

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 Santino Spadafora

Before: The Honourable Justice Esther Rosenberg
Regional Senior Justice of the Peace Bernard Swords
Ms. Leonore Foster, Community Member

Hearing Panel of the Justices of the Peace Review Council

DECISION ON THE APPLICATION FOR INTERVENOR STATUS

Counsel:

Mr. Scott K. Fenton
Fenton, Smith
Presenting Counsel

Mr. Mark J. Sandler
Cooper, Sandler, Shime & Bergman LLP
Counsel for His Worship Santino Spadafora

Mr. James Morton and Mr. Robert H. Karrass
Steinberg Morton Hope & Israel LLP
Counsel for the Association of Justices of the Peace

DECISION ON THE APPLICATION FOR INTERVENOR STATUS

1. The Association of Justices of the Peace of Ontario, referred to as "AJPO", has brought an application that was heard today before this Hearing Panel for intervenor status in the hearing about the complaint concerning Justice of the Peace Santino Spadafora. The hearing is scheduled to proceed in November of 2014.
2. Mr. Karrass made submissions on behalf of AJPO. Presenting Counsel, Mr. Fenton, made submissions, as did Mr. Sandler on behalf of Justice of the Peace Spadafora. The grounds presented by AJPO were that AJPO will assist the Panel in determining significant issues raised by this case, including issues of public interest, specifically: the underlying fairness of how financial policies are enforced across the bench; and, the appropriate practice, including the content of procedural and substantive fairness when a complaint results in criminal prosecution followed by discipline proceedings.
3. AJPO submits that it has recognized institutional experience, and special knowledge and expertise in the important issues that will be considered before this Panel and that they have a unique perspective in representing the justices of the peace bench as a whole.
4. Presenting Counsel, Mr. Fenton, submitted that the application to intervene should be dismissed. He referred the Panel to Section 11.1(8) of the *Justice of the Peace Act*, which states:

The Panel shall determine who are the parties to the hearing.

5. He directed the Panel to case law that has developed on the issue of intervenor applications, specifically in relation to adding a party or an intervention as a friend of the court. Referring to the Court of Appeal of Ontario decision in *Peel (Regional Municipality) v. Great Atlantic Pacific Co. of Canada Ltd.*, 74 OR (2d) 164 (ONCA), he outlined the overarching matters to be considered as: the nature of the case; the issues which arise; and, the likelihood of the applicant being able to make a useful contribution to the resolution of the appeal without causing injustice to the immediate parties.
6. He submitted that the sole issue to be determined in this case is factual and that there was no specific information shared today that would be of assistance to the Panel.
7. He further submitted that there are no judicial independence issues, and that there is a real concern here that granting intervenor status raises a risk of

derailing these proceedings with matters that have nothing to do with what needs to be decided.

8. Essentially, he submitted that there is no specific information that would be provided by AJPO that would be of assistance to this Panel. In fact, on the very issue of the recognized institutional experience, special knowledge and expertise referenced in the applicant's Notice of Motion, Justice of the Peace Saverio Nestico, who in his capacity as the president of AJPO provided the supporting materials for this application, confirmed today before the Panel that AJPO has no specific expertise in these areas.
9. Mr. Sandler, on behalf of His Worship Spadafora, submitted that he is not opposed to the granting of the intervenor status for AJPO so long as their role were confined to the areas specified in their materials. He further submitted that he could see how AJPO could contribute to the questions before the Panel as to the existing policy and whether it was applied uniformly across the province.
10. The Panel understands that AJPO in representing the interests of its membership, some 347 justices of the peace across Ontario, has an interest in the outcome of these proceedings. However, the Panel is not satisfied that the applicant can provide any unique information or expertise that will be helpful to a determination of the issues in this case.
11. In fact, in addressing Mr. Sandler's submission, after some probing questions put to counsel for AJPO, the Panel is not convinced that AJPO would provide any information that would assist in a determination of the issues that could not be adduced by Mr. Sandler in responding to the case on behalf of his client, His Worship Spadafora. Further, the Panel agrees that remunerative benefits for judicial officers are of interest to the public as public funds are being expended. However, in this particular case, we are dealing with a complaint based on allegations against an individual justice of the peace. The applicant was not able to articulate any specific information that would assist the Panel in that determination; only that they could provide background information about how the policies came about and generally how the policy relating to expense claims are applied in relation to claims by other justices of the peace. This, in our view, is significantly deficient in meeting the criteria that has been developed on the consideration of applications to intervene.
12. The applicant has expressed concern about the fairness of how financial matters pertaining to justices of the peace as a whole are dealt with and the overriding impact of this concern on judicial independence. The Panel is unable to conclude that there is any issue of judicial independence of the applicant as appropriately raised with respect to these particular proceedings. As for the fairness issue, we are unable to conclude that AJPO can provide the Panel with any information on the issues to be determined. There is guarded concern here that AJPO, as representative of the membership, seeks to vary or create policy or influence the outcome of the matters to be considered in the hearing about this complaint. In fact, as it relates to this specific complaint, the Panel concludes that there is a real risk that granting AJPO intervenor status could distract the Panel from its task of addressing the allegations about the conduct of this justice of the peace.

13. Finally, with respect to the concern of the interrelationship of a criminal prosecution and a complaint to the Justice of the Peace Review Council proceeding, the Panel is not convinced that the aspects of the criminal process raised by AJPO have any determinative value in the issues that will be raised during this hearing. The evidentiary standard of proof in a criminal case is not the same as a test in this proceeding. In any event, Mr. Sandler can raise any issues that he sees as relevant.
14. Finally, in Presenting Counsel's factum, he raises the concern about a potential prejudice. The Panel agrees that if the application to intervene were granted, there would be a risk of a perception on the part of the public that AJPO is attempting to influence the outcome of a hearing that is an independent objective process in relation to one specific judicial officer.
15. The application is denied. The Panel is not convinced that AJPO will provide any useful contribution, distinct or unique perspective or information to assist in the determination of the issues in this matter.

Dated this 22nd day of August, 2014.

HEARING PANEL:

The Honourable Justice Esther Rosenberg, Chair

Regional Senior Justice of the Peace Bernard Swords

Ms. Leonore Foster, Community Member