

**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 Errol Massiah**

Before: Justice of the Peace Michael Cuthbertson
Ms. Leonore Foster, Community Member

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

**DECISION ON LEAVE TO BRING A MOTION TO ADMIT
FRESH EVIDENCE**

Counsel:

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Presenting Counsel

Counsel for Mr. Errol Massiah

Decision on Leave to Bring a Motion to Admit Fresh Evidence

BACKGROUND

- 1) On March 30, 2017, this Hearing Panel, released our *Decision on a Motion for Disclosure of Appointment Letters, A Motion Asserting Bias or Reasonable Apprehension of Bias, Conflict of Interest and Breach of Procedures by Presenting Counsel; and, Notice of Intention to Bring a Motion Seeking a Re-Opening of the Findings of Liability and Penalty*. In that decision, we directed Mr. Massiah to file no more Motions without seeking our leave, to avoid an abuse of this tribunal's process.
- 2) On April 19, 2017, Mr. Massiah filed a motion seeking leave to admit fresh evidence.
- 3) Mr. Massiah relies on *Re Lovering and Minister of Highways, [1965] 2 O.R. 721-723*, to suggest that we hear new evidence. In that matter, the Ontario Municipal Board (OMB), upon being ordered by a reviewing court to reconsider the issue, declined to hear fresh evidence and relied solely on that presented at the original hearing. The OMB was then ordered again to re-hear the matter but with the inclusion of relevant fresh evidence from either or both parties.
- 4) The *Lovering* decision is distinguishable from the matter before us, as we invited both parties to file written submissions in support of their positions for our reconsideration of the compensation of costs issue. We placed no limits on what the parties could file, other than the number of pages to be filed. Both parties have now filed their submissions and we are in the process of fully considering them.
- 5) In addition to the *Lovering* decision, we have reviewed the documents Mr. Massiah filed with this motion and are of the view that this is yet another attempt to re-litigate or newly litigate matters from the original hearing. Mr. Massiah wishes to further argue the issues surrounding the 'complainant' and whether there is a valid "complaint". We decided the facts and law on this issue during the hearing. Neither the reviewing Divisional Court nor the Ontario Court of Appeal took issue with our decision surrounding the 'complainant' and the legality of the "complaint". The Divisional Court, in *Massiah v. Justices of the Peace Review Council*, 2014 ONSC 3415 and in *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191, has now informed Mr. Massiah twice that under

section 10.2(1) “any” person may make a complaint about the conduct of a justice of the peace.

- 6) Mr. Massiah now attempts to categorize the same matter as relevant to the compensation of costs issue. In our view, there is no basis to support his position; rather it is an attempt to further litigate the issue.
- 7) We have twice now, in our decision of March 30, 2017, noted above, as well as in our *Decision on Jurisdiction in Relation to a Notice of Constitutional Question* of March 6, 2017, carefully and thoroughly informed Mr. Massiah of our very limited jurisdiction in this matter. As we stated, our mandate is set out in para 62 of *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 691. We will not deviate from that mandate.

DECISION

- 8) Therefore, leave to bring a motion to admit fresh evidence is denied.

Dated: May 10, 2017

Hearing Panel: Justice of the Peace Michael Cuthbertson

Ms. Leonore Foster, Community Member