**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 Errol Massiah**

**Before:** Justice of the Peace Michael Cuthbertson

Ms. Leonore Foster, Community Member

**Hearing Panel of the Justices of the Peace**

**Review Council**

**REQUEST FOR THE APPOINTMENT OF A NEW THREE MEMBER HEARING PANEL to RECONSIDER THE REQUEST FOR A RECOMMENDATION FOR COMPENSATION**

**Counsel:**

Ms. Marie Henein Mr. Ernest J. Guiste

Mr. Matthew Gourlay E. J. Guiste Professional Corporation

Henein Hutchison, LLP

Presenting Counsel Counsel for Mr. Errol Massiah

REQUEST FOR THE APPOINTMENT OF A NEW THREE MEMBER HEARING PANEL TO RECONSIDER THE REQUEST FOR A RECOMMENDATION FOR COMPENSATION

1. Pursuant to the Divisional Court’s decision in *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191, the Hearing Panel’s decision in 2015 to not recommend to the Attorney General that Mr. Massiah be compensated for legal fees incurred by the hearing was set aside and remitted back to the Hearing Panel for its re-consideration.
2. Unfortunately, the Chair of the Hearing Panel, the Honourable Deborah Livingstone had fully retired as a judge of the Ontario Court of Justice prior to the Divisional Court’s ruling.
3. By virtue of s. 4.4(1) of the *Statutory Powers Procedures Act* (*SPPA*), the remaining two members of the Hearing Panel, Justice of the Peace Michael Cuthbertson and community member Ms. Leonore Foster, were tasked with addressing Mr. Massiah’s request for a recommendation for compensation.
4. On October 25, 2017, the parties were informed that the Hearing Panel was not able to reach a unanimous decision on the request by Mr. Massiah for a recommendation to the Attorney General.
5. The Hearing Panel informed the parties of two options both in statute and case law on how to proceed:

Option 1

Pursuant to s. 4.2.1(2) of the *SPPA*, the Chief Justice could appoint one person to replace the former Chair of the Hearing Panel, if both parties consent. Then the three member Panel could re-consider the issue of the recommendation of compensation of legal costs and make a determination.

Option 2

Pursuant to the decision in *Law Society of Upper Canada v Watson*, 2015 ONLSTH 189 (see also *Worker’s Compensation Appeals Tribunal Decision no. 969/941*, 1996 CanLii 9786 (ON WSIAT)), the Hearing Panel must advise the Chief Justice that we are deadlocked and request that, pursuant to s. 11.1(1) of the *Justices of the Peace Act*, she appoint a new three member Hearing Panel to replace us. That new Hearing Panel would then have the responsibility of re-considering the request for a recommendation for compensation of legal costs, in accordance with the Divisional Court’s ruling.

1. The Panel requested that both parties liaise on the issue and advise us in writing of their positions on Option 1 no later than Friday, November 24, 2017.
2. On November 24, both parties responded by email via the Registrar. Mr. Gourlay indicated that Presenting Counsel had indicated to Mr. Guiste their willingness to consent to Option 1 but that as Mr. Guiste did not agree to Option 1, accordingly, Option 2 must be engaged. Mr. Massiah requested Option 2.
3. Mr. Guiste also indicated that Mr. Massiah has initiated further Divisional Court proceedings to try to set aside, vary or amend the order made on judicial review previously. He argued that this process to address the request for compensation of legal costs should therefore be held in abeyance or adjourned *sine die*.
4. As stated in paragraph one above, the Divisional Court issued an Order directing the single issue of the compensation request to be remitted back for reconsideration. Applications by Mr. Massiah and by the Review Council for leave to appeal were dismissed by the Court of Appeal for Ontario on January 13, 2017. If Mr. Massiah’s motion is successful, this process will cease. In the absence of such an Order, we conclude that it is imperative that we proceed in order that the legislated mandate under the *Justices of the Peace Act* be carried out.
5. The Hearing Panel will advise the Chief Justice that we are deadlocked and request that, pursuant to s. 11.1(1) of the *Justices of the Peace Act*, she appoint a new three member Hearing Panel to replace us.

Dated: November 27, 2017

Hearing Panel: Justice of the Peace Michael Cuthbertson

Ms. Leonore Foster, Community Member