

**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 THE REQUEST FOR A  
RECOMMENDATION FOR COMPENSATION OF LEGAL  
COSTS**

**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 Mr. Errol Massiah

## **Decision on the Request for a Recommendation for Compensation of Legal Costs**

### **PUBLICATION BAN:**

On June 11, 2014, this Panel made an order that the names of all witnesses who appear in any of the *facta* or motion materials or application records in this hearing shall not be published, nor shall any information that might identify them be published. Names of witnesses have been redacted.

### **Background**

1. Following a public hearing under section 11.1 of the *Justices of the Peace Act*, on April 28, 2015, this Panel made a recommendation to the Attorney General under subsection 11.1(10)(g) of the *Act* that (then) Justice of the Peace Errol Massiah should be removed from office. On April 29, 2015, pursuant to section 11.2 of the *Act*, by order of the Lieutenant Governor in Council, former Justice of the Peace Massiah (Mr. Massiah) was removed from office.
2. The recommendation of this Panel was the result of our conclusions, following our consideration of the evidence presented during the hearing, that (then) Justice of the Peace Errol Massiah had engaged in judicial misconduct. Our decision including those findings was released on January 12, 2015.
3. Mr. Massiah has asked this Panel to make a recommendation that he be fully indemnified for his legal costs.
4. Pursuant to subsection 11.1 (17) of the *Justices of the Peace Act*, the Panel, which includes a member of the public, “may recommend that the justice of the peace be compensated for all or part of the cost of legal services incurred in connection with the hearing”. The amount of allowable costs is limited to “a rate for legal services that does not exceed the maximum rate normally paid by the government of Ontario for similar services.” (subsection 11.1(18), *Justices of the Peace Act*).
5. Written submissions were invited from the parties in relation to the issue of compensation. Those submissions and the Statement of Accounts for each of the two counsel for Mr. Massiah have been reviewed. The amount of compensation requested for legal services provided by Mr. Guiste is

\$517,055.81 plus \$5,175.94 for disbursements. The amount of compensation requested for Mr. House is \$93,916.84 including disbursements of \$27.97.

## **Analysis and Conclusion**

6. The Panel concludes that it will make no recommendation for compensation for the reasons below; to do otherwise would be inappropriate in the circumstances of this case.
7. The Panel agrees with the approach taken in recent jurisprudence from both the Justices of the Peace Review Council and the Ontario Judicial Council in concluding that, where there has been a finding of judicial misconduct, a recommendation for compensation does not automatically follow, and it is only in exceptional circumstances that the public purse should bear the legal costs of a judicial officer who has engaged in judicial misconduct.
8. The Panel agrees with the submission from Mr. Massiah that the decision on compensation in *Re Foulds* (JPRC, July 21, 2013), a decision of a Hearing Panel of the Review Council, is not binding on us. However, the Hearing Panel in that case was governed by and applied the same legislative framework as we must here. That Panel made a recommendation for compensation in circumstances where the justice of the peace admitted judicial misconduct in an Agreed Statement of Facts, provided letters of apology to the parties involved, and had 14 years as a justice of the peace with no history of findings of judicial misconduct.
9. The circumstances in *Re Foulds*, differed significantly from those before us. However, the Panel in *Re Foulds* provided some “general guidance” on how the provisions regarding compensation should be applied. We find this guidance to be helpful and persuasive. That Panel stated as follows at paras. 52-62:

[52] While addressing the issue of costs in the matter before us, we aim to also provide some general guidelines.

[53] Certainly respondents to these hearings should be encouraged to retain counsel.

[54] In this case, counsel assisted with the preparation of an Agreed Statement of Facts, a feat that might not otherwise

be accomplished without the benefit of counsel. That alone saved considerable public expenditure.

- [55] The participation of counsel also insulates complainants and other witnesses from cross-examination by the very respondent about whom they complained, thereby amplifying procedural fairness and the overall dignity of the process.
- [56] Although judicial members of a panel are screened for any personal or professional connection to a respondent, the addition of counsel for a respondent avoids the unseemliness of a judicial officer directly pleading his case to his peers.
- [57] In instances where the alleged misconduct is referred to a public hearing, and ultimately dismissed, there is a very compelling argument for the recovery of all costs (in accordance with subsections 11.1(17) and 11.1(18) of the *Act*) as the public's confidence has not been undermined in the least.
- [58] In cases where, pursuant to subsection 11.10(g), a recommendation to the Attorney General is made that a justice of the peace be removed from office, we doubt whether costs should ever be recommended, except in the most unusual of circumstances.
- [59] When a panel recommends removal from office it means that nothing short of removal is 'enough' to restore the public's confidence. That very public would unlikely countenance the awarding of costs for such extreme misconduct.
- [60] In other cases where there is a finding of misconduct, there is a spectrum of cost recommendations that might arise, all subject to the limitations in subsections 11.1 (17) and 11.1 (18) of the *Act*.

[61] In cases where no misconduct is admitted, but where it is eventually established by the Panel, then costs might still be warranted but on a lower scale.

[62] Some factors that might be weighed are these:

- a) the severity of the misconduct;
- b) the complexity of the hearing;
- c) the conduct of the justice of the peace in the course of the hearing, including whether the justice of the peace prolonged or expedited the process;
- d) the nature of the disposition(s);
- e) whether public funds were lost as a result of the misconduct;
- f) whether there had been previous findings of misconduct made against the justice of the peace; and,
- g) whether the conduct in question relates to a judicial function or impacts judicial independence.

10. The Panel in *Re Foulds* stated that the factors it delineated “would serve the public interest by ensuring that its judicial officers are fairly and wholly represented, but not at the cost of the administration of justice as a whole”. (*Re Foulds*, supra, at para. 64)

11. The Hearing Panel in *Re Phillips* (JPRC, November 4, 2013), which post-dated *Re Foulds* and where there was a recommendation for removal from office, declined to recommend compensation. The Panel stated, at paras. 8-11:

[8] At the outset, we note that we are not ruling on the competence of Justice of the Peace Phillips’ counsel or whether he should be compensated. He performed admirably and with great skill in a difficult case. He should be compensated, and this should be done, as would normally be the case by his client. She has both a moral and legal obligation to him.

[9] Our task is narrower: should we recommend to the Attorney General that compensation be awarded to Justice of the Peace Phillips?

[10] All of the factors militate against such a recommendation. The misconduct was severe, and we determined that the only way that public confidence in the administration of justice could be restored was to recommend removal from office. Justice of the Peace Phillips created this situation by her misconduct; she was ultimately removed from office because of her misconduct. We have considered the submission that due to the illness of one of our Panel members extraordinary circumstances exist. Our review of the transcript reveals that the hearing was going to be adjourned in any event. On the return date, either a further witness would be called and then submissions as to whether judicial misconduct had occurred would proceed; or, the witness would not be called and counsel would proceed directly to submissions. Under either scenario, an adjournment would have been needed to permit counsel to prepare arguments and case law prior to making their submissions on the evidence.

[11] We are of the firm view that the average reasonable Canadian fully apprised of all the facts would be shocked if any compensation were awarded. The Panel's decision is that no recommendation will be made to the Attorney General for compensation.

12. The Hearing Panel in *Re Johnston* (JPRC, August 19, 2014) also declined to recommend compensation, even though the disposition was not a recommendation for removal, but rather a seven-day suspension. The Panel stated at p. 10:

Given the gravity of the misconduct, and in particular that the misconduct occurred while in the performance of judicial duties with significant effect on the administration of justice, members of the public and the public purse, we are of the view that this is not an appropriate case for a recommendation for costs.

In deciding not to award costs we emphasize that our decision is not intended to be punitive. It is merely a reflection of the unique features of the matters before us, and the discretionary nature of any recommendation.

13. Similarly, the Ontario Judicial Council Hearing Panel in *Re Chisvin* (OJC February 22, 2013), in the exercise of its discretion pursuant to s. 51.7 (4) of the *Courts of Justice Act*, declined to order compensation. In that case Justice Chisvin admitted judicial misconduct, and the Panel determined a reprimand was the appropriate sanction. The Panel stated at paras. 4-6:

[4] As we noted in our reasons for disposition, Justice Chisvin is to be commended for facing up to the fact that his conduct fell below the required standard. However, it remains that he did fall below that standard and we did make a finding of misconduct.

[5] Taking into account all the circumstances of this matter, it is our view that the public purse should not be required to bear the cost of his legal representation.

[6] Accordingly, the request for compensation is dismissed.

14. We find the reasoning on compensation of the Hearings Panels in *Re Phillips*, *Re Johnston* and *Re Chisvin* to be persuasive.

15. In considering the factors from *Re Foulds*:

- a) In this case the misconduct was serious, such that a recommendation for removal was deemed the only disposition which would restore public confidence in the judiciary.
- b) The hearing was somewhat complex as there were a number of allegations involving a number of different women in the justice system.
- c) Mr. Massiah's conduct in advancing many pre-hearing motions, which were without merit, frequently appeared to be a deliberate attempt to prolong the process. This caused public resources to be unnecessarily expended.

- d) Mr. Massiah has argued that his case has raised issues transcending the parties and that are in the public interest, and that, therefore, his legal costs should be paid by public funds. We disagree. There are no “most unusual” circumstances in this case which could justify a departure from the general principle that no compensation for legal costs should generally be recommended where the Panel has concluded that the only disposition that would restore public confidence is removal from the bench. We are also mindful that the primary public interest of the judicial disciplinary process is to preserve and restore public confidence in the judiciary and in the administration of justice.
  - e) No public funds, other than those expended on this unduly elongated hearing process, appear to have been lost as a result of Mr. Massiah’s misconduct.
  - f) There were prior findings of similar misconduct made against Mr. Massiah. The circumstances whereby findings in this hearing pre-dated the prior findings was a novel situation before this Council, but the legal issues raised in that regard were not significantly complex.
  - g) The misconduct that has been established has nothing to do with the concept of judicial independence. The acts had little to do with Mr. Massiah’s exercise of his judicial function. Most incidents constituted conduct of a judicial officer towards women in the courthouse. In some instances, he displayed physical reactions towards female defendants while he was presiding in the courtroom. His judicial misconduct did not relate to the exercise of judicial discretion or judicial decision-making. In such circumstances, there are no judicial independence related concerns associated with the expectation that, like any other person whose wrongful actions are the reason for a legal proceeding against him or her, this former judicial officer should pay his own legal fees.
16. We acknowledge Mr. Massiah’s submission that financial security is a component of judicial independence. However, we agree with the submission of Presenting Counsel that a decision by this Panel against recommending compensation for his legal costs does not violate the principle of financial security that is a component of judicial independence.
17. Presenting Counsel submits, and we agree, that the essence of judicial independence is that a judicial officer cannot be removed from office without cause and that the Executive of government cannot **arbitrarily** (emphasis



added) interfere with a judicial officer's salary or pension. Losing one's livelihood as a judicial officer after cause has been established by an independent judicial discipline body to remove him from office does not unjustifiably interfere with judicial independence; similarly a decision by that independent judicial discipline body that the former judicial officer should pay for the legal costs he incurred because of his judicial misconduct does not unjustifiably interfere with his financial security. Put another way, requiring justices of the peace to pay their own legal bills in a judicial disciplinary proceeding that has resulted in a finding of judicial misconduct and a removal from office does not compromise the principle of judicial independence.

18. Although Mr. Massiah suggests that section 20 and subsection 11.1 (17) of the *Justices of the Peace Act* provide the "statutory articulation of the constitutional tradition" that the Attorney General is responsible for indemnifying judicial officers for the cost of their legal defence in judicial misconduct cases, we disagree.
19. In fact, the judicial discipline process has been established to preserve and restore the confidence of the public in the judiciary. Compensating someone for his legal costs, after he has been found to have engaged in misconduct so egregious that it warrants termination of his tenure as a judicial officer could hardly restore public confidence, particularly in these circumstances where Mr. Massiah has been receiving full salary throughout the proceedings even though he has not been assigned judicial duties since August 23, 2010. If in such circumstances the public were expected to bear the expense of the legal costs resulting from such judicial misconduct, the objective of the judicial discipline process, restoring public confidence in the judiciary, would be undermined.
20. We also reject Mr. Massiah's submission that the principle of "judicial immunity" has any application to this determination. Section 20 of the *Justices of the Peace Act* relates to immunity from civil liability for acts carried out in the course of their judicial duties. It does not protect Mr. Massiah from accountability for his misconduct through the discipline process within the same *Act*, nor does it create any "right" for him to be compensated for his legal fees.
21. Similarly, we reject that there is any "right" to public funding of his legal fees incurred by his judicial misconduct established in the international

conventions cited by Mr. Massiah. Mr. Massiah was accorded his right to procedural fairness and his right to retain counsel to represent him. It does not flow from international conventions that a judicial officer who has engaged in judicial misconduct should automatically have his legal costs paid. On the issue of compensation, the cited international conventions are completely irrelevant in this proceeding.

22. Mr. Massiah contends that he did not prolong the proceedings; he alleges that he made admissions early in the investigation process. In fact, there were no formal admissions made that dispensed with the need for any witnesses to be called. He also submits that the proceedings could have been streamlined if the Panel had ordered a pre-hearing conference pursuant to Rule 14 of the Procedures. As there was no convincing suggestion by Mr. Massiah at any juncture of the proceedings that the narrowing of issues or a possible settlement were realistic possibilities, the Panel declined to order a pre-hearing conference. Presenting Counsel indicated to the Panel that a pre-hearing conference would not resolve issues. It was also evident through the course of the hearing that a pre-hearing conference would not have benefitted the process. Mr. Massiah contested all of the allegations.
23. Once the hearing of evidence commenced, the hearing was conducted appropriately and effectively by Mr. Massiah's co-counsel, Mr. House.
24. We reject Mr. Massiah's assertion that, in relation to numerous pre-hearing motions, his defence was "clearly well-grounded on recognized and viable procedural grounds". We agree with and reiterate below examples included in Presenting Counsel's submissions which highlight a number of the frivolous motions brought by Mr. Guiste on behalf of his client:
  - (i) The Applicant's counsel, Mr. Guiste, brought a belated motion for a publication ban which required an adjournment of the hearing. It was based on the Applicant's dissatisfaction with certain media articles which had already been published, and about which the Panel had no ability to do anything. In the same motion, he sought both a publication ban and an order that the media publish articles that were fair. In other words, the Applicant sought relief that was factually and legally impossible to grant.

This motion also involved a baseless allegation that various agents of the Attorney General, as well as Presenting Counsel, were actively pursuing the removal or reputational destruction of Mr. Massiah as a justice of the peace. The Panel noted that “Mr. Guiste’s position that Presenting Counsel have been or are engaged in an attempt to undermine the judicial independence of His Worship illustrated a misunderstanding of the role of Presenting Counsel.” This was only one of the many allegations made over the course of this hearing against Presenting Counsel, the Panel, the Registrar, and even the court reporter. *Decision on the Motion to Ban Publication* (JPRC, April 11, 2014).

- (ii) The Applicant’s counsel, Mr. Guiste, brought a motion for recusal of the Hearing Panel on account of a reasonable apprehension of bias. The motion was entirely baseless, and was justifiably characterized as “frivolous” in the Panel’s decision. The Panel also observed that the Applicant’s motion contained assertions that were “completely offensive”, “egregious”, and “atrocious”, such as the absurd allegation that Presenting Counsel had somehow colluded with the Hearing Panel over the issue of retaining independent counsel: *Decision on the Motion Alleging Bias* (JPRC, May 29, 2014).
- (iii) Mr. Guiste expressed a concern that Mr. Gover’s retainer as Independent Counsel to provide a legal opinion would in some way result in an unfair hearing. He stated: “It’s my duty to say look, this fellow has too close of a relationship to Presenting Counsel and to Mr. Hutchison and the Ministry of the Attorney General.” He indicated that it was a serious matter. He conceded that he had not checked the case law to see if it would support his allegation. A date was scheduled for motion materials to be filed. No motion was ever brought. *Decision on Threshold Jurisdiction Question* (JPRC, June 6, 2014).
- (iv) Following release of the Divisional Court’s decision dismissing the application for judicial review of the prior Hearing Panel’s findings, the Applicant persisted in trying to re-litigate (under the auspices of the abuse of process motion) a number of issues conclusively determined by the Divisional Court: *Decision on Grounds to be Argued on the Motion Alleging Abuse of Process* (JPRC, June 19, 2014).

- (v) Mr. Guiste served and filed at least three Notices of Motion seeking disclosure and particulars, in respect of material that was either irrelevant or already in his possession. For instance, he complained that the witness contact information he had been provided was insufficient, but then acknowledged in submissions that he “had to date made no effort to speak with the witnesses.” He also demanded witness statement summaries even though he was already in possession of verbatim transcripts: *Decision on the Motion for Disclosure and Particulars* (JPRC, June 12, 2014).
  - (vi) On November 10, 2014, after the Panel had taken the matter under reserve, Mr. Guiste filed a Motion for Directions re Evidence making irrelevant and belated claims about evidence led before the Panel months earlier. In dismissing the Motion, the Hearing Panel made an order “to control and prevent any further abuse of this process” that Mr. Guiste cease trying to re-open the hearing and stop sending unsolicited correspondence to the Panel: *Decision on the Applicant’s Motion for Directions* (JPRC, November 18, 2014).
  - (vii) In this same period of time post-hearing, Mr. Guiste filed a Motion attempting to once again argue the jurisdictional points raised by the earlier motion, which remained under reserve. He also raised some new jurisdictional arguments, which the Panel characterized as “frivolous and meritless”. The Panel went on to note “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.” The return date originally scheduled for delivery of the Panel’s decision had to be adjourned as a result of the time lost dealing with the Applicant’s improper attempts to reargue the case: *Decision on His Worship’s Motion for Leave to Have the Hearing Panel Entertain Further Submissions* (JPRC, November 19, 2014).
25. Mr. Massiah’s conduct of this proceeding is considered in the context of the factors referred to in *Re Foulds*, namely that in cases of serious misconduct, compensation should be the exception rather than the rule even when the defence was conducted entirely appropriately.

26. In our view, awarding compensation for legal fees in a judicial disciplinary process where the proceedings were conducted in the manner described above would be an affront to the public confidence in the judiciary and in the administration of justice. His conduct of the case did nothing to expedite the proceedings; in fact, we have found it prolonged the hearing unduly.
27. Mr. Massiah committed serious misconduct that required removal from the bench to restore public confidence in the judiciary. This was not a case involving the most unusual of circumstances that would support a conclusion that there should be a recommendation for compensation after a finding of judicial misconduct and a removal from office.
28. In our view, therefore, ordering compensation in this case is wholly and completely inappropriate.
29. We have decided against making a recommendation for any compensation of Mr. Massiah's legal costs in this case. The application for a recommendation for compensation of legal costs is dismissed.
30. The conduct of Mr. Massiah's lawyer, Mr. Guiste, is not relevant to this decision. We have set out concerns about Mr. Guiste's conduct in an Addendum.

Dated: June 16, 2015

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

## **Addendum**

### **Conduct of Mr. Guiste**

1. In our decision regarding Mr. Massiah's request for a recommendation for compensation of his legal costs, reference was made to the conduct of Mr. Massiah during the proceedings. That conduct encompassed procedural steps taken by Mr. Massiah, through one of his counsel, Mr. Guiste. While we recognize that Mr. Guiste would have been acting on the instructions of Mr. Massiah, nonetheless Mr. Guiste, as a lawyer, must bear responsibility for the inefficient and unprofessional manner in which he filed submissions, continued to amend submissions, and contributed to delay in the progress of the proceedings.
2. During the hearing, on more than one occasion, after the Panel had reserved on its decision, Mr. Guiste took steps that interrupted the Panel during its deliberations and raised matters that should properly have been raised during the hearing, if his client sought to raise them.
3. During the course of the proceedings, in particular during the numerous pre-hearing motions, this Panel was taken aback by a number of egregious inflammatory comments that Mr. Guiste made to the Panel. His comments contained inappropriate, baseless allegations and/or inferences about this Panel, Presenting Counsel and other participants in the justice system. We attempted to focus him on the matters for adjudication before the Panel and to make him aware of the inappropriateness of his comments so that he would cease from his persistent incivility.
4. In the context of a public hearing that was underway to preserve confidence in the administration of justice, Mr. Guiste frequently made inappropriate comments that implied impropriety and/or unprofessional conduct on the part of the Panel, previous Presenting Counsel Hunt, Presenting Counsel Henein, the Attorney General and others involved in the justice system, and then he added a comment afterwards as if to suggest that it was not his intention to make such accusations. His conduct during this hearing process lacked courtesy, respect and decorum and gave rise to a concern that his conduct and comments could bring the administration of justice and the legal profession into disrepute.

5. The transcripts in this proceeding provide a more complete picture of how Mr. Guiste conducted himself during this process. Several examples of inappropriate commentary are set out as follows:

- (1) On November 4, 2013, the Panel confirmed the next motion date that had been previously agreed to and referred to the undertaking by His Worship's co-counsel that if one could not attend, they would make arrangements for the other to attend. Mr. Guiste said, "I guess in the circumstances, I would have to ask you in accordance with the client's wishes, that he be removed as counsel." The Panel sought to confirm whether His Worship had terminated his retainer with Mr. Bhattacharya. Mr. Guiste said, "Well, I think that the presenting counsel and the Tribunal would be exceeding their liberties, given that he has counsel. And I can inform the panel, if they so wish, that, yes, his retainer in these proceedings is no more, because it would be incompatible with the discharge of his duty in light of the argument of inadequate representation."

His Worship subsequently said, "On November 11, we are due to have a meeting with co-counsel, Mr. Bhattacharya, at which point in time that the Justices of the Peace Review Council, and to some extent this Panel will then be advised as to whether or not Mr. Bhattacharya will be retained, or continue to be retained on the record. Notification will come at that time. We are currently in discussion regarding that process. As it stands right now, he is still currently co-counsel."

- (2) On November 4, 2013, Mr. Guiste stated to this Panel, "What I am dealing with here, primarily, is the conduct of the body who brought the complaint. And what I am saying is, look, you cannot be a panel that acts in accordance with the law and close your eyes to the reality that those complaints were not properly brought in law. Otherwise, as the police officers refer to some of our other tribunals, they refer to them as "kangaroo courts". What is a kangaroo court? A kangaroo court is, I'll submit to you, is one that simply is a lapdog for the masters in terms of what they wish to accomplish."
- (3) On November 4, 2013, Mr. Guiste further stated to this Panel:

MR. GUISTE: This is a Tribunal of Law, a respected Tribunal. And I say to each and every one of you on this panel, that it is integral that you understand what I am saying....And the law from the Supreme Court of Canada is very helpful here. And I will agree that it's binding on you. But in saying that, I am also saying to you that - - Ms. Blight, you don't think that it's worthy of writing this?

MS. BLIGHT: The last note that I wrote, sir, is "kangaroo court".

MR. GUISTE: All right. I said quite a bit after that, I noticed that you've just been sitting there."

- (4) On November 4, 2013, Mr. Guiste stated, "...you have the Ministry of the Attorney General and you have the Justices of the Peace Review Council... there appears to be either intentionally or unintentionally, objective of seeking to, 'if we can't get him out by legitimate means in accordance with law, then we will so taint his reputation so that he will be unfit'." He further explained his comments by stating: "Intentionally or unintentionally it appears to me that the Ministry of the Attorney General and the Attorney General for Ontario have decided in their wisdom that, 'If we cannot get rid of Justice of the Peace Massiah within the bounds of the law – that is, with respect to legitimate complaints brought in accordance with the statute –then we will seek to remove him from office by virtue of deleterious effects of the publications by virtue of the nature of the allegations'."
- (5) On April 9, 2014, Mr. Guiste referred to the complainant whose complaint was the subject of the 2012 hearing that resulted in findings of judicial misconduct by Mr. Massiah. Despite findings by that Hearing Panel in 2012, based on the evidence presented before it, Mr. Guiste stated to this Panel that, "So for example, if Ms. [redacted] decides that she doesn't like His Worship and she decides, okay, well, what I'm going to do is I'm going to round up five people and I'm going to record their – whatever they have to say and send it to the Justices of the



Peace Review Council, that calls into question the integrity of the process.”

- (6) Mr. Guiste made comments to suggest that this Panel was discriminating against Mr. Massiah and his counsel during this process.

On April 9, 2014, Mr. Guiste said, “But the writing requirement is a very serious one, and all I’m saying is you can’t suck and blow. You can’t say on your website, this has to be in writing, signed letter. You can’t say in your annual report, and when this African Canadian Justice of the Peace comes, oh the law is changed for you. It doesn’t look good. It’s not right.”

On May 28, 2014, after the Chair of the Panel said, “Thank you for that speech” to Mr. Guiste, he responded, “To a man of African-Canadian descent, it strikes at the – what is that word? A stereotype of the black man on a soap box giving speeches on the street corner.” As we remarked at that time, the Panel was offended at the suggestion that we are racist. Mr. Guiste responded by saying, “I am suggesting to you that the context in which that was said, “Thank you, Mr. Guiste, for that speech,” I’m a man of African-Canadian descent and I’m very familiar with my history, and that when individuals of European descent in power want to exert their power, it is not uncommon to resort to that type of stereotyping.”

- (7) On April 9, 2014, Mr. Guiste said, “So because the Ministry of the Attorney General and the Government of Ontario is paying Presenting Counsel’s salary, because they want this rammed through and dealt with, done, guilty. That’s not why we’re here.”
- (8) On April 9, 2014, Mr. Guiste showed no respect for the complaints process, the Justices of the Peace Review Council or the seriousness of the allegations facing Justice of the Peace Massiah when he said: “In other words, does the Justices of the Peace Review Council have to deal with any garbage that is sent to it? Or does it have a duty to look at it intelligently and say, hmmm, all right well, why don’t you tell each of these individuals to write us a letter, signed letter and we will deal with it? That is for you to ponder and I think it makes an

abundance of sense that you just don't have garbage in and garbage out."

- (9) On April 9, 2014, Mr. Guiste diminished the seriousness of the allegations before the Hearing Panel when he said, "I'm not sure what Mr. Massiah did, but from what I know, he never raped anybody."
- (10) On April 9, 2014, Mr. Guiste stated in an insulting, demeaning tone to the Panel Chair, "I think you are fundamentally misunderstanding. I would ask that you work a little harder and try to understand me. I'm going to speak very slowly."
- (11) The Panel heard on April 28, 2014, that Mr. Guiste had contacted Mr. Gover who was retained as independent counsel to give the Panel legal advice on particular questions of law. Mr. Guiste telephoned Mr. Gover and asked him if he saw anything wrong in accepting the retainer to advise the Panel.

Mr. Guiste also suggested that there was a concern about the objective propriety of Mr. Gover acting as independent counsel. Mr. Guiste indicated that it seemed to him "that too many of the players are too loosely aligned to each other and I think a reasonable third member person in the public, looking at this, being informed of all of the facts and circumstances, would say wait a minute, that doesn't look very good."

Later in the proceeding, he stated that he had not yet looked at the case law to support his allegation and "if at the end of the day it doesn't pan out, I might withdraw it." No motion was brought in that regard.

- (12) On May 28, 2014, Mr. Guiste suggested that there had been inappropriate contact between the Panel and Ms. Henein, Presenting Counsel, and he stated, "...what I'm suggesting to this Panel is the rules are very clear that there ought not to be communication and decisions made in the absence of the subject Justice of the Peace. This was one made in his absence. Whether you and Ms. Henein, presenting counsel, had any communication or not I could never know that. But I simply have to advocate as lawyer for Mr. Massiah that the law requires this appearance of fairness and clarity ... So let me be clear. I'm just an advocate. I don't know who did what, what happened;

I can't know that, and that's not relevant. What's relevant is the appearance, and that's what I've been saying consistently. A decision was made on a fundamental point in his absence without any input ... A reasonable person, sir, looking at these circumstances, it is highly suspect, and it is a violation of the enabling procedures."

## **Summary**

6. In our view, comments such as those cited above, were unprofessional and inappropriate and exemplified conduct which did nothing to advance Mr. Massiah's defence. We did not consider the inappropriate conduct or comments of Mr. Guiste in deciding the issues in this hearing or in our reasons on the request regarding compensation. However, this judicial disciplinary process plays an important role in preserving and restoring public confidence in the administration of justice. Such conduct and comments from a lawyer cannot be overlooked. This Panel directs the Registrar to provide a copy of this Addendum to the Law Society of Upper Canada for its consideration.

Dated: June 16, 2015

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