

**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**

NO UNANIMOUS DECISION REGARDING COMPENSATION

Counsel:

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Presenting Counsel

Counsel for Mr. Errol Massiah

NO UNANIMOUS DECISION REGARDING COMPENSATION

SUMMARY: The Hearing Panel has not been able to reach a unanimous decision on the request by Mr. Massiah for a recommendation to the Attorney General under sections 11(17) and (18) of the *Justices of the Peace Act* that the Mr. Massiah should be compensated for legal costs incurred by him in connection with the hearing .

- 1) Pursuant to the Divisional Court's decision in *Massiah v. Justices of the Peace Review Council, 2016 ONSC 6191*, the Hearing Panel's decision in 2015 to not recommend to the Attorney General that Mr. Massiah be compensated for legal fees incurred by the hearing was set aside and submitted back to the Hearing Panel for its re-consideration.
- 2) Unfortunately, the Chair of the Hearing Panel, the Honourable Deborah Livingstone had fully retired as a judge of the Ontario Court of Justice prior to the Divisional Court's ruling.
- 3) By virtue of s. 4.4(1) of the *Statutory Powers Procedures Act (SPPA)*, the remaining two members of the Hearing Panel, Justice of the Peace Michael Cuthbertson and community member Ms. Leonore Foster, were tasked with determining the matter.
- 4) We note that s 4.2(3) of the *SPPA* states:

The decision of a majority of the members of a panel, or their unanimous decision in the case of a two-member panel, is the tribunal's decision.
- 5) The Hearing Panel received submissions on the compensation issue from both parties earlier this year. After concluding decisions on motions brought by Mr. Massiah, we began deliberations on the request for a recommendation for the compensation of legal costs. We have worked diligently and cooperatively in attempting to come to a unanimous decision but regrettably have been unable to do so.
- 6) As a result, we have considered options both in statute and case law on how to now proceed. There exist two options. The first option would require a joint position by both parties. That option is:

Option 1

Pursuant to s. 4.2.1(2) of the *SPPA*, the Chief Justice could appoint one person to replace the former Chair of the Hearing Panel, if both parties consent. Then the three member Panel could re-consider the issue of the recommendation of compensation of legal costs and make a determination.

- 7) If the parties cannot jointly agree to proceed under Option 1 then, in our view, this Hearing Panel must act as follows:

Option 2

Pursuant to the decision in *Law Society of Upper Canada v Watson*, 2015 ONLSTH 189 (see also *Worker's Compensation Appeals Tribunal Decision no. 969/941*, 1996 CanLii 9786 (ON WSIAT)), we must advise the Chief Justice that we are deadlocked and request that, pursuant to s. 11.1(1) of the *Justices of the Peace Act*, she appoint a new three member Hearing Panel to replace us. That new Hearing Panel would then have the responsibility of re-considering the request for a recommendation for compensation of legal costs, in accordance with the Divisional Court's ruling.

- 8) We therefore request that both parties liaise on the issue. We request that each of the parties advise us in writing of its position on Option 1 no later than Friday, November 24, 2017.

Dated: October 25, 2017

Hearing Panel: Justice of the Peace Michael Cuthbertson
 Ms. Leonore Foster, Community Member