**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**

**Response to Mr. Guiste’s Emails to the Registrar Seeking Adjudication by the Hearing Panel**

**Counsel:**

Ms. Marie Henein Mr. Ernest J. Guiste

Mr. Matthew Gourlay E. J. Guiste Professional Corporation

Henein Hutchison, LLP

Presenting Counsel Counsel for Mr. Errol Massiah

**Response to Mr. Guiste’s Emails to the Registrar Seeking Adjudication by the Hearing Panel**

**BACKGROUND**

1. On March 6, 2017, this Hearing Panel released our *Decision on Jurisdiction in Relation to a Notice of Constitutional Question,* regarding Motions brought by Mr. Massiah. In that decision, we noted that our jurisdiction is very narrow, based on the Divisional Court ruling in *Massiah v. Justices of the Peace Review Council,* 2016 ONSC 6191. We also advised Mr. Massiah that we would not condone any collateral attacks on the rulings of the Divisional Court and the Court of Appeal through an attempt to re-litigate the matters which were before those courts.
2. On March 8, 2017, just two days after the release of our decision, we were advised by the Registrar of the Justices of the Peace Review Council (JPRC) that Mr. Massiah had filed two new motions. In its decision on those two motions, issued on March 30, 2017, the Panel ordered that:

d. “To avoid an abuse of process, Mr. Massiah is to file no more motions without leave from this Hearing Panel.”

1. Mr. Massiah’s written submissions on compensation were due on March 24, 2017. Mr. Massiah filed those submissions accordingly. Presenting Counsel was then to have 30 days to respond to those submissions with a filing of their submissions by April 24, 2017.
2. On April 19, 2017, five days (three business days) before Presenting Counsel’s submissions were to be filed, Mr. Massiah filed a new motion, seeking leave to bring it.
3. It is our understanding that late in the afternoon on April 19, 2017, Mr. Massiah’s co-counsel were copied on an email from Mr. Gourlay to the Registrar requesting that the Panel extend the time to file their submissions by one week. Mr. Gourlay wrote:

We are currently preparing Presenting Counsel’s reply submissions. Having just received another voluminous motion record from Mr. Guiste, we will require some time to review it and determine what if any response is required.

In light of this development, we would like to ask the Panel if they would grant us an additional week to file our submissions on the compensation issue. If the Panel is content with this, we would file on or before May 1.

1. No concern or objection was communicated by Mr. Guiste or Mr. House to the Registrar on that afternoon. On April 20, 2017, at 10:45 a.m., the Registrar communicated the Panel’s decision to grant the one-week extension of time for Presenting Counsel to file submissions on compensation.
2. Presenting Counsel’s request for an additional week to file their submissions resulted from the filing of Mr. Massiah’s motion on April 19, 2017, five days before the original date for Presenting Counsel to file their submissions. In our view, the request by Presenting Counsel to have an opportunity to review the new motion, and determine what, if any, response is required was reasonable.
3. As a result, the Hearing Panel considered the request to grant the extension of one week until May 1, 2017, for Presenting Counsel to file submissions on compensation to be fair and reasonable.
4. On April 20, 2017, Mr. Guiste sent an email to the Registrar about the request for an extension of time. He wrote:

It was our hope that our client would be given a fair opportunity to respond to Presenting Counsel's request. There is a troubling pattern here. When we request any indulgence on the part of our client it is more often than not denied.

He set out examples, including previous motions by Mr. Massiah that were found by the Panel to raise issues outside of its legal authority to address. He asked that the Registrar “convey our grievance to the Hearing Panel for their adjudication.”

1. In a Motion Seeking Leave to Respond on the Panel’s Inquiry re Mr. House’s Letter and Seeking Leave to Reply to Presenting Counsel’s Submissions, Mr. Guiste provided to the Panel a copy of an email he sent to the Registrar on April 27, 2017, in which he said “in your capacity as the intermediary between the parties and their counsel and the Hearing Panel, I beg you to bring the following concerns to the Hearing Panel”. He then set out his arguments as to why “we are entitled to a right to reply” and on the role of Presenting Counsel.

**DECISION**

1. In our decision of March 30, 2017, we took a step to try to avoid an abuse of process by Mr. Massiah and/or his counsel. As indicated above, we ordered: “To avoid an abuse of process, Mr. Massiah is to file no more motions without leave from this Hearing Panel.”
2. This Panel does not condone Mr. Guiste’s efforts to circumvent the Panel’s order by sending requests for adjudication by email through the Registrar. We decline to render decisions based upon the email requests for adjudication sent to the Registrar by Mr. Guiste after that decision.

Dated: May 10, 2017

Hearing Panel: Justice of the Peace Michael Cuthbertson

Ms. Leonore Foster, Community Member