

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 Tom Foulds

Before: The Honourable Justice Peter Tetley, Chair
Justice of the Peace Monique Seguin
Ms. Jenny Gumbs, Community Member

Hearing Panel of the Justices of the Peace Review Council

DIRECTIONS ON MOTION FOR AN ORDER OF DISCLOSURE OF OTHERWISE CONFIDENTIAL DOCUMENTS, MOTION FOR DIRECTION ON HOW TO OBTAIN A SUMMONS, NOTICE OF INTENTION TO BRING A MOTION REGARDING LEGAL COSTS AND MOTION FOR RECONSIDERATION OF MOTION PREVIOUSLY BROUGHT FOR A TEMPORARY STAY/ADJOURNMENT OF THE DISCIPLINARY HEARING

Mr. Scott K. Fenton
Ms. Amy Ohler

His Worship Tom Foulds, self-represented

Presenting Counsel

By the Panel:

1. The Hearing Panel adjourned the matter from February 14, 2017 to June 20, 2017 as an interim date to allow for an update as to His Worship's continuing efforts to retain legal counsel and the status of the Divisional Court review.
2. On short notice, His Worship filed four motions. Pursuant to the Procedures, a Hearing Panel can abridge the time to permit a party to bring motions on short notice and the Panel permitted His Worship to argue his motions.
3. This decision reflects the direction provided by the Panel to enable the issues raised to be addressed in a timely, cost-effective and transparent manner.

Directions on Motion for an Order of Disclosure of Otherwise Confidential Documents, Motion for Direction on How to Obtain a Summons, and Notice of Intention to Bring a Motion Regarding Legal Costs

4. His Worship sought an Order authorizing him to disclose any and all correspondence between himself and his counsel or any member or staff of the JPRC related to JPRC File 24-003/13, a file containing a previous complaint about the conduct of His Worship, for the purpose of filing and referring to those documents in his application to the Divisional Court, if the documents are redacted to remove information that may identify the complainant.
5. His Worship sought direction on how to obtain information which he described as disclosure of information, and he referred to the authority of the Panel to issue a summons. He did not disclose what information he seeks.
6. His Worship sought a further date to be scheduled to consider a motion he intends to bring to argue that the Panel should authorize him to have funding for his legal costs. He indicated that he does not want the date to be scheduled prior to July 25, 2017 and not after August 11, 2017.
7. Presenting Counsel expressed concerns that His Worship provided no evidentiary basis for the matters he brought before the Hearing Panel and argued that the motions should be dismissed.
8. The Panel agreed and further indicated that no information was filed to assess the relevance of the requests; it was not, therefore, in a position to consider the motions.
9. Rather than make a determination on the incomplete materials, in fairness to His Worship Foulds, who would be familiar with the requirements of motions in the justice system but who was self-represented, the three motions were adjourned *sine die*.
10. The Panel determined that it can receive and adjudicate upon a written motion pursuant to section 5.2.1 of the *Statutory Powers Procedures Act* and s. 11.1(4) of the *Justices of the Peace Act* which provide for this tribunal to hold any combination

of written electronic and oral hearings. The Panel confirmed that it is prepared to consider motions in writing when it is provided with an evidentiary record for each motion.

11. The Hearing Panel provided a framework and procedural directions which, if employed and followed, could lead to a speedy resolution of the concerns identified by His Worship, and avoid costs, as well as logistical scheduling challenges during the summer. The process provided by the Hearing Panel permits His Worship Tom Foulds to pursue his three motions in a cost-effective and timely manner. This is particularly important given that public funds are being expended in this judicial disciplinary process.
12. Recognizing the importance of transparency in this public process, the motions need to be in a format available to the public (except for confidential documents in JPRC File 24-003/13 which will be considered through Motion One below). Updates on any motions will be posted on the Council's website. Motion materials are to be filed in hard copy and provided in an electronic version that can be provided to any person who may request a copy.

Motion for an Order Permitting Disclosure of Otherwise Confidential Information

13. The JPRC Procedures state: "Pursuant to section 8(18) of the *Justices of the Peace Act*, the Review Council has ordered that, subject to an order made by a complaints committee or a hearing panel, any information or documents relating to a meeting, investigation or hearing that was not held in public are confidential and shall not be disclosed or made public."
14. The Panel indicated that it is willing to consider His Worship's request for disclosure of the correspondence in JPRC File 24-003/13 once the evidentiary basis for the request is provided by him. The Panel authorized His Worship to provide on a confidential basis a copy of the unredacted documents of which he seeks disclosure, along with the proposed redactions, in a sealed envelope to each of Presenting Counsel and Ms. Rothstein, Counsel for the JPRC on the judicial review.
15. The Panel said that His Worship should perfect the materials for his motion, including an Affidavit to explain the relevance of the documents to the application for judicial review. The correspondence from File 24-003/13 and the materials to perfect the motion should be provided to counsel by June 30, 2017. Presenting Counsel has two weeks until July 14th to respond. His Worship has one week (by July 21) to reply.
16. The Panel observed that disclosure of the correspondence to counsel may result in consent by Presenting Counsel to an order for disclosure to the Divisional Court.

Motion for a Summons under Para. 16 of the Procedural Code for Hearings

17. His Worship sought direction on how to seek a summons to obtain information or evidence he believes to be relevant to the proceedings. The Hearing Panel indicated that His Worship should identify exactly what he is seeking, indicate why it is

relevant to the hearing and show why it is admissible. His Worship should use an Affidavit to do so.

18. No dates were scheduled but the timelines analogous to those in Motion One would apply for Mr. Fenton to respond and for His Worship to reply.

His Worship Intends to Bring a Motion Seeking Advance Funding for Payment of His Legal Fees

19. The Panel indicated that His Worship should provide a motion in writing, formalizing the record and including a factum with authorities.

Motion for Reconsideration of Motion Previously Brought for Temporary Stay/Adjournment of Disciplinary Hearing

20. His Worship requested a reconsideration of his previous motion brought on January 20, 2017 for a temporary stay/adjournment of the disciplinary hearing. He argued that the reasons of the Panel did not amount to a determination of the issues. He again requested a temporary stay or adjournment of the disciplinary hearing, either *sine die* or to a specified date for him to advise the Hearing Panel of the status of his judicial review application.

21. The Panel has already determined that this hearing will proceed in October of 2017, subject to any decision of the Divisional Court to the contrary in the interim. We reiterated to His Worship Foulds that the scheduled hearings dates will proceed and we referred him to our decision, issued on February 14, 2017, in which we stated:

31. We agree with the principle set out by the Divisional Court in *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 that adjudicative bodies, dealing with complaints about judicial officer holders, ought to start with 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. That does not mean that the justice of the peace can be permitted to unreasonably delay the complaints process by seeking to adjourn the hearing process until some undefined future date when he may be in an enhanced financial position that will enable him to retain counsel of choice and preferred counsel is available to act on his behalf.
32. The Panel is also sensitive to the expenditure of public funds. As indicated, His Worship is suspended from work and receiving his full salary.
33. If His Worship's application to stop the hearing process is successful, this process will cease. Until such an order is issued by the Divisional Court, in order to preserve public confidence in this complaints process, we conclude that it is imperative that our legislated mandate under the *Act* continue and that all necessary

steps be in place to facilitate the hearing of evidence in relation to this complaint.

34. In balancing the uncertain outcome of the judicial review process, the principle that a justice of the peace should be represented by counsel in the complaints process, and the public interest in having a timely hearing into the allegations set out in the Notice of Hearing, the Panel concludes that hearing dates should be scheduled today for three weeks in October. By that time, His Worship will have had more than a year to get his financial affairs in order and to retain counsel who is available to accommodate the scheduled dates. With this much lead time it is anticipated that counsel of choice may be able to adjust his pre-existing trial schedule to accommodate all or some of the proposed hearing dates. Alternatively, the justice of the peace will have sufficient time to retain and instruct other counsel. The complainant and the public will also have the certainty of knowing, subject to any decision that may be issued in the interim by the Divisional Court, that the evidence in relation to the allegations set out in the Notice of Hearing will be presented to the Panel in a public forum without undue or unreasonable delay. The complaint will progress at that time to the stage where, in a public forum, it will be assessed on the merits. In that way, public confidence will be preserved in the judiciary, the administration of justice and this complaints process, pending the final disposition of the complaint.

22. The Panel dismissed His Worship's renewed motion for a temporary stay of the proceedings.

23. The Panel requested an update as to His Worship's efforts to retain legal counsel and the status of the Divisional Court review. His Worship confirmed that he has not retained legal counsel for the October hearing, he is not in a position to do so at this time, and he is prioritizing his application for judicial review. He referred to unnamed counsel who is assisting him in that regard.

24. His Worship confirmed that his application for review has not yet been perfected. He indicated that he anticipates perfecting the application by the end of June.

Dated this 21st day of June, 2017

HEARING PANEL:

The Honourable Justice Peter Tetley, Chair
Her Worship Monique Seguin, Justice of the Peace Member
Ms. Jenny Gumbs, Community Member