

Ontario's Justices of the Peace Review Council: A Primer on the Complaint Process

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Many citizens in Ontario are unaware of the existence of a very important administrative tribunal known as the Justices of the Peace Review Council. This tribunal is tasked with, among other responsibilities, to receive and process complaints of misconduct against Ontario's justices of the peace.

In this brief piece I wish to introduce the reader to Ontario's complaint process with respect to misconduct complaints against justices of the peace.

The Justices of the Peace Act:

The Justices of the Peace Act, R.S.O. 1990 Ch. J.4 is the statutory enactment which governs the complaints process involving justices of the peace in Ontario. The Justices of the Peace Review Council (JPRC) was first established in 2006 and is continued under s. 8(1) of the current legislation. S.8(2)(b) provides the JPRC with express jurisdiction with respect to complaints involving justices of the peace in the following words: "to establish complaints committee from among its members to review and investigate complains under section 11."

Composition of JPRC:

S.8(3) provides that the JPRC is composed of: (a) the Chief Justice of the Ontario Court of Justice, or another judge of the Ontario Court of Justice designated by the Chief Justice; (b) the Associate Chief Justice-Coordinator of Justices of the Peace; (c) three justices of the peace appointed by the Chief Justice of the Ontario Court of Justice; (d) two judges of the Ontario Court of Justice appointed by the Chief Justice of the Ontario Court of Justice; (e) one regional senior justice of the peace appointed by the Chief Justice of the Ontario Court of Justice; (f) a lawyer appointed by the Attorney General from a list of three names submitted to the Attorney General by the Law Society of Upper Canada; (g) four persons appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General.

Complaint re justice of the peace:

S.10.2(1) provides that any person may make a complaint to the JPRC about the conduct of a justice of the peace and s.10.2(2) stipulates that a complaint to the JPRC must be in writing. What is meant by the writing requirement can be gleaned from other portions of the Act and the JPRC procedures to suggest that the complaint in writing must be from one who is directly affected by the acts and omissions of the justice of the peace as distinct from a representative complaint. For example, s.10.2(3) provides that judges, justices of the peace or the Attorney General must provide any complainant who approaches them with a complaint with information about the JPRC and how a complaint may be made. Accordingly none of these enumerated sources can bring a representative complaint on behalf of any complainant. The rationale for this would seem to be rooted in concerns of impartiality and fairness. The question of whether or not a Director of Court Operations who supposedly took statements from various court staff regarding the conduct of a justice of peace and forwarded them to the JPRC while copying the Deputy Attorney General for Ontario is currently the subject of a judicial review application before Ontario's Divisional Court*. It is asserted in that case that the JPRC exceeded its jurisdiction in entertaining such a complaint and in fact displayed a lack of institutional impartiality and institutional independence from the Attorney General and the Ministry of the Attorney General for Ontario.

Investigations

Complaints committees:

S.11(1) of the Act mandates the JPRC to establish a "complaints committee" to investigate and dispose of complaints as provided for by 11(15). A complaints committee is a subset of the JPRC which under s.11(2) of the Act must be composed of the following: (a) a judge who shall chair the complaints committee; (b) a justice of the peace; and (c) a member who is neither a judge nor a justice of the peace. The complaints committee has four mandatory functions under the Act. S.(11)(3) requires that the complaints committee, "shall report in a timely manner to the complainant that it has received the complaint and it shall report in a timely manner to the complainant on its disposition of the matter."

Under s.11(7) the complaints committee must conduct "such investigation as it considers appropriate".

The wording of the section seems to contemplate that the committee itself must conduct

investigations and that this important function can not be delegated - even to counsel. Had the drafters intended that this function could be delegated they would have used language such as "the complaints committee shall cause to be conducted...or better yet they would have expressly stated this in the legislation. S.11(15) provides that the complaints committee with what is referred to in the administrative law jurisprudence as a statutory power of decision. A statutory power of decision is essentially the right to make a decision with respect to competing rights. Under this provision the complaints committee has the jurisdiction to (a) "dismiss the complaint if it is frivolous, an abuse of process or outside of the jurisdiction of the complaints committee, (c) order that a formal hearing into the complaint be held by a hearing panel. The fourth mandatory function of the complaints committee under the act is found in s.11(18) and is to report to the JPRC on its decision.

Expert assistance:

S.8(15) allows the JPRC to "engage persons, including counsel, to assist it and its complaints committee and hearing panels." This provision would seem to permit the JPRC to retain counsel to assist it with investigations but it is not clear to what extent the actual delegation of the investigation itself may be delegated to counsel so retained. Clearly, if counsel is retained to undertake such functions it raises serious questions about such things as jurisdiction and fairness. For example, does counsel retained by the JPRC have the legal authority to actually conduct the investigation? If so - do they assume the same degree of obligations such as fairness and the like as does the complaints committee.

Hearings

Hearing panels:

When a complaints committee orders that a complaint against a justice of the peace should proceed to a hearing under s.11(15) the chair of the JPRC must establish a hearing panel from among the members of the JPRC to hold a hearing in accordance with that section of the Act. A hearing panel is a subset of the JPRC and under the Act is must consist of a (a) a judge who shall chair the panel; (b) a justice of the peace; and (c) a member who is a judge, lawyer or a member of the public. S.11(18) vests the panel with another statutory power of decision and provides that they may "dismiss the compliant, with or without a finding that it is unfounded. Where the panel upholds the complaint the section provides specific enumerated remedies which the panel may order from a reprimand to a recommendation to the Attorney General that the justice of the peace be removed from office.

Note: This piece is written for the sole purpose of educating the users of our court system on a very important tribunal in the administration of justice.

*Massiah v. Justice of the Peace Review Council - Divisional Court File No. 449/13.