**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 Two Complaints Respecting**

**Justice of the Peace Margot McLeod**

**Before:** The Honourable Justice Lisa Cameron, Chair

 Justice of the Peace Christine Smythe

 Dr. Michael Phillips, Community Member

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

**Matthew Gourlay**

Presenting Counsel

**Eugene Bhattacharya and**

**Mary C. Waters Rodriguez**

Counsel for Her Worship McLeod

**Overview**

1. On January 11, 2021, this Hearing Panel made multiple findings of judicial misconduct in relation to the conduct of Her Worship McLeod.
2. Findings of misconduct were made in relation to:
3. Her Worship’s written comments on reopening documents signed in Intake Court, which the Panel found were intemperate, lacking in judgment and propriety, disrespectful, undignified, hostile, inappropriate, and insulting. Further, Her Worship’s conduct undermined, or could reasonably be seen to have undermined, the integrity and impartiality of her judicial office and public confidence in the administration of justice;
4. Her Worship’s comments and conduct in Provincial Offences Court on June 19, 2018, including:
	* Allowing and/or assisting in the manipulation of factual circumstances in the courtroom to create the fiction that defendants had not appeared in court and making comments such as “start the car” and “get out of dodge”; and
	* Telling a defendant that she should bring her personal belongings with her because “everybody in court is here because they’ve done something wrong”.
5. Her Worship’s comments during the trial of C.W. on September 19th, 2018, including her remark that the defendant was “convicted” before the evidence had been completed; and
6. Her Worship’s comments and behaviour in the courtroom which, considered collectively, demonstrated a pattern of conduct that suggested a lack of impartiality and objectivity.
7. In our decision dated April 20, 2021, we determined that the following combination of dispositions were required to restore the public’s confidence in Her Worship and the administration of justice: a warning, a reprimand, letters of apology to those affected by the misconduct and continued education and mentorship.

1. On April 27, 2021, 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.
2. Her Worship has requested that the Panel recommend to the Attorney General that she be compensated for the full amount of legal expenses incurred as a result of the investigation and hearing.
3. Her Worship seeks $56,385 in legal fees plus $7,330.05 in HST, for a total of $63,715.05.
4. Presenting Counsel, while not advocating for a particular result, agrees that the balance of the relevant factors appear to support a recommendation for compensation. He takes no position on the appropriate quantum.

**The Law**

1. Under s. 11.1(17) of the *Justices of the Peace Act* (the “*JPA*”), a justice of the peace may make an application for a recommendation for compensation for legal costs incurred in the complaints process. As recently amended, the relevant subsections of s. 11.1(17) of the *Justices of the Peace Act* provide:

11.1(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.

(17.1) If the panel is of the opinion that the justice of the peace should be compensated, the panel shall make a recommendation to that effect, indicating the amount of compensation.

(17.2) If the panel makes a recommendation under clause (10) (g)2 in relation to a complaint made on or after the day subsection 2 (1) of Schedule 12 to the *Smarter and Stronger Justice Act, 2020* comes into force, subsection (17) does not apply and compensation shall not be recommended under subsection (17.1).

1. This Panel must consider whether Justice of the Peace McLeod should be compensated, in whole or in part, for her legal costs incurred in the complaints process, including this hearing. If the Panel is of the opinion that Her Worship should be compensated for her legal costs, it shall make a recommendation to the Attorney General to that effect, indicating the amount of compensation recommended. The Attorney General ultimately has discretion as to whether to pay compensation in accordance with the recommendation.
2. The guiding case on how this Panel should approach the issue of compensation is *Massiah v. Justices of the Peace Review Council*, 2016 ONSC 6191 (Div. Court). Writing for the Court, Nordheimer J. (as he then was), set out a number of guiding principles to consider on an application for compensation for legal costs incurred by the judicial discipline process, for example, at 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.”

1. Nordheimer J. recognized that it is in the best interests of the administration of justice that the judicial officer subject to the complaint has the benefit of legal counsel. This premise rests on the principal objective of the complaints process, which is to restore and maintain public confidence in the integrity of the judiciary, not to punish the judicial officer holder. The premise also operates irrespective of whether there has been a finding of misconduct.
2. However, the Divisional Court made it clear that it is not always the case that a compensation recommendation should be made, or that it should be made for the full amount requested. As the Court recognized at paragraph 55, a recommendation for compensation “does not carry with it any requirement that the compensation cover whatever legal expenses were incurred and at whatever level.” The determination must be based on the circumstances of each case and must consider the objective of the judicial discipline process.
3. The following circumstances or factors are relevant to the consideration of a compensation application:
4. The chief factor, according to Nordheimer J., is the nature of the misconduct and its connection to the judicial function. Conduct that is connected to the “judicial function” means conduct that involves the exercise of “judicial discretion or judicial decision-making.”

Misconduct more directly related to the judicial function may be more deserving of a compensation order than conduct that is less directly related. As Presenting Counsel observes in his written submissions, this is presumably because the primary objective of the compensation regime is to safeguard judicial independence, ensuring that judicial officers are able to defend themselves against allegations that potentially trench on that important constitutional principle. To the extent that the misconduct has little to do with the judicial function, the concern about judicial independence is attenuated and the rationale for compensation is correspondingly weakened.

1. Whether any person ought to have known that the conduct in question was improper.

Conduct that any person ought to have known was inappropriate will be less deserving of a compensation recommendation than conduct that is only determined to be inappropriate as a result of the ultimate decision in a particular case;

1. Whether there were multiple instances of misconduct.

Repeated instances of misconduct may be less deserving of a compensation recommendation than an isolated instance; and

1. Costs associated with steps which the decision-maker views unmeritorious or unnecessary.
2. The post-*Massiah* case law has recognized certain other factors that may be relevant to the decision to recommend compensation, including:
3. The seriousness of the misconduct;
4. Whether the justice of the peace has been subject to prior findings of misconduct; and
5. The conduct of the hearing itself, and whether it included any steps that were unnecessary.

**Application of the *Massiah* Factors to this Case**

1. The Panel has considered all of the factors described above and has determined that the following are significant in the present case:
* As previously described, all of the misconduct (on three separate days and cumulatively) was directly connected to Her Worship’s judicial function.  Her Worship engaged in judicial misconduct while exercising her judicial duties. This factor weighs in favour of a recommendation for compensation.
* The comments on the reopening applications were serious and clearly something that any person ought to have known were inappropriate. In our view, judicial officers aware of their professional and ethical obligations would know that making such comments was patently inappropriate. (The other occasions of misconduct, as noted in our decision on misconduct and our decision on disposition, were less straightforward or obvious.) This factor makes the application less deserving of compensation.
* There were multiple occasions of misconduct. This weighs against a recommendation for compensation.
* Her Worship has no prior findings of misconduct. This weighs in favour of a recommendation for compensation.
* The hearing was conducted with efficiency. Counsel filed an agreed statement of facts and Her Worship conceded that her comments on the reopening applications constituted judicial misconduct. Moreover, we found that, although some of her conduct constituted judicial misconduct, Her Worship did not appear to be arrogant, malicious, or derelict in her duty. These circumstances weigh in favour of a compensation recommendation.
1. Finally, the Panel is of the view that the fees incurred by Her Worship’s counsel for preparing submissions on compensation should not themselves be compensable. The Panel is not prepared to recommend that costs be paid for the time spent by Her Worship’s counsel in preparing and reviewing the costs submissions and bill of costs.

**Conclusion**

1. Based on our consideration of the factors set out above, including the nature of the allegations and findings made in this case and the applicant’s bill of costs, we have determined that a recommendation of partial compensation in the amount of $49,472.50 plus HST is appropriate.
2. The Panel recommends to the Attorney General that Justice of the Peace McLeod receive partial compensation for her legal costs incurred in the complaints process in the amount of $49,472.50, plus HST in the amount of $6,431.42, for a total of $55,903.92

Dated at Toronto this 10th day of June, 2021

**HEARING PANEL:**

The Honourable Justice Lisa Cameron, Chair

Justice of the Peace Christine Smythe

Dr. Michael Phillips, Community Member