

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 Anna Gibbon**

Before:

Justice Timothy R. Lipson, Chair
Ontario Court of Justice

Justice of the Peace Holly Charyna,
Ontario Court of Justice

John Tzanis,
Community Member

**REASONS FOR DECISION ON REQUEST FOR A RECOMMENDATION FOR
COMPENSATION FOR LEGAL COSTS**

Counsel:

Linda Rothstein and Alysha Shore, Presenting Counsel

Eugene J. Bhattacharya and Mary C. Waters Rodriguez, Counsel for Her Worship Anna
Gibbon

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INTRODUCTION

[1] A complaint to the Justices of the Peace Review Council, which was received on January 13, 2020, resulted in a complaints committee of the Council directing that a formal hearing be held pursuant to s. 11.1 of the *Justices of the Peace Act*, R.S.O. 1990, c. J. 4 (“the *JPA*”), concerning the conduct of Justice of the Peace Anna Gibbon. The complaint related to HW Gibbon’s alleged involvement in the prosecution of her son for an offence under the *Highway Traffic Act*.

[2] An initial set-date appearance took place on January 27, 2021 at which time presenting counsel filed a Notice of Hearing dated December 21, 2020 setting out the allegations that were ordered to a hearing by the complaints committee of the JPRC.

[3] On April 28, 2021, the hearing panel heard a motion by presenting counsel to withdraw certain allegations in the Notice of Hearing. This motion was granted in a decision of the same date and an Amended Notice of Hearing was filed.

[4] The hearing panel heard evidence in relation to the complaint on June 14-16, 18, and July 5-6, 2021. Oral submissions on the issue of whether Justice of the Peace Gibbon

had engaged in judicial misconduct were heard by the panel on October 1 and November 12, 2021.

[5] In written reasons delivered on February 7, 2022, the hearing panel unanimously concluded that Justice of the Peace Gibbon committed judicial misconduct in relation to the prosecution of her son on a *Highway Traffic Act* charge. At para. 185 of the Reasons for Decision, we summarized the findings of judicial misconduct as follows:

HW Gibbon committed numerous ethical lapses, commencing with her decision to personally file the Certificate of Offence requesting a trial on behalf of her son, and continuing with her decision to personally file with the prosecutor's office a disclosure request on his behalf, followed by her repeated calls asking about the readiness of disclosure. The pattern of unethical conduct included Her Worship's call to the prosecutor to discuss her son's case, followed by the dinner invitation she extended on the morning of her son's trial to the out-of-town justice of the peace who was presiding in conflict court that day. The inappropriateness of her conduct was significantly compounded by her angry exchange with the court supervisor and RSJP Caron – including her demand that court staff be disciplined and that the charge against her son be dropped. Several months after her son was convicted of the charge, HW Gibbon went on to have an ill-advised conversation with a court clerk about the perceived unfairness of the court proceeding against him. Her Worship's actions clearly meet the high threshold required to establish judicial misconduct and warrant the imposition of a disposition or dispositions under s. 11.1(10) of the *Justices of the Peace Act*.

[6] Having made these findings of misconduct, the hearing panel heard oral submissions on the issue of disposition on April 6 and May 24, 2022.

[7] In reasons released on August 25, 2022, a majority of the hearing panel, Justice Lipson and community member John Tzanis, concluded that only a recommendation to

the Attorney General that Justice of the Peace Gibbon be removed from office was capable of restoring public confidence in the administration of justice.

[8] In dissenting reasons, Justice of the Peace Charyna expressed the view that the imposition of a combination of seven dispositions under s. 11.1(10) – including a reprimand, a 30-day suspension without pay, education, mentoring and participating in a healing circle – would be capable of achieving the overarching objective of restoring public confidence in HW Gibbon and in the administration of justice generally.

[9] Counsel for Justice of the Peace Gibbon has submitted a request pursuant to s. 11.1(17) of the *JPA* for a recommendation to the Attorney General that she be compensated for the cost of legal services incurred in connection with the hearing. Section 11.1(18) of the *JPA* provides that the amount of compensation recommended under s. 11.1(17) “shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.”

[10] In submissions received by the panel on September 8, 2022, counsel for HW Gibbon has requested that she be compensated in the amount of \$108,742.50 for legal fees incurred in the hearing process, plus disbursements and HST, for a total amount of \$124,374.54. The legal services were set out in a detailed statement of account filed as an appendix to the submissions.

[11] Presenting counsel filed a letter dated September 12, 2022 advising that counsel for HW Gibbon’s submissions accurately describe the relevant sections of the JPRC Procedures and the applicable considerations with respect to a recommendation for compensation for legal costs following a hearing that has resulted in a recommendation

for removal from office. In addition, presenting counsel observed that the hours and rates claimed by HW Gibbon are reasonable and appropriate, as are the items and amounts claimed in respect of disbursements.

RELEVANT LEGAL PRINCIPLES

[12] Section 11.1(17) of the *JPA* provides that a hearing panel shall consider whether a justice of the peace should be compensated for all or part of the cost of legal services incurred with all the steps taken in relation to a hearing of a complaint. Section 11.1(17.1) states that if a hearing panel is of the opinion that the justice of the peace should be compensated, it shall make a recommendation to that effect, indicating the amount of compensation.

[13] We note that pursuant to an amendment to the *JPA* in the *Smarter and Stronger Justice Act, 2020*, S.O. 2020, c. 11, if a panel makes a recommendation for removal from office in relation to a complaint received on or after July 8, 2020, then compensation shall not be recommended under s. 11.1(17.1): *JPA*, s. 11.1(17.2). This amendment is reflected in r. 20.6 of the Procedures Document of the JPRC, which states:

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.

[14] In this case, the complaint was received by the JPRC on January 13, 2020, and therefore pre-dates the legislative change precluding a hearing panel from recommending compensation for legal costs where a recommendation for removal from office is made.

[15] In *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191, the Divisional Court considered the question of compensation in a situation where the hearing panel recommended removal from office. At para. 56, Nordheimer J. (as he then was) held that hearing panels ought to start from the presumption that it is always in the best interests of the administration of justice to ensure that members of the judiciary who are the subject of complaints should have the benefit of counsel. Justice Nordheimer explained, at para. 56:

[T]he costs of ensuring a fair, full and complete process, ought usually to be borne by the public purse, because it is the interests of the public, first and foremost, that are being advanced and maintained through the complaint process. Again, this reflects the public interest nature of the process.

This presumption and its rationale are incorporated in r. 20.4 of the JPRC's Procedures.

[16] At para. 57, Nordheimer J. acknowledged that judicial officers found to have engaged in judicial misconduct cannot expect their legal expenses to be compensated in every case. In reaching a compensation decision, a hearing panel is required to consider the following circumstances, as described at para. 57:

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.

[17] As further explained in *Massiah*, at para. 60, it is open to a hearing panel to include in its recommendation for compensation that such compensation should not include costs associated with steps in the hearing that were unmeritorious or unnecessary.

[18] The circumstances outlined above are reflected in r. 20.5 of the JPRC's Procedures Document, along with two additional factors: whether there have been prior findings of misconduct against the justice of the peace, and the conduct of the hearing.

ANALYSIS

[19] As directed in *Massiah*, and recognizing that the complaint in this case was made to the JPRC prior to the amendment to the *JPA* discussed above, we proceed from the presumption that there should be a recommendation for compensation for payment of the legal costs incurred.

[20] In our Decision on Disposition, there was unanimous agreement that the misconduct engaged in by HW Gibbon was serious and that there were many aggravating factors and few mitigating factors (Majority Reasons, at paras. 40-99; Dissenting Reasons, at para. 123).

[21] In summary, we found that the misconduct was serious and took place over an extended duration; was inextricably linked to HW Gibbon's role as a justice of the peace; revealed a concerning lack of understanding of the need for a clear and strict demarcation between the public and private life of a judicial officer; negatively impacted the integrity of

and respect for the judiciary; placed multiple justice system participants in ethically challenging positions; and was motivated by HW Gibbon's personal desire to assist her son with his legal proceeding. In addition, we observed that there was no evidence to suggest that HW Gibbon had taken steps to change or modify her behaviour, nor had she shown genuine remorse for or full insight into her misconduct. We further concluded that the adverse credibility findings against Her Worship were an aggravating factor on disposition.

[22] While these factors would tend to militate against a recommendation for full compensation for legal costs, we place importance on the consideration that the assistance of counsel for Her Worship was crucial in ensuring that the hearing was conducted efficiently and effectively. HW Gibbon's lead counsel, Mr. Eugene Bhattacharya, is a senior and experienced lawyer who has acted in past JPRC hearings. His co-counsel, Mary C. Waters Rodriguez, also has significant prior experience assisting with matters before the JPRC. The hourly rate that is being claimed in the compensation request of \$450 per hour and \$225 per hour, respectively, does not exceed the maximum rate normally paid by the Government of Ontario for similar services, in accordance with s. 11.1(18) of the *JPA*.

[23] In the statement of account submitted in support of the compensation request, the time indicated for the legal services is modest and reasonable. We agree with counsel for HW Gibbon and presenting counsel that the total quantity of hours expended by counsel is proportionate to the complexity of the case.

[24] It is also worth noting that in her seven years of service prior to the complaints, there were no findings of misconduct against HW Gibbon, which was a mitigating factor for both the majority and the dissent on disposition (Majority Reasons, at para. 89; Dissenting Reasons, at para. 123). The absence of prior findings of misconduct is a consideration that favours a recommendation for compensation.

[25] Having started with the presumption that HW Gibbon should receive full compensation for her legal fees for the reasons expressed in *Massiah*, we conclude that an award of partial compensation is appropriate in the circumstances of this case. We make this determination primarily due to the serious and protracted nature of the misconduct, and the fact that the conduct did not occur in the course of the ordinary functions of judicial office. However, given that there have been no prior findings against HW Gibbon and that Her Worship's counsel contributed to an efficient hearing, we see fit to recommend that the amount of compensation be marginally less than the amount sought.

RECOMMENDATION

[26] The request for compensation seeks legal fees in the amount of \$108,742.50, plus disbursements of \$1,323.46, plus HST on fees and disbursements of \$14,308.58.

[27] We see fit to recommend to the Attorney General that Justice of the Peace Gibbon receive partial compensation for her legal fees in the amount of \$100,000, plus HST of \$13,000 on the fees.

[28] The panel further recommends compensation for disbursements in the amount of \$1323.46, plus HST of \$172.05 on the disbursements.

[29] The total amount recommended is \$114,495.51, inclusive of HST and disbursements.

Dated at the city of Toronto in the Province of Ontario, October 11, 2022.

HEARING PANEL:

The Honourable Justice Timothy Lipson, Chair

Her Worship Holly Charyna, Justice of the Peace Member

Mr. John Tzanis, Community Member