc testified that the protocol is directed to the police to ensure that accused persons are brought to court in a timely fashion. In our view, Her Worship's interpretation can only lead to the conclusion that the protocol was put in place to curtail the right to bail and not to enhance it, which would be nonsensical.
- [47] In her testimony, Her Worship indicated that she decided to strictly enforce the protocol as she, and other justices of the peace, had been severely admonished the day before by RSJP Leblanc for not complying with the policy on how Judicial Endorsement Sheets (JEF'S) were to be filled out in case management court. In Her Worship Winchester's view, this was a clear signal that protocols and policies had to be followed, first and foremost. She testified that she felt compelled to close court because the language of the protocol was quite prescriptive. Interestingly, she did not offer this explanation in her initial response to the complaints committee of the Council.
- [48] The other justices of the peace who testified at this hearing recognized that taking a recess to understand what was happening would have been the prudent course of action to take. Her Worship Bourbonnais listed a number of questions that she would have asked and other possible courses of action that she may have taken to address the situation.
- [49] JJ was brought to the courthouse by 1:30 p.m. in accordance with the protocol but when court opened at 2:04 p.m., there were no Informations before the court. Attached hereto, as Appendix B, is a redacted copy of the court transcript of the proceeding on June 27, 2018. (It is redacted given the publication ban of the defendant's name.) The appearance in court lasted roughly nine minutes and Her Worship displayed impatience from the very beginning, invoking the two o'clock cut-off time as the reason she could not hear JJ's matter.
- [50] Notwithstanding being advised by counsel of the fact that JJ had no record and was releasable, Her Worship hastily closed court when the Informations could not be located. She neither inquired about the accused nor the charges but instead remained fixated on the fact that there were no Informations before her and that there was a two o'clock cut-off time referred to in the protocol.

- [51] We recognize that there was confusion during that brief attendance in court, but it was incumbent upon Her Worship, as the presiding judicial officer, to take the required time to understand what was happening. This was necessary in order to minimize the chances of an unwarranted denial of liberty. As she herself put it in her letter responding to the investigating complaints committee, filed as Exhibit 5A:

I showed a true lack of judgement for adjourning court prematurely. What I failed so badly to consider at that moment was that there was a human being in custody waiting to hear about his fate that day and my Bail court had to address his matter. I understand completely that my obligation was to deal with this matter and not to adjourn court.

I should have taken a recess and given instructions to the Crown to become fully apprised of the matter; to identify and locate the Special Constable; to inquire about the status of the Informations; and to provide an update to the Court after the recess. I could also have placed a discreet telephone call to the Special Constables' supervisor for an update and checked with admin to see if the Informations on file for the defendant were available and if there was a new Information concerning a breach. Instead, I adjourned court, completed some work in Chamber, and later asked the Justice of the Peace in Intake Court whether he had signed new Informations of which he had not. I made my decision to adjourn prematurely and, unwittingly that day, totally irresponsibly. I very deeply regret my decision.

- [52] At the hearing, Her Worship took a much different position from that expressed in her written response to the complaints committee. She indicated that she wrote the response letter under "emotional duress" as she thought that there had been a legitimate suicide attempt by JJ when he returned to police custody. While the fact that the defendant was found in his cell with his shirt tied lightly around his neck and on the cell bar 18 inches from the floor does not factor in our final decision, the position he was found in is nevertheless concerning. It does speak, at a minimum, to his emotional distress. Notwithstanding that, Her Worship did not agree that she acted irresponsibly in closing court early. At most, she admitted that she made a mistake but that it was made in good faith. In her view, her conduct should be viewed as acting in accordance with the protocol.

- [53] At the hearing, Her Worship also appeared to shift the blame to many other actors in the system. Surprisingly, she characterized both Crown counsel and duty counsel as not being credible because they had quickly agreed that JJ was releasable, notwithstanding the fact that they had just received the Crown brief. It is interesting that Her Worship came to this conclusion without knowing what the charges were. She was, however, told that the accused had no record. She also blamed the special constable for not giving her more information and she blamed the police for not releasing JJ on an undertaking. It is obvious that, by the time of

the hearing, Her Worship did not accept much responsibility for her actions or for JJ being held in custody the night of June 27.

- [54] We find that Her Worship's conduct was inconsistent with the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, particularly section 2.2 which provides as follows:

Justices of the peace should conduct court business with due diligence and dispose of all matters before them promptly and efficiently having regard, at all times, **to the interests of justice and the rights of the parties before the court.**" [Emphasis added]

- [55] The Panel accepts the evidence of a clerk with 20 years' of experience, who testified that it was so unusual for a justice of the peace to refuse to deal with an accused who had been brought to the courthouse within the time indicated in the protocol that she decided to write an incident report even before there was a report of an attempted suicide by the defendant.

- [56] The caselaw makes it clear that, before there can be a finding of judicial misconduct, there must be clear, cogent and compelling evidence of the alleged misconduct. While, as we have said, the June 27, 2018 proceeding was marked by some confusion, we find clear, cogent and compelling evidence that Her Worship acted in an impetuous fashion without due regard to the rights of the accused. Some of her comments in court show flippancy, as well. When duty counsel suggested that the cut-off time in the Protocol referred to the time for accused persons to be brought into the garage, Her Worship promptly responded:

"No way. It's in the intake office and then the Information comes here automatically."

- [57] More concerning is this exchange with duty counsel at page 7 of the transcript:

Ms. Quesnel: Okay, but we have someone in custody who is going to be spending the night.

The Court: Yes, I know that. Yes, and that happens, especially that the time is well exceeded. We don't even have anything yet to be able to proceed with.

- [58] Her Worship's position throughout this hearing was that there was nothing she could or should have done because she had no Informations before her and therefore no jurisdiction to act.

- [59] We unequivocally conclude that Her Worship acted in haste and without due regard to the right of the accused to have his bail hearing held that day. Her decision to close court was not judicial decision-making immune from review by the Council. Had she held the matter down to provide an opportunity to have the Informations brought before the court, heard the bail hearing and denied JJ bail, it

is clear that the recourse would have been a bail review and not a complaint to the JPRC.

- [60] As the Supreme Court of Canada noted in *Moreau-Bérubé v. New Brunswick (Judicial Council)*, supra, at para. 58, there are cases when an abuse of judicial independence by a judicial officer has threatened the integrity of the judiciary as a whole. The harm alleged is not curable by the appeal process.
- [61] After the events of May 23, 2018, RSJP Leblanc made it clear to Her Worship that a justice of the peace has an obligation to fulfill their judicial duties until the end of the court day.
- [62] We find that in disregarding the constitutional, procedural and fundamental rights of the accused on June 27, 2018, Her Worship failed to uphold and maintain judicial integrity, and undermined public confidence in the integrity of her judicial office and in the administration of justice.
- [63] We conclude that the allegations about Her Worship Winchester's conduct and comments on June 27, 2018, set out in paragraphs 2B, 2C, 2D, and 2D(b) of the Notice of Hearing are made out on the evidence and constitute judicial misconduct that undermines public confidence in the judiciary and warrant a disposition under section 11.1(10) of the *Justices of the Peace Act*. As we have indicated above, her conduct on May 23, 2018 and her comments to RSJP Leblanc on May 24, 2018 do not, in the particular circumstances, constitute misconduct. The allegations set out in paragraphs 2a and 2D(a) are dismissed. With respect to paragraph 1, as we have indicated, we do not find that there was a pattern of conduct.
- [64] The Panel will convene on March 18, 2020 to hear submissions from counsel on the appropriate disposition(s) to address the judicial misconduct on June 27, 2018.

Dated at the city of Toronto in the Province of Ontario, February 19, 2020.

HEARING PANEL:

The Honourable Justice Martin Lambert, Chair

Her Worship Kristine Diaz, Justice of the Peace Member

Ms. Leonore Foster, Community Member

APPENDIX A

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF a complaint respecting

Justice of the Peace Claire Winchester

Justice of the Peace in the

East Region

NOTICE OF HEARING

A complaints committee of the Justices of the Peace Review Council (the “Review Council”), pursuant to subsection 11(15)(c) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (the “Act”), has ordered that the following complaint regarding the conduct or actions of Your Worship, Justice of the Peace Claire Winchester, be referred to a Hearing Panel of the Review Council, for a formal hearing under section 11.1 of the *Act*.

The Hearing Panel will determine whether the allegations against you support a finding of judicial misconduct and whether, by reason of that, a disposition should be imposed pursuant to section 11.1(10) of the *Act*. The particulars of the complaint that will be presented to the Hearing Panel are set out in Appendix “A” to this Notice of Hearing.

The Hearing Panel of the Review Council will convene at the Justices of the Peace Review Council Boardroom, Suite 2310, 1 Queen Street East, in the City of Toronto, and/or by teleconference on Tuesday, February 12, 2019 at 8:30 in the morning or as soon thereafter as the Hearing Panel of the Review Council can be convened to set a date for the hearing into the complaint.

A justice of the peace whose conduct is the subject of a formal hearing before the Review Council may be represented by counsel and shall be given the opportunity to be heard and to produce evidence.

The Hearing Panel may, pursuant to subsection 11.1(10) of the *Justices of the Peace Act*, dismiss the complaint after completing the hearing, with or without a finding that it is unfounded or, if it upholds the complaint, it may:

- (a) warn the justice of the peace;
- (b) reprimand the justice of the peace;
- (c) order the justice of the peace to apologize to the complainants or to any other person;

- (d) order that the justice of the peace take specified measures, such as receiving education or treatment, as a condition of continuing to sit as a justice of the peace;
- (e) suspend the justice of the peace with pay, for any period; and/or
- (f) suspend the justice of the peace without pay, but with benefits, for a period up to 30 days; or
- (g) recommend to the Attorney General that the justice of the peace be removed from office in accordance with section 11.2 of the *Justices of the Peace Act*.

The Panel may adopt any combination of dispositions set out in clauses (10)(a) to (f). A recommendation under clause (10)(g) cannot be combined with another disposition.

You or your counsel may contact the office of Mr. Matthew Gourlay of Henein Hutchison LLP, the solicitor retained on behalf of the Review Council to act as Presenting Counsel in this matter.

If you fail to attend before the Review Council in person or by representative, the Review Council may proceed with the hearing in your absence and you will not be entitled to any further notice of the proceeding.

In accordance with the Procedures of the Review Council, any motions should be brought no later than 10 days before the set-date.

January 22, 2019

Original signed

Marilyn E. King,
Registrar
Justices of the Peace Review Council

- c. Donald B. Bayne, Counsel for Her Worship
Matthew R. Gourlay, Presenting Counsel

APPENDIX "A"

PARTICULARS OF THE COMPLAINT

The particulars of the complaint regarding the conduct of Her Worship Claire Winchester are set out below:

1. You engaged in a pattern of conduct that was inappropriate and/or demonstrated bias and partiality, and which, considered cumulatively and/or individually, leads to the conclusion that your conduct is incompatible with the due execution of office and/or constitutes a failure to perform the duties of office.
2. Specifically:
 - A. You abandoned your judicial duties when on May 23, 2018, you failed to remain in Intake Court in L'Original, to which you were assigned, which resulted in a member of the public not having the opportunity to have his bail conditions varied.
 - B. You failed to fulfill and uphold your judicial duties on June 27, 2018, when presiding in Bail Court in Cornwall, you closed court early in circumstances where you knew a defendant was in the building and you had been informed by the Assistant Crown Attorney that that the defendant was releasable, thus depriving an accused person of his right to reasonable bail, fair treatment in accordance with the law, due process, and ultimately his right to liberty. These events came to the attention of the Regional Senior Justice following an apparent attempt by the defendant to take his own life while in police custody on the night of June 27, 2018.
 - C. Your conduct in both instances denied persons timely access to the court to have their matters heard, and demonstrated a disregard for, or indifference to, the fundamental procedural rights of individuals who come before the courts.
 - D. Your comments and conduct displayed a flippant, dismissive attitude toward the liberty and rights of persons appearing before the court; a disrespect for the important role of a justice of the peace in the administration of justice; and a disregard for the impact of judicial conduct on persons in the justice system and on public confidence in the judiciary, including the following:
 - (a) On May 24, 2018, when Regional Senior Justice of the Peace (RSJP) Leblanc was speaking with you about leaving L'Original Intake Court unattended on the afternoon of May 23, 2018, you responded that "it's boring, there is nothing to do", and "Thankfully I don't have to go to L'Original very often." When the RSJP reminded you that all assignments had to be respected regardless of the location, you responded by asking, "Isn't there some way where I could just have them call my cell to deal with something or have to go back rather than

having to stay there?” When the RSJP reminded you that justices of the peace are there to serve the public and are well paid to do so, you responded, “I’m sure the judges wouldn’t tolerate this.”

(b) On June 27, 2018, when presiding in Cornwall Bail Court, and Duty Counsel informed you that a defendant was in the building, and the Information wasn’t ready yet, you said at approximately 2:00 p.m.:

- “So I’m not willing to wait here until everybody finds their way through the system...”; and,
- Counsel pointed out to you that the accused, who was releasable, would have to spend the night in custody if you closed the court and you replied, “Yes, I know that. Yes, and that happens” and closed the court.

3. Your conduct and comments, as set out above, are contrary to the integrity of the judiciary. They undermined the public’s confidence in your ability to perform the duties of office, in the judiciary and in the administration of justice generally.
4. Your actions as set out above, individually and collectively, could be found to constitute judicial misconduct that harms the public’s confidence in the judiciary and the administration of justice, and warrants a disposition under section 11.1(10) of the *Justices of the Peace Act*.

APPENDIX B

ONTARIO COURT OF JUSTICE

HER MAJESTY THE QUEEN

V.

[J.J.]

PROCEEDINGS AT BAIL COURT

BEFORE HER WORSHIP JUSTICE OF THE PEACE C. WINCHESTER

On WEDNESDAY, June 27, 2018 at CORNWALL, Ontario

Appearances:

K. ERGUS, Ms.

Counsel for the Crown

J. WESNEL, Ms.

Duty Counsel for [J.J.]

(i)

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ONTARIO COURT OF JUSTICE

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Transcript Ordered: June 28, 2018

Transcript Completed: June 28, 2018

Ordering Party Notified: June 29, 2018

WEDNESDAY, JUNE 27, 2018

MS. ERGUS: Good afternoon, Your Worship. So, we have one matter, Mr. [JJ]. I believe you don't have the information. There's nothing there before the court, but we were able to just get the brief on that. My friend and I are just going through it to come up with a --. He's releasable. We're just trying to figure out the conditions for that.

THE COURT: So, if we don't have the informations, they haven't been sworn in yet?

MS. QUESNEL: I'm not sure.

THE COURT: Cut-off time is two o'clock. I don't know why....

MS. ERGUS: I believe it's 1:30. I have no idea.

THE COURT: It's after two.

MS. ERGUS: Yes. You should have something. I'm not sure why.

THE COURT: Can you call intake and see if they have sworn this information and if they could be bringing it here shortly? Ask them if it's been sworn-in. Madam Clerk, they have not sworn it? It's because the cut-off time is two o'clock. That is the policy of the court. I haven't invented this.

MS. QUESNEL: I thought it was to come into the garage.

THE COURT: No way. It's in the intake office and then the information comes here automatically.

MS. QUESNEL: Maybe we can....

THE COURT: I've got -- well, it's not here. Usually there is something.

MS. QUESNEL: That would be a bench and bar issue to discuss because we've had....

THE COURT: Additions to bail docket will be accepted until 2:00 p.m. – where does it say this one does say. Duty counsel – full bail hearing at 2:00 p.m., either release or a full – if there are exceptional circumstances and a reason for the delay. The delay – if that is the case, the exception is no later than 2:30. So, there's a strict cut-off at 2:00 p.m.

MS. ERGUS: Except for an exception, like you've said, if there is an exception.

THE COURT: So, I don't – what is your impression? Is the person here?

MS. QUESNEL: Yes. The person is here. He arrived around one....

MS. ERGUS: Forty.

MS. QUESNEL: Yeah. No, 1:15, 1:20.

MS. ERGUS: Oh, was it then? Okay.

MS. QUESNEL: Yes, because they have a cut-off – they have a 1:30 cut-off at the garage. We got the file ten minutes ago.

MS. ERGUS: Yes, 15 minutes ago.

THE COURT: The information isn't even sworn to yet.

MS. QUESNEL: That, I'm not sure....

MS. ERGUS: Usually the information is sworn and then we get the file.

THE COURT: Absolutely, because otherwise you can't proceed anyway.

MS. ERGUS: Maybe we can find Cst. Roundpoint?

THE COURT: We currently are....

MS. ERGUS: There is the officer now.

THE COURT: Was this sworn to?

COURT OFFICER: Previously, yes.

THE COURT: Previously?

COURT OFFICER: There are two files that have been sworn to, but apparently there are new charges.

THE COURT: They have not been sworn to?

COURT OFFICER: I guess they're being prepped now. He's on tomorrow's docket. They are going to be transferred to today's docket.

THE COURT: No, no. Like, this hasn't even been to the intake court yet. We have no information in front of this court. The cutoff time is two o'clock for the intake court. So, I'm not sure what's happening with....

COURT OFFICER: Well, this just came in. So, we went down there and there was a line-up, so we had to wait. This is all we retrieved the first time, but apparently there are new charges.

THE COURT: And they haven't been sworn to.

COURT OFFICER: There is an email coming out. Apparently they are here already. You're prepping them.

CLERK OF THE COURT: We have no informations before the court.

THE COURT: We have nothing.

COURT OFFICER: Okay, because they told me that they were here being prepped for tomorrow.

THE COURT: Well then, tomorrow is tomorrow. It's an adjournment, right? As far as we know now.

CLERK OF THE COURT: Is it because he had a first appearance?

MS. ERGUS: I don't know what we're waiting for.

COURT OFFICER: Well, here are these. That's what they gave me. That's all they had and then....

THE COURT: Okay. Well, they – they are not ready. So, I'm not willing to wait here until everybody finds their way through the system, especially if something is supposed to be scheduled for tomorrow. There's no point in having two appearances.

COURT OFFICER: Because we went there and asked that for all they have available. I said, "Give me everything you have on him", and that's all they have.

THE COURT: It has to be complete. I mean, we can't be doing this hodgepodge. Okay. Is – any idea there how you want to proceed with this?

MS. QUESNEL: Well of course, I'm sure if I speak with Mr. [J] he's going to want to be – he's releasable on an undertaking. He has no record.

MS. ERGUS: And then we don't have all the information before the court. That would be my concern. The court has to have everything there. So, I'm in Your Worship's hands.

THE COURT: And this comment about having something for tomorrow....

COURT OFFICER: Well, it was on tomorrow's docket and we're bringing it forward for today.

MS. QUESNEL: He had a first appearance. He was released on an appearance notice for tomorrow. He breached. I'm here until 4:30 today.

THE COURT: I know, but that's not the point. The point is that, you know, if we never follow the rules, the policies as established, it means, that you know, what's the point of doing it. So, we have nothing else?

COURT OFFICER: That's all they gave me. That's all they have.

MS. ERGUS: And you still have others to come?
You have other charges?

COURT OFFICER: Well, apparently there's two other charges, but they were for tomorrow's docket. They are going to be – they wanted them put on today's bail court.

MS. ERGUS: I'm trying to understand why did they want to move it to today?

MS. QUESNEL: He had a first appearance tomorrow. He breached. So, we're doing a 524, so everything has to come to bails.

THE COURT: It can't go to bail tomorrow?

CLERK OF THE COURT: Your Worship, I'm working on tomorrow's docket and I have the information.

THE COURT: You have the information for tomorrow?

COURT OFFICER: That's what I was trying to say, that it's being prepped.

THE COURT: Okay. That is for tomorrow's docket, not today.

CLERK OF THE COURT: We have a promise to appear for – sorry. It was adjourned to tomorrow for remand court. I only have the one information. I don't know how many he is supposed to have.

MS. ERGUS: Should it be that – I'm just thinking, if it's for tomorrow, will we not have everything tomorrow?

THE COURT: Well, absolutely.

MS. ERGUS: Wouldn't it be within the 24 hours anyway? Like, I'm just trying to see to make sure.

COURT OFFICER: There were fail to complys that were supposed to be heard tomorrow.

MS. ERGUS: Okay.

CLERK OF THE COURT: I'm sorry. I didn't realize that it was tomorrow's remands.

THE COURT: Okay. So, can we schedule – he's already scheduled for tomorrow. So, he's going to appear tomorrow. The 24 hours doesn't play into this at all because tomorrow morning it's at nine o'clock that we start. So, that's that.

MS. ERGUS: So, then he would be in bail court tomorrow on all these....

THE COURT: Yes, everything.

MS. QUESNEL: Okay, but we have someone in custody who is going to be spending the night.

THE COURT: Yes, I know that. Yes, and that happens, especially that the time is well exceeded. We don't even have anything yet to be able to proceed with. Perhaps, at the constable level, the understanding is that it's for tomorrow, which is why there could be such a delay here. I don't know, because that's quite a delay. So, we're going to close court and Madam Clerk, you're assuring that that's on tomorrow's docket for bail.

CLERK OF THE COURT: I will make sure that they put it on the bail court docket, Your Worship.

THE COURT: All right. Good afternoon.

Certification

Form 2

Certificate of Transcript

Evidence Act, Subsection 5(2)

I, Shannon McDonald, certify that this document is a true and accurate transcript of the recording of R. v. [JJ] (June 27, 2018), in the Ontario Court of Justice held at *29 Second St. West, Cornwall, Ontario* taken from Recording(s) 3911- CR02-20180627-083858-6-WINCHEC which has been certified in Form 1.

June 29, 2018
Date

Original signed by ACT
Shannon McDonald
Authorized Court Transcriptionist