



Local Government Standards Panel

Complaint Number	SP 52 of 2018
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Stan Scott
Respondent	Councillor Benjamin Bell
Local Government	Shire of Toodyay
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs Sheryl Siekierka (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Rebecca Aubrey (Member)
Heard	22 March 2019 Determined on the documents
Outcome	Public apology

SANCTION DECISION AND REASONS FOR DECISION

Delivered 4 April 2019

DEFAMATION CAUTION

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Introduction

1. On 7 December 2018 the Panel found that Cr Benjamin Bell (“Cr Bell”), a member of the Shire of Toodyay (“Shire”), committed one breach under the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) and regulation 7(1)(b) when he published a series of Facebook posts relating to Mr Stan Scott the Chief Executive Officer (“the CEO”) of the Shire.
2. On 25 January 2019 the Panel published its Finding and Reasons for Finding (“Findings”) that Cr Bell had breached regulation 7(1)(b). The Panel reviewed all the evidence presented to it and said (extracts shown below):

- “46. Cr Bell asserts that he at all times had regard to the interests of Shire ratepayers. However, in the context this argument is not particularly compelling. The subject matter of the communications policy appears to concern Cr Bell personally and other Shire employees rather than the local community.
47. In addition, if the intent is to provide information or an alternative viewpoint to community members, this can be achieved in a manner which does not criticise the Shire or Shire employees in breach of the Code.
48. The posts specifically mention the CEO in a negative manner several times and take an aggressive stance which attempt to portray the CEO as:
- a. introducing a communications policy to unfairly target and control the actions of Cr Bell and other Shire employees; and
 - b. attempting to obtain moneys from rate payers above the needs of the Shire,
- and therefore can be seen to cast aspersions on the CEO’s competence and credibility in breach of clause 3.1 of the Code.
49. Further, the reference in Post 1 to the CEO being “a modern day dictator” is particularly discourteous and disrespectful and likely to cause offence in breach of clause 1.3 and 3.6 of the Code.
50. The overall tone of the Posts is combative, critical and aggressive and does not reflect the standards of behaviour expected of an Elected Member in a public forum.
51. In this case, the Panel finds it is more likely than not that the Posts by Cr Bell are improper as they:
- a. were in breach of the Code;
 - b. were of such a nature that a reasonable individual would consider the same to be inappropriate and not in keeping with the conduct that would be expected of a councillor; and
 - c. are deserving of a penalty.
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55. The argument that the comments were made as part of “robust public discussion” is not compelling. The tone and content of the Posts seek to apportion blame rather than to impart information or seek feedback from the community.
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57. In addition, the words “modern day dictator”, “brazen”, “arrogance”, “threat” and “dictate”, with specific reference to the CEO, indicate an intention to denigrate the CEO.

Jurisdiction

3. The Panel convened on 22 March 2019 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 Bell had ceased to be or was disqualified from being a councillor.

Possible sanctions

4. 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).”

5. 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 Bell’s submissions

6. 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
7. In a letter dated 29 January 2019, the Department notified Cr Bell of the Panel’s findings, providing him with a copy of its Findings published on 25 January 2019 and inviting him to make submissions on how the Panel should deal with the breach under section 5.110(6).
8. In a letter dated 14 February 2019 the Panel received submissions by Squire Patton Boggs law firm on behalf of Cr Bell asking that the Complaint be dismissed:

¹ Section 5.110(5) of the Act.



- a. The breach of regulation 7(1)(b) is minor in substance as well as definition, in that it will not cause any significant or lasting detriment to the Complainant.
- b. Facebook posts are by their nature, informal and subjective. Although it is acknowledged that they have some immediate impact, the majority of people would regard them as Cr Bell "*letting off steam*". They do not carry the legitimacy of, for example, a published statement or other media release.
- c. The Facebook posts were written several months ago and have now been deleted. An apology, censure or other sanction imposed now would be counterproductive, by drawing fresh attention to the Facebook posts when they are already long forgotten.
- d. Cr Bell at all times acted in what he genuinely felt were the best interests of the community he serves, although he acknowledges that his considerable frustrations with the Complainant may have influenced his judgement in respect of the Facebook posts.
- e. Cr Bell continues to hold his responsibility and role as an elected Councillor very seriously. He has learnt a significant amount from the process and is committed to refraining from any such actions that may be seen as improper in the future.

Panel's consideration

9. The Panel found that Cr Bell committed one breach of regulation 7(1)(b) which related to Cr Bell's conduct when he made a series of Facebook posts relating to the Shire's CEO. The Panel found that by doing so, Cr Bell intended to cause detriment to the CEO.
10. The Panel has considered Cr Bell's submissions as to how the Complaint should be dealt with and while he states that he has learnt a lot from this process, he does not show any sincere contrition for his behaviour or repentance for the lack of respect that he showed towards the CEO.
11. The allegation against Cr Bell was serious and 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.
12. Nor does the Panel consider that ordering Cr Bell to undergo further training is appropriate or an adequate sanction, given the serious nature of the comments Cr Bell chose to make about the CEO as part of a campaign to undermine him.
13. The options left for the Panel to consider are to order the publication of a Notice of Public Censure or to order Cr Bell to make a Public Apology (or both).
14. 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.



15. In the present case, on the evidence available to the Panel, the Panel does not consider that it should order a public censure.
16. The nature of the comments made about the CEO were highly offensive and disrespectful to the CEO and were made with the intention of causing detriment to him by casting aspersions on his credibility. Cr Bell made those comments publicly on Facebook which is a popular social media platform where posts and comments can be shared multiple times, and therefore the harm caused was likely serious and widespread amongst the community. A public apology is appropriate as it reflects the impact on the CEO who was subjected to Cr Bell's comments and the lasting effect of his actions.
17. An apology in public is also appropriate when a councillor's conduct does not meet the standards other councillors seek to uphold. It serves as an acknowledgement that Cr Bell's conduct was unacceptable and demonstrates that councillors are accountable for their actions.
18. The Panel considers a public apology to the person who suffered the damage is the appropriate penalty.

Panel's decision

19. 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 Bell is ordered to publicly apologise to the Shire's CEO.

Sheryl Siekierka (Presiding Member)

Elanor Rowe (Deputy Member)

Rebecca Aubrey (Deputy Member)



ATTACHMENT

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Panel Members	Mrs Sheryl Siekierka (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Rebecca Aubrey (Member)
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ORDER FOR PUBLIC APOLOGY

Delivered 4 April 2019

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Benjamin Bell, a Councillor for the Shire of Toodyay ("Shire"), publicly apologise to the Shire's Chief Executive Officer ("CEO").
2. At the Shire's first ordinary council meeting Cr Bell attends after the expiration of 28 days from the date of service of this Order on him Cr Bell shall:
 - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to the Shire's CEO;
 - (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 regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* when I published a series of Facebook posts relating to the CEO between 26 and 27 June 2018.
- (ii) The Panel found that by behaving in this manner I made improper use of my office as Councillor with the intention of damaging the CEO thereby committing one 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 towards the CEO and I apologise to the party concerned for having done so."

3. If Cr Bell fails or is unable to comply with the requirements of paragraph 2 above he 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 Toodyay Herald newspaper.

PUBLIC APOLOGY BY CR BENJAMIN BELL

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* when I published a series of Facebook posts relating to the Shire of Toodyay's CEO on various dates.

The Panel found:

- (1) I committed one breach of regulation of 7(1)(b) of the Rules of Conduct Regulations when I published a series of Facebook posts relating to the CEO between 26 and 27 June 2018.



(2) By behaving in this way to the CEO I failed to meet the standards of conduct expected of a councillor

I apologise to the party concerned for acting in such a manner.

Sheryl Siekierka (Presiding Member)

Elanor Rowe (Deputy Member)

Rebecca Aubrey (Deputy Member)



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."