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 James Ziegler

Before:

Justice Riun Shandler, Chair
Ontario Court of Justice

Justice of the Peace Kathryn Kellough,
Ontario Court of Justice

Naomi Solomon,
Community Member

Hearing Panel of the Justices of the Peace Review Council

Counsel:

Gerald Chan, Presenting Counsel

Julianna Greenspan and Lauren Crawford, Counsel for Justice of the Peace Ziegler

Heard: September 10, 2026

REASONS FOR DECISION RE RECUSAL MOTION

[1] On the first day of the hearing in this matter, September 10, 2026, counsel for Justice of the Peace Ziegler, Julianna Greenspan, brought an oral motion seeking that the justice of the peace member of the hearing panel be from a region other than the West Region. The basis for the motion is that the justice of the peace member of the panel, Justice of the Peace Kathryn Kellough, presides in the West Region. Justice of the Peace Ziegler and the complainant, Justice of the Peace

Gloria Kovach, also preside in the West Region, as do some of the potential witnesses in this proceeding, including RSJP Sonia Aleong.

[2] We dismissed the motion, with reasons to follow. These are those reasons.

Background and Parties' Positions

[3] The composition of the hearing panel was disclosed to presenting counsel and counsel for His Worship Ziegler in correspondence from the Registrar dated July 2, 2026.

[4] In correspondence dated September 8, 2026, Ms. Greenspan raised a concern about the composition of the hearing panel, namely, whether Her Worship Kellough's presence on the panel raises a reasonable apprehension of bias given that she presides in the West region. Ms. Greenspan requested that a pre-hearing conference be scheduled to address this issue the following day, on September 9.

[5] At the panel's direction, the Registrar responded to advise that, prior to confirming Justice of the Peace Kellough's appointment to the panel, inquiries were made about any potential conflicts, and to advise that the issue may be raised at the outset of the hearing on September 10 if counsel saw fit to do so.

[6] On September 10, Ms. Greenspan sought leave to bring an oral motion.[1] Ms. Greenspan submitted that the panel should grant leave, because she raised

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[1] The panel noted that given the timing of counsel's correspondence, leave of the panel was required to bring a motion, having regard to rr. 15.11-15.12 of the JPRC Procedures Document.

the issue expeditiously upon learning of it and after making further inquiries, and because the issue relates to the integrity of the proceeding. She explained that she only realized that HW Kellough presides in the West region shortly before the set-date appearance on August 28, and that she raised the issue as soon as possible thereafter.

[7] Presenting counsel, Gerald Chan, did not strenuously object to leave being granted, while noting this motion is distinguishable from a motion raising a reasonable apprehension of bias based on the conduct of an adjudicator during the proceeding itself.

[8] Although the panel had concerns about the timing of the motion, brought on the eve of the first day of the hearing, the panel exercised its discretion to grant leave to bring the motion, and heard further submissions from Ms. Greenspan and Mr. Chan.

[9] On the merits, Ms. Greenspan clarified that she was relying only on the appearance of bias and was not alleging any actual bias or lack of impartiality on the part of HW Kellough. She framed the issue as “whether there is an appearance of a fair adjudicative process given that Justice of the Peace Kellough presided and currently presides in the same jurisdiction of the complainant actively, and previously with Justice of the Peace Ziegler.”

[10] Ms. Greenspan submitted that this is an unusual case, because the complainant and witnesses are justices of the peace, and all currently preside in the same region as HW Kellough. According to Ms. Greenspan, it is concerning that evidence will be provided from the panel member's and participant's Regional Senior Justice of the Peace, RSJP Aleong. Ms. Greenspan further noted that HW Kellough and HW Ziegler had presided at different times at the same courthouse location. Ms. Greenspan submitted that an informed person would have a reasonable apprehension of bias, arising from one justice of the peace critically considering the evidence of some colleagues and sitting in judgment of another from the same shared region.

[11] Ms. Greenspan further relied on a statement in the Review Council's 2025 Annual Report, under the heading "Preliminary Investigation and Review", to the effect that complaints "are not generally assigned to judicial members from the same region where the justice of the peace who is the subject of the complaint presides to avoid possible or perceived conflicts of interest."[2] She relied as well on the publicized nature of the matter and the fact that an out-of-town judge had been assigned to HW Ziegler's criminal trial.

[12] Mr. Chan opposed the motion, emphasizing the high burden on HW Ziegler to establish a reasonable apprehension of bias, given the strong presumption of

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[2] 2025 JPRC Annual Report, p. 13.

judicial impartiality. Mr. Chan submitted that simply presiding in the same region as the complainant and witnesses could not meet this burden, noting the size of the West Region, which has around 12 base court locations and 50 justices of the peace. Mr. Chan further observed that, implicit in the fact that the witnesses other than the complainant are expected to have their evidence entered through a willsay is that their credibility would not be an issue in the proceeding.

[13] Mr. Chan further noted that the statement in the Annual Report reflects the Review Council's general practice, not a mandatory policy. In Mr. Chan's submission, the fact that the allegations have been reported in the media is not relevant to the application of the test. Similarly, the fact that an out-of-town judge was assigned to hear HW Ziegler's criminal trial does not mean that a reasonable apprehension of bias would necessarily result from having a decision-maker from the same judicial region.

Applicable Legal Principles

[14] The test for a reasonable apprehension of bias asks whether an informed person, viewing the matter realistically and practically, and having thought the matter through, would conclude that it is more likely than not that the decision

maker, consciously or otherwise, would not decide the matter fairly.[3] Several principles guide the application of this test, including:[4]

- The party alleging a reasonable apprehension of bias has the burden of proving it on the balance of probabilities.
- The threshold for finding a reasonable apprehension of bias is high, given the presumption that decision-makers will act impartially.
- The focus of the analysis is not on the decision-maker's own mind, but rather on the reasonable perceptions of an informed person.

[15] As counsel for HW Ziegler stressed, the objective of the test "is to ensure both the reality and the appearance of a fair adjudicative process. Both are essential to maintaining public confidence in our system of justice."[5]

Application of the Principles

[16] In our view, the fact that HW Kellough presides in the same region as HW Ziegler, the complainant, and potential witnesses is not sufficient to displace the strong presumption of judicial impartiality. An informed person, having considered all the circumstances, would not conclude that the shared regional assignment raises a reasonable apprehension of bias on the part of HW Kellough. These

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[3] *Committee for Justice and Liberty v. Canada (National Energy Board)* (1976), [1978] 1 S.C.R. 369, at pp. 394-95, per de Grandpré J.; *Yukon Francophone School Board, Education Area #23 v. Yukon (AG)*, 2015 SCC 25, [2015] 2 S.C.R. 282, at paras. 20-21.
[4] *Hazelton Lanes Inc. v. 1707590 Ontario Ltd.*, 2014 ONCA 793, at paras. 60-64.
[5] *Stuart Budd & Sons Ltd. v. IFS VehicleDistributors ULC*, 2016 ONCA 60, at para. 50.

circumstances include the role, statutory composition, and policies of the Review Council, as well as the basis for the recusal motion.

[17] The role and statutory composition of the Justices of the Peace Review Council necessarily means that justices of the peace will sit in judgment of each other's conduct. This role may include evaluating colleagues' evidence, including where a colleague is the subject of a complaint, a complainant, or a witness.[6] This is not a unique feature of this proceeding, but rather an essential feature of the judicial complaints process, as enshrined in ss. 8(3), 11(2) and 11.1(2) of the *Justices of the Peace Act*, R.S.O. 1990, c. J.4.

[18] Moreover, and as noted by presenting counsel, the interaction of ss. 8(3) and 11.1(1) of the Act gives rise to a structural concern that must be considered in addressing the reasonable apprehension of bias issue. Section 11.1(1) provides that when a hearing into a complaint is ordered, "the chair of the Review Council shall establish a hearing panel from among the members of the Review Council to hold a hearing in accordance with this section." Pursuant to s. 8(3) of the Act, the Review Council is composed of three justice of the peace members and one regional senior justice of the peace member. Section 11(4) provides that the justice of the peace member of the Review Council who served on the complaints committee that ordered the complaint to a hearing cannot be assigned to the

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[6] See, e.g., *Re McLeod* (2023), *Re Gibbon* (2022), *Re Lauzon* (2020), and *Re Winchester* (2020).

hearing panel. Given the limited pool of justice of the peace members, a finding that regionality alone automatically disqualifies a justice of the peace member from serving on a hearing panel would undermine the legislative intention that members of the Review Council be available to serve on such panels.[7]

[19] The policy referred to in the Review Council's Annual Report of not generally assigning complaints to judicial members who preside in the same region as the subject justice of the peace applies at the investigation stage of the complaints process. The policy reflects an institutional practice of attempting to reduce the potential for conflicts of interest as a matter of efficient administration of the complaints process. However, regional overlap is not determinative of the issue of a reasonable apprehension of bias. When justice of the peace members of the Review Council are assigned to either complaints committees or hearing panels, they are required to consider – both as a matter of Council policy and having regard to their ethical obligations – whether they have a personal or professional relationship with any of the participants and/or prior knowledge of disputed facts that could reasonably create a reasonable apprehension of bias.

[20] As noted, the basis for the present motion is the fact that HW Kellough presides in the same geographical region as others involved in the hearing. There

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[7] In circumstances where a judge or justice of the peace member of the Review Council is not able to deal fully with a matter, s. 8(10) authorizes the Chief Justice of the Ontario Court of Justice to appoint a judge or a justice of the peace who is not a member of the Review Council to be a temporary member for the purposes of sitting on a complaints committee or hearing panel.

is no suggestion that HW Kellough is in fact biased or has a personal or professional relationship with a participant in the hearing, or prior knowledge of disputed facts that could reasonably create an appearance of bias.

[21] Counsel for HW Ziegler submitted that HW Kellough presided “with” the complainant and witnesses at the time of the allegations, and continues to do so. Counsel also noted that there was some overlap between HW Ziegler and HW Kellough with respect to working location, namely that they both have presided at the Walkerton courthouse.

[22] In our view, the characterization that HW Kellough presides “with” these individuals overstates the significance of the shared regional assignment. Judicial officers who serve in the same region or court location do not necessarily have a personal or professional relationship. The existence of such an assignment alone is insufficient to support a reasonable apprehension that a panel member would be unable to decide the matter fairly and impartially.

[23] Similarly, regarding the concerns raised about HW Kellough being asked to evaluate the evidence of her Regional Senior Justice of the Peace, the fact that a witness in the hearing occupies a senior judicial office within the same region is insufficient, standing alone, to ground a reasonable apprehension of bias. It follows from the statutory composition of complaints committees and hearing panels of the Review Council, discussed above, that justices of the peace and judges may be

called upon to evaluate the evidence of members of the administrative judiciary, including an Associate Chief Justice or even the Chief Justice. The relevant question is whether there is some specific relationship, interest, or circumstance that would lead an informed person, viewing the matter realistically and practically, to conclude that the panel member could not decide the matter fairly, consciously or otherwise.

[24] In the absence of any information suggesting that HW Kellough has a personal or professional relationship with a participant, or any prior knowledge of the disputed facts, an informed person aware of the role and composition of the Review Council, would not conclude that HW Kellough, consciously or unconsciously, could not fairly assess the evidence. The mere fact that HW Kellough is assigned to the same judicial region as HW Ziegler, the complainant, and certain witnesses is insufficient to support such a conclusion.

[25] We agree with presenting counsel that the fact that the matter has been publicized does not change the operation of the applicable test. Similarly, while an out-of-town judge was assigned to hear HW Ziegler's criminal trial, this precautionary measure taken by the court is not determinative of what an informed person would conclude in the context of this proceeding.

Conclusion

[26] For these reasons, in our view, an informed person, having thought the matter through, would not conclude that the shared judicial region raises a reasonable apprehension of bias. The motion for the appointment to the hearing panel of a justice of the peace from outside the West Region is accordingly dismissed.

[27] Also on September 10, 2026, we heard a motion by presenting counsel for an order that certain factual findings by the trial judge who presided over HW Ziegler's criminal trial should be binding on the hearing panel in this proceeding. We dismissed presenting counsel's motion with written reasons to follow, noting that the issues of whether the trial judge's reasons for judgment are admissible, and if so, the weight to be assigned to them, can be argued at a later date.

[28] On October 13, 2026, following a case management meeting with both counsel, it became apparent that absent a material change in circumstances, this hearing is unlikely to conclude prior to HW Ziegler's mandatory retirement date at the end of October. Given that the panel will lose jurisdiction at this time, the panel does not see any utility in providing written reasons on this evidentiary issue.

Released: this 23rd day of October, 2026