

Decision-maker's Title: **LOCAL GOVERNMENT STANDARDS PANEL**
Jurisdiction: Complaints of minor breach by local government council members
Act: *Local Government Act 1995*
File No/s: SP 12 and 13 of 2011 (DLG 20110082 and 20110083)
Heard: Determined on the documents
Determined: 6 June 2012
Coram: Mr B. Jolly (Presiding Member)
Councillor P. Kelly (Member)
Mr G. Cridland (Member)

Complaint SP 12 and 13 of 2011

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| Complainants: | Mayor Barry Sammels and Mr Andrew Hammond |
| Council member complained about: | Councillor Ann PRINCE |
| Local Government: | City of Rockingham |
| Regulation alleged breached: | Regulation 7(1)(a) and/or 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i> |

FINDING AND REASONS FOR FINDING

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.

SUMMARY OF FINDING

The Panel found that Councillor Prince has

- a. not committed a breach of regulation 7(1)(a),
- b. has committed a breach of regulation 7(1)(b).

CONTENTS

- Finding and Reasons
- Complaint – Attachment 1
- Responding submissions by Councillor Prince – Attachment 2

FINDING AND WRITTEN REASONS FOR FINDING

Preliminary

1. In the body of these Reasons unless otherwise indicated:

- (a) a reference to a regulation is a reference to the corresponding regulation of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations"), and a reference to a section is a reference to the corresponding section of the *Local Government Act 1995* ("the Act"); and
- (b) the term 'viewed objectively' means "as viewed by a reasonable person" (the reference to a reasonable person being a reference to a hypothetical person with an ordinary degree of reason, prudence, care, self-control, foresight and intelligence, who knows the relevant facts).

Complaints

1. On or about 7 June 2011 Councillor Barry Sammels, the Mayor of the local government of the City of Rockingham (City), sent to the City's Complaints Officer his Complaint of Minor Breach (Complaint SP12/2011) dated 7 June 2011 about alleged conduct by a City Councillor, Councillor Ann Prince.
2. Mayor Sammels alleges, in effect, that in the week or so prior to 29 May 2011 Councillor Prince committed a breach of both or either of regulation 7(1)(a) and/or regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) when she made statements to a journalist Ms Linda Cann of **The Sunday Times** newspaper.
3. Mr Andrew Hammond, the City's Complaints Officer, in his capacity as the City's Chief Executive Officer, has also made a Complaint of Minor Breach (Complaint SP13/2011), dated 9 June 2011, about alleged conduct by Councillor Prince.
4. Mr Hammond also alleges, in effect, that in the week or so prior to 29 May 2011 Councillor Prince committed a breach of both or either of regulation 7(1)(a) and/or regulation 7(1)(b) of the Regulations when she made those statements to Ms Cann.
5. The alleged conduct which each of the complainants complain about in the complaints is that in the week or so prior to 29 May 2011 Councillor Prince made statements to a journalist, Ms Linda Cann of **The Sunday Times** newspaper.

Allegation 1 (ie SP 12 of 2011)

6. The complainants allege that when Councillor Prince engaged in the alleged conduct that she made improper use of her office as a Council member to gain directly or indirectly an advantage:
 - (a) for both or either of herself, and/or
 - (b) some of the then current or former employees of the City,

in contravention of regulation 7(1)(a) of the Regulations.

Allegation 2 (ie SP 13 of 2011)

7. The complainants allege that when Councillor Prince engaged in the alleged conduct that she made improper use of her office as a Council member to cause detriment:
- (a) to the City; and/or
 - (b) to some of the Council members; and/or
 - (c) to the City's Chief Executive Officer and some of the other then current employees of the City,

in contravention of regulation 7(1)(b) of the Regulations.

8. On or about 14 June 2012 the City's Complaints Officer sent the complaints to the Local Government Standards Panel (the Panel) as required by section 5.107 of the Act.
9. Due to the common nature of the complaints, the Panel considered it appropriate that they be dealt with together.
10. The complaint is attached at **Attachment 1**.

Jurisdiction

11. The allegations made against Councillor Prince concerns a contravention of Regulation 7(1)(a) and/or (b) of the *Local Government (Rules of Conduct) Regulations 2007*.
12. The complaint was also made within 2 years of the alleged breach (ie the making of the statements to the journalist) occurring.
13. Councillor Prince was elected as a member of the City's Council on 17 October 2009 for a term expiring on 19 October 2013.
14. Councillor Prince was at the relevant times and remains currently, elected as a member of the City.
15. Councillor Prince satisfies the requirements of being an elected member of the Council as:
- (a) She is qualified to be an elector of the district under section 2.19(1)(b) of the Act; and
 - (b) There is no evidence to indicate that Councillor Prince is disqualified for Council membership under sections 2.21, 2.22, 2.23 or 2.24; and
 - (c) Councillor Prince is not disqualified from continuing her membership of the Council under section 2.25 of the Act.
16. The allegations of minor breach made in the complaint concern regulation 7 of the Regulations, which regulation is a rule of conduct under section 5.104(1) of the Act.

17. A breach of regulation 7 of the Regulations is a 'minor breach' as defined in section 5.105(1)(a) of the Act.
18. A breach of regulation 7 of the Regulations occurs if there is a breach of regulation 7(1)(a) or regulation 7(1)(b). Accordingly, the breaches alleged in the complaints are alleged minor breaches.
19. In the circumstances, each of the complaints is a 'validly made' complaint in that each of them complies with sections 5.107(2) and (4) of the Act.
20. Each of the complainants has sought to withdraw their respective complaints. However, the Act does not allow for a validly made complaint to be withdrawn (see sections 5.107, 5.109 and 5.110).
21. In the circumstances, the Panel has jurisdiction and is required by law to consider the complaints and to deal with the alleged breaches of regulation 7(1) of the Regulations made in them.

Applicable Legislation

22. The applicable legislation relates to Regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* which provides that:

- (1) *A person who is a council member must not make improper use of the person's office as a council member—*
 - (a) *to gain directly or indirectly an advantage for the person or any other person; or*
 - (b) *to cause detriment to the local government or any other person.*

(underlining added by way of emphasis)

The Relevant Background

23. The Australian Services Union is a trade union that represents the industrial interests of workers in a number of different industries and occupations including employees of WA local governments.
24. In the week or so prior to 29 May 2011 Councillor Prince was a Council member who was contacted by Ms Cann. Ms Cann identified herself as a journalist for ***The Sunday Times*** and then asked Councillor Prince some questions in relation to the "bullying problem" concerning the City's staff, that ***The Sunday Times***.
25. Councillor Prince advised Ms Cann that she could only speak regarding people who had already ceased working for the City.

26. Councillor Prince then made the following statements to Ms Cann, knowing that they would or would likely be published in **The Sunday Times** in the then near future.
27. In the 29 May 2011 edition of **The Sunday Times** an article by Ms Cann was published under the heading of "Bullying divides council". The article was accompanied by a small picture of Councillor Prince's head, face and shoulders, under which the name "Ann Prince" appears. The first two-thirds of the article reads:

"A WOMAN was forced to work out of her car and HR staff insisted on sitting in on another worker's doctor's appointment amid claims of chronic bullying at the City of Rockingham council.

Five former staff members from different departments have told The Sunday Times how superiors made their lives "hell" and drove them to quit.

The Australian Services Union said it believes workers were forced out to make way for new employees who could be hired at lower levels and paid less.

Councillor Ann Prince, with the council for 16 years, said she had seen a "massive turnover" of staff and had been told about the bullying problems by employees.

"There isn't a single face I know there any more," Ms Prince said.

ASU assistant branch secretary Pat Branson said more than 20 members had complained about bullying in the past two years, with at least a dozen leaving.

"There have been many cases where a bullied employee who has left has been replaced with a new employee who was hired at a lower grade and paid less," she said.

But city chief executive Andrew Hammond strongly denied the union's claims, saying he welcomed an inquiry by Fair Work Australia or any other watchdog.

"Not one specific incident has been reported in the last three years that has seen the city breach its duty of workplace care or legal obligations," Mr Hammond said. "The City of Rockingham is proud of its supportive culture and low staff turnover. Out of more than 500 employees, only 10.3 per cent (excluding retirements) left the city last year. That is half of the industry average of 19 per cent."

28. Shortly after the 29 May 2011 edition of **The Sunday Times** was published, Councillor Prince contacted the newspaper: to emphasise that she had referred only to some former City employees, and to request that the reference to "employees" attributed to her in the said article be publicly corrected to "former employees" – which request was not acted on by **The Sunday Times**.
29. At all times relevant to this matter the City's code of conduct pursuant to section 5.103(1) of the Act was the *City of Rockingham Code of Conduct for Councillors, Employees and Committee Members* as reviewed by Council in October 2009 (the City's Code of Conduct).

Procedural fairness and Response by Councillor Prince

30. The Panel is required to afford procedural fairness to the council member complained about in a complaint before it, according to the circumstances of the matter. The importance of procedural fairness has been explained as follows:

*"It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. 'When something is obvious', they may say, 'why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start.' Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change."*¹

31. Procedural fairness was afforded to Councillor Prince by way of a Department letter (dated 29 December 2011) sent to her which provided her with the complainants' allegations and an opportunity to provide comments and any information she desires in relation to the matter.
32. Councillor Prince's response is brief and consists of her hand-written two-paged completed Form A with her additions.
33. Councillor Prince's response is attached at Attachment 2.

Available information

34. The information before the Panel in relation to this matter (the available information) which was taken into account by the Panel was:
- (a) the complaint, and
 - (b) Councillor Prince's response.

Responses to Complaint

35. Councillor Prince's submission admits or does not contest that:
- (a) in the week or so prior to 29 May 2011 she was a Council member who was contacted by Ms Cann, who identified herself as a journalist for **The Sunday Times** and then asked Councillor Prince some questions in relation to the "bullying problem" concerning the City's staff, that **The Sunday Times** had been told about;
 - (b) Councillor Prince advised Ms Cann that she could only speak regarding people who had already ceased working for the City;
 - (c) Councillor Prince then made four statements to Ms Cann, knowing that they would or would likely be published in **The Sunday Times** in the then near future;

¹ *John v Rees* [1970] Ch 345 per Megarry J at 402

- (d) the four statements that Councillor Prince made to Ms Cann were or were to the effect, that:
 - (i) she has been a City Council member for 16 years;
 - (ii) she has seen a "massive turnover" of City staff;
 - (iii) "There isn't a single face I know there any more."; and
 - (iv) that some of the City's former employees had told her about bullying problems with their superiors; and
 - (e) her making of the subject statements to Ms Cann was a use of her office as a Council member.
36. It appears that Councillor Prince's submission is that she did not make improper use of her office as a Council member when she made the subject statements to Ms Cann, because in doing so she was representing the interests of some of the former employees of the City in their capacity as ratepayers in the City's district.

Panel's role - duty to make finding - required standard of proof

37. The Panel notes that:
- (1) The Panel is a statutory decision-maker that is required to adjudicate on complaints made in writing that give certain details including the details of the contravention that is alleged to have resulted in the breach.
 - (2) The Panel has no power to compel any information to be provided to it.
 - (3) Clause 8 of Schedule 5.1 of the Act requires the Panel's members to have regard to the general interests of local government in Western Australia.
 - (4) The Panel is required to make a finding as to whether the breach alleged in the complaint occurred [section 5.110(2)]. In order for the Panel to make any finding that any minor breach has been committed by a council member, the finding is to be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur [section 5.106].

This level or standard of proof is the same as in ordinary civil legal proceedings where it is referred to as being a preponderance of probabilities (or, the balance of probabilities).

- (5) The Panel is aware that when it makes a finding of a minor breach, the finding is a serious matter as it may affect individuals personally and professionally.

Accordingly, in determining whether on the evidence the standard of proof - on the balance of probabilities - has been satisfied, the Panel recognises that *"the seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to*

the question whether the issue has been proved to the reasonable satisfaction of the [determining body]².

Each of these 'considerations' applies in complaint proceedings against a council member. These 'considerations' are referred to in these Reasons as 'the Briginshaw principles'.

- (6) As the High Court of Australia has expressed the position, the significance of *Briginshaw*³ is that the seriousness of the matter and of its consequences does not affect the standard of proof but goes to the strength of the evidence necessary to establish a fact required to meet that standard. So much reflects a conventional perception that (relevantly) local government council members do not ordinarily engage in improper conduct generally and in circumstances where to do so is likely to render them liable to a punitive sanction.⁴
- (7) The following passage (without the authorities) from the High Court's decision in *Bradshaw v McEwans Pty Ltd*⁵ is relevant in complaint proceedings against a council member:

"The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while in the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort, where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference; they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture. But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusion sought then, though the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise." [Underlining added]

Matters for Determination

38. The issues (or elements of the breach) before the Panel for determination of whether or not Councillor Clarke breached regulation 7(1)(a) or (b) of the Rules of Conduct in the email are underlined below:

Regulation 7(1) of the *Local Government (Rules of Conduct) Regulations 2007*:

A person who is a council member must not make improper use of the person's office as a council member—

(a) to gain directly or indirectly an advantage for the person or any other person; or

² *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J in at 362

³ *ibid*

⁴ *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170.

⁵ (1951) 217 ALR 1 at 5

(b) to cause detriment to the local government or any other person.

39. The essential elements of a breach of regulation 7(1)(a) and (b) are that it is more likely than not that:
- (a) a person who is currently a council member committed the alleged conduct;
 - (b) the member's conduct complained about occurred;
 - (c) the conduct was a use of the member's office as a council member;
 - (d) viewed objectively, the member's conduct complained about was an improper use of the member's office as a council member; and
 - (e) the member committed the conduct complained about with the intention to gain directly or indirectly an advantage for a person OR to cause detriment to the local government or any other person.

Findings

40. On a consideration of the complaint and the responses, being the available information, the Panel is satisfied (i.e. satisfied to the degree required by the *Briginshaw*⁶⁶ principles) and accordingly finds as follows:

Council member

41. The Panel finds that Councillor Prince is a council member.

Use of office

42. An element of the breach is that the council member "used their office" for the breach.
43. Thus the question is whether Councillor Prince 'used' her office as Councillor.
44. In determining whether such a 'use' occurred, there must exist some indication that the council member availed herself of her position as a council member.
45. His Honour Judge Sharp briefly considered the issue of "use" in the case of Re and Local Government Standards Panel [2011] WASAT 108 and at paragraph 45 states:

"The Tribunal does not suggest that reg 7 of the Regulations prohibits a council member from questioning or even criticising the actions of others which impact on the community. It only limits the freedom of a councillor to communicate matters in a way which constitutes an improper use of a councillor's office"

⁶⁶ *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J in at 362

46. Councillor Prince was contacted for comment by **The Sunday Times**. Councillor Prince provided comment and is referred to by her councillor title in the newspaper article.
47. There is no suggestion by Councillor Prince that she was commenting to **The Sunday Times** in a capacity other than as an elected councillor.
48. The Panel finds that Councillor Prince's conduct in making statements to the journalist was a use of her office.

Improper use of office

49. In Treby and Local Government Standards Panel [2010] WASAT 81 (Treby), Judge Pritchard examined in detail the meaning of the word 'improper'. In that case Judge Pritchard consulted the Shorter Oxford English Dictionary to find that the meaning included '*unsuitable*' and '*inappropriate*' which is not to be read in isolation, but is to take its flavour from the surrounding context, which includes an assessment of what is involved in the role of Councillor.
50. In *Treby* Judge Pritchard further stated that:
 - a. *"Impropriety consists of a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, powers and authority of that person's position as a councillor and the circumstances of the case.*
 - b. *...Alternatively, impropriety will arise from the doing of an act which a councillor knows or ought to know that he or she has no authority to do."*
51. Mr Hammond contends that Councillor Prince's making of the subject statements to Ms Cann was an improper use of her office as it contravened a number of the standards of conduct expected and required of her under the City's Code of Conduct as a Council member.
52. Mr Hammond maintains that those standards of conduct at the relevant time were that Councillor Prince was required:
 - (a) to act, and be seen to act, properly and in accordance with the requirements of the law and the terms of the City's Code of Conduct and that will not bring the City into disrepute [clause 5.1(a)(i) of the City's Code of Conduct];
 - (b) to perform her duties as a Council member impartially and in the best interests of the City uninfluenced by fear or favour [clause 5.1(a)(ii) of the City's Code of Conduct];
 - (c) to act in good faith (ie, honestly, for the proper purpose, and without exceeding their powers) in the interests of the City and the community [clause 5.1(a)(iii) of the City's Code of Conduct];

- (d) to make no allegations which are improper or derogatory (unless true and in public interest) and refrain from any form of conduct, in the performance of her official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment [clause 5.1(a)(iv) of the City's Code of Conduct]; and
 - (e) to always act in accordance with her obligation of fidelity to the City [clause 5.1(a)(v) of the City's Code of Conduct].
53. In determining the impropriety, the Panel considered and assessed the matters raised by Mr Hammond as requirements imposed on councillors.
54. The Panel notes the work of journalists is to seek comment information and from persons (including councillors) with a view to publishing interesting articles which will be read. Controversial or salacious comment is valued by journalists as it makes for a more interesting article. Councillors need to be careful in their dealings with journalists as a result of the obligations imposed on councillors by the Act and therefore to ensure that their actions in office are proper.
55. The Panel finds that Councillor Prince made the statements knowing that it was likely that those statements would be published and would damage the reputation of the City.
56. The Panel did not find that there was it was in the public interest to make the statements – in particular in circumstances where the statements misrepresented the workplace culture of the City.
57. The Panel finds that, viewed objectively (ie a reasonable person with knowledge of the duties, obligations, powers and authority of a councillor of the City), the making of the statements to the journalist, was in the absence of an overriding and countervailing public interest, inconsistent with her duty of fidelity to the City.
58. Consequently, the Panel finds that the making of the statements by Councillor Prince was an improper use of her office.

To gain advantage for any person

59. For regulation 7(1) to be breached, it is not necessary that an advantage has actually been directly or indirectly gained or that a detriment has been actually suffered, as it is sufficient that the council member had the intention of directly or indirectly gaining an advantage or of causing a detriment: *Chew v R* (1992) 173 CLR 626.
60. In considering the meaning of the term 'advantage' in regulation 7(1)(a), the definitions of the noun 'advantage' in the Shorter Oxford English Dictionary (6th ed) include: "a favouring circumstance; something which gives one a better position ... benefit; increased well-being or convenience ... pecuniary profit ...".

61. The Panel considers the term 'advantage' in regulation 7(1)(a) is to be construed widely, and includes a financial or a non-financial benefit, gain or profit, or any state, circumstance, opportunity or means specially favourable.
62. The Panel notes there is no evidence suggesting that any person has gained an advantage nor is there any direct evidence that Councillor Prince acted with the intention that any person gain an advantage.
63. The Panel accordingly finds that complaint SP 12 of 2011 is not made out – ie there is no breach of regulation 7(1)(a).

To cause detriment to the local government

64. Even if a Council member's conduct is an improper use of a councillor's office, that of itself is not a breach of regulation 7(1)(b) unless that improper use of office was also made to cause detriment to another person: *Steck and Local Government Standards Panel* [2011] WASAT 117, at paragraph [50].
65. Judge Pritchard provided a meaning for 'detriment' in *Treby*, provided below:

"The ordinary and natural meaning of the word 'detriment' is loss or damage done or caused to, or sustained by, any person or thing: Shorter Oxford English Dictionary.

The meaning of 'loss' is the 'diminution of one's possessions or advantages; detriment or disadvantage involved in being deprived of something, or resulting from a change in conditions', while 'damage' means 'loss or detriment to one's property, reputation etc' and 'harm done to a thing or person' Shorter Oxford English Dictionary.

A contravention of reg 7(1)(b) does not depend on actual detriment being suffered by a person...However, it must be established that the councillor believed that the intended result of his or her conduct would be that the other person would suffer detriment."

66. The Panel finds that a reader of the article in ***The Sunday Times*** would be likely to have a substantially reduced regard for the City of Rockingham and that this damage was the readily foreseeable and the certain and obvious consequence of the publication of the statements.
67. The Panel finds that reputational damage is a detriment to the local government.
68. The legislation specifies that an element of the breach is "*intent to cause detriment*".

Intent

69. The intent of Councillor Prince must be considered in the light of Judge Pritchard's comments (above) that "*it must be established that the councillor believed that the intended result of his or her conduct would be that the other person would suffer detriment.*"

70. In relation to establishing a Council member's intent:

- (a) the test for establishing that a Council member had the necessary subjective purpose or specific intent in order for him/her to be culpable (i.e. guilty, blameworthy or responsible) for a breach of regulation 7(1)(a), is whether or not the evidence demonstrates that it is more likely than not that in committing the relevant conduct the member believed that the intended result of such conduct would be (i.e. the member's purpose and intent was) to gain directly or indirectly an advantage for the member or any other person;
- (b) the test for establishing that a Council member had the necessary subjective purpose or specific intent in order for him/her to be culpable for a breach of regulation 7(1)(b), is whether or not the evidence demonstrates that it is more likely than not that in committing the relevant conduct the member believed that the intended result of such conduct would be (i.e. the member's purpose and intent was) to cause detriment to the local government or any other person; and
- (c) The member's belief (or his/her purpose and intent) in (a) and (b) above may be inferred from both or either of the member's motives and/or the other circumstantial evidence, *if such inference is more likely than not the only reasonable and definite inference to be drawn from such motives and/or such circumstantial evidence*, as the case may require.⁷

71. Councillor Prince has not suggested that she did not know that her statements were likely to be published or cause damage to the City.

72. The Panel finds that -

- (a) Councillor Prince knew it was likely that her statements to the journalist would be published;
- (b) It was certain that the publication of the statements would cause reputational damage (ie detriment) to the City; and
- (c) Councillor Prince intended these certain, obvious and foreseeable consequences of her making the statements to the journalist.

⁷ *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1 at 5.

Panel finding on the subject allegation

73. On the available information, for the above reasons, the Panel is reasonably satisfied and hereby finds, that in the week preceding 29 May 2011 Councillor Prince
- (a) committed a breach of regulation 7(1)(b) of the Regulations in that she made improper use of his office as a Council member to cause a detriment to the local government by making statements relating to bullying and "massive turnover" of staff to a journalist from ***The Sunday Times***; and
 - (b) did not commit a breach of regulation 7(1) (a) of the Regulations.



.....
Brad Jolly (Presiding Member)



.....
Paul Kelly (Member)



.....
Glenn Cridland (Member)

Decision-maker's Title: LOCAL GOVERNMENT STANDARDS PANEL
Jurisdiction: Complaints of minor breach by local government council members
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Coram: Mr B. Jolly (Presiding Member)
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Mr G. Cridland (Member)

Complaint: SP 12 and 13 of 2011
Complainants: Mayor Barry Samuels and
Mr Andrew Hammond
Council member complained about: Councillor Ann Benson Prince
Local Government: City of Rockingham
Regulation found breached: Regulation 7(1)(b)

DECISION AND REASONS FOR DECISION

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.

FINDING OF MINOR BREACH

1. The Panel has made a finding of minor breach in respect of regulation 7(1)(b) against Councillor Prince in relation to Complaint No. SP 13 of 2011.
2. The Panel did not make a finding of minor breach against Councillor Prince in relation to Complaint No. SP 12 of 2011.
3. Consequently, this decision relates only to Complaint No. SP 13 of 2011.

Relevant Conduct

4. The Panel found that in the week preceding 29 May 2011 Councillor Prince made statements relating to "bullying" and "massive turnover" of City of Rockingham staff to a journalist from *The Sunday Times*.

Finding

5. The Panel has made a finding of minor breach against Councillor Prince to the following effect:

That by carrying out the relevant conduct Councillor Prince committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations") in that she made improper use of her office as a Council member to cause detriment to the City of Rockingham – such detriment being damage or loss to the local government's reputation.

SUMMARY OF DECISION

6. The Panel's decision on how the minor breach was to be dealt with under section 5.110(6) of the *Local Government Act 1995* ("the Act") was that, for the following reasons, the sanction to be applied was as described in subsection (b)(ii) of that section specifically that

Councillor Prince be ordered to apologise publicly to the City of Rockingham at a Council meeting or by apology published in the local community newspaper,

as specified in the attached Minute of Order.

DECISION & REASONS FOR DECISION

References to sections and regulations

7. In these Reasons, unless otherwise indicated a reference to a section is a reference to the corresponding section in the Act, and a reference to a regulation is a reference to the corresponding regulation in the Regulations.

Jurisdiction

8. At the time this report is signed there is no information before the Panel which indicates that Councillor Prince has ceased to be or is disqualified from being a sitting member of the Council of the City of Rockingham.

Applicable legislation

9. The relevant legislative provision is S5.110(6) which is -

The breach is to be dealt with by —

- (a) *dismissing the complaint;*
- (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*

- (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)."*

Procedural fairness matters

10. By letter dated 11 January 2013 Councillor Prince was given:
- (a) notice of the finding dated 6 June 2012;
 - (b) a copy of the Panel's *Finding and Reasons for Finding* in this matter ("the Reasons for Finding"); and
 - (c) a reasonable opportunity for her to make submissions about how the minor breach should be dealt with under section 5.110(6).

Councillor Prince's response

11. Councillor Prince responded to the notice of finding and the Reasons for Finding by her submission ("Councillor Prince's response") dated 16 January 2013 and received by the Department on 14 February 2013.

Panel's views on Councillor Prince's response

12. In regard to Councillor Prince's response, the Panel notes that:
- (a) Councillor Prince wishes the complaint be dismissed;
 - (b) Councillor Prince asserts the ***Sunday Times*** quoted her incorrectly in that she alleges she said to the ***Sunday Times*** that "*I only spoke to people who had already left the Council*" and that if she had been quoted "*correctly and printed exactly as it was said*" then "*none of this would have taken place*";
 - (c) Councillor Prince has limited contrition and remorse for her conduct and blames others (i.e. the paper for misquoting her) for the minor breach;
 - (d) Councillor Prince has some limited insight into her behaviour;
 - (e) Councillor Prince will be resigning from the City of Rockingham Council at the end of her term in October 2013;
 - (f) The complaint has caused her a lot of stress; and
 - (g) Councillor Prince has done 19 years as a Councillor.
13. The Panel notes the wishes of Councillor Prince as to the sanction (ie none) that should be applied in this matter.

14. In the Panel's view, the misquotation which is alleged by Councillor Prince, and accepted by the Panel for the purposes of determining the appropriate sanction, is not the cause of the minor breach. The Panel would have reached the same conclusion as to commission of a minor breach if Councillor Prince been quoted by the ***Sunday Times*** in the words, that she alleges in her response, she actually used to the journalist, i.e. that she had only spoken to former staff members of the city.
15. The fact that Councillor Prince will be resigning from Council and not seeking re-election is a relevant factor in respect of personal deterrence of Councillor Prince.
16. The impending resignation of Councillor Prince is of obviously much less relevance to the importance of setting an appropriate example for other local government elected members and general deterrence.
17. The Panel notes that any disciplinary or complaint resolution mechanism will inevitably involve stress for the participants of that process. The inevitable stress imposed on participants is expressly recognised by the Panel. The recognised stress is an undesirable outcome of the process, however, that recognition must not prevent the panel from determining and implementing the appropriate sanction (if any) to be applied in that matter.
18. Councillor Prince has had a long career in local government without the blemish of a previous finding of minor breach which must be considered indicative of the good character and behaviour of the Councillor.

Panel's views on how the minor breach should be dealt with under section 5.110(6)

19. As noted above, Councillor Prince has not previously been found under Part 5 Division 9 of the Act to have committed a minor breach.
20. When dealing with other unrelated complaints, the Panel has previously expressed the views that:
 - (a) a breach of regulation 7(1) is a serious matter and will in almost all occasions deserve the sanction of a publicly censure – not only as a reprimand aimed at reformation of the offending council member and prevention of further offending acts, but also as a measure in support of the institution of local government and those council members who properly observe the standards of conduct expected of them; and
 - (b) a breach of regulation 7(1) to cause detriment to another person – whether or not the other person is a council member – is a very serious matter and will in almost all occasions deserve the

sanction of a public apology to the other person/member, in addition to a public censure.

21. A public censure is a significant sanction and involves a high degree of public admonition of the conduct of the council member concerned.¹

Appropriate sanctions for the minor breach

22. It is the Panel's view that:

- (a) on balance, Councillor Prince's offending conduct in this matter, while serious, is not so serious as to warrant the sanction of a public censure as well as being required to publicly apologise to the City of Rockingham,
- (b) Taking into account Councillor Prince's good character and unblemished record before the Panel, Councillor Prince's response and the reasoning in this Decision and Reasons for Decision, it is appropriate and proportionate to the gravity of the minor breach that Councillor Prince should apologise publicly to the City of Rockingham, as specified in the attached Minute of Order, as that sanction is:
 - i. is an appropriate reflection of the seriousness of the minor breach; and
 - ii. is an appropriate reflection of the fact that the City of Rockingham was the subject of the offending conduct by Councillor Prince.

Form of the public apology

23. The Panel notes that:

- (a) When it has dealt with a minor breach by ordering that a council member publicly apologise, the form of the apology specified by the Panel has often been a concise description of the found minor breach/es and a statement by the council member that he or she apologises to the person/s concerned for the offending conduct and for any embarrassment or distress that such conduct caused to such person/s.
- (b) In the context of Part 5 Division 9 of the Act and the Regulations, the components of a full apology (or, a good apology) appear to consist of an acknowledgment of the offending conduct, acceptance of responsibility, expression of remorse or regret,

¹ *Mazza and Local Government Standards Panel* [2009] WASAT 165 per Judge J Pritchard (Deputy President) at [107]

and a promise or undertaking not to repeat the offending conduct.

- (c) However, a forced public apology in the form described above will often be sufficient to publicise the relevant council member's conduct in such a way that his/her unacceptable conduct is identified to the public and he/she is effectively sanctioned.
- (d) Where it thinks appropriate, the Panel may order that the person against whom the complaint was made make a full public apology in terms that consist of all of the components mentioned above.

Panel decision

24. Having regard to the Reasons for Findings, the response of Councillor Prince, the matters mentioned in these Reasons, and the general interests of local government in Western Australia, the Panel's decision on how the minor breach is dealt with under section 5.110(6) is that it orders the sanction described in subsection (b)(ii) of that section – namely that Councillor Prince apologise publicly to the City of Rockingham as specified in the attached Minute of Order.



.....
Brad Jolly (Presiding Member)



.....
Cr Paul Kelly (Member)



.....
Glenn Cridland (Member)

NOTICE TO THE PARTIES TO THE COMPLAINT/S

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) hereby gives notice that:

- (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 "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 under the *State Administrative Tribunal Act 2004* (SAT Act) section 20(1).
- (3) The Panel's *Reasons for Finding* and these *Reasons for Decision* constitute the Panel's notice (i.e. the decision-maker's notice) given under the SAT Act section 20(1).

Attachment A

Decision-maker's Title: LOCAL GOVERNMENT STANDARDS PANEL
Jurisdiction: Complaints of minor breach by local government council members
Act: Local Government Act 1995
File No/s: SP 13 of 2011 (DLG: 20110083)
Heard: Determined on the documents
Considered: 3 April 2013
Coram: Mr B. Jolly (Presiding Member)
Councillor P. Kelly (Member)
Mr G. Cridland (Member)

Complaint No. SP 13 of 2011
Complainant: Mr Andrew Hammond
Council member complained about: Councillor Ann Benson Prince

ORDER

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Ann Benson Prince, a member of the Council of the City of Rockingham, apologise publicly to the City of Rockingham, as specified in paragraph 2 or paragraph 3 below, as the case requires.
2. At the next City of Rockingham Ordinary Council Meeting immediately following the date of service of this Order on the said Ann Benson Prince:
 - (a) the said Ann Benson Prince shall request the presiding person for his/her permission to address the meeting immediately following Public Question Time or during the Announcements part of the meeting or at such time during the meeting when it is open to the public as the presiding member thinks fit, for the purpose of the said Ann Benson Prince making a public apology to the City of Rockingham; and
 - b) Ann Benson Prince shall verbally address the Council as follows, without making any introductory words prior to the address, and without making any comment or statement after the address:

"I advise this meeting that:

- (1) Two complaints were made to the Local Government Standards Panel about certain conduct by me in the week preceding 29 May 2011 when as a member of this Council I made statements relating to "bullying" and "massive turnover" of City of Rockingham staff to a journalist from **The Sunday Times**; and*
 - (2) The Local Government Standards Panel has considered the two complaints, and in respect of one of those complaints the Panel has made a single finding of a minor breach, namely that in the week preceding 29 May 2011 I committed a breach of regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 in that I made an improper use of my office as a Council member to cause detriment to the local government of the City of Rockingham – such detriment being damage or loss to the City's reputation.*
 - (3) I apologise to the City of Rockingham for my conduct, and I regret any hurt, inconvenience or unpleasantness I have caused."*
3. If the said Councillor Ann Benson Prince fails or is unable to comply with the requirements of paragraph 2 above then within 14 days after the next City of Rockingham Ordinary Council Meeting immediately following the date of service of this Order on her, the said Councillor Ann Prince shall cause the following Notice of Public Apology to be published, in no less than 10 point print, as a one-column or a two-column display advertisement in the first 20 pages of the local community newspaper.

PUBLIC APOLOGY

Two complaints have been made to the Local Government Standards Panel (the Panel) about my **conduct as a member of the Council of the City of Rockingham** in the week preceding 29 May 2011 when I made statements relating to "bullying" and "massive turnover" of City of Rockingham staff to a journalist from **The Sunday Times**.

The Panel has considered the complaints and made a single finding of minor breach – namely, that in the week preceding 29 May 2011 I committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* in that I made an improper use of my office as a Council member to cause detriment to the City of Rockingham – such detriment being damage or loss to the City's reputation.

I apologise to the City of Rockingham for my said conduct, and regret any hurt, inconvenience or unpleasantness I have caused.

Councillor Ann Benson Prince