



Local Government Standards Panel

Complaint Number	SP 60 of 2017 [DLGSC 20170205]
Legislation	<i>Local Government Act 1995</i>
Complainant	Councillor Patrick Hall
Respondent	Mayor Paul Ng
Local Government	City of Canning
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs S Siekierka (Presiding Member) Ms E Rowe (Member) Ms R Aubrey (Member)
Heard	21 August 2018 Determined on the documents
Outcome	Training

SANCTION DECISION AND REASONS FOR DECISION

Published 29 August 2018

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 8 March 2018 the Panel found that Mayor Paul Ng, a member of the City of Canning (the City), committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) on 5 October 2017 and 6 October 2017 when he telephoned and sent emails to a local newspaper journalist concerning a local government election flyer published by another City Councillor, Councillor Patrick Hall.
2. On 3 July 2018 the Panel published its Finding and Reasons for Finding that Mayor Ng had breached regulation 7(1)(b) and said:

“63. (extracts) The Mayor initiated contact with Mr TH by telephone and email within 16 days before the election, making adverse comments about the truth of Cr Hall’s public statements. The Mayor wanted MR TH to publish his comments and knew Mr TH was likely to publish them before the election.

The Mayor wanted to hide the fact that he had initiated contact with Mr TH. He wanted readers to think that Mr TH or the Examiner had approached him for an interview.

The Mayor’s assertion in Article 1 that Cr Hall had been dishonest and untruthful about his support for WBA’s projects misrepresented Cr Hall’s views and actions.

In Article 2 the Mayor said Cr Hall was intentionally misleading the community by saying in his Flyer he had assisted in securing \$60,000 for the RNC project. The Mayor again misrepresented the situation.

The Mayor did not accurately report the nature and outcome of his discussions with the MP to TH.

The Mayor breached the standards of conduct expected of a councillor by initiating contact with Mr TH during the election period; misrepresenting Cr Hall’s involvement in the WBC and RNC projects; and telling Mr TH that Cr Hall made false statements and was dishonest, knowing that his comments would be published.

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67. Based on the findings referred to in paragraph 63 above the only reasonable conclusion is that the Mayor intended to cast Cr Hall as a dishonest and untrustworthy person, at a time when the community would be focussed on candidates’ credibility.

68. The Panel is satisfied to the required standard that the Mayor intended to cause detriment to Cr Hall”.

Jurisdiction

3. The Panel convened on 21 August 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 Mayor Ng 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.

Mayor Ng'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. On 9 July 2017, the Department sent a letter to Mayor Ng notifying him of the Panel's findings, providing him with a copy of its Finding and Reasons for Finding published on 3 July 2017 and inviting him to make submissions on how the Panel should deal with the breach under section 5.110(6).
8. Mayor Ng sent his submissions to the Department by email on 23 July 2018, in which he submitted:
- It was never his intention to cause detriment to or discredit Cr Hall.
 - He did not cause any detriment to Cr Hall as Cr Hall received 60% of the votes from his ward.
 - It was at all times his intention to ensure that only truthful statements were made during the election and to correct misconceptions that could have been formed as a result of the campaign process. He only intended to uphold the integrity of the election process and his actions were true to the public office he holds.
 - He believes the public must have a fair and balanced base of public information and he should not be silent when he is aware of misleading and deceptive conduct.
 - He believes that by disclosing public information he helped to correct misleading and deceptive statements made in public thereby giving guidance to the community that they should value truth and honesty in those in public life.
 - He believes he acted because he saw such values not being displayed by others in public office.

¹ Section 5.110(5) of the Act.



- The information he provided to the reporters was not confidential and was available from other sources.
- He did not improperly use his office to cause detriment to Cr Hall and the Local Government.
- The Panel failed to examine the truth of the issue and the facts and rather focussed on procedural correctness.

Panel's consideration

9. Mayor Ng has not previously committed any minor breaches.
10. It is not appropriate to dismiss the breach as this would trivialise the matter and indicate that the breach is so minor that no penalty is warranted. Mayor Ng initiated conduct with the reporter and timed his approach before the election and misrepresented facts.
11. Mayor Ng has not apologised for the breach and instead uses the opportunity to respond to criticise the Panel's decision and further justify his actions.
12. The Panel considers it is not appropriate to make an order for censure for Mayor Ng's actions in this matter.
13. The Panel has weighed up the option of ordering training or a public apology. In all the circumstances the Panel decides that training in the area of increasing Mayor Ng's understanding of his role as an Elected Member and the importance of ethics is the appropriate sanction.

Panel's decision

14. The Panel orders that Mayor Ng undertake training.

Sheryl Siekierka (Presiding Member)

Elanor Rowe (Member)

Rebecca Aubrey (Member)

Date of Reasons – 27 August 2018



ATTACHMENT

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ORDER FOR TRAINING

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Within 4 months of the date of this Order, Mayor Ng, a member of the City of Canning, shall undertake:
 - (a) the training course for Elected Members “Effective Community Leadership” provided by WA Local Government Association (WALGA) for a period of 7.5 hours; or
 - (b) a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a similar duration.

Date of Order – 29 August 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."