

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 Alfred Johnston

Before: The Honourable Justice Joseph DeFilippis (Chair)
Justice of the Peace Kristine Diaz
Ms. Leonore Foster, Community Member

Hearing Panel of the Justices of the Peace Review Council

REASONS FOR DECISION

Mr. Scott Fenton
Ms. Amy Ohler
Fenton Smith Barristers
Presenting Counsel

His Worship Alfred Johnston, self-represented

Chronology of Events in the Hearing Process:

1. An overview of the history in this matter is set out below.
2. His Worship Johnston received a letter on January 9, 2018 on behalf of the Complaints Committee of the Review Council informing him of the decision to order a hearing.
3. On February 22, 2018, the Registrar emailed His Worship at his judicial email address and informed him that a set-date would be scheduled to commence the hearing process. He was also asked to let the Registrar know as soon as possible whether he had retained counsel, and, if so, to identify that person. His Worship did not respond.
4. On March 14, 2018, the Registrar sent an email to His Worship at his judicial email address to inform him that the set-date would take place on April 26, 2018. It was explained that at the set-date, the Notice of Hearing is filed as an Exhibit and the hearing dates are confirmed, after which the process becomes a public one. He was informed that it was anticipated that hearing dates would be scheduled for June 7 and June 8, 2018 in Toronto. The Registrar asked that His Worship let her know as soon as possible whether he would be retaining a lawyer so that arrangements could be made to serve the lawyer with the Notice of Hearing, otherwise he would be served directly. He was also asked to confirm whether he or a lawyer would be in attendance at the set-date on April 26, 2018.
5. On March 15, 2018, His Worship sent an email to the Registrar, indicating "I am not in a position to proceed at this time and I am asking to adjourn the matter until I am in a position to proceed."
6. The Registrar responded by email on the same date, informing His Worship that once a hearing has been ordered, a party seeking an adjournment must bring that request formally before the Hearing Panel. The Registrar told His Worship that as it appeared that he did not have counsel, he would be served personally with the Notice of Hearing. He was reminded that the set-date was scheduled for April 26, 2018 at 9:00 a.m. It was brought to His Worship's attention that, in accordance with the Procedures, a party to the hearing may bring a motion, not later than 10 calendar days before the set-date for any matter related to scheduling. His Worship was also informed that if he decided to bring a motion, four hard copies should be filed at the Council office and Presenting Counsel should be served directly with a copy.
7. On March 16, 2018, His Worship sent an email to the Registrar indicating that he had reviewed the *Act* and could not find anything setting out the rules governing an adjournment request. He indicated that he would like to properly present the application and asked the Registrar to point him in the right direction. His Worship

also said, "I have a continuing matter on April 26th and some others several months following, I wonder if I should cancel based on the council's findings."

8. On the same date, the Registrar responded with an email to His Worship informing him that section 10(1) of the *Justices of the Peace Act* permits the Review Council to establish rules of procedures. He was provided with an electronic copy of the Review Council's Procedures and directed to the applicable provisions. The Registrar also enquired about the time of his court matter on April 26 and noted that the set-date generally takes 20 minutes or less.
9. His Worship responded on March 19, 2018 and advised that his seized matter was at 9 a.m. on April 26. He added that "I can cancel it as well as the other matters I am seized with in light of the council's decision. As I am a member of the native justice of the peace bench, I understand our annual seminar is the first week of June including the 5th."
10. In an email on March 20, 2018, the Registrar informed His Worship that the set-date would likely take no more than 10 minutes and that he could participate by telephone so that he could avoid adjourning the matter of which he was seized. The Registrar also informed him of her understanding that the annual seminar for the Native Justice of the Peace bench was scheduled for the week of May 30 to June 1, which would not conflict with the June hearing date(s).
11. On March 29, 2018, His Worship delivered a letter to the office of the Review Council indicating "Please accept this application to change the hearing date as this date was set without any input from myself." He stated that he would not be ready to proceed as he would like to seek legal advice and hoped to be in a position to hire counsel in the future. His Worship requested that "the current date set for this hearing be adjourned to a date agreeable to all parties."
12. The Registrar sent His Worship a letter by email on April 4, 2018 informing him that if he wanted an adjournment of a hearing, he must file a motion a Notice of Motion and supporting documentation. The Registrar added that hearing dates were subject to confirmation by the Hearing Panel when it convened for the set-date and that if His Worship retained counsel, either he or his lawyer could participate in the set-date proceeding in person or by telephone.
13. On April 4, 2018, Presenting Counsel, emailed a letter to His Worship, along with a true copy of the Notice of Hearing. Mr. Fenton stated that he was retained as Presenting Counsel in respect of the Notice of Hearing that was initially returnable before the Hearing Panel on Thursday, April 26, 2018 and he provided the location. Mr. Fenton informed His Worship: "On April 26, 2018, it will be my intention to file a copy of the Notice of Hearing with the Hearing Panel and, thereafter, to request that dates for a pre-hearing conference and a s.11.1 Hearing be scheduled." Mr. Fenton indicated that he anticipated that no more than a day would be required for the hearing. He noted that the Registrar had brought to his attention the letter that

His Worship delivered to the Review Council office on March 29, 2018 and he indicated that in his respectful submissions, His Worship should bring any scheduling concerns to the attention of the Hearing Panel at the first appearance on April 26, 2018.

14. Presenting Counsel reiterated that His Worship could appear in person or by legal counsel and/or by telephone on April 26, 2018. Mr. Fenton asked that if His Worship had retained counsel, he kindly provide Mr. Fenton with the name and contact information of counsel or have counsel contact Mr. Fenton's office. Presenting Counsel also stated that he would be grateful if His Worship would acknowledge receipt of his letter and the Notice of Hearing and that he reply, by email if convenient, if he intended to appear on April 26, 2018.
15. On April 25, 2018, His Worship delivered a letter to the receptionist of the Office of the Chief Justice of the Ontario Court of Justice. The letter was addressed to the Registrar and it said, "As I am aware that I am not allowed any direct contact with the Justice of the Peace Review Council nor with presenting counsel, Mr. Fenton, except through a lawyer. I can only hope the following information is shared with the Justice of the Peace Review Council." In the letter, His Worship acknowledged that he understood that the complaint before the Council must be addressed and he recognized that a public hearing had been ordered. His Worship said:

"After the conclusion of the last experience I had when I appeared before the Justice of the Peace Review Council, because of the treatment I suffered, I took ill and was under doctor's care for a short time.

As I am most certain that I could never go through the same ordeal, ever again, I have been spending a great deal of time inquiring about and preparing for my retirement.

I do have a number of seized matters, I would like to finish prior to my retirement. The last one is scheduled for judgment, in the end of July 2018. I then plan to retire. I have made some inquiries and understand the Chief Justice requires at least six months notice.

As I noted earlier in my correspondence, I have been kicked around all my life, because I am the product of two minorities, I am just too old, nor do I have the strength to kick back.

I cannot afford a lawyer to assist or represent me as I know I will get no assistance with costs.

I am unable to appear before the Justice of the Peace Review Council, as I know I would not be able to handle the way I fear, I will be treated.

I am fearful and suffer from anxiety attacks whenever I even think of dealing with the Justice of the Peace Review Council. I am even afraid to open any mail because of the affect it may have on me. Thus the enclosed.

Please understand that this letter is sent with the utmost respect.”

16. The Hearing Panel convened on April 26, 2018 and His Worship did not appear. The letter of application for an adjournment that he filed earlier showed that he was aware of the set-date. The Hearing Panel adjourned the set-date until Friday, May 11, 2018 at 9:00 a.m. The Hearing Panel directed the Registrar to send a letter to His Worship to inform him of the May 11 date and that he or his representative could attend in person at the JPRC Boardroom, or by teleconference. The information to attend by teleconference was provided in the letter.
17. On April 26, 2018, the Hearing Panel observed that in His Worship's letter, received on April 25, 2018, he indicated that he may retire and that his understanding was that he must give six months' notice to do so. As well, he indicated that he had medical issues that may prevent him from participating in the hearing process.
18. The Hearing Panel noted that there is no rule that a justice of the peace must give six months' notice; that is a guideline. A justice of the peace may choose to retire at any time. If a justice of the peace chooses to retire, he or she can provide a letter to the Chief Justice of the Ontario Court of Justice or the Associate Chief Justice Coordinator of Justices of the Peace stating that he or she fully retires and does not seek per diem status.
19. The Hearing Panel noted that jurisdiction over the conduct of a justice of the peace continues until and unless a justice of the peace has left office. If a justice of the peace retires during the hearing process, jurisdiction to proceed with the hearing is lost on the date when the full retirement takes effect.
20. On April 26, 2018, the Hearing Panel decided to provide His Worship with an opportunity to provide further evidence and directed the Registrar, in consultation with Presenting Counsel, to prepare a letter to be served on His Worship that invited him and/or his legal representative to provide the following documents on May 11, 2018 at the set-date:
 1. If His Worship is fully retiring, a copy of the letter of retirement that he had delivered to the Chief Justice or the Associate Chief Justice that shows the effective date of full retirement and that he is not seeking per diem status; or,

2. If His Worship relies upon medical reasons for his inability to participate in the hearing, a medical report.
21. Even though the Hearing Panel was aware that His Worship had already been sent a true copy of the Notice of Hearing by email by Mr. Fenton, the Hearing Panel directed the Registrar to issue a summons to the Legal Executive Officer for the Office of the Chief Justice of the Ontario Court of Justice to require her to provide information for further service of His Worship. Information was subsequently received.
22. On May 1, 2018, His Worship hand-delivered three documents to the receptionist of the Office of the Chief Justice. His Worship returned the unopened Purolator envelope sent to him on April 4, 2018 that enclosed the letter sent to him by the Registrar on April 4, 2018, referred to above. The third document was an unsigned, undated letter addressed to the Registrar from His Worship in which he requested that the information contained in the letter be shared with the Review Council. His Worship said:

“I have tendered by formal resignation notice for retirement effective January 31, 2019. As this is complying with the request of the complainant, there is no need to put the tax payers or the public purse to the expense of a hearing, which, I feel is a serious concern. Therefore, I have been advised to ask for an adjournment of the hearing.

As I have indicated in the past, I have a number of seized matters, I would like to conclude. I feel this is only fair to the defendant and I believe it is in the interest of justice.

If I could have had some discussion with whoever, since this matter came to my attention, I would have agreed to retirement, which I tried to do in the past, but unfortunately, I can only communicate through you or a lawyer.”

23. On May 2, 2018, at the direction of the Hearing Panel, a letter was sent to His Worship. The letter approved the above-noted letter, informed him of the set-date scheduled on May 11, 2018, and that the Notice of Hearing would be filed at that time, thereby making the process a public one. His Worship was informed that the dates of June 7 and 8, 2018 were tentatively scheduled for the hearing to proceed, subject to further evidence or submissions from His Worship or His representative on May 11, 2018. The letter also explained that His Worship or his representative failed to attend on May 11, 2018, the hearing dates would be confirmed and the hearing would proceed in his absence. The Hearing Panel directed the Registrar to include a copy of the Notice of Hearing with the letter, and she did so.

24. After May 2, 2018, efforts were made to serve His Worship with the letter, dated May 2, 2018, in accordance with the directions of the Hearing Panel. However, the process server was unable to do so.
25. On May 11, 2018, His Worship did not appear at the set-date. The Hearing Panel decided that it would not grant the request set out in his letter, received on March 29, 2018, to change the hearing date or accede to his suggestion in his letter, received on May 1, 2018, that the hearing should not proceed. The Notice of Hearing was filed and publically available. The Hearing Panel directed that this letter be served on His Worship with a further copy of the Notice of Hearing.
26. The Hearing Panel scheduled the hearing for Thursday, June 7 and Friday, June 8, 2018 at 10:00 a.m. in Toronto.
27. On June 7, 2018 the Hearing Panel assembled at the appointed time and place. His Worship did not appear. Counsel did not appear on his behalf. Presenting Counsel, Ms. Ohler, reviewed the history of proceedings as set out above and advised that in undated letters received by the Registrar on May 30, showed that His Worship wrote to Associate Chief Justice F. Finnestad, informing her of his retirement, effective August 31, 2018. The letter to the Associate Chief Justice stated that His Worship expected to be “under doctor’s care” and absent from his duties until that date. His Worship wrote a further letter to the Registrar, received on May 30, stating that he would not be able to attend the hearing scheduled on June 7, 2018 and asking for an adjournment of the hearing.
28. Presenting Counsel submitted that, having regard to the retirement letter sent to the Associate Chief Justice, the public interest would be best served by adjourning the hearing until after the effective retirement date. The Hearing Panel accepted this recommendation.
29. This hearing is adjourned to be spoken to on September 5, 2018. This ensures that the process will be in place for the hearing to proceed in a timely manner if the retirement does not proceed. If the retirement takes effect on August 31, 2018, jurisdiction over the matter will be lost and the September 5 date will be vacated.
30. In this way, the objective of preserving public confidence in the complaints process and in the judiciary is balanced with responsible use of public funds.

31. The Hearing Panel directs that a copy of these reasons be made publically available and provided to His Worship by email.

Dated this 8th day of June, 2018

HEARING PANEL:

The Honourable Justice Joseph DeFilippis, Chair

Her Worship Kristine Diaz, Justice of the Peace Member

Ms. Leonore Foster, Community Member