



Local Government Standards Panel

Complaint Number	SP 11 of 2018 [DLGSC 20180245]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mayor Gary Brennan
Respondent	Cr Michelle Steck
Local Government	City of Bunbury
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr Mark Beecroft (Presiding Member) Ms Elanor Rowe (Member) Ms Rebecca Aubrey (Member)
Heard	19 September 2018 Determined on the documents
Outcome	Public apology

SANCTION DECISION AND REASONS FOR DECISION

Published 21 October 2018

DEFAMATION CAUTION

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Introduction

1. On 2 July 2018 the Panel found that Councillor Michelle Steck ("Cr Steck"), a member of the City of Bunbury ("City"), committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) by criticising a Council decision in a letter to the editor of the South Western Times local newspaper ("the Paper") published on 1 February 2018. The Council decision was to appoint a representative for the Bunbury Geopraphe Chamber of Commerce and Industry (BGCCI) to the Council's Policy Review and Development Committee.
2. On 13 July 2018, the Panel published its Finding and Reasons for Finding that Cr Steck had breached regulation 7(1)(b).

3. The Panel reviewed all the evidence presented to it and said:

"37. Applying the tests for improper use of office as outlined in paragraphs 29 to 34 above the Panel is satisfied to the required standard that Cr Steck made improper use of her office when making the following statements in the first and eighth paragraphs of the Letter (the Statements), considered in the context of the Letter as a whole:

"As a Bunbury Councillor for over 12 years, I have major concerns about the recent decision of the council to appoint "hand-picked" representation such as the (BGCCI) to the Policy Review and Development Committee ...

.....

Fobbing-off and blatantly watering down the role and responsibilities of an elected member should be concerning for all.

38. The Panel forms this view because:

- (a) It is more likely than not that a reasonable reader of the Statements, in the context of the Letter as a whole, would form the view that Cr Steck was, in her capacity as a Councillor, criticising a recent Council decision to appoint a member of the BGCCI to the Committee.
- (b) Councillors have a duty to be faithful to Council decisions. There is nothing to indicate that Council made the decision to appoint a BGCCI representative to the Committee without authority or due process.
- (c) It is more likely than not that Cr Steck had the opportunity to consider the relevant officer's report and to explain her opposition to these recommendations before Councillors voted. She has not submitted otherwise. Once Council made its decision she had a duty to respect and be faithful to it.
- (d) Although a councillor may advise the public after a council meeting why they voted against a proposal they must be careful to word their comments in a way that indicates respect for the views of all other councillors and a commitment to their council's decision.
- (e) It is more likely than not that other City Councillors would find the use of "hand-picked" and "fobbing-off" offensive and disrespectful. Cr Steck's comments show disrespect for the views of the several Councillors who voted to accept recommendations 2 and 3.



- (f) It is more likely than not that a reasonable reader of the letter would consider Cr Steck was accusing the Councillors who voted in favour of the recommendations of adding an inappropriate outsider to the Committee thereby devaluing the role of Councillors and limiting Councillors' responsibilities.
- (g) The Code of Conduct warns Councillors who wish to speak publicly about the risk of damaging the City and the need to be positive, informative and appropriate. Cr Steck did not take sufficient care to ensure her comments met the standards espoused in the Code of Conduct.
- (h) The Panel is satisfied to the required standard that any reasonable person who reads the Letter, knowing about Council's decision and the rules that govern the conduct of councillors, would come to the view that Cr Steck did not meet the standards for professionalism and respect for the Council decision, and for her fellow Councillors, that she is expected to uphold.

43. The Statements, when considered in the context of Council's decision and the other paragraphs in the Letter, say in effect that Council made a bad decision. Although it is not clear when she wrote to the Paper, 8 clear days elapsed between the OCM and the publication of the Letter. Cr Steck was not speaking impulsively; the Statements did not arise out of an interview; she initiated the communication and would have, or should have, taken time to reflect on her words.

44. In her Response Cr Steck does not resile from her Statements, even after time to reflect on the effect of regulation 7. She affirms her view that the Councillors who voted in favour of BGCCI representation on the Committee were wrong. She is more explicit about "hand-picked", saying the Mayor hand-picked BGCCI to join the Committee. She says she was responding to community concerns about BGCCI. However, the proper action would have been to tell any concerned members of the community that, after consideration at the OCM and a close vote, the majority had made a decision which should be upheld unless Council chose at some point to reconsider the matter. Instead she set to blame the Mayor personally and other Councillors for making a wrong decision.

45. The only reasonable inference is that by sending the Letter Cr Steck wanted to tell the community that the Mayor and the other Councillors who voted in favour of the recommendations had made a damaging decision. She intended to cause members of the community to think less favourably of them for allowing BGCCI to join the Committee."

Jurisdiction

- 4. The Panel convened on 19 September 2018 to consider how it should deal with the breach. The Panel accepted the Department's advice that on this date there was no available information to indicate that Cr Steck had ceased to be or was disqualified from being a councillor.

Possible sanctions

- 5. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by —
 - “(a) dismissing the complaint; or*
 - (b) ordering that —*

- (i) *the person against whom the complaint was made be publicly censured as specified in the order; or*
 - (ii) *the person against whom the complaint was made apologise publicly as specified in the order; or*
 - (iii) *the person against whom the complaint was made undertake training as specified in the order; or*
- (c) *ordering 2 or more of the sanctions described in paragraph (b)."*

6. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. The Panel may dismiss a complaint under section 5.110(6)(a), not to reverse the Panel's finding of a breach but to indicate that in all the circumstances the councillor should not be penalised and the breach should not be recorded against the councillor's name.

Cr Steck's submissions

7. If the Panel finds that a councillor has committed a minor breach it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).¹
8. In a letter dated 13 July 2018, the Department notified Cr Steck of the Panel's findings, providing her with a copy of its Finding and Reasons for Finding published on 13 July 2018 and inviting her to make submissions on how the Panel should deal with the breach under section 5.110(6).
9. Cr Steck did not send any submissions within the timeframe provided to her. A reminder email was sent and an extension granted but no submission was received.

Panel's consideration

10. Cr Steck had previously been found by the Panel to have breached the regulations, however both findings were subsequently overturned by the State Administrative Tribunal.
11. Cr Steck has not apologised for the breach. In her Response, Cr Steck did not resile, from her Statements, and instead affirmed them.
12. The Panel does not consider that dismissal of the Complaint is appropriate as this would indicate that the breach is so minor that no penalty is warranted.
13. Nor does the Panel consider that ordering Cr Steck to undergo further training is appropriate or an adequate sanction. Cr Steck has not accepted she has done anything wrong and she has not used her opportunity to provide any submissions on penalty.
14. The Panel's penalty must send a message to the offending councillor, ratepayers, residents, Council employees and other Councillors that this type of conduct is unacceptable.

¹ Section 5.110(5) of the Act.



15. The options left for the Panel to consider are to order the publication of a Notice of Public Censure or to order Cr Steck to make a Public Apology (or both).
16. When the Panel makes an order that a Notice of Public Censure be published, that Notice is published by the local government's CEO at the expense of the local government and such expense is significant where the Notice is to be published in a newspaper or newspapers.
17. In the present case, on the evidence available to the Panel, the Panel does not consider that it should order a public censure.
18. An apology in public is appropriate when a councillor's conduct adversely affects a particular individual and does not meet the standards other councillors seek to uphold. In this case, Mayor Brennan and other Councillors were adversely affected.
19. Cr Steck was speaking to the community in her capacity as a trusted elected member. The harm caused by the Statements to Mayor Brennan and the other Councillors was likely serious, widespread amongst the community and enduring. The Statements were made publicly when they were published in the local paper, and there is good reason for Cr Steck to make a public apology.
20. The Panel considers a public apology to the person who has suffered the damage, the Mayor and other Councillors, is the appropriate penalty.

Panel's decision

21. Having regard to the Findings, the matters set out herein, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under s5.110(6) of the Act, is that pursuant to subsection (b)(ii) of that section, Cr Steck is ordered to publicly apologise to Mayor Gary Brennan and her fellow Councillors, in the terms of the attached Order.

Mark Beecroft (Presiding Member)

Elanor Rowe (Member)

Rebecca Aubrey (Deputy Member)

Date of Reasons – 21 October 2018



ATTACHMENT

Complaint Number	SP 11 of 2018 [DLGSC 20180245]
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ORDER FOR PUBLIC APOLOGY

Published 21 October 2018

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Cr Steck, a Councillor for the City of Bunbury (City), publicly apologise to Mayor Gary Brennan ("Mayor Brennan"), and her fellow Councillors as specified in paragraph 2 below.
2. At the City's first ordinary council meeting Cr Steck attends after the expiration of 28 days from the date of service of this Order on her Cr Steck shall:
 - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to Mayor Brennan and all other City Councillors;
 - (b) make the apology immediately after Public Question Time or during the Announcements part of the meeting or at any other time when the meeting is open to the public, as the presiding person thinks fit;
 - (c) address the Council as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

- (i) A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened a provision of the *Local Government (Rules of Conduct) Regulations 2007* on 1 February 2018 when I criticised a Council decision in a letter to the editor of the South Western Times published on that day.
- (ii) The Panel found that behaving in this manner I made improper use of my office as Councillor with the intention of damaging Mayor Brennan and my fellow Councillors, thereby committing a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007*.
- (iii) I accept that I should not have acted in such a manner and I apologise to Mayor Brennan and all my fellow Councillors for having done so."

3. If Cr Steck fails or is unable to comply with the requirements of paragraph 2 above she shall cause the following notice of public apology to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the South Western Times newspaper.



PUBLIC APOLOGY BY COUNCILLOR MICHELLE STECK

A formal complaint was made to the Local Government Standards Panel alleging that I contravened a provision of the *Local Government (Rules of Conduct) Regulations 2007* on 1 February 2018 in a letter to the editor of the South Western Times.

The Panel found:

(1) I breached the regulation 7(1)(b) of the Rules of Conduct Regulations when I made improper use of my office when I criticised a Council decision in a letter to the editor of the South Western Times which was published on 1 February 2018, with the intention of damaging Mayor Gary Brennan and my fellow Councillors.

(2) By behaving in this way to Mayor Brennan and my fellow Councillors, I failed to meet the standards of conduct expected of a councillor

I apologise to Mayor Brennan and all other Councillors for acting in such a manner.

Date of Order – 21 October 2018



NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (1) Under section 5.125 of the *Local Government Act 1995* the person making a complaint and the person complained about each have the right to apply to the State Administrative Tribunal (the SAT) for a review of the Panel's decision in this matter.
In this context, the term "decision" means a decision to dismiss the complaint or to make an order.
- (2) By rule 9(a) of the *State Administrative Tribunal Rules 2004*, subject to those rules an application to the SAT under its review jurisdiction must be made within 28 days of the day on which the Panel (as the decision-maker) gives a notice [see the Note below] under the *State Administrative Tribunal Act 2004* (SAT Act), section 20(1).
- (3) The Panel's *Breach Findings and these Findings and Reasons for Finding – Sanctions*, constitute the Panel's notice (i.e. the decision-maker's notice) given under the SAT Act, section 20(1).

Note:

- (1) This document may be given to a person in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*. [see s. 9.50 of the *Local Government Act 1995*]
- (2) Subsections 75(1) and (2) of the *Interpretation Act 1984* read:
 - "(1) Where a written law authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, **service shall be deemed** to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served, and, **unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.** [Bold emphases added]
 - (2) Where a written law authorises or requires a document to be served by registered post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail."
- (3) Section 76 of the *Interpretation Act 1984* reads:

"Where a written law authorises or requires a document to be served, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, without directing it to be served in a particular manner, service of that document may be effected on the person to be served —

 - (a) by delivering the document to him personally; or
 - (b) by post in accordance with section 75(1); or
 - (c) by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or
 - (d) in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State."