

Justices of the Peace Review Council

Procedures Document

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1. DEFINITIONS

1.1 In these Rules of Procedure,

- a) The “*Act*” means the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended;
- b) “Complaints committee” means a committee consisting of a provincial judge, a justice of the peace, and a community or lawyer member, established to review and investigate a complaint pursuant to section 11(1) of the *Justices of the Peace Act*;
- c) “Council” or “Review Council” means the Justices of the Peace Review Council;
- d) “Hearing panel” or “panel” means a panel established to conduct a hearing pursuant to subsection 11(15) of the *Justices of the Peace Act*. Hearing Panels consist of a judge, a justice of the peace, and a community or lawyer member of the Council;
- e) “Judge” means a judge of the Ontario Court of Justice;
- f) “Justice of the peace” means a justice of the peace of the Ontario Court of Justice;
- g) The “*SPPA*” means the *Statutory Powers Procedures Act*;
- h) “Subject justice of the peace” means the justice of the peace who is the subject of a particular complaint;
- i) “Presenting Counsel” means counsel engaged on behalf of the Council to independently prepare and present the evidence to a hearing panel in relation to a complaint about a justice of the peace who is the subject of a hearing;
- j) “Registrar” means the Registrar of the Justices of the Peace Review Council or their delegate;
- k) “Respondent” means the justice of the peace who is the subject of a complaint ordered to a hearing;
- l) All other words in these Rules of Procedure shall, unless the context otherwise indicates, bear the meanings ascribed to them by the *Act*.

2. INTERPRETATION

- 2.1 The *Justices of the Peace Act* sets out the statutory framework that governs the complaint process. Sections of the *SPPA* are also applicable.
- 2.2 Where these Rules of Procedure refer to a section of a statute, the reference is to the corresponding provision in the *Act* unless a different statute is specified.
- 2.3 Where these Rules of Procedure specify the number of days within which something is to be done, the passage of time shall be calculated as the number of calendar days.
- 2.4 Where matters are not provided for in these Rules of Procedure, the process shall be determined by analogy to them.
- 2.5 These Rules of Procedure shall be interpreted in a manner consistent with the objective of preserving and restoring public confidence in the judiciary in general, rather than in any particular justice of the peace who may be the subject of a complaint.

3. COMPLAINTS – GENERAL

- 3.1 An anonymous complaint may be considered by the Review Council where a complaints committee is satisfied that the allegations raise a serious issue of judicial misconduct that may be independently verified.
- 3.2 If a complainant indicates in writing that they wish to withdraw their complaint, a complaints committee may:
 - a) Treat the matter as withdrawn; or
 - b) Proceed to review the matter on the basis that it warrants further consideration by the Review Council.
- 3.3 If a justice of the peace is asked to respond to the complaint, the rules of natural justice require that the justice of the peace be provided with disclosure of all materials considered by the investigating complaint subcommittee, including the letter of complaint and the name of the complainant.
- 3.4 If a public hearing into a complaint is ordered by a complaints committee, the letter of complaint shall be filed by Presenting Counsel as an appendix to the Notice of

Hearing at the initial set-date appearance. The name(s) of the complainant(s) and witnesses in the letter of complaint appended to the Notice of Hearing shall be redacted to afford such persons an opportunity to bring a motion for non-publication, if desired.

- a) If the complaint contains allegations that were not ordered to a hearing, such allegations shall be redacted in both the letter of complaint appended to the Notice of Hearing and in the letter of complaint that may be subsequently filed in evidence at the hearing.
- b) Subject to the exception set out in paragraph (a), above, and subject to an order of the Hearing Panel, a party may file the unredacted letter of complaint or the Hearing Panel may request that a copy of the unredacted complaint letter be filed. Upon filing, the complaint letter will form part of the public record, subject to any order of the Hearing Panel.

- 3.5 Where any allegations in a complaint to the Review Council relate to an ongoing court, tribunal or other legal proceeding, the Registrar shall advise the complainant that the Council does not generally consider such complaints until the proceeding and any appeal or judicial review thereof, have been completed. This approach prevents the Council's consideration of a complaint from interfering with, or from being perceived as interfering with, any ongoing legal proceedings.

Out of jurisdiction

- 3.6 The jurisdiction of the Council is limited to the investigation and review of complaints about conduct. The Council does not have the legal authority to change a decision of a justice of the peace.
- 3.7 If it is plain and obvious that a complaint does not contain allegations about the conduct of a justice of the peace, the Registrar shall inform the complainant in writing,
- a) That the complaint does not appear to make allegations regarding the justice of the peace's conduct;
 - b) That the Council's jurisdiction is limited to the investigation and review of complaints about judicial conduct;
 - c) That if the complainant disagrees with the justice of the peace's interpretation or application of the law, the complainant should seek an

appropriate remedy through the courts, for example, by way of an appeal;
and

- d) That because the complaint is outside the Council's jurisdiction, the complaint will not be referred to a complaints committee for investigation, and a complaint file will not be opened.

- 3.8 Complaints about a justice of the peace's interpretation or application of section 136 of the *Courts of Justice Act*, which sets out the prohibition against recording in the courtroom, or of the Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings (Appendix C) are not, in and of themselves, complaints about conduct.
- 3.9 The Council does not have jurisdiction over a justice of the peace who has ceased to hold office. If the Council loses jurisdiction over a complaint, the Registrar shall inform the complainant that the subject of the complaint is no longer a justice of the peace and that the Council no longer has jurisdiction to continue with the complaint process.
- 3.10 If a complaint relates to someone other than an Ontario justice of the peace, Council staff will, if known, refer the complainant to the appropriate agency or office where the complainant's concerns may be pursued.

4. CONFIDENTIALITY AND PRIVACY

- 4.1 If any person, other than a justice of the peace asking if a complaint exists in relation to their own conduct, asks whether a particular complaint has been made to the Council, the Council, or a complaints committee thereof, will consider whether it is appropriate in the circumstances to confirm or deny that a complaint has been made to it. The Council, or a complaints committee thereof, shall exercise its discretion to confirm or deny that a complaint has been made on a case-by-case basis having regard to the statutory framework set out in the *Justices of the Peace Act*, which requires that the complaints process is confidential unless a public hearing into a complaint is ordered. Requests shall be dealt with in writing. If it is determined that a hearing is warranted, the hearing process, by contrast, becomes public after the Notice of Hearing is served on the justice of the peace, unless a Hearing Panel has ordered that there are exceptional circumstances that require that all or part of the hearing be held in private.
- 4.2 If a justice of the peace asks if a complaint in relation to their conduct has been made to the Council, Council staff shall confirm if there is a complaint and may

provide the justice of the peace with a copy of the Council's procedures. However, in order to preserve the confidentiality of the investigation required by the *Act* and ensure the effectiveness of the investigation process, the justice of the peace shall not be provided with a copy of the complaint.

- 4.3 Pursuant to section 8(18) of the *Act*, the Council has ordered that, subject to any order made by a complaints committee or a hearing panel, any information or documents relating to a meeting, investigation or hearing that was not held in public are confidential and shall not be disclosed or made public.¹ The order applies whether the information or documents are in the possession of the Review Council, the Attorney General, or any other person, but does not apply to information and/or documents,
- a) that the *Act* requires the Council to disclose; or
 - b) that have not been treated as confidential and were not prepared exclusively for the purposes of a Council meeting, an investigation or a hearing.
- 4.4 Documents reviewed by a complaints committee during the investigation stage of the complaints process are confidential. Such documents may include complaint letters, a justice of the peace's response to a complaint, transcripts of interviews conducted for a complaints committee, reports by the Chief Justice to a complaints committee, and an advice letter sent to a justice of the peace.
- 4.5 The Review Council may release letters or emails from a complainant, and/or a disposition letter, and/or any related voicemails,
- a) to the local police and/or the Justice Sector Security Office, if the communication(s) could constitute a criminal offence and those documents or audio recordings may be relevant to determining whether there is a need for action to prevent harm to a person and/or property; or
 - b) for use in any criminal proceeding that results from the actions or comments of a complainant that are related to the complaint or the disposition of the complaint.

¹ For more information about the order of confidentiality, see *In the Matter of the Application Brought by the Toronto Star and the Criminal Lawyers' Association* (OJC, 2014) posted on the OJC's website under the link "Confidentiality"

- 4.6 If a complainant brings a civil action against the Council or its staff or an application for judicial review, the Council may release any letters to and from the complainant and/or any disposition letters to a lawyer retained on behalf of the Council to defend the Council in the proceeding. So long as it is in accordance with the Council's instructions, the lawyer retained by the Council may use the letters in whatever way the lawyer deems advisable in the course of litigation.
- 4.7 Nothing in these Rules of Procedure shall prevent a complainant from making their own complaint letter public. The Council recognizes a complainant's right to make their own complaint public.
- 4.8 When deciding whether there are exceptional circumstances that justify maintaining confidentiality and holding all or part of a hearing in private, the Hearing Panel shall consider,
- a) where matters involving public or personal security may be disclosed, or
 - b) where intimate financial, personal or other matters may be disclosed at the hearing of such a nature that, having regard to the circumstances, the desirability of avoiding disclosure is in the interests of any person affected or in the public interest and outweighs the desirability of adhering to the principle that the hearing be open to the public.

Disclosure of interim recommendation

- 4.9 Where,
- a) a justice of the peace has been not assigned work or has been reassigned to a different location pending the final disposition of a complaint pursuant to the interim recommendation of a complaints committee under s. 11(11); and
 - b) a hearing has been ordered and the complaint process has become public,
- the policy objectives of the statutory framework of preserving confidence in the judiciary and in the administration of justice are best achieved by disclosing that the justice of the peace has been non-assigned from judicial duties or reassigned to a different location. Subject to orders of the hearing panel, the fact that a justice of the peace has been non-assigned with pay or reassigned to a different location shall be disclosed by placing that information on the Council's website.

5. COMPLAINTS COMMITTEES

Multiple complaints against same justice of the peace

- 5.1 Where a justice of the peace has an open complaint file(s), the Registrar shall assign any new complaints about that justice of the peace to the same complaints committee that is investigating the outstanding complaint(s).

6. INVESTIGATIONS BY COMPLAINTS COMMITTEES

- 6.1 The complaints committee will examine the complaint, as well as such materials as it considers appropriate, which may include certified transcripts, audio recordings of court proceedings, and documents from the court file. The Registrar shall, on behalf of a complaints committee, obtain such information or materials as the committee determines to be appropriate in the course of its investigation.
- 6.2 If a transcript is ordered, transcribers shall be instructed by the Registrar not to alter the transcript in any way, nor to submit the transcript to the subject justice of the peace for editing.
- 6.3 If a complaints committee decides to retain independent counsel to provide legal advice and/or to assist in its investigation by interviewing witnesses or obtaining documents, the Registrar shall retain counsel on the committee's behalf and communicate the committee's instructions to counsel.

Power to summons and compel witnesses to give evidence

- 6.4 Section 4.2, subsections 12 (1) to (3.1) and sections 13, 14, 15 and 22 of the *SPPA* apply to the activities of a complaints committee. These sections give complaints committees the power to summons witnesses to give evidence under oath or affirmation and/or require the production of materials that may be relevant to the subject-matter of the proceeding where the complaints committee decides it is warranted. If the complaints committee decides to summons a witness and/or to require the production of materials, the Registrar or the Deputy Registrar will issue and sign the summons on its behalf.
- a) Pursuant to section 4.2 of the *SPPA*, a complaints committee has some flexibility regarding quorum on a procedural or interlocutory matter. Such matters may be heard and determined by one or more members of the

complaints committee, assigned by the chair of the committee, rather than requiring the attendance of all three members.

- b) Pursuant to section 13 of the *SPPA*, a complaints committee may institute contempt proceedings for persons who, without lawful excuse, default in their attendance before the committee pursuant to a summons or who refuse to take an oath or make an affirmation legally required by the committee to be made.
- c) Pursuant to section 14 of the *SPPA*, witnesses who are called before the complaints committee during the investigation stage are protected against self-incrimination.
- d) Pursuant to section 22 of the *SPPA*, a complaints committee may administer oaths or affirmations.

Interim recommendations

- 6.5 As the body designated by the *Act* to investigate and determine the appropriate disposition of complaints about the conduct of justices of the peace the Council has the primary responsibility for considering and recommending whether a justice of the peace who is the subject of a complaint should be not assigned work or reassigned to a different location, pending the final disposition of a complaint.

Criteria for interim recommendations

- 6.6 In deciding whether to make an interim recommendation, the committee shall consider whether any of the following factors are present:
- a) the complaint arises out of a working relationship between the complainant and the justice of the peace and the complainant and the justice of the peace both work at the same court location;
 - b) allowing the justice of the peace to continue to preside would likely bring the administration of justice into disrepute;
 - c) the complaint is of sufficient seriousness that there are reasonable grounds for investigation by law enforcement agencies; and/or
 - d) it is evident to the complaints committee that a justice of the peace is suffering from a disability that cannot be accommodated in accordance with the procedures.

Information re: basis for interim recommendation

- 6.7 Where a complaints committee recommends to a Regional Senior Justice not assigning or re-assigning a justice of the peace pending the resolution of a complaint, particulars of the factors upon which the complaints committee's recommendations are based shall be provided contemporaneously to the Regional Senior Judge and the subject justice of the peace to assist the Regional Senior Judge in making their decision and to provide the subject justice of the peace with notice of the complaint and the complaints committee's recommendation. The complaints committee may provide to the Regional Senior Justice any previous complaint and disposition history that the subject justice of the peace has had with the Review Council which the complaints committee considers relevant to their recommendation.

Opportunity to respond to issue of interim recommendation

- 6.8 Where a complaints committee is considering making an interim recommendation, it may give the justice of the peace an opportunity to be heard on that issue in writing.
- 6.9 Where a committee decides to provide a justice of the peace with an opportunity to make submissions on the issue of whether an interim recommendation of non-assignment or reassignment should be made, the Registrar shall send by email, courier or registered mail the letter on behalf of the complaints committee to the justice of the peace informing them that the committee is considering making an interim recommendation and the reasons therefore, and inviting them to respond, **within 10 days**, to the question of whether an interim recommendation should be made.
- 6.10 If a justice of the peace seeks an extension of time to respond on the question of whether the committee should make an interim recommendation, the justice of the peace, or their counsel, must make the request in writing through the Registrar providing brief reasons for the request. The complaints committee may deny the request or may decide whether to grant such extension as it considers appropriate.
- 6.11 If no response is received from the justice of the peace within 10 days from the date of emailing, mailing or couriating the letter inviting submissions, the committee will proceed with making its interim recommendation.

Disclosure of non-assignment or reassignment to another location

- 6.12 When a justice of the peace is reassigned or non-assigned by a Regional Senior Justice following a committee's interim recommendation to do so, the committee may order that such information be disclosed on a confidential basis to any party affected by the alleged conduct of the justice of the peace.

Opportunity to respond to complaint

- 6.13 When a complaints committee chooses, as part of its investigation, to invite a response from the subject justice of the peace, the Registrar shall, in accordance with the instructions of the complaints committee, communicate that invitation to the subject justice of the peace in writing along with any particular concerns that the complaints committee wishes to express. A complaints committee shall invite a justice of the peace to respond to the complaint if the committee is considering any disposition other than dismissal.
- 6.14 As part of any invitation to respond to a complaint, the Registrar shall provide to the justice of the peace a copy of the materials under consideration by the committee, as directed by the complaints committee, including a copy of the complaint, any court transcripts, any transcripts of witness interviews, and the disposition history of the justice of the peace other than dismissed complaints to which the justice of the peace was not invited to respond.
- 6.15 A justice of the peace is provided with 30 days from the date of the letter inviting a response to provide a response to the complaint. A justice of the peace is informed that they are not obliged to provide a response.
- 6.16 If a justice of the peace requires an extension of time to respond, the justice of the peace, or their counsel, must make the request in writing through the Registrar, providing brief reasons for the request. The complaints committee may deny the request or may grant such extension as it considers appropriate.
- 6.17 If a justice of the peace's response is not received within 30 days or the extended deadline, if any, the Registrar shall,
- a) advise the complaints committee that the justice of the peace has not responded; and
 - b) send a reminder letter to the justice of the peace by email, registered mail or courier.

- 6.18 If a justice of the peace's response is not received within 10 days of the date of the reminder letter, and the complaints committee is satisfied that the justice of the peace has been notified of the complaint and has been provided with full particulars of the complaint, the committee will proceed to consider the appropriate disposition in the absence of a response.
- 6.19 If the justice of the peace does provide a response, the committee shall review and consider the response in the course of its investigation. Any response to the complaint made by the justice of the peace may be considered by a complaints committee for any purpose in connection with sections 11(15) or 11.1 of the *Act*.
- 6.20 A justice of the peace's response to a complaint may be referred to in the case summary that will appear in the Council's Annual Report but the justice of the peace will not be identified.
- 6.21 A justice of the peace has the right to retain counsel in responding to a complaint, or in providing submissions on the issue of whether an interim recommendation regarding assignment should be made.

Consideration of past history

- 6.22 Where a complaints committee is assessing a new complaint, the Registrar shall bring any JPRC history to the attention of the complaints committee and make available any complaint file materials requested by the committee, except dismissed complaints to which the subject justice of the peace was not invited to respond.

Criteria in assessing appropriate disposition

- 6.23 The following criteria apply when a complaints committee is determining the appropriate disposition of a complaint:

a) Dismissal

A complaints committee will dismiss a complaint after reviewing the complaint if, a majority of the complaints committee believes:

- it is frivolous or an abuse of process, or
- it falls outside the Review Council's jurisdiction because it is a complaint about the exercise of judicial discretion and does not include an allegation of judicial misconduct, or

- if it does include an allegation of judicial misconduct, the allegation is unproven or unfounded, or the conduct does not rise to the level of misconduct that requires further action on the part of the Review Council.

b) Provide advice

A complaints committee may provide advice to a justice of the peace, in person or by letter, or both, in circumstances where the misconduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of a majority of the complaints committee, a suitable means of informing the justice of the peace that their course of conduct was not appropriate in the circumstances that led to the complaint.

c) Refer the complaint to the Chief Justice

A complaints committee may refer a complaint to the Chief Justice of the Ontario Court of Justice in circumstances where the conduct complained of does not warrant another disposition, there is some merit to the complaint and the disposition is, in the opinion of a majority of the complaints committee, a suitable means of informing the justice of the peace that their course of conduct was not appropriate in the circumstances that led to the complaint.

A complaints committee may impose conditions on its referral to the Chief Justice if, in its opinion, there is some course of action or remedial training of which the subject justice of the peace could take advantage.

d) Order a hearing

A complaints committee may order a hearing into a complaint where there has been an allegation of judicial misconduct that a majority of the complaints committee believes has a basis in fact and which, if believed by the finder of fact, could result in a finding of judicial misconduct by a hearing panel.

7. NOTICE OF DECISION OF COMPLAINTS COMMITTEE

Notice of decision communicated

To the complainant

- 7.1 The Council shall communicate the disposition of a complaint to the complainant in a disposition letter.
- 7.2 In accordance with the instructions of the complaints committee, the Registrar will draft the disposition letter. The draft disposition letter is circulated to the complaints committee for review and consideration and, once approved, is sent to the complainant in accordance with section 11(3) of the *Act*.
- 7.3 Where a committee decides to dismiss a complaint, provide advice to the justice of the peace, or refer the complaint to the Chief Justice, it will provide brief reasons in its disposition letter for doing so.

To the subject justice of the peace

- 7.4 The Council will provide a copy of the disposition letter to the subject justice of the peace in circumstances where the justice of the peace was advised of the complaint due to the fact that a complaints committee sought a response from the justice of the peace to the complaint.
- 7.5 In circumstances where a complaint is dismissed and a response was not sought from the justice of the peace, the Council will provide a copy of the disposition letter to the subject justice of the peace, subject to instructions from the justice of the peace to waive such notice.

Justices of the peace to provide instructions

- 7.6 The Council has distributed an instruction form to all justices of the peace to sign and complete, in which the justices of the peace instruct the Review Council whether they wish to be advised of complaints made against them that are dismissed. The Review Council has also distributed an address form for all justices of the peace to sign and complete, instructing the Review Council of the address to which correspondence about complaint matters should be sent.

8. HEARINGS - GENERAL

- 8.1 A hearing panel may hold the hearing in any combination of written, electronic and oral proceedings.
- 8.2 (1) Subject to subrule (2), every hearing of the Review Council shall take place in Toronto.

(2) a) Any party may bring a motion for a change in venue before a hearing panel seeking an order that the hearing take place in a location other than Toronto.

b) A hearing panel may only grant a motion for a change in venue in exceptional circumstances.

c) In deciding whether exceptional circumstances exist, a Hearing Panel may consider,

- i. the convenience of the parties;
- ii. the cost, efficiency and timeliness of the proceeding in which the hearing is being held;
- iii. the avoidance of delay or unnecessary length;
- iv. the fairness of the process;
- v. public accessibility to the hearing;
- vi. the fulfilment of the Review Council's statutory mandate;
and
- vii. the just and expeditious determination of the hearing.

8.3 The *Protocol Regarding the Use of Electronic Communications Devices in the JPRC Hearing Proceedings* applies to all persons attending or participating in a hearing.

9. HEARING PANELS

Mandate of hearing panel

9.1 The Hearing Panel's mandate is to inquire into the facts to determine whether there has been judicial misconduct and, if judicial misconduct is found, determine the appropriate disposition(s) to preserve or restore public confidence in the judiciary.

9.2 These Rules of Procedure shall be liberally construed so as to ensure the just determination of every hearing on its merits.

10. PRESENTING COUNSEL

10.1 On the making of an order for a hearing in respect of a complaint against a justice of the peace, the Registrar will, on behalf of the Council, retain legal counsel to act as independent "Presenting Counsel" to prepare and present the case to the hearing panel.

- 10.2 Presenting Counsel is fully independent, and does not take instructions from the Review Council, the hearing panel or Council staff.
- 10.3 The duty of Presenting Counsel engaged to appear before a hearing panel is to see that the complaint against the justice of the peace is evaluated fairly and dispassionately to achieve a just result and to preserve or restore confidence in the judiciary. Following a finding of judicial misconduct, Presenting Counsel may make submissions on the appropriate disposition, or combination of dispositions, necessary to restore public confidence in the justice of the peace and in the administration of justice.
- 10.4 During the hearing process, all communications between Presenting Counsel and the Hearing Panel shall be made on the record, and in the case of written communications, such communications shall be copied to counsel for the Respondent or where there is no counsel, the Respondent.
- 10.5 A lawyer or law firm retained to act as Investigating Counsel to assist a complaints committee in investigating a complaint may not be retained as Presenting Counsel for any hearing ordered for that same complaint or any other complaint against that same justice of the peace.

Registrar may instruct lawyer when hearing process complete

- 10.6 Once the hearing process is complete, the Registrar, on behalf of the Review Council, may provide instructions to a lawyer retained to represent the Council in respect of any court proceedings arising from the hearing.

11. LEGAL COUNSEL FOR JUSTICE OF THE PEACE

- 11.1 A justice of the peace has the right to be represented by counsel at the hearing stage, or to act on their own behalf in any hearing.

12. NOTICE OF HEARING

- 12.1 A hearing shall be commenced by a Notice of Hearing (Appendix D). Presenting Counsel shall draft the Notice of Hearing for the approval of the complaints committee that referred the complaint for a hearing.
- 12.2 The Notice of Hearing shall contain,

- a) particulars of the allegations against the respondent;
- b) a reference to the statutory authority under which the hearing will be held;
- c) a statement of the time and place of the commencement of the hearing;
- d) a statement of the purpose of the hearing; and
- e) a statement that if the respondent does not attend at the hearing, the panel may proceed in the respondent's absence and the respondent will not be entitled to any further notice of the proceeding.

12.3 Presenting Counsel shall cause the Notice of Hearing to be served upon the respondent by:

- a) personal service; or
- b) upon a motion to the panel hearing the complaint, an alternative to personal service, and Presenting Counsel shall file proof of service with the Review Council; or
- c) if the justice of the peace, or counsel for the justice of the peace, agrees to accept service by email, service may be effected by Presenting Counsel emailing a copy of the issued Notice of Hearing to the justice of the peace or their counsel.

12.4 At the initial set-date proceeding presided over by the Hearing Panel, Presenting Counsel will file the Notice of Hearing as an exhibit.

12.5 Recognizing the role that the complaints process has in maintaining and restoring public confidence, and that the legislative requirements for maintaining privacy no longer apply for formal hearings under section 11.1 of the *Act*, after the justice of the peace is served with the Notice of Hearing, the complaints process shall become public, subject to any orders by the hearing panel.

13. PUBLIC INFORMATION ABOUT HEARING PROCEEDINGS

13.1 Once the complaint has become public, the Registrar shall cause notice of the hearing to be,

- a) posted in the prescribed form on the Review Council's website, subject to any orders by the hearing panel; and

- b) published in a local newspaper not less than two weeks prior to the commencement of the hearing.
- 13.2 A hearing panel may, on such grounds as it deems appropriate, abridge the time for publication in the local newspaper.
- 13.3 The public notice posted and published by the Registrar shall include a brief summary of the allegations of misconduct but shall not identify any complainants or witnesses, due to the possibility that a complainant or witness may ask for their identity to be protected by a publication ban.
- 13.4 If a justice of the peace has been non-assigned or reassigned to a different location pending the final disposition of the complaint under s. 11(12) of the *Act*, the Registrar shall include that information on the Council's website.

14. EXCEPTIONS TO FULLY OPEN HEARING

- 14.1 When deciding whether there are exceptional circumstances that justify maintaining confidentiality and holding all or part of a hearing in private, the Hearing Panel shall consider,
 - a) where matters involving public or personal security may be disclosed, or
 - b) where intimate financial, personal or other matters may be disclosed at the hearing of such a nature that, having regard to the circumstances, the desirability of avoiding disclosure is in the interests of any person affected or in the public interest and outweighs the desirability of adhering to the principle that the hearing be open to the public.

Publication bans

- 14.2 The Hearing Panel may, on motion by any party and at any time during the hearing, order that certain information or documents remain confidential or be subject to a publication ban, including information contained in the allegations in the Notice of Hearing.
- 14.3 When a party files a motion requesting a publication ban, the Council shall provide public notice of such motion on its website.
- 14.4 The onus is on the party bringing a motion for a publication ban to give proper notice of the motion to major media outlets.

- 14.5 If a party believes that a publication ban ordered by the Hearing Panel may have been violated, the party may file a motion in writing requesting that the Hearing Panel state a case to the Divisional Court, pursuant to section 13 of the *Statutory Powers Procedures Act*, so that the Court may inquire into the facts to determine whether there has been a violation of the publication ban.

15. PRE-HEARING AND HEARING PROCEDURES

Response to Notice of Hearing by justice of the peace

- 15.1 A respondent may file a response to the allegations in the Notice of Hearing, and if so, shall serve a copy on Presenting Counsel and file the original in the Council office.
- 15.2 A respondent may at any time before or during the hearing serve on Presenting Counsel and file with Council office an amended response.
- 15.3 The response and/or amended response may contain full particulars of the facts on which the respondent relies.
- 15.4 Failure to file a response shall not be deemed to be an admission of any allegations against the respondent.

Obligation to provide respondent with disclosure

- 15.5 Presenting Counsel shall, before the hearing, forward to the respondent or to counsel for the respondent:
- a) the names and contact information for all witnesses who will be called by Presenting Counsel to give evidence;
 - b) any statements taken from any witnesses that were not provided during the investigation phase; and
 - c) summaries of any interviews with such witnesses conducted before the hearing who were not interviewed during the investigative stage, and
- the Hearing Panel may preclude Presenting Counsel from calling a witness at the hearing if Presenting Counsel has not provided such information.

- 15.6 Presenting Counsel shall confirm before the hearing that the respondent or the respondent's counsel has received full disclosure of all non-privileged materials considered by the complaints committee during the investigation stage. If such materials have not been received by the justice of the peace, or their lawyer, Presenting Counsel shall provide the disclosure.
- 15.7 Presenting Counsel's disclosure obligations apply equally to any documents relevant to the allegations in the Notice of Hearing that are in the possession of Presenting Counsel and that have not already been disclosed in the complaints process.

Pre-hearing conference

- 15.8 Upon request by Presenting Counsel or by the respondent, the Hearing Panel may order that a pre-hearing conference take place before a judge or justice of the peace of the Ontario Court of Justice for the purposes of narrowing or resolving the issues. Any discussions at the pre-hearing conference are confidential and without prejudice.
- 15.9 Any judge or justice of the peace who,
- a) was a member of the complaints committee that investigated the complaint; or
 - b) Is a member of the Hearing Panel that will hear the allegations against the justice of the peace,
- shall not preside over the pre-hearing conference in respect of the same complaint.

Pre-Hearing Motions

- 15.10 A party bringing a motion shall file the original and three print copies with the Council office, and provide an electronic version by email to the Registrar.
- 15.11 (1) Any party to the hearing may, not later than 10 days before a set-date, file a notice of motion regarding any procedural or other matters that are required to be determined before the hearing can be scheduled. At the set-date, the hearing panel will schedule a date for the motion to be heard and the Registrar will provide notice of the motion and its return date on the Review Council's website, unless the hearing panel orders otherwise.

(2) Any party to the hearing may, by motion, not later than 10 calendar days before the commencement of the date set for the hearing, bring any procedural or other matters to the hearing panel as are required to be determined prior to the hearing of evidence in relation to the complaint.

(3) Without limiting the generality of the foregoing, a motion may be made for any of the following purposes:

- a) objecting to the jurisdiction of the Hearing Panel to hear the complaint;
- b) resolving any issues with respect to any reasonable apprehension of bias or institutional bias on the part of the panel;
- c) objecting to the sufficiency of disclosure by Presenting Counsel;
- d) determining any point of law for the purposes of expediting the hearing;
- e) determining any claim of privilege in respect of the evidence to be presented at the hearing;
- f) any matters relating to scheduling;
- g) seeking a publication ban or an order that the hearing or part thereof proceed in the absence of the public, in which case the Review Council shall provide public notice of any such motion on its website; or
- h) determining any other procedural or other matters as required.

15.12 A motion seeking any of the relief set out above may not be brought during the hearing, without leave of the hearing panel, unless it is based upon the manner in which the hearing has been conducted.

15.13 The hearing panel may, on such grounds as it deems appropriate, abridge the time for bringing any motion.

15.14 The Hearing Panel shall appoint a time and a place for the hearing of submissions on any motion as soon as is reasonably possible and shall render a decision thereon as soon as is reasonably possible.

Agreed Statements of Fact

15.15 The parties may rely on an Agreed Statement of Facts by filing same with the Registrar no later than 10 days before the date set for the commencement of the

hearing. The recommended template for an Agreed Statement of Facts is included as “Appendix E” to these Rules of Procedure.

15.16 The hearing panel, may, on such grounds as it deems appropriate, abridge the time for filing an Agreed Statement of Facts.

Summons

15.17 On application at any time, Presenting Counsel or the justice of the peace may request that the Registrar or Deputy Registrar issue a summons to compel any person or party to give evidence by oath or affirmation at the hearing and to produce in evidence at the hearing any documents or things which are relevant to the subject matter of the hearing. The Registrar or Deputy Registrar shall either issue the summons or, if they believe that there is a question of relevancy that should be determined by the Hearing Panel, inform the party seeking the summons that they must bring a motion before the Hearing Panel for a determination as to whether a summons should issue.

15.18 A summons issued under this section shall be in the form prescribed by subsection 12(2) of the Statutory *Powers Procedure Act*.

Conduct of hearing

15.19 The following guidelines apply to the conduct of the hearing, unless the panel, on motion by a party, or on consent, requires otherwise:

- a) All testimony shall be under oath or affirmation.
- b) Presenting Counsel shall commence the hearing by an opening statement, and shall proceed to present evidence in support of the allegations in the Notice of Hearing by direct examination of witnesses.
- c) Counsel for the respondent may make an opening statement, either immediately following Presenting Counsel’s opening statement, or immediately following the conclusion of the evidence presented on behalf of Presenting Counsel. After Presenting Counsel has called its evidence, and after the respondent has made an opening statement, the respondent may present evidence.
- d) All witnesses may be cross-examined by the other party/parties to the hearing and re-examined as required.

- e) The hearing shall be transcribed by a certified reporter. Upon request, the respondent shall be provided with a transcript of the hearing within a reasonable time and at no cost.
 - f) Both Presenting Counsel and the respondent may submit to the panel proposed findings, conclusions, recommendations or draft orders for the consideration of the hearing panel.
 - g) Presenting Counsel and counsel for the respondent may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence, with the order to be determined by the hearing panel.
- 15.20 (1) Subject to (3), on motion by a party, or on its own motion with notice to the parties, a Hearing Panel may amend the Notice of Hearing or an allegation in it:
- a) where there is a variance between the evidence taken at the hearing and the particulars of the allegations in the Notice of Hearing; or
 - b) to correct any deficiencies as to form or substance in the Notice of Hearing.
- (2) In considering whether or not an amendment should be made to the notice of hearing or an allegation in it, the Hearing Panel shall consider:
- a) the circumstances of the case;
 - b) the nature of the amendment sought;
 - c) whether the justice of the peace would be misled or prejudiced by the amendment;
 - d) any evidence introduced at the hearing; and
 - e) whether, having regard to the merits of the case, the proposed amendment would achieve a just result that is consistent with preserving or restoring public confidence in the judiciary.
- (3) If additional facts are disclosed during the course of a hearing that,
- a) are outside the ambit of the complaint that is the subject of the hearing; and
 - b) would constitute an allegation of misconduct against a justice of the peace if they were disclosed in a complaint to the Review Council,

the additional facts shall not be the subject of an amendment to the notice of hearing or an allegation in it.

(4) Where the conditions in (3) are present, the Registrar shall prepare a summary of the particulars of the additional facts and forward the summary to a complaints committee to be processed as an original complaint. Members of the Hearing Panel before which the additional facts were disclosed may not serve on the complaints committee assigned to investigate the new complaint.

Investigative Authority of the Hearing Panel

15.21 Given the important role of the Review Council in preserving public confidence in the judiciary, and recognizing that a three-person complaints committee that orders a hearing has concluded that the evidence could support a finding of judicial misconduct, a Hearing Panel has a responsibility to make its own determinations on the matters before it.

- a) As soon as practicable, Presenting Counsel may bring a motion to the Hearing Panel with a recommendation to the Hearing Panel that some or all of the allegations in the Notice of Hearing be withdrawn.
- b) Such a recommendation by Presenting Counsel shall be made in writing and state the reasons that the allegation(s) should be withdrawn. Upon receiving such a motion, the Hearing Panel shall appoint a time and place for the hearing of the motion as soon as is reasonably possible.
- c) The Hearing Panel may ask questions and/or request evidence from Presenting Counsel in order that the Panel will have sufficient information to determine whether withdrawal of the allegation(s) from the Notice of Hearing will achieve a just result and preserve confidence in the judiciary.
- d) The Hearing Panel shall order the withdrawal of any allegation(s) of judicial misconduct in the Notice of Hearing if the Hearing Panel finds that there is no reasonable prospect of a finding of judicial misconduct based on the evidence at the time of the hearing.
- e) In the absence of an order from the Hearing Panel withdrawing the allegation(s), Presenting Counsel must proceed with all allegations in the Notice of Hearing.
- f) A hearing panel is not bound by joint submissions from the parties.

- g) A hearing panel is not limited to making its determinations based upon an Agreed Statement of Facts filed by the parties.
- h) The Hearing Panel may choose not to accept an Agreed Statement of Facts if the Agreed Statement of Facts would bring the administration of justice into disrepute or be otherwise contrary to the public interest in judicial discipline proceedings.
- i) If the Hearing Panel is considering not accepting an Agreed Statement of Facts, the Hearing Panel shall provide the parties with notice and an opportunity to make submissions.
- j) Whether or not an Agreed Statement of Facts is filed by the parties, a hearing panel may direct that certain witnesses or evidence be presented at the hearing, if the Panel is of the view that the witnesses or evidence may be relevant and it has not been put forward at the hearing by the parties.
- k) Presenting Counsel may not enter into an agreement to make a joint submission on disposition.
- l) The Hearing Panel is not bound by the submissions of either party as to disposition.

16. TEST FOR JUDICIAL MISCONDUCT

16.1 To ensure that the Review Council may address misconduct of varying degrees of severity as contemplated by ss. 11.1(10)(a)-(g) of the *Justices of the Peace Act*, the Review Council has adopted the following test for judicial misconduct that should be applied by Hearing Panels.

16.2 (1) If the Hearing Panel finds that:

- a) some or all of the alleged conduct has been proven on a balance of probabilities, and
- b) some or all of the proven conduct is incompatible with judicial office,

the Hearing Panel shall make a finding that the justice of the peace has engaged in judicial misconduct.

(2) In determining whether the proven conduct is incompatible with judicial office, the Hearing Panel shall consider all the circumstances, including:

- a) whether the conduct is inconsistent with the *Principles of Judicial Office* and/or any standards of conduct established by the Chief Justice of the Ontario Court of Justice and approved by the Review Council under s. 13(1) of the *Justices of the Peace Act*;
- b) whether the conduct is contrary to the impartiality, integrity, and/or independence of the judiciary;
- c) whether the conduct undermines the public's confidence in the justice of the peace's ability to perform the duties of office; and
- d) whether the conduct undermines the public's confidence in the administration of justice generally.

17. DISPOSITIONS AND ORDERS DETERMINED BY HEARING PANEL

Factors in Considering Appropriate Disposition

- 17.1 In determining the appropriate disposition of a complaint following a hearing, the hearing panel shall focus on what is required to restore public confidence in the justice of the peace and in the judiciary in general.
- 17.2 If it is determined that a disposition under s. 11.1(10) is required, the Panel should first consider the least serious disposition - a warning - and move sequentially to the most serious - a recommendation for removal - and order only what is necessary to restore public confidence in the justice of the peace and in the judiciary and the administration of justice generally.²
- 17.3 Factors that may be relevant to an assessment of the appropriate sanction for judicial misconduct include, but are not limited to:
 - i. Whether the misconduct is an isolated incident or evidences a pattern of misconduct;
 - ii. The nature, extent and frequency of occurrence of the act(s) of misconduct;
 - iii. Whether the misconduct occurred in or out of the courtroom;

² *Re Baldwin* (OCJ, 2002)

- iv. Whether the misconduct occurred in the justice of the peace's official capacity or in their private life;
 - v. Whether the justice of the peace has acknowledged or recognized that the acts occurred;
 - vi. Whether the justice of the peace has evidenced an effort to change or modify their conduct;
 - vii. The length of service on the bench;
 - viii. Whether there have been prior findings of judicial misconduct about this justice of the peace;
 - ix. The effect the misconduct has upon the integrity of and respect for the judiciary; and
 - x. The extent to which the justice of the peace exploited their position to satisfy their personal desires.
- 17.4 The judicial discipline process is remedial. Following a finding of judicial misconduct, Presenting Counsel shall file with the Hearing Panel the justice of the peace's disposition history other than dismissed complaints to which the justice of the peace was not invited to respond.
- 17.5 The Hearing Panel may only make a recommendation for removal from office in accordance with s. 11.2(2)(b) of the *Justices of the Peace Act*.

18. COMPENSATION

Issue of compensation following a hearing

- 18.1 If a complaint has been ordered to a hearing, the Hearing Panel shall consider any application by the justice of the peace for a recommendation that they should be compensated for legal costs incurred in connection with the investigation and the hearing.
- 18.2 A Hearing Panel's consideration of the question of compensation shall take place in public if there was a public hearing into the complaint, and otherwise shall take place in private.

- 18.3 Where a Hearing Panel has discretion to recommend to the Attorney General whether or not a justice of the peace should be compensated for some or all of their legal costs incurred in connection with the hearing. This discretion shall be exercised on a case-by-case basis.
- 18.4 The principal objective of the complaint process is to restore and maintain public confidence in the integrity of the judiciary, not to punish the judicial office holder. When considering whether a justice of the peace should be compensated for legal costs, a Hearing Panel shall be guided by the principle that it is generally in the best interest of the administration of justice for justices of the peace who are the subject of complaints to have the benefit of legal counsel in order to ensure a fair, full and complete process.³
- 18.5 Except where there is a recommendation for removal from office, a finding of judicial misconduct does not, in itself, preclude a Hearing Panel from making a recommendation for compensation. When there has been a finding of judicial misconduct, the decision about whether a justice of the peace should be compensated for part, none or all of their legal costs shall be based upon consideration of the circumstances of the case, viewed in the context of the objectives of the complaint process, including⁴:
- a) The nature and seriousness of the misconduct;
 - b) The connection of the misconduct to the judicial function; chief among the circumstances will be the nature of the misconduct and its connection to the judicial function. For example, misconduct that is more directly related to the judicial function may be more deserving of a compensation order than conduct that is less directly related.
 - c) Whether the conduct was such that any person ought to have known it was inappropriate; conduct that any person ought to have known was inappropriate will be less deserving of a compensation decision than would conduct that is only determined to be inappropriate as a result of the ultimate decision in a particular case.
 - d) Whether the misconduct consisted of a single instance or multiple instances; where there are multiple instances, the justice of the peace may

³ *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 (Div Ct)

⁴ *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 (Div Ct).

be less deserving of a compensation recommendation than if there was a single instance of misconduct.

- e) Whether there had been prior findings of misconduct; where there has been a previous finding of misconduct, the justice of the peace may be less deserving of a compensation recommendation.
- f) The conduct of the hearing; compensation should not include the costs associated with steps which the decision-maker views as unmeritorious or unnecessary.⁵

Recommendation of Removal from Office

18.6 If the complaint was made on or after July 8, 2020 and the hearing results in a recommendation of removal from office, the Hearing Panel has no jurisdiction to recommend compensation for legal costs.

Compensation – General

18.7 The Review Council recognizes that the public expects accountability for expenditures of public funds, and that such expenditures be supported by all relevant documentation. Accordingly, a justice of the peace who requests compensation for legal costs incurred in connection with an investigation and/or hearing is deemed to waive solicitor-client privilege over statements of account setting out the services provided, time spent, and fees charged. Any recommendation for compensation submitted to the Ministry of the Attorney General shall include the unredacted statement(s) of account issued to the justice of the peace by legal counsel.

- a) Any recommendation for compensation for legal costs submitted to the Ministry of the Attorney General shall include the statement(s) of account issued to the justice of the peace by legal counsel.

Compensation – Investigation Only

⁵ See *Re: Foulds: Decision on Disposition and Compensation for Legal Costs Following a Finding of Misconduct* (JPRC, 2018) and *Re: Keast: Reasons for Decision- Compensation for Legal Costs* (OJC 2018).

- 18.8 In order to uphold the confidentiality of the legislative framework, where a hearing does not occur, the name of the justice of the peace shall be redacted in the statement(s) of account submitted to the Ministry of the Attorney General.

19. CRITERIA AND PROCEDURES FOR APPLICATION TO ENGAGE IN OTHER REMUNERATIVE WORK

- 19.1 All such applications to the Justices of the Peace Review Council will be considered by the Review Council at the earliest possible opportunity and the justice of the peace will be advised of its decision, in writing.

Application Procedure

- 19.2 An application for such approval must be made by the justice of the peace to the Justices of the Peace Review Council, in writing, prior to accepting or engaging in other extra-remunerative work and must set out a detailed explanation of the activity for which approval is sought, an estimate of the time commitment required and the amount of the remuneration. The applicant must also address in their letter each of the criteria indicated below that will be considered by the Review Council.
- 19.3 This application must be accompanied by a letter from the relevant Regional Senior Justice of the Peace providing their opinion with respect to any concerns about potential impacts related to scheduling and the applicant's assignment of duties.
- 19.4 The Council looks at two aspects in relation to remuneration associated with the work. Firstly, the Council considers whether the work gives rise to any remuneration to the applicant justice of the peace. Secondly, the Council considers that a justice of the peace is engaged in extra-remunerative work when that justice of the peace is a party to someone else's remunerative work. Once the Council has established whether there is any remuneration, the policy and criteria set out in the Council's Extra-Remunerative Policy are considered.
- 19.5 The following are some of the criteria which should be addressed by the applicant in the letter of application and which will be considered by the Review Council in assessing whether or not approval will be granted:
- a) whether there is an actual, or perceived, conflict of interest between the duties as assigned and the extra-remunerative activity for which approval is sought; (examples of potential conflict of interest include: employment by government in any capacity related to the administration of justice, the

courts or corrections, engagement in the practice of law, employment in a legal clinic or a law firm, etc.)

- b) whether the nature of the activity for which the justice of the peace seeks approval will present an intrusive demand on the time, availability or energy of the justice of the peace and their ability to properly perform the judicial duties assigned;
- c) whether the activity for which the justice of the peace seeks approval is a seemly or appropriate activity in which a judicial officer should engage, having regard to the public perceptions of judicial demeanour, independence and impartiality.

Commercial Extra-remunerative Work

The Council has noted that the criterion in paragraph c) above must be understood in the context of the public policy encapsulated in the legislative framework set out in the *Act R.S.O. 1990, c. J.4*, as amended and, in particular, in view of the amendments that resulted from the *Access to Justice Act*, 2006, S.O. 2006, c. 21. The amendments brought about a comprehensive reform intended to strengthen public confidence in a professional bench and in the justice system.

Having carefully considered the public policy underlying the current legislative framework, the objectives of the amendments underlying the *Access to Justice Act*, 2006, and the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice*, the Review Council has determined that it would in general be unseemly for full-time presiding justices of the peace to be engaged in commercial extra-remunerative work.

The Review Council has approved some applications to extra-remunerative work by full-time presiding justices of the peace on an exceptional basis in limited circumstances where the activity was primarily non-commercial and had other intrinsic value from an educational, patriotic, religious or creative standpoint. In accordance with the Council's procedures, an applicant who seeks approval to engage in commercial activity should address the issue of why the application for extra-remunerative work should be approved as an exception to the general policy that full-time presiding justices of the peace should not engage in extra-remunerative work that is commercial in nature.

Additional Information

- 19.6 If upon its review of the application, the Review Council is not satisfied that there is sufficient information, the Review Council may request such additional

information as the Review Council may deem necessary and relevant, including information from the justice of the peace, the Regional Senior Justice of the Peace or any other person.

Approval of Application without Conditions

- 19.7 If, upon its review of the application and any additional material, the Review Council is satisfied that there is sufficient information to approve the application, without conditions, the Review Council will approve the application. The applicant justice of the peace will be advised in writing of the decision of the Review Council, including brief reasons for the decision.

Opportunity to Respond to Concerns

- 19.8 If, upon its review of the application and any additional information, the Review Council has concerns about granting the application, the Review Council will provide a letter to the applicant justice of the peace setting out its concerns. The Review Council may also suggest conditions of approval to address those concerns.
- 19.9 The justice of the peace will be given an opportunity to respond to the concerns of the Review Council and to respond to any suggested conditions by sending submissions in writing to the Review Council. If the justice of the peace agrees with the conditions, they should respond to the Review Council confirming their agreement with the approval being contingent upon the conditions.
- 19.10 The justice of the peace will be given thirty calendar days to respond from the date of the letter from the Review Council expressing its concerns. If a response is not received from the applicant justice of the peace within that time, the Review Council members considering the request will be notified and a reminder letter will be sent to the justice of the peace. If no response is received within ten calendar days from the date of the reminder letter, the Review Council will proceed in the absence of a response.

Decision

- 19.11 The Review Council will consider the response of the justice of the peace, if any, in making its decision. The justice of the peace will be advised in writing of the Review Council's approval of the application and of the conditions, if any, upon which the approval is contingent. In the alternative, the justice of the peace will be

advised in writing that the request has not been approved. Brief reasons will be provided for the decision.

No Authority to Order Compensation for Legal Costs

- 19.12 The Review Council does not have legislative authority to recommend or order compensation for costs of legal services incurred as a result of an application for extra-remunerative work.

Application Process in Private

- 19.13 Any meeting of the Review Council regarding applications for extra-remunerative work shall be conducted in private.

Quorum of Review Council

- 19.14 The usual rules for composition and quorum apply to meetings for the purposes of considering applications for extra-remunerative work. The Chief Justice of the Ontario Court of Justice, or in their absence, the Associate Chief Justice Co-ordinator of Justices of the Peace, shall chair meetings held for the purposes of considering applications for extra-remunerative work. Six members of the Review Council, including the chair, constitute a quorum for the purposes of dealing with an application for approval of extra-remunerative work. At least half of the members present must be judges or justices of the peace. The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

Annual report

- 19.15 After the end of each year, the Review Council shall make an annual report to the Attorney General on its affairs including a summary of each application for approval of extra-remunerative work received or dealt with during the year and the decision of the Review Council, but the report shall not name the justice of the peace or the Region in which they preside.

20. ACCOMMODATION OF NEEDS

- 20.1 The role of the Council must be viewed within the legislative framework of the *Justices of the Peace Act* and the legislated authority of the Regional Senior Justice under the direction of the Chief Justice of the Ontario Court of Justice

pursuant to section 15(1) to direct and supervise the sittings of the justices of the peace in their region and the assignment of their judicial duties.

The Supreme Court of Canada has recognized that one characteristic fundamental to judicial independence is institutional independence with respect to matters of administration bearing directly on the exercise of the judicial function: *Valente v. The Queen*, [1985] 2 S.C.R. 673 at 686. Judicial control over such matters as assignment of judges and justices of the peace, sittings of the court and court lists has been considered the essential or minimum requirement for institutional independence.

While the Council cannot assume the responsibility of assignment of judicial duties, it can consider whether, as a result of a disability, a justice of the peace is able to perform the essential duties of the office if their needs are accommodated.

- 20.2 Pursuant to section 5.2, the *Justices of the Peace Act* requires the Council to determine whether accommodation can be provided for a justice of the peace to perform their essential duties of the office.
- 20.3 Given that judicial control over assignment of justices of the peace is a component of judicial independence, the Review Council may not make an order that a justice of the peace should be accommodated by assigning the justice of the peace to only a portion of their essential duties.
- 20.4 For the Review Council to properly consider an application for accommodation, the applicant justice of the peace must first exhaust the accommodation of needs process that is available for judicial officers through the Ministry of the Attorney General and provide a copy of all documents, medical evidence and decisions resulting from the justice of the peace's application through that process.

Application in writing

- 20.5 An application for accommodation of disability by a justice of the peace shall be in writing and shall include the following information:
 - a) a description of the needs to be accommodated;
 - b) a description of the essential duties of the justice of the peace's office for which accommodation is required;
 - c) a description of the item and/or service required to accommodate the justice of the peace's needs; and

- d) a detailed medical report from a qualified doctor or other medical specialist (e.g., chiropractor, physiotherapist, etc.) supporting the justice of the peace's application for accommodation.
- 20.6 The application and supporting materials are inadmissible, without the consent of the applicant, in any investigation or hearing, other than the hearing to consider the question of accommodation.
- 20.7 Disclosure of the application and supporting materials by the Justices of the Peace Review Council to the public is prohibited without the consent of the applicant.

Accommodation subcommittee

- 20.8 On receipt of an application, the Review Council will convene an "accommodation subcommittee" of the Review Council composed of one justice of the peace and one lay member. At its earliest convenience the accommodation subcommittee shall meet with the applicant and with any person against whom the accommodation subcommittee believes an order to accommodate may be required, and retain such experts and advice as may be required, to formulate and provide a report to the Review Council.

Report of accommodation subcommittee

- 20.9 The accommodation subcommittee shall report its opinion to the Review Council in relation to,
- a) whether the justice of the peace has needs arising from a disability and whether those needs require accommodation;
 - b) what item and/or service is necessary to accommodate the justice of the peace's needs;
 - c) the period of time that the item and/or service would be required to accommodate the justice of the peace's needs;
 - d) the approximate cost of the item and/or service required to accommodate the justice of the peace's needs, taking into account the estimated length of time that the item and/or service would be required,

And the report shall include all of the evidence that the accommodation subcommittee considered in determining the cost of the accommodation.

20.10 If, after meeting with the applicant, the accommodation subcommittee is of the view that the applicant does not suffer from a disability, it shall communicate this fact to the Review Council in its report.

Initial consideration of application and report

20.11 Once the accommodation subcommittee has delivered its report, the Review Council shall meet, at its earliest convenience, to consider the application and the report of the accommodation subcommittee in order to determine whether or not the application for accommodation gives rise to an obligation under the statute to accommodate the applicant short of undue hardship.

Threshold test for qualification

20.12 When considering the application and the report, the Review Council shall be guided generally by human rights jurisprudence applicable to its jurisdiction as it relates to,

- a) the definition of “disability”;
- b) the content of the duty to accommodate; and
- c) the procedures developed in the jurisprudence for the purposes of determining whether an order to accommodate is warranted.

20.13 The Council shall consider a condition to amount to a disability where it may interfere with the ability of a justice of the peace to perform the essential functions of their office.

Notification of Minister

20.14 If the Review Council,

- a) is satisfied that the justice of the peace’s condition meets the threshold test for qualification as a disability; and
- b) is considering making an order to accommodate the justice of the peace,

the Review Council shall, at its earliest convenience, provide a copy of the application for accommodation and the report of the accommodation subcommittee to the Attorney General.

- 20.15 The Review Council shall give notice to the Minister that the Minister may make written submissions regarding whether any Order to accommodate a justice of the peace's disability that the Review Council is considering would cause undue hardship to the Ministry of the Attorney General or any other person affected by the said order to accommodate. The Review Council will view the Minister, or any other person against whom an order to accommodate may be made, as having the onus of showing that accommodating the applicant will cause undue hardship.
- 20.16 The Review Council shall request that the Minister respond to the notice of application for accommodation within 30 days of the Minister receiving such notice.
- 20.17 The Review Council shall stipulate in its notice to the Minister that, in the event the Attorney General does not acknowledge the notice or does not make written submissions, the Review Council will proceed with making an Order to accommodate the justice of the peace in accordance with the justice of the peace's application and the Review Council's initial determination of the matter.
- 20.18 The Minister shall, within 30 days, advise the Review Council whether or not the Minister intends to make written submissions regarding the application for accommodation.
- 20.19 If the Minister intends to make written submissions regarding the application for an order to accommodate, such submissions shall be made within 60 days of the Minister advising the Review Council of an intention to respond.

Meeting to determine order to accommodate

- 20.20 After receipt of the Minister's submissions with respect to undue hardship or the expiration of the time period specified in the notice to the Minister, whichever comes first, the Council shall meet, at its earliest convenience, to determine the order it shall make to accommodate the justice of the peace's needs.
- 20.21 The Review Council shall, before making its determination, consider the justice of the peace's application, and any supporting materials and submissions regarding the question of undue hardship.
- 20.22 In considering whether accommodation of the applicant will cause undue hardship, the Review Council will generally be guided by human rights jurisprudence relating to the question of whether undue hardship will be caused, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Chair and quorum

20.23 The usual rules for composition and quorum apply to meetings for the purposes of considering applications for accommodation. The Chief Justice of the Ontario Court of Justice, or in their absence, the Associate Chief Justice Coordinator of Justices of the Peace, shall chair meetings held for the purposes of ordering accommodation. Six members of the Review Council, including the chair, constitute a quorum for the purposes of dealing with an application for accommodation of needs. At least half the members present must be judges or justices of the peace. The chair is entitled to vote, and may cast a second deciding vote if there is a tie.

Copy of Order

20.24 If the Review Council makes an Order to accommodate a justice of the peace's disability, a copy of the order shall be provided to the justice of the peace and to any other person affected by the order within 10 calendars days of the date on which the decision was made.

APPENDIX A – *Justices of the Peace Act*

R.S.O. 1990, CHAPTER J.4

For the most recent version of the Act, see E-laws Ontario:

<https://www.ontario.ca/laws/statute/90j04>

APPENDIX B – *Statutory Powers Procedure Act*

R.S.O. 1990, c. S.22

For the most recent version of the Act, see E-laws Ontario:

<https://www.ontario.ca/laws/statute/90s22>

APPENDIX C – Protocol Regarding the Use of Electronic Communication Devices in JPRC Hearing Proceedings⁶

This Protocol is founded on the “open courts” principle, which requires transparency and accountability in the judicial system to foster public confidence in the administration of justice.

(1) Application

This Protocol applies to all persons attending or participating in a location where public proceedings are being held before a Hearing Panel of the Justices of the Peace Review Council (JPRC) regarding the conduct of a justice of the peace. Use of electronic communication devices should never interfere with the hearing proceedings or the ability to have a fair hearing.

(2) Definitions

“Electronic communication devices” include all computers, personal electronic and digital devices, and mobile, cellular and smart phones.

“Hearing Panel” means the three-person panel consisting of a judge of the Ontario Court of Justice and a justice of the peace of the Ontario Court of Justice and a community or lawyer member.

(3) Use of Electronic Communication Devices in Hearings

The use of electronic communication devices in silent or vibrate mode is permitted, except as follows:

- i. The presiding Hearing Panel orders otherwise.
- ii. Legislation (e.g. the *Justices of the Peace Act* or the *Statutory Powers Procedures Act*) or the Hearing Panel restricts public attendance.

⁶ The Justices of the Peace Review is a body independent of the Ontario Court of Justice with jurisdiction to investigate and dispose of complaints about the conduct of justices of the peace of that Court. The Review Council notes that the Ontario Court of Justice has established a **Protocol Regarding the Use of Electronic Communication Devices in Court Proceedings** and has decided to adopt the rules of that Protocol as set out above for its hearings.

- iii. No photos or videos may be taken unless there is a Hearing Panel order otherwise.
- iv. Audio recording of proceedings is permitted by counsel, members of the media, and litigants for note-taking purposes only but the Hearing Panel must be advised before the recording is commenced. These audio recordings cannot be transmitted.
- v. Talking on electronic communication devices is not permitted while the hearing is in session.

(4) Publication Bans and Other Restrictions

Anyone using an electronic communication device to transmit information has the responsibility to identify and comply with any publication bans, sealing orders, or other restrictions imposed by statute or by order of the Hearing Panel.

(5) Hearing Panel Orders

The presiding Hearing Panel retains overriding responsibility to maintain hearing room decorum and to ensure that proceedings are conducted in a manner consistent with the proper administration of justice. In deciding whether to restrict the use of electronic communication devices, the Hearing Panel may consider whether there is evidence regarding factors such as:

- i. whether the use of electronic communication devices would disrupt the proceedings or interfere with the proper functioning of the electronic equipment being used to make a proper record of the hearing; or
- ii. whether the use of electronic communication devices would interfere with witness testimony, or unreasonably infringe anyone's privacy or security.

APPENDIX D – Notice of Hearing Template

JUSTICES OF THE PEACE REVIEW COUNCIL

IN THE MATTER OF a complaint respecting
Justice of the Peace [name] in the
[name] Region

NOTICE OF HEARING

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 matter of a complaint regarding the conduct or actions of Justice of the Peace [name] be referred to a Hearing Panel of the Review Council, for a formal hearing under section 11.1 of the Act.

It is alleged that you have conducted yourself in a manner that is incompatible with the due execution of your office and that by reason thereof you have become incapacitated or disabled from the due execution of your office. The particulars of the complaint regarding your conduct 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, [location] or by teleconference, on [day], the [date] day of [month], [year], at [time] a.m. in the forenoon 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 Review Council 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;
- (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*.

You, your counsel or your representative may contact the office of the solicitor retained on behalf of the Review Council to act as presenting counsel in this matter, [name of presenting counsel].

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.

[signed by the Registrar]
Registrar
Justices of the Peace Review Council

Date

TO: **Justice of the Peace [name]**

APPENDIX "A" TO THE NOTICE OF HEARING

PARTICULARS OF THE COMPLAINT

The particulars of the complaint regarding the conduct of Justice of the Peace [name] are set out below:

APPENDIX E – Agreed Statement of Facts Template

IN THE MATTER OF a hearing under section 11.1 of the *Justices of the Peace Act*
about the conduct of Justice of the Peace [name]
of the Ontario Court of Justice

Justice of the Peace [name], and Counsel for Justice of the Peace [name], [name of lawyer], and Presenting Counsel, [name of Presenting Counsel], agree as provided herein:

A. General Principles

1. The *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* state 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 individuals who have agreed to accept the responsibilities of judicial office.
2. 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. One factor which is capable of undermining public respect and confidence is the conduct of justices of the peace, in and out of court, that demonstrates a lack of integrity, independence or impartiality.
3. The public expects that justices of the peace must be and must give the appearance of being an example of impartiality, independence and integrity.

B. Background

4. Justice of the Peace [name], the subject of the complaint, is now and was at all times referred to in this document, a justice of the peace of the Ontario Court of Justice assigned to preside in the [region]. Justice of the Peace [name] has served in that capacity since [date].
5. On [date], the Justices of the Peace Review Council received a written complaint from
6. The allegations were investigated by a complaints committee of the Review Council. On [date], Justice of the Peace [name] was provided with the

opportunity to respond to the complaint.

7. After reviewing the information obtained in its investigation, including the response of Justice of the Peace [name], the complaints committee ordered a hearing into the allegations set out in the Notice of Hearing pursuant to subsection 11(15)(c) of the *Justices of the Peace Act*.

C. FACTS

8. Etc.

D. ADMISSIONS (APPLICABLE IF JUDICIAL MISCONDUCT IS ADMITTED)

10. Justice of the Peace [name] admits that their actions negatively impacted the confidence of members of the public in them as a justice of the peace, in the judiciary in general and in the administration of justice. In particular:

(Elaborate on the particulars of how the actions impacted on public confidence...)

11. Justice of the Peace [name] admits that their conduct on [date] constitutes judicial misconduct that warrants a disposition under subsection 11.1(10) of the *Justices of the Peace Act*.

Justice of the Peace [name]

Date

Counsel for Justice of the Peace [name]

Date

Presenting Counsel

Date