

# **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**

**Before:** The Honourable Justice Martin Lambert, Chair  
Her Worship Kristine Diaz, Justice of the Peace Member  
Ms. Leonore Foster, Community Member

**DECISION ON THE APPLICATION FOR A RECOMMENDATION OF  
COMPENSATION FOR LEGAL COSTS**

**Counsel:**

Mr. Matthew Gourlay  
Presenting Counsel

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

[1] On February 19, 2020, this Hearing Panel found that Justice of the Peace Winchester engaged in judicial misconduct.

[2] We found as follows:

[59] We unequivocally conclude that Her Worship acted in haste and without due regard to the right of the accused to have his bail hearing held that day. Her decision to close court was not judicial decision-making immune from review by the Council. Had she held the matter down to provide an opportunity to have the Informations brought before the court, heard the bail hearing and denied JJ bail, it is clear that the recourse would have been a bail review and not a complaint to the JPRC.

[60] As the Supreme Court of Canada noted in *Moreau-Bérubé v. New Brunswick (Judicial Council)*, supra, at para. 58, there are cases when an abuse of judicial independence by a judicial officer has threatened the integrity of the judiciary as a whole. The harm alleged is not curable by the appeal process.

[61] After the events of May 23, 2018, RSJP Leblanc made it clear to Her Worship that a justice of the peace has an obligation to fulfill their judicial duties until the end of the court day.

[62] We find that in disregarding the constitutional, procedural and fundamental rights of the accused on June 27, 2018, Her Worship failed to uphold and maintain judicial integrity, and undermined public confidence in the integrity of her judicial office and in the administration of justice.

[63] We conclude that the allegations about Her Worship Winchester's conduct and comments on June 27, 2018, set out in paragraphs 2B, 2C, 2D, and 2D(b) of the Notice of Hearing are made out on the evidence and constitute judicial misconduct that undermines public confidence in the judiciary and warrant a disposition under section 11.1(10) of the *Justices of the Peace Act*.

[3] In our decision dated July 24, 2020, we determined that a combination of dispositions, including a reprimand, an apology from Her Worship to the defendant and a five-day suspension without pay, were required to restore the public's confidence in Her Worship.

[4] On July 30, 2020, pursuant to section 11.1(17) of the *Justices of the Peace Act*, counsel for Her Worship made an application to this Hearing Panel for a recommendation that Her Worship be compensated for the legal costs incurred in the complaints process.

- [5] Justice of the Peace Winchester is requesting that the Panel make a recommendation to the Attorney General that Her Worship be compensated for the legal costs incurred as a result of the hearing. Her counsel submit they have voluntarily reduced their fees from \$251,436.50 to \$171,596.25. In sum, “the compensation application seeks a Panel recommendation for payment of \$171,596.25 in legal fees, \$22,307.51 in HST and \$11,329.51 in necessary disbursements, for a total of \$205,233.27.”
- [6] Presenting Counsel, while acknowledging Her Worship’s right to a full defence, alerts the Panel to review one of two unsuccessful pre-hearing motions brought by Her Worship: “On October 15, 2019, Her Worship filed a motion for an Order that some of the allegations, set out in paragraphs 2B and 2D(B) of the Notice of Hearing, filed as Exhibit One in the Hearing are outside the jurisdiction of this Hearing Panel.”

## The Law

- [7] In 2020, sections 11 and 11.1 of the *Act* were amended to provide that if a complaint against a justice of the peace is ordered to a formal hearing, it is the Hearing Panel that has authority to make a recommendation for compensation for legal costs in relation to both the investigation of the complaint and the resulting hearing. These amendments came into force on July 8, 2020. Section 11.1(17) now states:

### Compensation

11(17) The panel shall consider whether the justice of the peace should be compensated for all or part of the cost of legal services incurred in connection with all the steps taken under section 11 and this section in relation to the complaint.

- [8] Prior to this amendment, where a hearing had been ordered, a justice of the peace had to send two separate requests for compensation, one to the complaints committee with respect to costs incurred in the investigation, and one to the Hearing Panel with respect to costs incurred in the hearing.
- [9] The Divisional Court discussed the rationale for justices of the peace being compensated for the costs incurred by the judicial discipline process in *Massiah v Justices of the Peace Review Council*, 2016 ONSC 6191, aff’d 2020 ONSC 4746, para. 56:

“...it is always in the best interests of the administration of justice, to ensure that [justices of the peace] have the benefit of counsel.” Accordingly, “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.”

- [10] Nordheimer, J., writing for the Panel, also recognized that it is not always the case that a compensation recommendation should be made, or that it should necessarily recommend compensation in full. A determination of whether to recommend compensation should consider the circumstances of the particular case, and must take into account the objective of the judicial discipline process:

[57] All of that is not to say that, in every case where a judicial officer holder is subject to a successful complaint, that judicial officer holder can expect that his or her legal expenses will be compensated. It is a decision that must be made separately in each case and only after a consideration of the particular circumstances of the case viewed in the context of the objective of the process. Chief among those circumstances will be the nature of the misconduct and its connection to the judicial function. For example, 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. In contrast, conduct that any person ought to have known was inappropriate will be less deserving of a compensation decision than would conduct that is only determined to be inappropriate as a result of the ultimate decision in a particular case. Further, misconduct where there are multiple instances may be less deserving of a compensation recommendation than would a single instance of misconduct. Similarly, repeated instances of misconduct may be less deserving of a compensation recommendation than one isolated incident.

- [11] The principles and factors outlined above were affirmed by the Divisional Court in *Errol Massiah v. Justices of the Peace Review Council*, 2020 ONSC 4746, a further unsuccessful application for judicial review by Mr. Massiah:

[19] The circumstances Nordheimer J. identified as relevant to the determination are<sup>1</sup>:

- The nature of the misconduct and its connection to the judicial function;
- Misconduct that is more directly related to the judicial function may be more deserving of a compensation recommendation than conduct that is less directly related;

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<sup>1</sup> *Massiah* at paras.56 and 60.

- In contrast, conduct that any person ought to have known was inappropriate will be less deserving of a compensation recommendation than would conduct that is only determined to be inappropriate as a result of the ultimate decision in a particular case;
- Misconduct where there are multiple instances may be less deserving of a compensation recommendation than would a single instance of misconduct;
- Similarly, repeated instances of misconduct may be less deserving of a compensation recommendation than one isolated incident;
- It is open to a hearing panel to indicate that the compensation should not include the costs associated with unmeritorious or unnecessary steps.

[12] This Hearing Panel also accepts the post-*Massiah* case law set out in Her Worship's submissions that recognizes those factors.

## **Analysis**

[13] In considering the circumstances of this case, this Panel notes that Her Worship's judicial misconduct was tied to her judicial function. Her Worship was presiding in bail court at the time.

[14] This is also Her Worship's first finding of judicial misconduct and there was one instance of misconduct before us.

[15] These three factors favour a recommendation for compensation.

[16] On the other hand, the judicial misconduct engaged in by Her Worship was serious. She acted in haste without due regard to the right of the accused to a bail hearing. Such misconduct by a justice of the peace impacts on the fundamental liberty rights of an individual. This is misconduct of a nature that any person ought to have known was inappropriate. Those circumstances make a recommendation less deserving.

[17] In balancing the above factors, this Panel concludes that the circumstances support a recommendation for partial compensation.

- [18] The judicial learning undertaken by Her Worship with the Honourable Jack Nadelle was at her own initiative and related to bail law and ethics that a justice of the peace is expected to know. Any costs related to this learning should be borne by Her Worship.
- [19] Moreover, this Panel accepts the submission of Presenting Counsel that Her Worship's pre-hearing motion to quash certain allegations in the Notice of Hearing as outside the jurisdiction of the Review Council, while not frivolous, did cause some "duplication of argument and effort".
- [20] In its decision the Hearing Panel found that "the timing of this pre-hearing motion was unfortunate. An earlier date prior to the date scheduled for the evidence to begin should have been sought for argument in order to allow us to provide more fulsome reasons prior to the commencement of the hearing." The basis for this motion was "the very same issue that formed the bulk of the argument at the end of the hearing." Accordingly, Her Worship should not receive compensation for the costs associated with this motion.
- [21] In addition to considering the circumstances of the particular case, we must take into account the objective of the judicial discipline process which is to preserve public confidence in the integrity of the judiciary in general.
- [22] This Panel recommends to the Attorney General that Her Worship receive compensation of \$127,000 in legal fees plus HST of \$16,510.00 on the fees.
- [23] The Panel recommends compensation for disbursements in the amount of \$8,329.51 in disbursements inclusive of HST.
- [24] The total amount recommended is \$151,839.51.

Dated at the city of Toronto in the Province of Ontario, October 5, 2020.

HEARING PANEL:

The Honourable Justice Martin Lambert, Chair

Her Worship Kristine Diaz, Justice of the Peace Member

Ms. Leonore Foster, Community Member