

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 Claire Winchester

Application Before: The Honourable Justice Martin Lambert, Chair
Her Worship Kristine Diaz, Justice of the Peace Member
Dr. Michael Phillips, Community Member

DECISION ON THE APPLICATION TO DETERMINE THE LOCATION OF THE HEARING

Counsel:

Mr. Matthew Gourlay
Presenting Counsel

Mr. Donald Bayne
Ms. Michelle O'Doherty
Counsel for Her Worship

- [1] On March 8, 2019, Her Worship brought an application before the Hearing Panel as it was then constituted,¹ for an order that the hearing take place in the East Region of Ontario, namely Cornwall or Ottawa.
- [2] On May 15, 2019, the Hearing Panel provided an oral decision denying the application and ordering that the hearing take place in Toronto, with written reasons to follow. These are the Reasons of the Hearing Panel.

Statutory and Procedural Authority

- [3] Section 11.1(4) of the *Justices of the Peace Act*, R.S.O. 1990, c.J.4 (“*JPA*”) provides that the provisions of the *Statutory Powers and Procedures Act*, R.S.O. 1990 S. 22 (“*SPPA*”) apply to hearings of the Justices of the Peace Review Council (the “JPRC”). The *JPA* also provides that the rules of procedure developed by JPRC (the “Procedures Document”) apply to hearings (s. 11.1(5)).

Position of Justice of the Peace Winchester

- [4] Her Worship submits that the *JPA*, the *SPPA* and the Procedures Document do not mandate that JPRC hearings be held in a particular location. Rather, section 2 of the *SPPA* directs that JPRC hearings shall be conducted so as “to secure the just, most expeditious and cost-effective determination of every proceeding on its merits”.
- [5] Her Worship takes the position that the Registrar of the JPRC directed the location of the hearing to be downtown Toronto without any statutory authority. She submits that the Procedures Document does not authorize the Registrar to fix the venue of the hearing because this issue falls within the jurisdiction of the Hearing Panel to determine on a case-by-case basis, and because venue itself is not fixed; there is no default rule establishing the location of JPRC hearings at Toronto.
- [6] Her Worship argues that, absent exceptional circumstances, the factors of justice, expedition and cost-effectiveness are best served when proceedings are held in the location where the events took place, where the witnesses are located and where the subject of the hearing, Her Worship Winchester, resides and/or works.

¹ The application was argued before the Hearing Panel constituted of the Honourable Justice Martin Lambert, Justice of the Peace Kristine Diaz and Dr. Michael Phillips. Subsequently, Dr. Phillips became unable to continue on the Panel and he was replaced by community member Ms. Leonore Foster.

She argues that in the circumstances of this application, such factors support having the hearing held in the East Region, specifically Ottawa.

- [7] It is submitted that holding the hearing in the East Region would be less expensive, less stressful and more convenient for Her Worship than having the hearing in Toronto. Her Worship further indicates that she anticipates calling up to 13 witnesses, all of whom would have to travel from the East Region to Toronto.
- [8] The ability to use technology, including video conferencing, to make available distance evidence was acknowledged by Her Worship. However, counsel for Her Worship indicated that his choice would be to have all witnesses, other than character witnesses, attend in person. He referred the Panel to technical difficulties he encountered with videoconferencing during an Ottawa criminal trial.
- [9] Her Worship outlined the manner by which various adjudicative tribunals in Ontario address the issue of venue for hearings. She submits that criminal law concepts regarding venue are applicable here, as both the JPRC hearing process and criminal trials involve public interest adjudication and the complaint itself arose in the criminal law context.
- [10] She also raises concerns with the affidavit of Marilyn King, the Registrar of the JPRC, filed by Presenting Counsel on this application. The affidavit details the human resource and operational burden on the JPRC should the hearing be conducted in the East Region. Counsel for Her Worship notes that the Registrar's role includes assisting and providing advice to the Hearing Panel. Her affidavit, it is argued, puts the Hearing Panel in an awkward position and could give rise to a reasonable apprehension of bias against Her Worship on the application.

Position of Presenting Counsel

- [11] Presenting Counsel accepts that the Panel has jurisdiction to order that the hearing be held in a location other than Toronto. He states that the Panel's jurisdiction arises from the principle that every tribunal is the master of its own procedure and rely on their own rules, practices and policies in determining whether a change in venue is warranted. Presenting Counsel refers to the administrative law principle set out by the Supreme Court of Canada in *Knight v. Indian Head School Division No. 19*, [1990] 1 SCR 653, 1990 CanLII 138 (SCC): "It must not be forgotten that every administrative body is the master of its own procedure and need not assume the trappings of a court."

- [12] Presenting Counsel notes that the JPRC's long-standing practice is to conduct hearings in Toronto. He argues that there is nothing improper with this practice, and the *SPPA* does not prohibit a tribunal from "adopting a rule and/or practice of holding its hearings at its head office." Accordingly, he submits that the Registrar's direction that the hearing would be held in Toronto was appropriate and in accordance with the long-established practice of the JPRC.
- [13] Presenting Counsel dismisses the proposition that principles of criminal law should be applied to an area of administrative law governed by provincially-regulated statutes. He notes that, unlike in the administrative tribunal context, there are common law presumptions regarding the proper location of trials in criminal law, specific *Criminal Code* provisions relating to venue, and fundamental concerns relating to jury (im)partiality.
- [14] Presenting Counsel submits that there is no presumption of locality in the context of provincially-constituted tribunals like the JPRC; rather, many tribunals presumptively hold hearings in the venue where the tribunal itself is located and will only consider changing the venue to another location in exceptional circumstances. Reference was made to various professional disciplinary bodies, such as the Law Society of Ontario, the College of Physicians and Surgeons of Ontario, the Ontario College of Pharmacists and the Royal College of Dental Surgeons of Ontario. With the exception of the Law Society, all of these professional disciplinary bodies hold hearings at the location of their headquarters. The Law Society's Tribunal's *Rules of Practice and Procedure* provides a default rule that every hearing shall be held at the Law Society Tribunal in Toronto. Parties may bring a motion for an order that the hearing be held at a different location.
- [15] Presenting Counsel acknowledges that the JPRC does not have specific rules in its Procedures Document governing applications related to the location of hearings. By way of analogy, Presenting Counsel submits that the Law Society *Tribunal's Rules of Practice and Procedure* provide a number of relevant factors for the Hearing Panel to consider. Ultimately, Presenting Counsel submits that the onus is on Her Worship to demonstrate that the interests of justice, including overall costs, fairness and convenience of the parties, demonstrably favours holding the hearing elsewhere.
- [16] Presenting Counsel argues that the Panel should consider the relative costs of holding the hearing in the East Region as compared to Toronto, both in terms of the financial and organizational costs to the functioning of the JPRC. Presenting

Counsel argues that while the central witnesses would likely need to give evidence in person, witnesses who would only testify on peripheral matters could easily do so by videoconference.

- [17] Presenting Counsel also addressed the concern expressed by Her Worship about the Registrar's affidavit. He indicated that this affidavit was provided by the Registrar at the request of Presenting Counsel in order to provide the Hearing Panel with relevant information to assess the balance of convenience. He disagrees that there is a conflict arising from this evidence and that the Registrar was the only person who could provide such evidence. The Registrar essentially organizes the hearings and is responsible for finding and securing hearing venues.

Decision

- [18] Based on the oral and written submissions of counsel and the evidence filed, and considering the applicable legislation and Procedures Document, the Panel concludes that it has jurisdiction to order that the hearing be conducted in a location other than Toronto. However, for the reasons that follow, the Panel orders that this hearing should be conducted in Toronto.
- [19] The Panel agrees with Presenting Counsel that the onus is on Her Worship to demonstrate that the interests of justice, including overall costs, fairness and convenience of the parties, demonstrably favours holding the hearing in the East Region.
- [20] The Panel is not persuaded by Her Worship's submission that the hearing should be located close to her home or workplace to reduce personal inconvenience, travel and/or stress. The Panel notes that the convenience of the parties is not a final or determining factor.
- [21] With respect to witnesses, the Panel observes that videoconferencing is an accepted and cost-effective method used in many courts to accommodate out-of-town witnesses. While Counsel for Her Worship expressed concerns about using videoconferencing due to the potential for technical difficulties, the Panel was not presented with any evidence to support this suggestion other than counsel's reference to a trial he conducted in Ottawa.
- [22] With respect to costs, the Panel notes that counsel for Her Worship observed that many of the costs are comparable as between the East Region and Toronto.

- [23] The Panel observes that the affidavit of the Registrar filed by Presenting Counsel states that the Review Council has a small staff who also support the work of the Ontario Judicial Council. The affidavit describes why a hearing outside of Toronto would result in inconvenience and operational impacts for the ongoing work of both Councils. Presenting Counsel submits that if the hearing were conducted in the East Region, Council staff would be required to travel to and remain in the East Region to support the operation of the hearing. Having most Council staff absent from the OJC/JPRC office during a hearing estimated by Mr. Bayne to be lengthy would impede the regular functioning of both Councils.
- [24] We note the concerns expressed by counsel for Her Worship in relation to the affidavit emanating from the Registrar of the JPRC. While the Panel is not persuaded that the affidavit created any reasonable apprehension of bias, the Panel is of the view that, in the future, it would be advisable that this type of evidence come from persons other than staff of the Review Council.
- [25] Taking into account the governing principle of securing the most just, expeditious and cost-effective determination of the proceeding on its merits as outlined by the *SPPA*, and accepting that the most logical comparators are professional disciplinary bodies whose established practices are to generally hold hearings at the location of their headquarters, it is the decision of this Panel to hold Her Worship's hearing in Toronto.
- [26] The Panel observes that, since issuing its oral decision, the JPRC formally amended its Procedures Document to provide that, absent exceptional circumstances, all JPRC hearings shall be conducted in Toronto. Had the JPRC not recently amended its Procedures Document to reflect this long-standing practice, this Panel would have recommended such an amendment.

Dated at the city of Toronto in the Province of Ontario, November 25, 2019.

REASONS OF THE HEARING PANEL, AS IT WAS THEN CONSTITUTED:

The Honourable Justice Martin Lambert, Chair

Her Worship Kristine Diaz, Justice of the Peace Member

Dr. Michael Phillips, Community Member