

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 Robert McNally

Before: The Honourable Justice Lisa Cameron, Chair

Her Worship Liisa Ritchie, Justice of the Peace Member

Dr. Michael Phillips, Community Member

Decision of the Hearing Panel Following Notice of the Pending Retirement of Justice of the Peace Robert McNally

Counsel:

Ms. Marie Henein
Henein Hutchison LLP

Presenting Counsel

Mr. Howard Rubel
Heller Rubel Barristers

Counsel for Justice of the Peace McNally

1. A complaints committee of the Justices of the Peace Review Council ordered a hearing, under section 11(15) of the *Justices of the Peace Act*, R.S.O. 1990, C. J.4, into three complaints about the conduct of Justice of the Peace Robert McNally of the Ontario Court of Justice.
2. The particulars of the alleged misconduct, which were set out in Appendix A to the Notice of Hearing, can be briefly summarized as follows:

Between August 1, 2017 and September 30, 2017, His Worship made comments in the courtroom that could be perceived as: racist, culturally insensitive, and ridiculing or mocking toward First Nations persons; sarcastic, condescending, demeaning and sexist toward counsel and accused persons; and, inappropriate or gratuitous humour and disrespect for the administration of justice. His Worship failed to be, and be seen to be, impartial and objective.

3. This Hearing Panel was appointed to hear evidence in relation to the allegations of judicial misconduct, to determine whether there should be a finding(s) of judicial misconduct, and if so, to determine the appropriate disposition of the complaints.
4. At the request of the parties, the Panel ordered a pre-hearing conference which was scheduled to occur on November 20, 2018.
5. The hearing was scheduled to commence on January 22, 2019, and continue on January 23, 24 and 25, 2019.
6. On October 30, 2018, Mr. Rubel, counsel for His Worship McNally, sent to the Registrar a copy of a letter from His Worship to Associate Chief Justice Faith Finnestad, Coordinator of the Justices of the Peace for the Ontario Court of Justice. In his letter, His Worship states his intention to fully retire, effective January 3, 2019, with no opportunity to engage in any *per diem* work.
7. Subsequently, counsel for His Worship advised that His Worship has decided to retire effective December 31, 2018.
8. The Hearing Panel notes that jurisdiction over the conduct of a justice of the peace continues unless and until a justice of the peace retires from 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.
9. This Hearing Panel will therefore retain jurisdiction until His Worship's retirement

takes effect on December 31, 2018. When the retirement takes effect, this proceeding will come to an end because the Review Council and the Hearing Panel will cease to have jurisdiction over His Worship McNally, who will no longer be a justice of the peace.

10. The Hearing Panel directs the Registrar to cancel the scheduled hearing dates upon receipt of confirmation that His Worship's retirement has taken effect.
11. If, for any reason, His Worship's retirement does not take effect on December 31, 2018, the proceeding will commence, as previously scheduled, on January 22, 2019. Accordingly, pending confirmation of His Worship's retirement, all hearing dates in this matter shall be preserved.
12. This will ensure that the hearing can proceed in a timely manner should His Worship not retire. Further, the objective of preserving public confidence in the complaints process and in the judiciary is balanced with the responsible use of public funds.
13. The Hearing Panel directs that a copy of these reasons be made publicly available and provided to His Worship's counsel by email.

Dated this 5th day of November, 2018

HEARING PANEL:

The Honourable Justice Lisa Cameron, Chair

Her Worship Liisa Ritchie, Justice of the Peace Member

Dr. Michael Phillips, Community Member