**Justices of the Peace Review Council**

**IN THE MATTER OF A HEARING UNDER SECTION 11.1 OF THE *JUSTICES OF THE PEACE ACT*, R.S.O. 1990, c. J.4,**

**as amended**

**Concerning a Complaint about the Conduct of**

**Justice of the Peace Richard Bisson**

**Before:** The Honourable Justice Lisa Cameron, Chair

Regional Senior Justice of the Peace Warren Ralph

Ms. Jenny Gumbs, Community Member

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

**DECISION ON DISPOSITION AND**

**COMPENSATION FOR LEGAL COSTS**

**FOLLOWING A FINDING OF JUDICIAL MISCONDUCT**

Ms. Marie Henein Mr. Jeffrey Root

Ms. Christine Mainville Counsel for His Worship

Presenting Counsel Richard Bisson

**DECISION ON DISPOSITION AND COMPENSATION FOR LEGAL COSTS**

**Part I: Overview of the Hearing Process**

1. Justice of the Peace Richard Bisson came before this Hearing Panel of the Justices of the Peace Review Council (JPRC) in the Spring of 2017. A Notice of Hearing was filed on April 3rd, 2017. (Exhibit 1 on the hearing.)
2. The hearing proceeded on July 28th, 2017, by way of Agreed Statement of Facts. (Exhibit 2 on the hearing and attached to these reasons as Appendix A.) The Agreed Statement of Facts sets out the judicial misconduct; both the facts and the judicial misconduct are admitted. Transcripts of the court appearances during which the misconduct took place were also filed. (Exhibits 3A and 3B on the hearing.)
3. After reviewing all of the materials filed, this Panel made a formal finding of judicial misconduct.
4. Presenting Counsel, Ms. Henein, and Mr. Root, counsel for His Worship, made submissions with respect to disposition. Through counsel, His Worship asked this Panel, in considering disposition, to take into account a history of good conduct and good character and to accept that the misconduct before the Panel is “absolutely out of character” for His Worship.
5. The hearing was adjourned from July 28th, 2017 to December 14th, 2017 to allow both counsel to prepare submissions on the issue of whether there should be production to the Panel of any prior complaints and to address other issues raised.
6. On December 14th, 2017, the Panel heard submissions regarding disclosure and production of any prior complaints. The Panel made a ruling that day ordering that the Registrar provide the Panel and counsel with a copy of any case summaries for complaints that were warranted under section 11(15) of the *Justices of the Peace Act*, R.S.O. 1990, C.J.4, [hereinafter *JPA*] restricting production to any matters that warranted a disposition under that section. This would not include any complaints that were dismissed. The Panel directed the Registrar to provide only case summaries as would have been provided in the JPRC Annual Report, which is a public document after it has been tabled in the Legislature.
7. The decision to overcome the a priori position of confidentiality of the complaint process was based on the Panel’s holding that where the justice of the peace has put his/her prior conduct in issue, the integrity of this process is only upheld if the Panel is making its decision with respect to disposition based on full and accurate information, including any previously upheld complaints and their dispositions. Case summaries for four prior complaint processes were produced that day. (Exhibit 6A to 6D on the hearing.)
8. His Worship requested and was granted an adjournment to file additional material with the Panel in light of the ruling. The Panel also informed counsel that in light of the case summaries that were filed, it would be seeking further submissions on disposition if counsel chose to make them. Presenting Counsel advised that their guidance to the Panel regarding disposition might change in light of the new information.
9. The Panel set a deadline of April 3, 2018 for any further submissions from counsel for His Worship, and of April 17th for Presenting Counsel.
10. On April 4, 2018, the Registrar contacted counsel for His Worship to see whether he had any further submissions, since none were received by the April 3, 2018 deadline. He responded that he had misunderstood the deadlines, he was still accumulating materials and he requested until April 16, 2018 to file the materials. The Panel considered the request, noting that Mr. Root only sought an extension after being contacted by the Registrar and he was seeking to file materials one day prior to the deadline for Presenting Counsel to file submissions. The Panel extended the deadline until April 11, 2018 for Mr. Root to file any submissions and materials upon which he sought to rely. On April 13, 2018, Mr. Root filed a “Submissions and Testimonial Brief”.
11. The hearing resumed on May 1st, 2018. The Panel heard further submissions from both counsel regarding disposition and His Worship’s request for costs. Mr. Root submitted that the Panel should order an apology and a suspension. The guidance provided by Presenting Counsel at that stage in relation to the appropriate disposition was that it would be appropriate for the Panel to consider a recommendation for removal from office in its deliberation on possible dispositions.
12. The Panel reserved its decision and the proceeding concluded with a decision to follow on disposition and on whether it will make a recommendation for compensation of legal costs incurred during the hearing process.

**Part II: Brief review of findings of misconduct and facts**

1. As set out in the Agreed Statement of Facts, the import of the allegations in the complaint before this Panel involved:

(i) a pattern of conduct on September 9, 2015 that was inappropriate and demonstrated incompetence;

(ii) a failure to ensure that defendants received a fair trial and were afforded due process;

(iii) a failure to perform the duties of office impartially, independently and with integrity by: failing to explain the court process to a self-represented defendant, responding to a defendant with combative, reprimanding and sarcastic comments; entering the fray; becoming argumentative; failing to provide an opportunity for parties to make submissions; failing to provide reasons for His Worship’s decision; the cumulative effect of His Worship’s interventions and comments gave rise to an overall appearance of unfairness in the trial and created the perception that His Worship was showing bias in favour of the police officer, and pre-judging the outcome of the case;

(iv) failing to conduct plea comprehension inquiries when defendants pled guilty in provincial offences proceedings, contrary to the law;

(v) failing to ensure that there were sufficient facts on the record to accept a guilty plea;

(vi) failing to provide an opportunity for defendants to make submissions on penalty prior to imposing a fine and/or to allow submissions on time to pay;

(vii) failing to demonstrate that the fundamental principles of justice were applied and failed in His Worship’s duty to ensure that justice could be seen to have been done; committing a pattern of legal errors that demonstrated a lack of competence in the law, a failure to properly apply the law and a lack of awareness or understanding of the law in the context of routine duties of a justice of the peace;

(viii) making inappropriate comments and exhibiting inappropriate demeanor by: being rude, discourteous, demeaning, impatient and sarcastic; demonstrating a lack of dignity and professionalism; making inappropriate and gratuitous comments to a female paralegal that appeared to demonstrate sexual innuendo; appearing to suggest that a party engage in dishonest behavior; mocking aspects of the justice system, including comparing the results in the justice system to the element of chance in a lottery, suggesting and/or giving rise to a perception that outcomes in the justice system are based on random luck rather than consideration of fact and law; making derogatory and insulting comments about lawyers, who are participants in the justice system.

[14] In the Agreed Statement of Facts, His Worship acknowledged that he “failed to meet the standard of conduct expected of a judicial officer” and “recognized that his actions were also contrary to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice”.* His Worship admitted that his “pattern of legal errors demonstrated a lack of competence in the law, a failure to properly apply the law, and a lack of awareness or understanding of the law, in the context of routine duties of a justice of the peace.” He agreed that his actions as set out in the Agreed Statement of Facts, individually and collectively, constituted judicial misconduct and warrant a disposition under section 11.1(10) of the *JPA.*

[15] A Hearing Panel of the Ontario Judicial Council (*Re: Douglas* (2006) O.J.C. paragraphs 8-9) provided a summary of the test for judicial misconduct which applies to both judges and justices of the peace:

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

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

[16] The Panel considered the test and the evidence before it and made a finding that each of the instances set out in paragraphs 7-13 of the Agreed Statement of Facts constituted judicial misconduct. There have been four prior complaints involving His Worship Bisson resulting in dispositions in 2009, 2010, 2011 and 2012. He has twice received in-person advice from a complaints committee of the JPRC, pursuant to section 11(15)(b) of the *JPA,* and twice been referred to meet with the Chief Justice, pursuant to section 11(15)d) of the *JPA*.

[17] The case summaries indicate that the conduct of His Worship that gave rise to those complaints displayed the following:

(i) Questionable legal knowledge;

(ii) Unfairness with respect to court processes, failing to take control of the court as required by his duties;

(iii) Haste in proceeding without due regard for the rights of defendants;

(iv) Rude, sarcastic, bombastic demeanour;

(v) Entering the fray, conducting himself like a prosecutor;

(vi) Failing to respect the rights of self-represented individuals;

(vii) Failing to appear impartial and objective in the discharge of his duties;

(viii) Using an obscenity in dealing with a complainant in an out of court incident;

(ix) Conducting himself in a manner that was inappropriate and unprofessional in an out of court incident.

[18] Over the course of two advice sessions and two meetings with the Chief Justice concerning the prior complaints:

(i) In 2009, His Worship variously confirmed that he had taken steps to correct his knowledge of the law, acknowledged his responsibility to manage court proceedings, undertook to exercise patience, and to seek clarification on points of law about which he might be uncertain;

(ii) In 2010, he confirmed his understanding that he should carry out his duties in a manner that upholds the high standards of conduct expected of justices of the peace of the Ontario Court of Justice;

(iii) In 2011, he expressed regret for being impatient, argumentative, and dismissive with a self-represented defendant, apologizing for his behavior and acknowledging that he has a responsibility to uphold the high standards of the Court, and said that he had been suffering from a medical condition at the time of the complaint; and

(iv) In 2012, he again acknowledged that his conduct was not at the level expected of a justice of the peace and expressed that personal circumstances had a bearing on his conduct, for which he apologized.

**Part III: Legislation and Legal Principles With Respect to Disposition**

[19] Section 11.1(1) of the *Justices of the Peace Act* states:

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:

1. warn the justice of the peace;

(b) reprimand the justice of the peace;

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

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

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

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

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

[20] Section 11.1(11) of the *JPA* states that the Panel “may adopt any combination of the dispositions set out in clauses (1)(a) to (f)”. A recommendation to the Attorney General that the justice of the peace be removed from office (under section 11.1(10)(g)) cannot be combined with any other disposition available under section 11.1(10).

[21] Pursuant to Section 11.2 of the *JPA*, removal from office, by order of the Lieutenant Governor in Council, may only be ordered if a complaint has been made to the Review Council and such a recommendation to the Attorney General has been made by the Hearing Panel on the grounds that the justice of the peace “has become incapacitated or disabled from the due execution of his or her office by reason of,

1. inability, because of a disability, to perform the essential duties of his or her office, if an order to accommodate the justice of the peace’s needs would not remedy the inability, or could not be made because it would impose undue hardship on the person responsible for meeting those needs, or was made but did not remedy the inability,
2. conduct that is incompatible with the due execution of his or her office, or
3. failure to perform the duties of his or her office.”

[22] A recommendation for removal from office is only possible if the Hearing Panel is satisfied that one of, or a combination of, the dispositions available in section 11.1(10)(a) to (f) is insufficient to “restore public confidence in the judge and in the administration of justice generally” (*Re: Baldwin* (2002) OJC).

1. In *Therrien v. Minister of Justice*, [2001] 2 S.C.R. 3 and *Moreau-Bérubé v. New Brunswick, (Judicial Council)*, 2002 1 S.C.R. 249, the Supreme Court of Canada concluded that the purpose of judicial misconduct proceedings is essentially remedial.
2. In the matter of *Re: Baldwin*, (OJC, 2002), the following principles were found to apply in the determination of an appropriate disposition:

(i) The Hearing Panel should first consider the least serious disposition and move sequentially to the most serious;

(ii) The disposition must restore the public confidence in the judicial officer; and,

(iii) The disposition must restore the public confidence in the administration of justice generally.

1. In *Therrien*, the Supreme Court of Canada addressed a number of jurisdictional issues relating to disciplinary proceedings involving a provincially appointed Quebec-based judge. The decision to revoke the judge’s commission was upheld. At paragraph 147 of the judgment, Justice Gonthier, for the court, referenced the importance to be attached to the maintenance of public confidence in the justice system:

[147] The public's invaluable confidence in its justice system, which every judge must strive to preserve, is at the very heart of this case. The issue of confidence governs every aspect of this case, and ultimately dictates the result. Thus, before making a recommendation that a judge be removed, the question to be asked is whether the conduct for which he or she is blamed is so manifestly and totally contrary to the impartiality, integrity and independence of the judiciary that the confidence of individuals appearing before the judge, or of the public in its justice system, would be undermined, rendering the judge incapable of performing the duties of his office (Friedland, *supra*, at pp. 80-81).

1. Similar sentiments were expressed on behalf of the court, by Justice Arbour in *Moreau-Bérubé*, a case involving the appeal of a decision by the Judicial Council of New Brunswick, recommending removal from the office of a provincial court judge because of statements she made in court while presiding over a sentencing hearing. In upholding the decision of the Judicial Council, Justice Arbour referenced the public’s high expectations of those that hold judicial office:

The comments of Judge Moreau-Bérubé, as well as her apology, are a matter of record. In deciding whether the comments created a reasonable apprehension of bias, the Council applied an objective test, and attempted to ascertain the degree of apprehension that might exist in an ordinary, reasonable person. The expertise to decide that difficult issue rests in the Council, a large collegial body composed primarily of judges of all levels of jurisdiction in the province, but also of non-judges whose input is important in formulating that judgment. The Judicial Council has been charged by statute to guard the integrity of the provincial judicial system in New Brunswick. In discharging its function, the Council must be acutely sensitive to the requirements of judicial independence, and it must ensure never to chill the expression of unpopular, honestly held views in the context of court proceedings. It must also be equally sensitive to the reasonable expectations of an informed dispassionate public that holders of judicial office will remain at all times worthy of trust, confidence and respect.

1. Many factors are relevant to the determination of an appropriate disposition*. Re: Chisvin* (OJC, 2012) paragraph 38 and *Re: Foulds* (JPRC, 2018) paragraph 34 provide helpful discussions of factors to consider. The factors referenced in *Re: Chisvin* include the following:

(a) Whether the misconduct was isolated in nature or reflected a pattern of conduct of like nature;

(b) The nature, extent and frequency of the acts of misconduct;

(c) Whether the misconduct occurred inside or outside of the courtroom;

(d) Whether the misconduct occurred in the course of the judicial officer’s official capacity or during the course of his/her private life;

(e) Whether the judicial officer acknowledged or recognized that the acts of misconduct had occurred;

(f) Whether the judicial officer had demonstrated an effort to change or modify his/her conduct;

(g) The length of service of the judicial officer;

(h) Whether there had been prior complaints of misconduct in relation to the judicial officer;

(i) The effect of the misconduct on the integrity of the justice system and respect for the judiciary; and,

(j) The extent to which the judicial officer exploited his/her position in order to satisfy his/her own personal desires.

1. The factors referenced in *Re: Foulds* include the following:

(a) Whether the Hearing Panel had found more than one incident of judicial misconduct to have occurred;

(b) Whether the misconduct was isolated in nature, or alternatively, had taken place over a period of time or constituted a pattern of conduct;

(c) The length of the justice of the peace’s time of service on the bench;

(d) Whether there were multiple complaints;

(e) Whether the misconduct took place outside the courtroom, or in the justice of the peace’s capacity as a private citizen;

(f) Whether the acts that were concluded to have constituted judicial misconduct were also the subject of criminal sanction;

(g) Whether there was an element of corruption to the judicial misconduct;

(h) Whether the justice of the peace had exploited his/her position for personal gain;

(i) The effect of the misconduct on the integrity of the judicial officer and respect for the judiciary at large;

(j) Whether the justice of the peace demonstrated an understanding of the seriousness of the misconduct;

(k) Whether the justice of the peace has demonstrated a willingness to address the cause of the misconduct, demonstrating that he/she is capable of rehabilitation;

(l) Whether the justice of the peace acknowledged the misconduct or otherwise demonstrated remorse;

(m) Whether there has been a previous finding of judicial misconduct.

**Part IV: Factors to be Considered in Disposition**

1. The Panel considers the following factors to be relevant to the determination of an appropriate disposition in this matter:

1. Pattern of conduct – although all within one court day, there are nine individual court cases underlying the finding of misconduct that show a sustained pattern throughout the day. There is a backdrop of similar types of behaviours over several years (prior complaints resulting in dispositions, Exhibits 6A through 6D on the hearing ) which is relevant because it informs our perspective now with respect to an appropriate disposition on this matter. The current conduct cannot be ascribed to be an aberration or out-of- character mistake.

2. The pattern of conduct reveals serious deficiencies in knowledge of court processes, trial procedures and conduct becoming of a judicial officer, all of which are directly tied to the core functions of a justice of the peace.

3. The behaviours constituting misconduct before this Panel all take place inside a courtroom.

4. All behaviours are related to official functions of a justice of the peace.

5. In the Agreed Statement of Facts, His Worship has acknowledged the improper behaviours which gave rise to the complaint that is the subject of this Hearing.

6. Mr. Root referred to His Worship’s health, the pressure on His Worship of dealing with his wife’s health, and to reference letters and testimonial letters filed at the hearing (Exhibit 7A and 7B on the hearing). Counsel submitted that His Worship took steps to receive professional counselling with regard to his ability to gain insight into his behaviour and what might or might not be affecting him.

The Panel finds that any efforts by His Worship to meaningfully change and improve have been limited, at least as concerns what is relevant to this proceeding. The counselling undertaken by His Worship, referred to in Tab 3 of Exhibit 7, is recent and does not satisfactorily address the issues of concern here. The counselling postdates the formal finding of misconduct on July 28th, 2017 even though the issues of concern about his conduct have been identified to His Worship as early as 2009 through prior complaints, in-person advice from complaints committees of the JPRC and meetings with the Chief Justice.

His Worship was well aware of his disciplinary history and had much time to reflect upon the high standard of conduct expected of a justice of the peace; yet, his view at this hearing on July 28, 2017 was that the conduct that led to this hearing was “absolutely out of character” and “…not a situation where that cumulative effect of behaviour that doesn’t warrant office has taken place.”

7. His Worship was appointed in 1993, has 25 years of service and commenced *per diem* service as of June 1st, 2017.

8. There are four previous complaints about His Worship’s conduct that warranted dispositions other than dismissals under section 11(15) of the *JPA* (Exhibits 6A through 6D on the hearing.)

9. The misconduct had an immediate and negative effect on the integrity of the justice system and respect for this judicial officer and the judiciary in general. It was conduct that clearly undermined public confidence in His Worship and the justice system.

10. The misconduct was not for personal advantage.

11. The misconduct was not subject to criminal sanctions.

12. The Panel is of the view that His Worship has not demonstrated any insight into or understanding of the seriousness of his misconduct given that it is, unfortunately, of a similar nature to previously-identified inappropriate conduct which he promised to end. Except for very recently, there is no evidence of any remedial or rehabilitative effort by His Worship that would reflect a sincere interest on his part to improve.

1. Presenting Counsel has provided guidance to the Panel that it may wish to consider the prior complaints in its determination of an appropriate disposition since the prior matters demonstrate that:

(i) there are similarities between the previous conduct and the misconduct before this Panel;

(ii) the misconduct that is the subject of the complaint in this hearing cannot be said to be the result of a momentary lapse of judgment or out of character;

(iii) His Worship has had previous, apparently unfruitful, opportunities to learn from deficiencies in his judicial conduct.

1. This Panel finds that the prior complaints/dispositions are relevant in our consideration of the appropriate disposition for this matter.
2. As indicated above, His Worship’s past conduct led to prior complaints to the JPRC that warranted dispositions beyond a dismissal of the complaint, and, that provided multiple opportunities for His Worship to reflect upon his conduct and to be mindful of the standard of conduct expected of a justice of the peace, both in relation to his demeanour and his competence to carry out his duties. During those prior complaint processes, His Worship confirmed his understanding of the high standards of conduct expected of a justice of the peace and that he would carry out his duties in that manner.
3. Mr. Root said in his submissions on May 1, 2018 that “it would be far less palatable to accept the suspension and an apology which he’s already given if he hadn’t taken the steps to seek professional help.” The issue for this Panel is not whether His Worship sought professional help; rather, we must consider, in all of the circumstances, what disposition will preserve and restore public confidence in the judiciary.
4. The Panel considered the Testimonial Brief submitted by counsel for His Worship (Exhibit 7A), consisting of medical reports for the period August 2015 through April 2018, 22 testimonial letters, and a letter from a counselling practitioner.
5. Counsel for His Worship submits that the medical report (Exhibit 7A), filed as part of the hearing, rationalizes His Worship being short-tempered and irritable on the date relevant to this complaint, and shows that he has sought help to try to deal with these personality issues.
6. The accompanying letter contained in Exhibit 7A from the professional counsellor acknowledges that His Worship attended one counselling session in February 2017 and 7 one-hour sessions between January 2018 and March 2018. The latter sessions were attended only after this Panel became aware of his prior disciplinary history. There is no indication that any counselling occurred between 2007 (the date of the first of four complaints indicated in hearing Exhibit 6) and 2015 (the date of the current complaint before this Panel).
7. The Panel notes that the counsellor indicates that His Worship reports being at “greater peace” with himself and experiencing an “increase in confidence” regarding his “capacity to perform [his] duties.”
8. After reviewing the letter from the counsellor, the Panel is not persuaded that His Worship’s intemperate conduct will not be repeated.
9. There is no evidence that His Worship improved his competence in the law or made any attempt to do so.
10. The prior complaints also raise the question of whether or not His Worship’s previous apologies and undertakings were sincere and whether or not the current misconduct is as a result of extraordinary personal circumstances.

[41] When the earlier complaints were made about His Worship’s conduct, His Worship relied on his personal circumstances to explain his inappropriate conduct. He does so again in his letter of apology, dated July 25, 2017, filed as Exhibit 4 on the hearing. His previous acknowledgments, in prior complaints processes, of inappropriate conduct have not led to change with respect to his conduct in exercising his judicial duties. The Panel is not persuaded that the medical issues or personal circumstances are the cause of the pervasive conduct that is the subject of this hearing.

[42] The Panel does not have confidence in His Worship’s future capacity to fulfill his duties.

[43] Presenting Counsel has suggested that the Panel may wish to consider either a strong combination of dispositions in *JPA* section 11.1(10)(a) to (f) or a recommendation to the Attorney General that His Worship be removed from office.

[44] Counsel for His Worship is recommending a combination of dispositions and not a recommendation for removal from office.

**Part V: Disposition**

[45] The *Principles of Judicial Office for Justices of the Peace of the Ontario Court of Justice* (2007) states in the preamble that the “justices of the peace of the Ontario Court of Justice recognize their duty to establish, maintain, encourage and uphold high standards of personal conduct and professionalism so as to preserve the independence and integrity of their judicial office and to preserve the faith and trust that society places in the men and women who have agreed to accept the responsibilities of judicial office.”

[46] His Worship Bisson does not appear to understand the expectations and responsibilities of a judicial officer or is unwilling to accept them, as demonstrated by his misconduct on September 9, 2015 that is the subject of this hearing.

[47] Many of the behaviours before this Panel individually are serious; cumulatively they are very serious, and relate to the core functions of his office. They are behaviours that would be obvious to anyone as unacceptable.

[48] His Worship filed numerous character letters and reference letters. Counsel for His Worship submitted that the Panel should consider His Worship’s “credits in the bank for good conduct”. The Panel accepts that there may be and may have been days when His Worship does not engage in judicial misconduct in or outside of the courtroom. That does not conclude the matter. The evidence before this Panel demonstrates a departure from the positive “character” traits described in the testimonials. [49] His Worship’s previous acknowledgments, prior dispositions and previously stated commitments to improvement have apparently not yielded a change in his behaviour. Serious measures were taken earlier by complaints committees of the JPRC when His Worship failed to uphold the standards expected of him. He was given a reasonable opportunity to learn and change. His Worship had the benefit of two advice meetings and two meetings with the Chief Justice to make him well aware of the standard of conduct expected of a justice of the peace. Despite those remedial efforts, his history demonstrates that he is not a justice of the peace who will or can permanently change his conduct. This is further evidenced by the fact that despite his prior history with the Review Council, His Worship sees the conduct that led to this complaint as “absolutely out of character”. He has not shown himself to be someone who sincerely reflects upon the perceptions created by his conduct or its impact on the public.

[50] In the Panel’s view, His Worship Bisson is unwilling or unable to change his ways. His Worship has not upheld the standard of conduct expected of a judicial officer necessary to uphold public confidence in him, the judiciary and the justice system.

[51] In the circumstances, we are not satisfied that His Worship Bisson will not repeat this sort of conduct. This Panel has determined that no disposition or combination of dispositions short of removal from office would restore public confidence. To preserve and restore confidence in the judiciary in general, there is no alternative other than to recommend to the Attorney General that His Worship Bisson be removed from office.

[52] The incidents of misconduct before this Panel are seriously contrary to the impartiality, integrity and independence of the judiciary such that the confidence of individuals appearing before His Worship on September 9, 2015 would have been eroded beyond reclamation, and the confidence of the public in its judicial officers and the administration of justice has been badly damaged.

[53] The Panel finds that His Worship has become incapacitated or disabled from the due execution of his office by reason of conduct that is incompatible with the due execution of his office.

**Part VI: Request for Compensation**

[54] His Worship Bisson requests compensation in the amount of $34,769.54, representing the full amount of his counsel’s Bill of Costs (Exhibit 7C on the hearing), being $30,055.00 in fees, $3,907.15 in HST, $714.50 in disbursements and $92.89 in HST on disbursements. The Panel notes that travel time for counsel was billed at the full counsel rate.

[55] Pursuant to section 11.1(17) of the *JPA*, this Panel may recommend that His Worship be compensated for the costs of his legal services incurred in connection with the hearing. Any recommendation is at the discretion of the Panel. The fact of a finding of misconduct does not, by itself, preclude compensation.

[56] In *Errol Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 held that there is no presumption against compensation where a justice of the peace is found to have committed misconduct[[1]](#footnote-1). The Court rejected such a presumption because of the public interest nature of judicial misconduct proceedings and the needs of an independent judiciary. The purpose of judicial misconduct proceedings is to restore the public’s confidence in the judiciary, not to punish the individual judge or justice[[2]](#footnote-2).

[57] Guidelines as set out in *Massiah* for considering requests for compensation. In that case, the Divisional Court set out a premise to guide adjudicators:

[56] For these reasons, adjudicative bodies, dealing with complaints against judicial office holders, ought to start from the premise that it is always in the best interests of the administration of justice, to ensure that persons, who are subject to such complaints, have the benefit of counsel. Consequently, the costs of ensuring a fair, full and complete process, ought usually to be borne by the public purse, because of the interests of the public, first and foremost, that are being advanced and maintained through the complaints process. Again, this reflects the public interest nature of the process.

[57] All of that is not to say that, in every case where a judicial officer holder is subject to a successful complaint, that judicial officer holder can expect that his or her legal expenses will be compensated. It is a decision that must be made separately in each case and only after a consideration of the particular circumstances of the case viewed in the context of the objective of the process. Chief among those 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. In contrast, 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. Further, misconduct where there are multiple instances may be less deserving of a compensation recommendation than would a single instance of misconduct. Similarly, repeated instances of misconduct may be less deserving of a compensation recommendation than one isolated incident.

[58] However, in *Massiah[[3]](#footnote-3)* the Court also notes that: “It should be clear that just because a panel makes a recommendation for compensation for legal expenses does not carry with it any requirement that the compensation cover whatever legal expenses were incurred and at whatever level. It is open to a hearing panel to include in its recommendation for compensation that such compensation should not include the costs associated with steps taken that, in the view of the hearing panel, were unmeritorious or unnecessary.”

[59] The factors provided by the Divisional Court in the *Massiah* case were applied in *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). They include:

1. 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.
2. 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.
3. Whether the misconduct consisted of a single instance or multiple instances. Where there are multiple instances, the judge may be less deserving of a compensation recommendation than if there was a single instance of misconduct.
4. Whether there had been prior findings of misconduct. Where there has been a previous finding of misconduct, the judge may be less deserving of a compensation recommendation.
5. The conduct of the hearing. Compensation should not include the costs associated with steps which the decision-maker views as unmeritorious or unnecessary.

[60] The misconduct in the case before us is directly related to the judicial function and is therefore deserving of a compensation order. It is serious and is misconduct that any person ought to have known was inappropriate: such conduct is less deserving of a compensation decision. There were multiple instances of misconduct throughout the day that led to the complaint before this Panel, making this request less deserving of a compensation recommendation than if there were a single instance of misconduct. There are no prior findings of misconduct.

[61] With respect to the merit of some legal services provided, the Panel is of the view that better preparation on the part of counsel for His Worship could have avoided at least one of the hearing dates. Counsel would have been aware that on December 14th, 2017 one possible outcome was that prior complaint history could be ruled admissible and all preparation should have been completed accordingly to make full submissions on that date. The Bill of Costs indicates that Mr. Root has charged His Worship $3,200.00 for attending the hearing on the third day, which was May 1, 2018. That attendance, and the additional costs including renting hearing space, paying a court reporter, and requiring Presenting Counsel to re-attend, could have been avoided.

[62] It is the view of the Panel that partial compensation is appropriate in light of the previous history and the severity of the misconduct. We recommend compensation in the total amount of $20,000.00 inclusive of fees, disbursements and HST.

Dated at Toronto this 10th day of July, 2018

**HEARING PANEL:**

The Honourable Justice Lisa Cameron, Chair

Regional Senior Justice of the Peace Warren Ralph

Ms. Jenny Gumbs, Community Member

**APPENDIX “A”**

**JUSTICES OF THE PEACE REVIEW COUNCIL**

**IN THE MATTER OF** a complaint respecting

Justice of the Peace Richard Bisson

Justice of the Peace in the

West Region

**AGREED STATEMENT OF FACTS**

His Worship Richard Bisson, and Counsel for His Worship, Mr. Jeffrey Root, and Presenting Counsel, Ms. Marie Henein, agree as provided herein.

1. The *Principles of Judicial Office of 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 people 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. A justice of the peace’s courtroom conduct symbolizes the law in action and it is the manner in which a justice of the peace conducts himself that promotes and preserves public confidence in the integrity of the judiciary.
4. The public expects that justices of the peace must be and must give the appearance of being an example of impartiality, independence and integrity.
5. Justice of the Peace Richard Bisson, the subject of the complaints detailed below, is now and was at all times referred to in this document, a justice of the peace of the Ontario Court of Justice. His Worship Bisson has served in that capacity since his appointment in 1993.

***Admissions***

1. Justice of the Peace Bisson admits to the facts set out in the transcripts and audio recordings of the court proceedings that took place on September 9, 2015 and that are summarized below.
2. Specifically, he admits that while presiding over the case of *R. v. Gregory Howe* on September 9, 2015, he failed to ensure the defendant received a fair trial and was afforded due process:
   1. His Worship failed to explain the court process to the defendant Mr. Howe, a self-represented litigant. The defendant did not understand the process and several times expressed his inexperience while asking for help as to what he should be doing. His Worship responded with combative, reprimanding and sarcastic comments.
   2. As Mr. Howe was conducting a cross-examination, His Worship entered the fray, frequently interrupting Mr. Howe’s efforts and objecting to how he was proceeding without providing a calm and helpful explanation of this stage in the process.
   3. Over the course of the proceedings, His Worship became increasingly combative and argumentative with Mr. Howe.
   4. His Worship did not afford either of the parties the opportunity to make submissions before finding Mr. Howe guilty, and failed to provide reasons for his finding of guilt.
   5. The cumulative effect of His Worship’s interventions and comments gave rise to an overall appearance of unfairness in the trial and created the perception that His Worship was biased in favour of the police officer, and had pre-judged the outcome of the case.

His Worship acknowledges that he thereby failed to meet the standard of conduct expected of a judicial officer. He recognizes that his actions were also contrary to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice.*

1. His Worship admits that he failed to conduct plea comprehension inquiries when defendants pled guilty in provincial offence proceedings, contrary to the law set out in the case of *R. v. Shields,* [2002] O.J. No. 4876 (C.J.). In particular, His Worship failed to ensure that defendants entering guilty pleas understood their right to have a trial, the charges, and the process. His Worship did not fulfil this obligation in the following cases:
   1. On September 9, 2015, while presiding over the case of *R. v. Ivan Heeg;*
   2. On September 9, 2015, while presiding over the case of *R. v. Cheryl Rate;*
   3. On September 9, 2015, while presiding over the case of *R. v. Jason Hague*; and
   4. On September 9, 2015, while presiding over the case of *R. v. Stanislav Urge*.

His Worship recognizes that he thereby failed to meet the standard of conduct expected of a judicial officer. His actions were also contrary to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice.*

1. His Worship admits that he failed to ensure a sufficient factual record before accepting guilty pleas. In the following instances, His Worship accepted guilty pleas from defendants without hearing any recitation of the facts prior to entering a conviction:
   1. On September 9, 2015, while presiding over the case of *R. v. Ivan Heeg;*
   2. On September 9, 2015, while presiding over the case of *R. v. Cheryl Rate;*
   3. On September 9, 2015, while presiding over the case of *R. v. Jason Hague*; and
   4. On September 9, 2015, while presiding over the case of *R. v. Stanislav Urge*.

His Worship acknowledges that he thereby failed to meet the standard of conduct expected of a judicial officer. His actions were also contrary to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice.*

1. His Worship admits that he failed to provide an opportunity for defendants to make submissions on penalty prior to imposing a fine in the following instances:
   1. On September 9, 2015, in the case of *R v. Gregory Howe*, His Worship found the defendant guilty of an offence under s. 128 of the *Highway Traffic Act*. He then proceeded to impose a fine of $86.25 (plus $20 in court costs) without hearing submissions from either party with respect to penalty. When the defendant requested “the longest possible time” to pay, His Worship gave him only fifteen days without hearing the defendant’s submissions on why additional time was needed.
   2. On September 9, 2015, while presiding over the case of *R. v. Yiping Sun*, His Worship found the defendant guilty of an offence under s. 74(1)(a) of the *Highway Traffic Act*. His Worship then asked prosecution counsel whether she had any submissions with respect to penalty. Prosecution counsel asked that “the set fine as laid” be imposed which amounted to $85 (plus $10 in court costs, and a $15 surcharge). His Worship accepted prosecution counsel’s submission without hearing from the defendant. The defendant then asked of her own accord whether the fine could be reduced. His Worship declined the defendant’s request without hearing her submissions on why the fine should be reduced.

His Worship acknowledges that he thereby failed to meet the standard of conduct expected of a judicial officer. His actions were also contrary to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice.*

1. His Worship acknowledges that his failure to conduct proper plea inquiries, to show the facts upon which he made findings of fact, and to show that he applied and interpreted the law, demonstrated a failure to respect the procedural rights of the defendants. These also led to a failure to demonstrate that the fundamental principles of the justice system had been applied. In doing so, Justice of the Peace Bisson also failed in his duty to ensure that justice could be seen to have been done. His Worship recognizes that justices of the peace have a duty to maintain professional competence in the law and a duty to follow the law in order to discharge the duties of the judicial office.
2. Justice of the Peace Bisson admits that the above pattern of legal errors demonstrates a lack of competence in the law, a failure to properly apply the law, and a lack of awareness or understanding of the law, in the context of routine duties of a justice of the peace.
3. His Worship further admits that on September 9, 2015, while presiding in the courtroom, he made inappropriate comments and exhibited an inappropriate demeanour in the conduct of his duties by:
   1. Being rude, discourteous, demeaning, impatient and sarcastic;
   2. Demonstrating a lack of dignity and professionalism;
   3. Making inappropriate and gratuitous comments to a female paralegal when addressing the matter of *R. v. Vadim Kioroglo*, including a comment that appeared to demonstrate sexual innuendo;
   4. Appearing to suggest that a party engage in dishonest behaviour by encouraging her to tell his son that the fine was higher than the actual amount imposed and then putting the difference in his pocket. Specifically, in the matter of *R. v. Ivan Heeg*, His Worship said the following to the defendant’s mother (who entered a plea of guilt on his behalf): “once you receive that yellow piece of paper go to the front counter and you pay it there and when you get home you tell your son that the fine was $150, you put $50 in your pocket.” You continued, “I won’t tell him, Ma’am, I won’t tell him”;
   5. Mocking aspects of the justice system, the results of which he compared to the element of chance in a lottery, suggesting and/or giving rise to a perception that outcomes in the justice system are based on random luck rather than consideration of fact and law. Specifically, in the matter of *R. v. Brendan Horvath*, His Worship withdrew the charge against the defendant at the prosecution’s request after an officer failed to attend court. His Worship then told the defendant that today was “lotto” day, that he “got lucky today” and should “[g]o buy a lotto ticket”;
   6. Making derogatory and insulting comments about lawyers, who are participants in the justice system, which could be perceived as suggesting that lawyers are dishonest. Specifically, in the matter of *R v. Vikramjit Lakhana*, the defendant told His Worship that he had gone to some lawyers in order to retain one, but “they were very expensive.” In response, His Worship stated, “Lawyers are expensive, really?” Later in the exchange (during which His Worship expressed concerns about scheduling difficulties should a lawyer be retained), His Worship stated, “You said they are very expensive that means … they have to keep busy, right.”

His Worship acknowledges that he thereby failed to meet the standard of conduct expected of a judicial officer. His actions were also contrary to the *Principles of Judicial Office of Justices of the Peace of the Ontario Court of Justice.*

1. His Worship agrees that the actions set out above, individually and collectively, constitute judicial misconduct and warrant a disposition(s) under section 11.1(10) of the *Justices of the Peace Act*.
2. His Worship Bisson agrees that a disposition(s) ordered by the Justices of the Peace Review Council must be sufficient to restore and preserve the dignity and integrity of the judicial position. The disposition(s) should also seek to restore public confidence in His Worship Bisson’s integrity and ability to carry out his duties as a justice of the peace.
3. His Worship agrees that he will not repeat such conduct in the future, mindful of the potential harm that such conduct poses to public confidence in the integrity and impartiality of the judiciary and to the administration of justice

Original Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: July 17, 2017

Justice of the Peace Richard Bisson

Original Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: July 18, 2017

Mr. Jeffrey Root (Counsel for Justice of the Peace Bisson)

Original Signed \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: July 18, 2017

Marie Henein (Presenting Counsel)

1. *Errol Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 paras. 49-51 [↑](#footnote-ref-1)
2. *Errol Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 para. 35 [↑](#footnote-ref-2)
3. *Errol Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 para. 60 [↑](#footnote-ref-3)