GOVERNMENT OF
WESTERN AUSTRALIA

Local Government Standards Panel

Complaint Number	SP 53 of 2018
Legislation	*Local Government Act 1995*
Complainant	**Mr Stan Scott**
Respondent	**Councillor Benjamin Bell**
Local Government	**Shire of Toodyay**
Regulation	Regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007*
Panel Members	Mrs Sheryl Siekierka (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Rebecca Aubrey (Deputy Member)
Heard	22 March 2019 Determined on the documents
Outcome	Public apology

SANCTION DECISION AND REASONS FOR DECISION

Delivered 4 April 2019

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents.

Introduction

1. On 7 December 2018 the Panel found that Cr Benjamin Bell ("Cr Bell"), a council 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 Facebook post and comments relating to Mr Stan Scott, the Chief Executive Officer of the Shire ("the CEO") and the acting CEO ("Acting CEO").

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):

> "44. The argument that Cr Bell had regard to the interests of Shire ratepayers at all times is not persuasive. The Post clearly asserts Cr Bell's personal feelings as to the CEO and Acting CEO. There is nothing that can be properly described as providing relevant information to the community.
>
> 45. The Post is unambiguous in its implication that the CEO and Acting CEO should be *"sacked"* for their behaviour.
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> 46. There is no clarification included as to the context of the comments or as to exactly what behaviour is in question.
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> 47. In addition, the image used in the Post also reinforces the impression that the CEO and Acting CEO are guilty of wrongful or shameful actions.
>
> 48. The Response is substantially concerned with Cr Bell defending his Post when questioned as to its clarity and accuracy.
>
> 49. The relevant comments for the purpose of the Complaint are contained in the last 2 paragraphs of the Response. In the context of the Post, following comments and Response these comments clearly reinforce the idea that the CEO and Acting CEO should be *"shown the door"* and that their actions should lead them to be *"down at Centrelink next week*".
>
> 50. A reasonable member of the public upon seeing the Post and Response would come to the conclusion that the CEO and Acting CEO were guilty of some kind of serious misconduct.
>
> 51. The Panel finds it is more likely than not that the Post and the Response would breach clause 3.1 and 3.5 the Code as they:
>
> a. imply that the CEO and Acting CEO should be sacked;
>
> b. cast aspersions on the professional competence and credibility of the CEO and Acting CEO; and
>
> c. contain derogatory allegations likely to cause embarrassment or offence to a reasonable person.
>
> 52. Irrespective of the fact the Code specifically mentions that parties should endeavour to resolve any serious conflict by discussion, it cannot reasonably be considered that public Facebook posts would be a proper forum for a councillor to address conflict between a councillor and the CEO or Acting CEO.

53. In this case, the Panel finds it is more likely than not that the posts by Cr Bell are improper in that they:

    a. 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

    b. are deserving of a penalty.

……

57. The argument that the comments were made as part of "robust public discussion" is not compelling. The Post cannot be reasonably seen as a discussion or invitation to discuss but, rather, a statement of opinion or fact.

58. As discussed above, the contents of Post and the Response clearly imply that the CEO and Acting CEO have acted so wrongfully that their employment should be terminated.

59. These comments were made in a very public forum with no additional contextual information provided. It is difficult to infer any other motive other than to denigrate and humiliate the parties concerned.

60. The Panel finds that it is more likely than not that the Post and the Response were intended by Cr Bell to cause a detriment to the CEO and the Acting 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:

    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.

[1] Section 5.110(5) of the Act.

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 published a Facebook post and comments relating to the Shire's CEO and Acting CEO. The Panel found that by doing do, Cr Bell intended to cause detriment to both parties.

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 remorse for the lack of respect he showed the CEO and Acting CEO or acknowledge the seriousness of the breach.

10. The allegation against Cr Bell was serious and the Panel found that he publicly implied that the CEO and Acting CEO should be sacked, cast aspersions on their professional integrity and made derogatory allegations likely to cause them embarrassment.

11. 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. 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 which were intended to denigrate and humiliate the parties concerned.

12. 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).

13. 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.

14. In the present case, on the evidence available to the Panel, the Panel does not consider that it should order a public censure.

15. The nature of the comments made about the CEO and Acting CEO were highly offensive and disrespectful. Cr Bell made those comments publicly on Facebook on a page visible and followed by members of the local community (if not a wider audience), 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 and Acting CEO who were both subjected to Cr Bell's comments and the lasting effect of his actions.

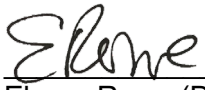
16. An apology in public is also appropriate when a councillor's conduct does not meet the standards other councillors seek to uphold. It serves as an acknowledgement that Cr Bell's conduct was unacceptable and demonstrates that councillors are accountable for their actions.

17. The Panel considers a public apology to the parties who suffered the damage is the appropriate penalty.

Panel's decision

18. 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 and Acting 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 (Deputy Member)
Heard	22 March 2019 Determined on the documents
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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) and Acting 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 and Acting 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 Facebook post and comments relating to the CEO and Acting CEO on 2 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 and Acting 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 Acting CEO and I apologise to the parties 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.

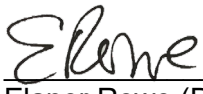
> **PUBLIC APOLOGY BY CR BENJAMIN BELL**
>
> A formal complaint was made to the Local Government Standards Panel alleging that I contravened a provision of the *Local Government (Rules of Conduct) Regulations 2007* when I published a Facebook post and comments relating to the CEO and Acting CEO on 2 June 2018.
>
> The Panel found:

(1) I committed one breach of regulation of 7(1)(b) of the Rules of Conduct Regulations when I published a Facebook post and comments relating to the CEO and Acting CEO.

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

I apologise to the parties 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."*