

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
Senior Advisory Justice of the Peace Bernard Swords
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:

Mr. Scott K. Fenton
Fenton, Smith
Presenting Counsel

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

DECISION ON THE REQUEST FOR A RECOMMENDATION FOR COMPENSATION OF LEGAL COSTS

Background

1. This is a hearing, pursuant to section 11.1 of the *Justices of the Peace Act* into a complaint about the conduct of Justice of the Peace Santino Spadafora of the Ontario Court of Justice. The decision to order a hearing was taken following the investigation of the complaint in accordance with the Review Council's complaints process. A three-person complaints committee, consisting of a judge, a justice of the peace, and a community or lawyer member, investigated the complaint and ordered, pursuant to section 11(15)(c) of the *Act* that a formal hearing be held.
2. Pursuant to section 11.1(1) of the *Act*, the Honourable Chief Justice Annemarie E. Bonkalo, Chair of the Review Council, established this Hearing Panel to hear evidence and determine whether there is evidence to support a finding of judicial misconduct and, if so, to determine the appropriate disposition of the complaint under section 11.1(10).
3. On January 24, 2014, Presenting Counsel, Mr. Scott Fenton, filed the Notice of Hearing setting out the allegations about His Worship's conduct which are summarized below:

Between 2005 and 2011, His Worship submitted expense claims in which he misrepresented information and claimed for overnight stays and driving distances that were incorrect, excessive and/or inappropriate. When made aware of issues, he provided information to the Manager of Regional Judicial Support that misrepresented his travel dates, places of stay and distances of travel.
4. Five dates were scheduled for evidence, commencing on November 24, 2014.
5. On November 4, 2014, His Worship filed a motion for adjournment of the hearing.
6. On November 13, 2014, His Worship submitted a letter to Chief Justice Bonkalo, confirming his full retirement, effective January 31, 2015. He withdrew his motion for an adjournment.
7. The Hearing Panel convened on November 14, 2014 at which time Mr. Sandler confirmed that His Worship had submitted his letter of retirement. The Panel noted that in the circumstances, it was not a good use of public funds to proceed with the hearing. A minimum of five full days were scheduled for the hearing of evidence. The Panel would then need time to deliberate and issue a decision. The Panel determined that it was unlikely that the hearing process would be fully concluded before the retirement would take effect. It considered

that on January 31, 2015 when the retirement was to take effect, the Review Council and this Hearing Panel would lose jurisdiction over the matter. On that basis, pending the retirement taking effect, the Hearing Panel adjourned the matter *sine die*.

8. The Panel also noted that if His Worship were to ever attempt to return to office as a justice of the peace, the Review Council would regain jurisdiction and the hearing process would reactivate and continue.
9. On November 14, 2014, Mr. Sandler submitted a request on behalf of His Worship Spadafora pursuant to section 11.1 of the *Justices of the Peace Act* for a recommendation to the Attorney General that he should be compensated for the costs of legal services incurred in connection with the hearing. Section 11.1 states:

Compensation

11.1(17) The panel 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.

Maximum.

(18) The amount of compensation recommended under subsection (17) shall be based on a rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.

10. Shortly after that date, His Worship Spadafora wrote to Chief Justice Bonkalo and requested permission to withdraw his letter of retirement. In a letter, dated January 6, 2015, Chief Justice Bonkalo exercised her discretion in favour of that request and allowed the retirement letter to be withdrawn.
11. With the withdrawal of the retirement, the Hearing Panel would retain jurisdiction to proceed with the hearing. Presenting Counsel promptly filed a motion to reinstate the proceedings as soon as reasonably possible. The motion was scheduled to be heard on January 23, 2015.
12. The Hearing Panel convened on January 23, 2015. At that time, Presenting Counsel advised that His Worship Spadafora sent an email to Chief Justice Bonkalo on January 14, 2015 again indicating his intention to retire, effective January 31, 2015.
13. On January 23, 2015, His Worship filed a sworn document indicating his intention to retire irrevocably, effective January 31, 2015.
14. On January 23, 2015, the Panel expressed its concern about the course of events. Acting prudently, and in the interest of absolute certainty in the judicial discipline process, it put steps in place for the hearing of evidence, should His Worship again request revocation of his retirement. The Panel was sensitive to the expenditure of public funds and concluded that the most expeditious and least costly option moving forward was to set potential hearing dates, with the

understanding that should His Worship's retirement take effect on January 31, 2015, this Panel would lose jurisdiction and the dates would be vacated. The hearing was scheduled to commence on March 30, 2015.

15. The retirement took effect on January 31, 2015 and the Panel lost jurisdiction over the hearing and the dates were vacated.
16. Following the further appearance on January 23, 2015, His Worship submitted a supplementary request through Mr. Sandler for compensation for legal costs related to that appearance.
17. In considering His Worship's requests for a recommendation for compensation of his legal costs associated with the hearing process, the Panel considered the guidelines set out in the JPRC hearing in 2013 about the conduct of His Worship Tom Foulds. In that case, the presiding Hearing Panel observed that the provision in section 11.1(17) relating to a request for compensation of legal costs is unusual in the professional disciplinary process. That Panel noted that the awarding of costs in judicial misconduct proceedings has lacked consistency and it endeavoured to provide some general guidelines to consider in deciding upon such requests.
18. Although a number of the guidelines in the *Foulds* case applied to the situation where after a hearing there was a finding of judicial misconduct, some of the guidelines are relevant where a matter has not proceeded to a hearing and there is no finding of misconduct:
 - (i) Respondents to these hearings should be encouraged to retain counsel.
 - (ii) Where counsel assists with the preparation of an Agreed Statement of Facts, it is recognized that this results in a considerable savings to the public.
 - (iii) Having complainants and other witnesses cross-examined by counsel, rather than by the judicial officer who is the subject of the complaint proceedings, adds to procedural fairness and the dignity of the process. It also avoids the unseemliness of a judicial officer directly pleading his case to his judicial peers.
19. The Panel agrees with the view expressed by that Panel that these guidelines serve the public interest by ensuring that its judicial officers are fairly and adequately represented, but not at the cost of the administration of justice as a whole. A Hearing Panel of the JPRC must be mindful of the role of the complaints process in preserving and restoring public confidence in the judiciary, and of the fact that the public expects careful scrutiny when a request is made for public funds to pay the costs of a judicial disciplinary hearing.

20. Keeping in mind the public interest, in addition to the factors listed above in paragraph 18, the Panel is of the view that the following additional guidelines should be applied in circumstances where a hearing under section 11.1 of the *Act* has been ordered even if the complaints process did not proceed to the stage where a decision was made, based on the merits, as to whether the justice of the peace's actions constituted judicial misconduct:
- (a) The outcome of the proceedings;
 - (b) The nature of the allegations before the Hearing Panel;
 - (c) The complexity of the proceeding and the importance of the issues;
 - (d) The amount requested;
 - (e) Whether the conduct of the justice of the peace tended to shorten or to lengthen unnecessarily the duration of the process or unnecessarily increased the cost of the process;
 - (f) Whether the conduct of the justice of the peace during the process could negatively impact on public confidence in the judiciary and in the complaints process that has been established to preserve that confidence;
 - (g) The skill and competence of counsel;
 - (h) Time and costs saved prior to reaching a conclusion in the process;
 - (i) The amount of costs that an unsuccessful party could reasonably expect to pay in relation to the steps in the proceeding for which costs are being requested; and,
 - (j) Whether the legal services relate to matters that were peripheral to or outside of the consideration of the matters before the Panel.
21. In considering the outcome in this process, we note that the allegations were serious. This is not a case where the allegations of misconduct have been dismissed. His Worship Spadafora retired before the evidence was called. The Hearing Panel lost jurisdiction to proceed.
22. It is also not a situation where the allegations were proven or disproven in the hearing. In his oral submissions, Mr. Sandler referred to a related criminal charge which was withdrawn by the prosecution and he informed the Panel that His Worship had to incur expenses personally to successfully defend the criminal charge. There was no finding made by a court in that regard that informs our decision. We are also mindful that in the Canadian system of

justice, it would not be appropriate to assume that there would have been a finding of judicial misconduct.

23. We accept Mr. Sandler's submissions that he worked closely with Presenting Counsel to narrow the issues that would be the subject of the hearing and to obviate the need to formally prove uncontentious matters. It is our understanding that through those discussions and a pre-hearing conference, the number of days estimated for the hearing was reduced from several weeks to five days. We accept that he was also actively involved in the discussions with his client that led to his decision to retire, which ultimately saved considerable costs associated with a contested hearing. We also note that work was done on an Agreed Statement of Facts. Mr. Fenton submitted that Mr. Sandler was reasonable to deal with in coming to concessions regarding the admissibility of documents and expressed his agreement that the matter was complex and that Mr. Sandler assisted in that regard. We are recommending compensation for those legal services.
24. We are not recommending compensation for services provided on March 25, 2014, April 11, 2014 or April 19, 2014 which we find relate to the application by the Association of Justices of the Peace of Ontario ("AJPO") for intervenor status in the hearing. We note that His Worship did not file written submissions and had no significant oral submissions in that application. We are of the view that reasonable informed members of the public would see those services as unnecessary for His Worship and could perceive those services as being provided to assist AJPO, rather than His Worship Spadafora. We are recommending compensation for the costs charged by Mr. Sandler for his attendance and that of Ms. Shwartzentruber on August 22, 2014 when the application for intervenor status was argued and denied.
25. On November 13, 2014, His Worship submitted his first letter to the Chief Justice of the Ontario Court of Justice confirming his retirement from judicial office, effective January 31, 2015. It was a motion brought by His Worship on short notice and less than two weeks before the hearing was scheduled to commence on November 24, 2014. The hearing dates had been determined months earlier on May 2, 2014. As a result of the Notice of Motion, hearing facilities were required for the hearing of the motion, along with the attendance of the Panel members, Presenting Counsel, staff and a reporter. Notice had to be given to the public. On November 14, 2015, Mr. Sandler requested that the motion be withdrawn.
26. We are not recommending compensation for most of the costs of legal services after October 27, 2014 related to the motion that was withdrawn on November 14, 2014. It is our view that, in all of the circumstances, public confidence in the complaints process would not be served by granting compensation for those costs. We have granted the cost of Mr. Sandler's appearance on November 14, 2014 because he formally confirmed to the Panel and for the public that His Worship had submitted a letter of retirement, effective January 31, 2015. Mr. Sandler also made oral submissions on the question of whether the Panel should make a recommendation that His Worship should be compensated for

his legal costs.

27. Nor are we prepared to recommend compensation for any legal services incurred subsequent to the date when His Worship submitted his first letter of retirement to the Chief Justice. The submission of a letter of retirement is a significant step, particularly when it is done in circumstances when the justice of the peace is the subject of a judicial disciplinary hearing. For public confidence to be preserved in the judiciary, the public is entitled to expect the letter of retirement to be irrevocable. In this case, His Worship submitted a letter of retirement in November that impacted on the hearing process and he then withdrew that letter. Presenting Counsel had to bring a motion to reschedule hearing dates. The hearing process is public and the public had to be apprised that the hearing was cancelled and then that it would need to be rescheduled.
28. The withdrawal of the letter of retirement created a risk that members of the public could perceive His Worship to be attempting to manipulate the hearing process. As indicated, the purpose of the complaints process is preserving and restoring confidence in the judiciary. The Panel has concluded that it would be inconsistent with that purpose for the public to bear the cost of legal expenses incurred after His Worship submitted the first letter of retirement, dated November 13, 2014.
29. We have also been mindful of section 11.1(17) which respects the fact that a request is being made to use public funds and that section 11.1(18) requires that compensation be based upon the rate for legal services that does not exceed the maximum rate normally paid by the Government of Ontario for similar services.
30. For all of those reasons, we are recommending to the Attorney General that His Worship Spadafora be compensated in the amount of \$13,888.50 plus HST for part of the cost of the legal services provided by Mr. Sandler in relation to the hearing ordered into the complaint alleging judicial misconduct.

Dated: April 7, 2015.

HEARING PANEL:

The Honourable Justice Esther Rosenberg, Chair

Senior Advisory Justice of the Peace Bernard Swords

Ms. Leonore Foster, Community Member