

**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:** Justice of the Peace Michael Cuthbertson

Ms. Leonore Foster, Community Member

**Hearing Panel of the Justices of the Peace Review  
Council**

**DECISION ON JURISDICTION IN RELATION TO A  
NOTICE OF CONSTITUTIONAL QUESTION**

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## **Decision on Jurisdiction in Relation to a Notice of Constitutional Question**

### **BACKGROUND**

- 1) This is not a first-instance consideration of Mr. Massiah's request for a recommendation that he should be compensated for his legal costs.
- 2) In June 2015, with the addition of the Honourable Justice Deborah Livingstone, who has now retired from the bench, this Hearing Panel considered an application by Mr. Massiah for compensation of his legal costs for the hearing on his judicial misconduct which began in 2013. Our decision was to not recommend compensation be paid to Mr. Massiah (see *Decision on the Request for Compensation of Legal Costs* of 16 June, 2015).
- 3) Mr. Massiah then sought judicial review in the Divisional Court of that and other decisions made by the Hearing Panel. In its decision on the application, the Divisional Court found that we had approached the analysis on compensation based on a flawed premise (see *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191). As a result, the Divisional Court ordered:

[62] The application for judicial review is allowed only to the extent that the decision of the 2012 Panel, not to recommend compensation for legal fees, is set aside and that single issue is remitted back to the 2012 Panel for reconsideration.

- 4) Subsequently, leave to appeal the Divisional Court rulings was sought by both Mr. Massiah and the Justices of the Peace Review Council. The Court of Appeal for Ontario denied leave to appeal to both parties. Therefore, the Divisional Court ruling applies. That ruling must and will be respected by this Panel.

### **NOTICE OF CONSTITUTIONAL QUESTION**

- 5) Mr. Massiah has now filed a Notice of Constitutional Question. We have reviewed the Notice and decline to consider it for two reasons. First, we have no jurisdiction. Second, much of the content of the Notice either borders on, or crosses the line into an impermissible collateral attack on

the Divisional Court ruling which, with leave to appeal denied by the Court of Appeal of Ontario, is final .

## **JURISDICTION**

- 6) Upon our completion of all matters dealing with the hearing in June 2015, this Hearing Panel became *functus officio*. In simple terms, we no longer held any jurisdiction over the matter.
- 7) However, in the *Massiah* (supra) ruling of the Divisional Court, we were ordered to assume a new but very narrow jurisdiction for one purpose and one purpose only. That purpose is clearly articulated in para 62 of *Massiah* which is noted previously.
- 8) For this position, we rely on the ruling of the Saskatchewan Court of Appeal in *Harle v. 101090442 Saskatchewan Ltd., 2016 SKCA 66*. The Court stated:

**21** That is, when this Court remits a matter to a trial court, it is not for the trial court to question this Court's decision; it is the duty of the trial court to give full effect to that decision, whatever the trial court's views may be as to the intrinsic wisdom of it. This is so because *stare decisis* requires a trial court to follow the law as interpreted by its coordinate appellate court. Therefore, when a matter is remitted for determination, the trial court must follow the directions of the appellate court in making that determination. Of course, the trial court may look to the appellate court's reasons and to the original trial decision to determine the scope of the matter remitted. But, to the extent the appellate court's reasons alter the trial court's findings and its initial decision, the appellate court's findings and decision must be followed.

- 9) While *Harle* deals with a trial matter, it offers persuasive guidance to us on the principle of *stare decisis* and the limited jurisdiction we have been granted, based on para 62 of *Massiah*.
- 10) The Divisional Court remitted one limited matter for reconsideration. We must correct an analytical error and apply the analysis that has been set out by that Court to decide whether to recommend that Mr. Massiah should be compensated for some, all or none of his legal costs. We have no jurisdiction to go further than that.

## **COLLATERAL ATTACKS**

- 11) From his materials, Mr. Massiah seeks to argue that the provisions of the *Justice of the Peace Act (JPA)* and the Procedures of the Justice of the Peace Review Council (Procedures) breached certain aspects of Mr. Massiah's judicial independence when he was a justice of the peace. Further, Mr. Massiah wishes to argue issues surrounding the making of a complaint under the *JPA* and/or the Procedures.
- 12) We respectfully remind Mr. Massiah that the Divisional Court has made its ruling which is now binding on the parties and this Panel. That Court dismissed his application in relation to all matters except for the narrow issue remitted for this Panel to reconsider based on the analysis set out by the Court.
- 13) This Panel will not permit Mr. Massiah to re-litigate the hearing now. To allow otherwise would be for us to lend support to a collateral attack on the review court's and appellate court's rulings.

## **DECISION**

- 14) In conclusion, for the reasons cited above, this Hearing Panel declines to consider the Notice of Constitutional Question filed by Mr. Massiah on 16 February, 2017.

Dated: March 6, 2017

Hearing Panel: Justice of the Peace Michael Cuthbertson

Ms. Leonore Foster, Community Member