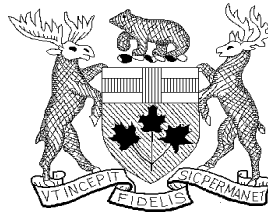


Report of a Judicial Inquiry
Re: His Worship
G. Leonard Obokata,
A Justice of the Peace

The Honourable
Madam Justice Cathy Mocha
Commissioner



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November 6, 2003

The Honourable James K. Bartleman
Lieutenant Governor of the Province of Ontario
Legislative Building
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May it please Your Honour:

**Re: Report of the Commission of Inquiry into the conduct of
His Worship G. Leonard Obokata
A Justice of the Peace**

Further to my appointment by Order in Council No. 573/2003 to inquire into the question of whether there has been misconduct by His Worship G. Leonard Obokata, a Justice of the Peace, and pursuant to s.12 of the *Justice of the Peace Act*, R.S.O. 1990, C.J.4 as amended, I have the honour to submit my report.

A handwritten signature in black ink, appearing to read 'Cathy Mocha', with a long horizontal flourish extending to the right.

Cathy Mocha
Commissioner

Enclosures

INTRODUCTION

By Order in Council dated March 5, 2003, I was appointed to conduct an Inquiry pursuant to section 12 of the Justices of the Peace Act into a complaint about misconduct on the part of His Worship Leonard Obokata, a Justice of the Peace. A copy of the order is attached as Appendix 1.

The complaint was investigated by the Justices of the Peace Review Council and a recommendation was made in a report dated December 5, 2002 that this Inquiry be held. A copy of the report is attached as Appendix 2. A Notice of Public Hearing was published in the Ontario Reports and the London Free Press on August 8, 2003. A copy of the Notice is attached as Appendix 3.

The commission is to inquire into whether there has been misconduct by Justice of the Peace Obokata and if there was misconduct, whether a recommendation should be made to the Lieutenant Governor in Council to remove His Worship Leonard Obokata from office or recommend that the Justices of the Peace Review Council implement a disposition under section 12 (3.3) of the Justices of the Peace Act.

THE STATUTORY FRAMEWORK

Pursuant to section 12 of the Justices of the Peace Act, the “Lieutenant Governor in Council may appoint a provincial judge to inquire into the question whether there has been misconduct by a justice of the peace”. This is the first determination to be made by the commission. If there is a finding of misconduct, then section 12 (3) provides the commission “may recommend that the Lieutenant Governor in Council remove the justice of the peace from office in accordance with section 8, or that the review Council implement a disposition under subsection (3.3).” Section 8 (1) states that a “justice of the peace may be removed from office only by order of the Lieutenant Governor in Council”. Such an order can only be made if the prerequisites in section 8 (2) have been established. That section reads:

8. - (2) The order may be made only if,
 - (a) a complaint regarding the justice of the peace has been made to the Review Council; and
 - (b) the removal is recommended, following an inquiry held under section 12, on the ground that the justice of the peace has become incapacitated or disabled from the due execution of his or her office by reason of,
 - (i) infirmity

- (ii) conduct that is incompatible with the execution of the duties of his or her office, or
- (iii) having failed to perform the duties of his or her office as assigned.

The only reason for removal that is relevant to this Inquiry is whether Justice of the Peace Obokata has become incapacitated or disabled from the due execution of his office by reason of conduct that is incompatible with the execution of the duties of his office.

If a determination is made that removal is not warranted under this provision, then the question becomes whether a recommendation should be made pursuant to section 12 (3.3). A recommendation may be made to the Review Council to:

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

THE INQUIRY

On September 19, 2003 the Inquiry commenced. A Statement of Agreed Facts was filed, a copy of which is attached as Appendix 4. The Statement has been signed by Commission Council Gavin MacKenzie and Justice of the Peace Obokata. Some minor additional facts were agreed to in the course of counsel's submissions. A Book of Agreed Documents was also filed. Included in the Book is a Letter of Apology from Justice of the Peace Obokata and a letter and two e-mail notes relating to the character of His Worship Obokata. There was no viva voce evidence called at the Inquiry.

BACKGROUND OF JUSTICE OF THE PEACE OBOKATA

Justice of the Peace Obokata was 55 years old at the time of this Inquiry. He was appointed a justice of the peace by Order in Council dated November 8, 1978. He has presided as a justice of the peace in the Southwest Region since his appointment to the

present. His duties have included presiding in assignment court, bail court, intake court and Provincial Offences Act court. Justice of the Peace Obokata was the Administrative Justice of the Peace for the counties of Middlesex, Elgin, Perth, Oxford and Huron from 1978 to June 17, 2002.

He has two daughters and a son. He has been separated from his wife since 1995 and currently lives in a common law relationship with a woman he has known for over 30 years. Justice of the Peace Obokata is a past member of the Salvation Army Court Advisory Committee and is presently a chairperson of the Communication Arts Committee at Fanshawe College.

THE COMPLAINT

The complainant is a female Justice of the Peace who will be referred to in this report as Justice of the Peace X. Justice of the Peace X and Justice of the Peace Obokata were colleagues. At the time of the incident, Justice of the Peace Obokata had no supervisory authority over Justice of the Peace X.

In early May 2002, an educational conference for justices of the peace was held in a hotel in Toronto. The justices of the peace were staying at the hotel during the conference. Justice of the Peace Obokata and Justice of the Peace X attended the conference. On the evening of May 2, 2002, Justice of the Peace Obokata went out to dinner with five other justices of the peace at a restaurant in Toronto. Prior to dinner, Justice of the Peace Obokata consumed some alcoholic beverages in his hotel room. He consumed more alcoholic drinks during dinner. After dinner, Justice of the Peace Obokata, Justice of the Peace X and three other justices of the peace walked back along public streets toward their hotel several blocks from the restaurant.

Justice of the Peace Obokata and Justice of the Peace X engaged in general conversation while they walked a short distance behind the other justices of the peace. Although under the influence of alcohol, Justice of the Peace Obokata was able to walk without difficulty and carry on a conversation. Without any invitation or consent from Justice of the Peace X and without any warning, Justice of the Peace Obokata deliberately reached over and grabbed one of Justice of the Peace X's breasts and twisted his hand. Justice of the Peace Obokata recalls grabbing her breast between his thumb and forefinger and pinching her breast. Justice of the Peace X loudly exclaimed "Lenny! I can't believe you did that!" Justice of the Peace Obokata then repeated the action.

Justice of the Peace Obokata says that he immediately attempted to apologize to Justice of the Peace X. Justice of the Peace X has no recollection of an attempted apology. Justice of the Peace X told Justice of the Peace Obokata to tell one of the other Justices of the Peace walking ahead of them what he had done. Justice of the Peace Obokata complied. The other justice of the peace suggested that Justice of the Peace Obokata immediately apologize but Justice of the Peace X did not want to have any further conversation or contact with him.

Justice of the Peace X was angry, shocked, hurt, humiliated and felt cheapened by the incident. As a result, she took the following day off work as a “mental health day”. Two days after the incident, Justice of the Peace Obokata met with Regional Senior Justice of the Peace Robert Ponton. He explained what he had done and acknowledged that it was stupid and could cost him his career. Regional Senior Justice of the Peace Ponton advised Justice of the Peace Obokata to consider apologizing in person or in writing and offered to speak to Justice of the Peace X in advance. Justice of the Peace Obokata told him that he had already attempted to apologize at the time but Justice of the Peace X was unwilling to accept his apology. He was concerned any further attempt may be misinterpreted. Regional Senior Justice of the Peace Ponton did not pursue the matter.

Justice of the Peace X chose not to report the incident to the police. No criminal charges have been laid. Justice of the Peace X wrote to the Registrar of the Justices of the Peace Review Council on June 13, 2002 to file a complaint. She wrote:

“I am regretfully filing a complaint concerning the conduct of a colleague. This difficult decision has been reached following much deliberation and soul-searching.”

After describing the incident she continued:

“Notwithstanding an attempt by His Worship to apologize, his behaviour was unprofessional, immoral, and reflects conduct unbecoming a judicial officer. I remain hurt, angered, and offended by his actions. In my opinion, his disrespect constituted a total lack of sensitivity towards me personally and women in general. I am concerned that failure on my part to bring this matter to the attention of our governing body to address this situation, may result in others being exploited.”

Justice of the Peace Obokata responded in a letter from his counsel to the Registrar on July 30, 2002. He acknowledged acting inappropriately, expressing “his embarrassment, remorse and deep regret over his inappropriate behaviour towards (Justice of the Peace X).” His counsel added that Justice of the Peace Obokata “remains prepared to tender, and wishes to tender, a formal, in person, or written, apology to (Justice of the Peace X)”. His counsel added that Justice of the Peace Obokata “has asked me to convey, through the Council, to (Justice of the Peace X), his sincerest regrets for his behaviour, his desire to apologize, and his assurance that his inappropriate behaviour will not be repeated.”

Justice of the Peace Obokata wrote a formal letter of apology dated September 12, 2003. A copy of the letter is attached as Appendix 5. A formal letter was not submitted earlier upon the advice of his counsel.

A letter and two e-mail notes in support of Justice of the Peace Obokata were submitted to the Inquiry. The letter from Scott L Schuessler, a lawyer who appeared before Justice of the Peace Obokata, speaks of his “high opinion of His Worship Obokata’s effectiveness as a Justice of the Peace.” It is attached as Appendix 6. Kathy and Bob Martin have known Justice of the Peace Obokata socially for over eighteen years. In an e-mail note they describe him as “a very friendly, fun loving yet professional, smart man.” The note is attached as Appendix 7. Mr. L. Ryan, a prosecutor

of Provincial Offences Act cases, sent an e-mail note to Regional Senior Justice of the Peace Ponton commending Justice of the Peace Obokata on his handling of a particular case in which Mr. Ryan was involved. The note is attached as Appendix 8.

FINDING OF MISCONDUCT

The first question is whether the incident amounts to misconduct within the meaning of section 12 (1) of the Justices of the Peace Act. Justice of the Peace Obokata's behavior on May 2, 2002 constituted a sexual assault contrary to the Criminal Code. Justice of the Peace Obokata intentionally applied force to Justice of the Peace X without her consent in circumstances of a sexual nature such that the sexual integrity of Justice of the Peace X was violated. The force need not cause physical injury. The purpose of the touching need not be for sexual gratification. Any reasonable person would perceive the sexual context of the touchings by Justice of the Peace Obokata.

Having committed a sexual assault, Justice of the Peace Obokata clearly misconducted himself within the meaning of section 12 of the Justices of the Peace Act.

GROUND FOR REMOVAL

The next question is whether the misconduct on the part of Justice of the Peace Obokata is incompatible with the execution of the duties of his office and has caused him to be disabled or incapacitated from the due execution of his office. Criminal conduct does not automatically warrant removal from office. Justice of the Peace Obokata would have to be rendered unfit or incapable of proper and effective action as a justice of the peace as a result of the misconduct.

There is no justification for Justice of the Peace Obokata's misconduct. It was serious, deliberate and it was repeated. Although there may have been some additional motivations for his actions, there is one that is clear. The intent of the misconduct, at least in part, was to demean and show disrespect toward Justice of the Peace X both personally and generally as a woman. Such misconduct would not have occurred without some deficiency in his ability to respect women. Consequently, this misconduct does not just potentially cast doubt on his judgment concerning sexual assault cases, as argued by his counsel, but on any matter before him in which a woman is involved. It casts doubt on his respect for the law. It casts doubt on his morality. It casts doubt on his ability to feel empathy. Impartiality, integrity and morality are all essential elements of the administration of justice.

Justices of the peace are the public face of the justice system for many people. When a justice of the peace acts in such an unprofessional and disgraceful manner, it not

only reflects poorly on that particular justice of the peace and all justices of the peace but also on the entire administration of justice. A justice of the peace must not only strive to be unbiased and fair but must ensure that there is the appearance of fairness. It is for these reasons that all judicial officers need to be held to a higher standard of conduct in their professional and personal lives than those involved in other professions. The conduct here of course is illegal and wrong no matter the profession. The *impact* is more significant to this profession than it would be to other professions.

Although the misconduct did not occur in the courthouse or while working in his capacity as a justice of the peace, it can still be capable of disabling or incapacitating him from carrying out his duties. An oft quoted passage from the decision of the Honourable Mr. Justice Robins in the Commission of Inquiry re: Provincial Judge Harry J. Williams at p.17 reads:

“A judge’s responsibility as a judge does not begin or end at the courtroom door. His behaviour off the bench is not wholly outside his position as a judge and may fall within the realm of legitimate public concern. If he engages in irresponsible or improper conduct – conduct which causes others fairly to question his character, his honour, his integrity, his morals, his sense of decency – he loses respect, not only for himself as a person, but for the court over which he presides and the judicial process. Such conduct, even though in private life, may be at variance with his obligations as a judge and may affect his ability to discharge fully and completely his duties on the bench. Public knowledge of improper conduct by a judge can only erode public confidence in him as a judge and in the administration of justice.”

It must be remembered that judicial officers are human beings with all the frailties that entails. Mistakes will be made. The question is the gravity of the misconduct and whether it is a correctible error. The magnitude of the misconduct and its effect must be weighed in light of the circumstances in which it was committed. In this case, Justice of the Peace Obokata’s misconduct was repeated but it occurred on one occasion toward one person. He was not in a position of authority in relation to Justice of the Peace X. Although his consumption of alcohol prior to the misconduct provides no excuse, it no doubt acted as a disinhibitor. He immediately acknowledged the misconduct when he told the other justice of the peace what he had done when requested to do so by Justice of the Peace X. He attempted to apologize to Justice of the Peace X at the time of the misconduct and made further attempts later, including a written letter of apology. At no time has he denied the misconduct nor attempted to minimize his behavior and its impact. At each stage of the proceedings in relation to the complaint, Justice of the Peace Obokata has admitted the facts and has not disputed the impact of his actions on Justice of the Peace X and on the administration of justice. As a result, Justice of the Peace X has been spared the necessity of having to testify and the proceedings have moved along expeditiously. Through his actions subsequent to the misconduct including his apology supplemented by counsel’s submissions at the Inquiry, Justice of the Peace Obokata has shown some insight into the consequences of his actions not only for Justice of the Peace X, but for the administration of justice. The character evidence produced is sparse and does very little to assist in the Inquiry. Similarly, there has also been no information

provided to establish any history of similar behavior or attitude problems toward women in general that would point to this being more than an anomaly in relation to Justice of the Peace Obokata. Even though this is an isolated event, if Justice of the Peace Obokata did not demonstrate an appreciation of the impact of his conduct on the administration of justice, removal from office would be the only reasonable course of action.

There has been information provided that this sort of misconduct may not be unique among judicial officers. In a 1993 Report of the Canadian Bar Association Task Force on Gender Equity in the Legal Profession entitled “Touchstones for Change: Equality, Diversity and Accountability” at p.193 it reads:

“No incidents of sexual harassment were reported by federally appointed women judges but there is a problem at the provincial court level. It is not widespread but it is serious. Fortunately, the worst offenders are well known for their proclivity in this direction and newly appointed younger women judges are warned by their male colleagues. Judicial conduct at conferences and seminars where alcohol is served poses a special problem and some very scandalous incidents were reported by a number of women judges as having occurred on these occasions. There is clearly a need for supervision at these events.”

I would add that a clear message needs to be sent that this type of misconduct will not be tolerated. Although removal from office would certainly send that message, the response needs to be proportionate and must take into account whether something less severe could accomplish the same goal.

The question returns to whether a reasonable, well-informed member of the public would believe that he still has the ability to administer justice in light of the misconduct. As described by the Honourable I.C. Rand:

“...would the conduct, fairly determined in the light of all circumstances, lead such persons to attribute such a defect of moral character that the discharge of the duties of the office thereafter would be suspect?; has it *destroyed* (emphasis added) unquestioning confidence of uprightness, or moral integrity, of honesty indecision, the elements of public honour?”

(Inquiry re The Honourable Mr. Justice Leo A. Landreville (1966) p.97)

As a result of the misconduct by Justice of the Peace Obokata, I find that public confidence in his ability to continue in office has been eroded but not lost. I am hopeful that this confidence can be restored with some guidance and a great deal of effort on the part of Justice of the Peace Obokata. I have further concluded that a lack of tolerance for this type of behavior can be demonstrated in this case through recommendations short of removal from office.

CONCLUSION

I find that Justice of the Peace Obokata has not become incapacitated or disabled from the due execution of his office by reason of conduct that is incompatible with the execution of the duties of his office. I do not recommend to the Lieutenant Governor in Council that Justice of the Peace Obokata be removed from office. I recommend that the Review Council implement a disposition under section 12 (3.3) of the Justices of the Peace Act. My recommendation is that the Review Council reprimand Justice of the Peace Obokata and suspend him without pay, but with benefits, for thirty days. It is further recommended that Justice of the Peace Obokata be required to take a course in gender equity issues as a condition of continuing to sit as a justice of the peace.

I further recommend given the manner in which Justice of the Peace Obokata conducted himself following the incident that he be compensated for all of his costs in connection with the Inquiry.

All of which is respectfully submitted.

Justice Cathy Mocha
COMMISSIONER

November 6, 2003