

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 Dianne Ballam

Before: The Honourable Justice Joseph A. De Filippis, Chair
 Her Worship Liisa Ritchie, Justice of the Peace Member
 Ms. Lauren Rakowski, Community Member

DECISION ON HER WORSHIP'S MOTION TO ADJOURN THE HEARING

Marie Henein and Maya Borooah
Presenting Counsel

Justin Khorana-Medeiros
Counsel Appearing on Behalf of Her Worship Ballam

1. A Complaints Committee of the Justices of the Peace Review Council (the "Review Council"), pursuant to subsection 11(15)(c) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4, as amended (the "Act"), has ordered that the complaints regarding the conduct or actions of Justice of the Peace Dianne Ballam, be referred to a Hearing Panel of the Review Council, for a formal hearing under section 11.1 of the *Act*.
2. The Hearing Panel of the Review Council is scheduled to convene on Tuesday, March 2, 2021 at 10:00 a.m. by videoconference to conduct the hearing into the complaint with the option of Her Worship attending in person, as she requested, at Arbitration Place in Toronto.
3. By Notice of Motion dated February 19, 2021, Her Worship seeks to adjourn the Hearing for two months and to reschedule it on non-consecutive days. The grounds for the motion are: (1) Her Worship's medical conditions, both mental and physical, and (2) the inability of her lawyer to properly prepare for the scheduled Hearing.

HISTORY OF THE PROCEEDINGS

4. On March 14, 2019, Her Worship was informed of the complaint about her conduct and was given an opportunity to respond to the question of whether an interim recommendation of non-assignment should be made pending the completion of the complaints process. Her Worship was given until March 25, 2019 to respond to the Complaints Committee on this issue. In a series of email exchanges with the Registrar, Her Worship advised that she could not respond in time as she would be travelling overseas, returning on March 31, 2019. Her Worship was advised that the time to respond would be extended until April 4, 2019. Her Worship failed to respond by this date.
5. On April 8, 2019, Her Worship emailed the Registrar and offered several explanations for not responding to the Committee by the due date. On April 10, 2019, the Committee made an interim recommendation of non-assignment pending the final disposition of the complaint. This recommendation was accepted by Regional Senior Justice Rosenberg. Her Worship was advised of the recommendation and decision by mail. These letters were returned to the Registrar by Canada Post, having not been retrieved by Her Worship in time. These letters were mailed to Her Worship again by the Registrar. Canada Post returned these letters to the Registrar a second time, as they were again not retrieved.
6. Between May 8 and 10, 2019, the Registrar and Her Worship exchanged email messages in which the latter stated she had not picked up her mail at the Post Office as she was away from home for medical tests, was recovering from pneumonia, and that her aunt had died. She added that her internet access was

not reliable and preferred to receive regular mail, without the need for a signature requirement due to her difficulty in attending at the Post Office.

7. On October 31, 2019, the Registrar wrote to Her Worship on behalf of the Complaints Committee to invite Her Worship to provide a response to the allegations arising from the complaint. The Registrar also provided disclosure of the materials under consideration in the investigation. In accordance with the Review Council's Procedures, on behalf of the Committee, the Registrar provided Her Worship an opportunity to respond by December 2, 2019. This correspondence was sent to Her Worship by regular mail and email.
8. Her Worship failed to respond by December 2, 2019. On December 4, 2019, the Registrar informed Her Worship that the Complaints Committee had extended the deadline to respond to December 16, 2019. Over the next several days, the Registrar and Her Worship exchanged a number of email messages.
9. Her Worship failed to respond to the complaint by December 16, 2019. Over the next several days, the Registrar and Her Worship continued their email conversation during which the latter advised that she could not get to the Post Office during business hours and would be retaining the firm of Heller Rubel as soon as possible.
10. On January 10, 2019, the Registrar, not having heard from Her Worship, wrote to her to advise that the Complaints Committee had granted a final extension to January 31, 2020 for Her Worship to reply to the complaint.
11. On January 13, 2020, the Registrar wrote to Mr. Brian Heller, following receipt of an e-mail from Her Worship advising that he had just been retained. Mr. Heller responded on January 17, 2020, requesting a 60-day extension to March 31 to respond to the complaint. On January 20, 2020, the Registrar responded to Mr. Heller advising that the Complaints Committee had granted a final extension to February 28, 2020 for Her Worship's reply.
12. On February 28, 2020, Mr. Heller requested a further extension for Her Worship's reply. He advised that Her Worship's anxiety and depression causes her to freeze and prevents her from responding. Mr. Heller added that he hoped to provide a medical report in due course.
13. On March 10, 2020, the Registrar advised Mr. Heller that the Complaints Committee would be meeting on March 30, 2020, at which time it would consider whatever material had been filed up to that date. On March 24, 2020, Mr. Heller submitted a written response from Her Worship.
14. On June 17, 2020, the Registrar advised Her Worship and Mr. Heller that the Complaints Committee would be referring the matter to a hearing. On July 29, 2020, the Registrar e-mailed all counsel about scheduling the set-date

appearance. On August 6, 2020, Mr. Heller replied to the Registrar and Presenting Counsel and advised that he had no instructions from Her Worship.

15. On August 17, 2020, the first Notice of Hearing was served on Mr. Heller and Her Worship advising that a set-date had been scheduled for September 9, 2020. In response, Mr. Heller advised he had just been discharged as counsel. The same day, Her Worship also advised the Registrar and Presenting Counsel of having discharged Mr. Heller.
16. Over the next several days, Her Worship was contacted by the Registrar and Presenting Counsel. The Registrar informed Her Worship of the teleconference information for the September 9 set-date hearing. Her Worship replied that she could not participate and needed at least one month to recover from a medical procedure. Presenting Counsel inquired about service of materials. Her Worship refused to receive the material by email because of her limited internet access and she said that she was unable to digest information and respond due to her present medical condition. Presenting Counsel informed Her Worship that she would be bringing a motion for substituted service by e-mail. The next day, Her Worship wrote to the Registrar and requested accommodation due to her medical conditions, which she stated prevented her from responding to anything. The Registrar sought and obtained an Order from the Hearing Panel permitting Her Worship to have the assistance of a support person to help her read information related to the hearing and attend the set-date, if needed.
17. As a result of Her Worship's request for accommodation and her refusal to acknowledge service of the Notice of Hearing, Presenting Counsel brought a motion before the Hearing Panel requesting an adjournment of the set-date, as well as an order for substituted service of the Notice of Hearing by e-mail.
18. On September 9, 2020, Presenting Counsel argued the motion before the Hearing Panel. The Hearing Panel granted both motions and adjourned the set-date to October 15, 2020. The Hearing Panel also ordered that any further adjournments on the basis of Her Worship's medical conditions would require more substantive medical evidence, including a medical professional available for cross-examination. Neither Her Worship nor a support person attended the appearance.
19. On September 10, 2020, the Notice of Hearing was re-issued with the rescheduled set-date of October 15, 2020. Her Worship was advised by e-mail of the new set-date, the Notice of Hearing, and the Hearing Panel's decision on the motion.
20. On October 14, 2020, Her Worship responded to the September 10, 2020 e-mail and engaged in a series of e-mail correspondence with Presenting Counsel. In that correspondence, Her Worship explained her failure to respond as follows: She had just received the Notice of Hearing; She was not well enough to respond; She did not have email access at her house; She had not had time to obtain medical evidence. Her Worship explained her ability to engage in the present

email conversation by noting that she was residing with a friend for a few days. Presenting Counsel again advised Her Worship of the set-date, and her ability to phone in to the teleconference or have a support person do so on her behalf.

21. On October 15, 2020, neither Her Worship nor a support person on her behalf participated in the set-date hearing. The Hearing Panel noted that Her Worship had been served with the Notice of Hearing and ordered that the matter be set down to proceed.
22. On October 19, 2020, Presenting Counsel wrote to Her Worship to advise of the outcome of the October 15 set date appearance; namely; that the hearing had been scheduled to proceed from March 2 - 5, 2021. Her Worship was also provided with a copy of the Hearing Panel's decision. This correspondence was sent by e-mail, regular mail and registered mail.
23. On October 22, 2020, the Registrar received a letter from Her Worship inquiring what had happened at the set-date hearing. The Registrar replied immediately that Presenting Counsel had sent materials about that to Her Worship, including the Panel's Order, by e-mail, registered and regular mail. Her Worship did not respond to this letter and material.
24. On January 7, 2021, the Registrar wrote to Her Worship to remind her that the hearing would proceed remotely on March 2-5, 2021 with technical support from Arbitration Place and to inquire what accommodation, if any, Her Worship required to participate. This correspondence was sent by e-mail, registered mail and regular mail. The Registrar requested a response no later than January 31, 2021, so that any accommodation arrangements could be secured in time.
25. On January 29, 2021, Mr. Justin Khorana-Medeiros wrote to the Registrar and Presenting Counsel to advise that he had recently been retained by Her Worship. Within days, Presenting Counsel responded and provided him with a copy of all disclosure and previous correspondence in relation to the matter.
26. On February 19, 2021, the Registrar was advised by Mr. Khorana-Medeiros of the present motion to adjourn.

THE MOTION TO ADJOURN

27. The motion to adjourn was heard virtually on February 26, 2021. Neither Her Worship nor a support person attended, although Her Worship was represented by legal counsel.
28. The material filed included an Affidavit from Her Worship and letters from Dr. Liu and Dr. Safakish. The latter also testified.

29. Her Worship deposes that she cannot meaningfully participate in the scheduled hearing because of medical issues, both mental and physical. In this regard, Her Worship relies on statements contained in the letters from her doctors. Her Worship repeats earlier statements to the Registrar and Presenting Counsel that she is hindered in participating in virtual hearings due to poor internet reliability at her home. Finally, she notes that recently retained counsel requires adequate time to prepare.
30. In a letter dated February 23, 2021, Dr. Liu notes that Her Worship has been under her care for the treatment of depression and anxiety related to Post-Concussion Syndrome. According to Dr. Liu, Her Worship responded well to treatment and was stable within the first year, but since then has struggled with residual symptoms related to anxiety, fluctuating mood, and is vulnerable to stress. It is Dr. Liu's opinion that during times of stress Her Worship is more prone to deficits in cognition, concentration, and memory.
31. Dr. Safakish provides pain management for Her Worship for the following ailments: Complex regional pain syndrome of her right hand; facet joint arthropathy in the lumbar spine; neuropathic pain (numbness) in both legs; and sacroiliac joint dysfunction. Dr. Safakish has been treating Her Worship at his clinic for almost eight years.
32. In his letter, Dr. Safakish states that Her Worship's condition has worsened in the last two years and that this has affected her ability to concentrate. The doctor performed neurotomy procedures on Her Worship to treat her back pain on a number of occasions, including on January 19, 2018, February 16, 2019, August 14, 2020, and most recently on January 22, 2021. These neurotomy procedures are described in the motion to adjourn as "surgery". Dr. Safakish also repeats Her Worship's subjective belief that she is unable to participate in the hearing due to chronic pain and the physical discomfort of sitting for hours each day for several days.
33. In his testimony at the motion to adjourn, Dr. Safakish said that the neurotomy procedure is not surgery; it is an injection into the spine followed by radiofrequency. It lasts about one hour. He added that he has never seen Her Worship "look so aged, down, and unfocussed" as she was on January 22, 2021. When pressed on this point he acknowledged that "unfocussed" is difficult to define and that Her Worship was able to understand and approve the medical procedure. The doctor confirmed that he would not have performed the procedure if he had not been confident of her full participation in it.
34. Dr. Safakish testified that the statement in his letter that Her Worship does not feel confident attending the hearing is information he received from her lawyer. In this regard, Dr. Safakish also conceded that he did not assess Her Worship with respect to concentration, memory and ability to make decisions. He noted that Her Worship can drive a motor vehicle and can sit for one to two hours at a time. He

suggested it would be best that the hearing be set on non-consecutive days, four hours a day, with frequent breaks.

CONCLUSIONS

35. We are not persuaded that Her Worship has mental health issues that compromise her ability to meaningfully participate in this judicial discipline hearing. Notwithstanding the failure of Her Worship to respond, in a timely manner, to correspondence from the Registrar and Presenting Counsel over the past two years, and the fact that five months elapsed between the time she discharged previous counsel and retained the present one, we agree to adjourn the hearing to permit Mr. Khorana-Medeiros to prepare for it. The terms of the adjournment and the arrangements to accommodate Her Worship's internet problems and physical difficulties, if any, are set out below.
36. Dr. Liu's letters outline Her Worship's mental health diagnosis, and indicate that as of February 2020, Dr. Liu and Her Worship were considering titrating up her medication to provide additional support for her mood and anxiety. There is nothing further from Dr. Liu, or Her Worship, in the Affidavit about whether that happened or to what effect. In addition, the letter does not explain what constitutes stressful circumstances or what specific accommodations process would assist Her Worship to participate in the hearing.
37. Her Worship deposed that Dr. Liu conducted a further assessment of her in January 2021 about her "current medical unfitness", and promised to submit a supplemental affidavit with a further letter from Dr. Liu. Her Worship provides no explanation of what Dr. Liu's conclusions or recommendations were at that time and Dr. Liu did not testify as expected by the Panel, in accordance with its reasons granting the prior adjournment request.
38. On the basis of the medical evidence provided, this Hearing Panel is left without an understanding of Her Worship's mental health challenges and how these might impact the hearing. What is clear is that Her Worship's chronic pain is one of long standing and the recent neurotomy procedure conducted by Dr. Safakish is the same one performed in 2019 and 2020. During this time, Her Worship is alleged to have appeared as counsel in the Superior Court of Justice, Ontario Court of Justice and the Human Rights Tribunal, has engaged two lawyers with respect to the present proceedings and interacted with medical practitioners. Moreover, her Affidavit filed in support of the present motion reflects clarity of thought and advocacy.

RESULT

39. The motion to adjourn is granted so that recently retained counsel for Her Worship can properly prepare.

40. So that hearing dates could be scheduled in a timely manner, the Panel indicated the members would provide their available dates in March, April, May and June to the Registrar to coordinate with counsel to identify dates when the hearing can proceed.
41. To accommodate any physical difficulties experienced by Her Worship, the hearing will proceed on non-consecutive days, no more than four hours per day, with frequent breaks.
42. The hearing will proceed in person or virtually, depending on the circumstances of the current pandemic. If any part or all of the hearing proceeds virtually, Her Worship will be provided with technical support, if needed, from Arbitration Place.
43. The hearing is to be marked peremptory on Her Worship and will proceed, as scheduled, with or without counsel.

Dated at the City of Toronto in the Province of Ontario, March 2, 2021

HEARING PANEL:

The Honourable Justice Joseph A. De Filippis, Chair

Her Worship Liisa Ritchie, Justice of the Peace Member

Ms. Lauren Rakowski, Community Member