

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 Paul Welsh

Before: The Honourable Justice Robert Wadden, Chair
 Her Worship Christine Smythe, Justice of the Peace Member
 Ms. Lauren Rakowski, Community Member

DECISION ON THE REQUEST FOR A RECOMMENDATION THAT HIS WORSHIP SHOULD BE COMPENSATED FOR HIS LEGAL COSTS INCURRED BY THE HEARING

Counsel:

Mr. Matthew R. Gourlay
Presenting Counsel

Mr. Eugene Bhattacharya
Ms. Mary Waters Rodriguez
Counsel for His Worship

1. A complaint was brought pursuant to the *Justices of the Peace Act*, R.S.O. 1990, c. J.4 (the “*Act*”), against Justice of the Peace Paul Welsh in relation to his conduct towards an unrepresented applicant during a pre-enquete hearing. The matter was defended by His Worship and proceeded to a hearing before this Panel. In an Order dated March 2, 2020, this Panel dismissed the complaint, finding that the allegations had not been proven. His Worship is now requesting that the Panel make a recommendation to the Attorney General that he be compensated for the legal costs that he incurred as a result of the hearing.

Facts of the Case

2. The complaint that gave rise to this discipline hearing against His Worship alleged that he committed misconduct during a pre-enquete proceeding over which he was presiding. All of the allegations related to that single proceeding, not multiple events. The complainant had a confrontational history with the courts, and was later found by the Superior Court of Justice to be a vexatious litigant. The allegations related to His Worship’s core judicial functions, and His Worship successfully defended them at the hearing. This Panel found that the allegations against His Worship had not been proven, and that he had conducted himself in a reasonable way in the course of the proceeding in question. Accordingly, the complaint was dismissed.

Legal Principles

3. The authority for this Panel to recommend to the Attorney General that His Worship should be compensated for his legal costs is found in s. 11.1(17) of the *Act*, which provides that a 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”.
4. The governing principle was stated by the Divisional Court decision in *Massiah v. Justice of the Peace Review Council*, 2016 ONSC 6191, in which Nordheimer J. (as he then was) stated, at para. 56:

... adjudicative bodies, dealing with complaints against judicial office holders, ought to start from the premise that it is always in the best interests of the administration of justice, to ensure that persons, who are subject to such complaints, have the benefit of counsel. Consequently, the costs of ensuring a fair, full and complete process, ought usually to be borne by the public purse, because it is the interests of the public, first and foremost, that are being advanced and maintained through the complaint process. Again, this reflects the public interest nature of the process.

5. The Court in *Massiah* cited a number of reasons in support of this principle. The third one, at para. 53 of the decision, is apt in the case before us:

... judicial office holders, by the very nature of their duties, and the decisions that they make, naturally attract criticism and animosity. It is an easy matter for someone, or some group, to make a complaint regarding something that a person, who holds judicial office, does, says, or decides. While there are screening mechanisms to ensure that only complaints that appear to have a requisite degree of validity, and that are related to judicial conduct rather than judicial decisions, are permitted to proceed beyond the stage of the initial complaint, the impact on the holder of a judicial office, where a hearing is called, is significant, as this case and others have amply demonstrated.

6. It is worth noting that the *Massiah* decision dealt with the awarding of costs to a justice of the peace who was unsuccessful in his defence of the complaint and had a finding of misconduct made against him and discipline imposed. The Court noted that even where misconduct has been found, it may be appropriate to recommend compensation for costs. The Court set out a number of factors that may be considered in making a decision to recommend costs. Justice Nordheimer wrote, at para. 57, that “misconduct that is more directly related to the judicial function may be more deserving of a compensation order than conduct that is less directly related”, and repeated or multiple instances of misconduct may be less deserving of a compensation recommendation.
7. An additional factor was noted in *Re Bisson* 2018 JPRC, which held that “the conduct of the hearing” is a factor that should be considered, in addition to those set out by the Divisional Court in *Massiah*, reasoning that compensation should not include costs associated with steps in the hearing that were unmeritorious or unnecessary.

Legal Costs

8. In support of this application regarding costs, His Worship’s counsel, Mr. Eugene Bhattacharya, has submitted his accounts showing that he spent 32.6 hours, and his associate a further 28.1 hours, on this matter. If charged at his full rate, the costs would be \$26,897.39, including HST. However, there is a cap on the rate that may be used by this Panel in making a recommendation. Section 11.1(18) of the *Act* states that “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.” This rate is fixed at \$450/hour for a lawyer of Mr. Bhattacharya’s experience, and \$175/hour for his

associate, Ms. Rodriguez, who was called in 2018 and has less than three years experience. That would reduce the costs to \$22,133.88, including HST.

9. Presenting Counsel, Mr. Gourlay, agrees with His Worship that a recommendation for compensation would be appropriate in this case. Mr. Gourlay's view is that the costs incurred by His Worship appear to be reasonable and appropriate in the circumstances.

Analysis

10. In our view, the discipline hearing before this Panel was run professionally and efficiently by counsel on both sides. The hearing was concluded in one day, which was less than originally estimated. The documentary evidence was well organized and filed on consent, upon agreement of counsel. The original complainant was not called as witness, but it was reasonable for Mr. Battacharya to prepare to cross-examine him, given that he might unexpectedly attend. The hearing proceeded on the merits, with evidence being filed by Presenting Counsel and a relevant witness being called by counsel for His Worship. There were no unmeritorious or unnecessary motions or procedural steps in the hearing.
11. The hearing, as with all JPRC hearings, dealt with a matter of public importance, with implications not just for His Worship but for the justice system as a whole. As stated in *Massiah*, at para 50: "The principal objective of the complaint process is to restore and maintain public confidence in the integrity of the judiciary ...".

Conclusion

12. In this case, we are in agreement that we should make a recommendation for compensation for His Worship's legal costs in defending this hearing.
13. We have carefully reviewed the itemized statement of legal fees submitted by His Worship. It appears reasonable in light of the complexity of the work involved, and we do not find any evidence of unnecessary costs.
14. The following is a summary of the costs incurred by His Worship, at the approved counsel rates of \$450/hour and \$175/hour:

<u>Counsel</u>	<u>Hours Billed</u>	<u>Maximum rate</u>	<u>Total</u>
Eugene Bhattacharya	32.6	Up to \$450.00	\$14,670.00
Mary Waters Rodriguez	28.1	Up to \$175.00	\$ 4,917.50
Total Legal Fees			\$19,587.50

HST on Legal Fees	\$ 2,546.38
Disbursements	\$ 0.00

Total Legal Costs Based on JPRC hourly rates	\$22,133.88
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16. Therefore, this Panel recommends that His Worship be compensated in the amount of \$22,133.88, inclusive of HST, for the cost of legal services incurred in connection with his hearing.

Dated at the City of Toronto in the Province of Ontario, May 6, 2020.

HEARING PANEL:

The Honourable Justice Robert Wadden, Chair

Her Worship Christine Smythe, Justice of the Peace Member

Ms. Lauren Rakowski, Community Member