

**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: The Honourable Justice Deborah K. Livingstone, Chair
Justice of the Peace Michael Cuthbertson
Ms. Leonore Foster, Community Member

Hearing Panel of the Justices of the Peace Review Council

**DECISION ON HIS WORSHIP'S MOTION FOR LEAVE TO
HAVE THE HEARING PANEL ENTERTAIN FURTHER
SUBMISSIONS**

Counsel:

Ms. Marie Henein
Mr. Matthew Gourlay
Henein Hutchison, LLP
Presenting Counsel

Mr. Ernest J. Guiste
E. J. Guiste Professional Corporation
Mr. Jeffry A. House
Counsel for His Worship Errol Massiah

Mr. James Morton
Mr. Robert H. Karrass
Morton Karrass LLP
Association of Justices of the Peace of Ontario
(Intervenor)

DECISION ON HIS WORSHIP'S MOTION FOR LEAVE TO HAVE THE HEARING PANEL ENTERTAIN FURTHER SUBMISSIONS

1. This is a public hearing taking place pursuant to section 11.1 of the *Justices of the Peace Act* in relation to a complaint about the conduct of His Worship Errol Massiah. Witnesses were called to give evidence in this hearing during the week of July 14, 2014 and the week of July 28, 2014. Evidence concluded on July 31, 2014 and the hearing was adjourned until October 8, 2014 for oral submissions by counsel.
2. Presenting Counsel and His Worship Massiah had the opportunity to file written submissions. Transcripts of all of the testimony heard by all of the witnesses were provided to Presenting Counsel and Counsel for His Worship prior to the filing of submissions. His Worship's written submissions were due on September 29, 2014. On that date, Mr. Guiste, Counsel for His Worship requested an extension of time until Wednesday, October 1, 2014 to file the written submissions. The request was granted by the Hearing Panel. His Worship's written submissions were filed on October 1.
3. The hearing reconvened on October 8, 2014 for the purpose of allowing counsel to make oral submissions. Submissions were made on the evidence, on the motion by His Worship Massiah alleging a lack of jurisdiction and on the motion by His Worship alleging an abuse of process. On that date, Mr. House, Counsel for His Worship, requested that a collective agreement referred to during cross-examination of witnesses be made an exhibit and that was done. Mr. Guiste provided additional case law that had been omitted from the Book of Authorities filed with his written submissions, and the Panel accepted the cases.
4. On November 10, 2014, Mr. Guiste, on behalf of His Worship, filed an *Applicant's Motion for Directions re Evidence of (two witnesses whose names are redacted in this judgment)*. This Hearing Panel issued a decision on November 18, 2014 dismissing that motion. In accordance with section 23(1) of the *Statutory Powers Procedures Act*, in order to control and prevent any further abuse of this process, we also ordered that there is no further opportunity for His Worship and his Counsel Mr. Guiste to make submissions or re-examine any witness in relation to this Hearing. We directed that Mr. Guiste is to cease sending emails, or correspondence or any further motions about the evidence or the law to the Panel. We stated that the Hearing Panel has reserved its decisions and we rely on counsel to respect the process and await our determinations in due course.
5. Before the Panel issued its decision on the *Motion for Directions*, His Worship filed another motion in which he seeks leave to have the Panel entertain issues raised in the motion.

6. In this more recent motion, His Worship reiterates an argument already addressed in oral and written submissions made on his behalf by his counsel. He seeks to have the Panel entertain additional arguments on the question of whether the Justices of the Peace Review Council exceeded its jurisdiction when a complaints committee ordered a hearing under section 11(15)(c) of the *Justices of the Peace Act*.
7. His Worship is arguing that he should be permitted to make the case that, to date, he has received no order that there should be a hearing under section 11.1 of the *Justices of the Peace Act*, and that, therefore, the Hearing Panel has no jurisdiction to conduct this hearing or to render a decision.
8. Even if this argument had any merit, this assertion from His Worship comes well after His Worship's *Motion for Disclosure*. Written submissions were filed on that motion and oral submissions were heard on June 11, 2014. A decision was made on June 12, 2014.
9. The Panel finds that this argument is frivolous and meritless. The Panel finds that the Notice of Hearing, Exhibit 1(A) and 1(B) in this hearing, that was issued on May 31, 2013, clearly informed His Worship that a hearing was ordered by a complaints committee of the Justices of the Peace Review Council pursuant to section 11.1 of the *Justices of the Peace Act*. The Notice of Hearing states:

NOTICE OF HEARING

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 following matter of a complaint regarding the conduct or actions of Justice of the Peace Errol Massiah be referred to a Hearing Panel of the Review Council, for a formal hearing under section 11.1 of the *Act*.

It is alleged that you have conducted yourself in a manner that is incompatible with the due execution of your office and that by reason thereof you have become incapacitated or disabled from the due execution of your office. The particulars of the complaint regarding your conduct are set out in Appendix "A" to this Notice of Hearing.

The Hearing Panel of the Review Council will convene at [the Justices of the Peace Review Council Boardroom] on Thursday, the 4th day of July, 2013, at 10:00 a.m. in the forenoon or as soon thereafter as the Hearing Panel of the Review Council can be convened to set a date for the hearing into the complaint.

A justice of the peace whose conduct is the subject of a formal hearing before the Review Council may be represented by counsel and shall be

given the opportunity to be heard and to produce evidence.

10. In this motion, His Worship also raises his earlier argument that the existence of the collective agreement in the Region of Durham or the harassment policy in that Region ousts the jurisdiction of the Review Council to consider allegations about His Worship's conduct and to consider whether that conduct constituted judicial misconduct that warrants a disposition under the *Justices of the Peace Act*.
11. On November 17, 2014, His Worship's Counsel filed case law with the motion: *Weber v. Ontario Hydro*, [1995] 2 SCR 929, 1995 CanLII 108 (SCC); and, *Giorno v. Pappas*, 1999 CanLII 1161 (ON CA). Both of these cases could have been provided by Counsel for His Worship at the time when written submissions were filed on October 1, 2014 or when the Panel permitted Mr. Guiste to provide additional cases on October 8, 2014. His Worship now seeks leave to have the Hearing Panel consider additional submissions.
12. The Panel does not grant leave for His Worship Massiah to make further submissions. We affirm the view expressed in our decision on the *Applicant's Motion for Directions re Evidence of (two witnesses whose names are redacted in this judgment)*:

24. In our view, in a hearing such as this, as in any litigation, counsel are expected to make their case in closing submissions and not attempt to supplement those submissions after the fact when new ideas or arguments occur to them.

25. The JPRC Procedures provide that Presenting Counsel and Counsel for the Respondent may, at the close of the evidence, make statements summarizing the evidence and any points of law arising out of the evidence, with the order to be determined by the Hearing Panel. In this hearing, that process was followed. In a hearing before the Review Council, counsel for the parties is expected to make their full arguments with respect to all issues under consideration within the facts that are filed and/or in oral submissions made before the Panel. Once the Panel reserves on its decisions, save exceptional circumstances, the opportunity for further submissions is concluded.

26. In our view, it is not open to His Worship Massiah and his Counsel to provide further written submissions and additional argument to the members of the Hearing Panel on the matters referenced. There has been a full opportunity for submissions throughout this process. There are no exceptional circumstances warranting an opportunity for His Worship or Mr. Guiste to supplement the submissions that were already made in writing and orally on motions during this hearing process and after the evidence concluded. The further submissions sought to be made are plainly an effort to try to add to submissions already made in the written and oral submissions of Counsel for His Worship.

13. As the Panel found in its decision of November 18, 2014 on the *Applicant's Motion for Directions re Evidence of (two witnesses whose names are redacted in this judgment)*, there is a public interest in the finality of litigation. His Worship was given ample opportunity to be heard and was heard upon the arguments he seeks to raise again. The jurisdiction to reopen submissions after the Panel has reserved is not to be exercised for the purpose of regurgitating arguments already under consideration by the Panel. There are no circumstances that warrant a decision to allow His Worship to reopen submissions and add to his arguments.
14. The Panel notes that His Worship Massiah's decisions to bring meritless motions to try to reargue his case while the Panel is deliberating on its decisions on the hearing could be perceived by the public as consistent with a deliberate attempt to delay the Panel in reaching a final decision.
15. Recognizing that the purpose of this hearing process is to preserve or restore public confidence in the judiciary, the Panel relies upon Justice of the Peace Massiah and his Counsel to comply with the order of this Panel made on November 18, 2014 in the *Applicant's Motion for Directions re Evidence of (two witnesses whose names are redacted in this judgment)* that Mr. Guiste is to cease sending emails, or correspondence or any further motions about the evidence or the law to the Panel. The Panel relies upon Justice of the Peace Massiah and Mr. Guiste to respect the Panel's right to reserve its decisions and retire, without interruption, to consider the evidence, the law and the arguments that were made during the public hearing and then render its decisions.

Dated this 19th day of November, 2014.

HEARING PANEL:

The Honourable Justice Deborah K. Livingstone, Chair

Justice of the Peace Michael Cuthbertson

Ms. Leonore Foster, Community Member