



Local Government Standards Panel

Complaint Number	SP 30 of 2018 [DLGSC20180326]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mayor Camilo Blanco
Respondent	Councillor George Daccache
Local Government	Town of Port Hedland
Regulation	Regulation 4 Regulation 7(1)(b) Regulation 8(b) Regulation 10 <i>of the Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs S Siekierka (Presiding Member) Ms Rebecca Aubrey (Member) Mrs E Power (Member)
Heard	12 October 2018 Determined on the documents
Finding	1 breach of Regulation 4 1 breach of Regulation 7(1)(b)

FINDING AND REASONS FOR FINDING

Delivered 6 November 2018

DEFAMATION CAUTION

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Summary of the Panel's decision

1. On 12 October 2018, the Panel found that Councillor George Daccache, a councillor of the Town of Port Hedland (**"the Town"**);
 - a. did commit the alleged minor breaches pursuant to the Local Government Act 1995 (WA) (**"the Act"**) and in particular of:
 - i. regulation 4 of the Local Government (Rules of Conduct) Regulations 2007 (**"the Regulations"**);
 - ii. regulation 7(1)(b) of the Regulations;
 - b. did not commit the alleged minor breaches under the Act and of:
 - i. regulation 8(b) of the Regulations; and
 - ii. regulation 10 of the Regulations,
- when he spoke in relation to a newspaper article in the North West Telegraph at the Town's Ordinary Council Meeting of 23 May 2018 (**"the OCM"**) as further described in paragraph 20 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.¹
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.²
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and (where there are conflicting circumstances, inferences or evidence) must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate³; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.

¹ Section 5.105 of the Act

² Section 5.106 of the Act

³ Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1

⁴ Briginshaw v Briginshaw (1938) 60 CLR 336

⁵ Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)



9. The Panel also must have regard to the general interests of local government in Western Australia⁶.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

Regulation 4

11. Regulation 4 reads:

“(1) In this regulation —

*“**local law as to conduct**” means a local law relating to conduct of people at council or committee meetings.*

“(2) The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act.”

12. Section 5.105(1)(b) of the Act states as follows:

“A council member commits a minor breach if he or she contravenes -

...

“(b) a local law under this Act, contravention of which the regulations specify to be a minor breach.”

13. In this case it is alleged that Cr Daccache caused an adverse reflection regarding the Mayor of the Town and thereby breached 9.14(2) of the Town of Port Hedland Standing Orders Local Law 2014 (**“the Standing Orders”**):

“9.14 No adverse reflection

(1) A member is not to reflect adversely on a decision of the council except on a motion that the decision be revoked or changed (see Part 17).

(2) A member is not—

(a) to reflect adversely on the character or actions of another member or employee; or

(b) to impute any motive to a member or employee,

unless the meeting resolves, without debate, that the question then before the meeting cannot otherwise be adequately considered. ”

Regulation 7(1)(b)

14. Regulation 7 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

“7. Securing personal advantage or disadvantaging others

(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.

⁶ Section 8(6) of Schedule 5.1 of the Act



- (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*

Regulation 8

15. Regulation 8 prohibits the use of government resources in certain circumstances and provides:

“8. Misuse of local government resources

A person who is a council member must not either directly or indirectly use the resources of a local government —

- (a) *for the purpose of persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918; or*
- (b) *for any other purpose,*
- unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose.”*

Regulation 10

16. Regulation 10 regulates councillor’s interactions with local government employees.
17. Although Regulation 10 is ticked on the Complaint of Minor Breach Form, the same has not been addressed or mentioned in the Complaint.
18. As such, the Panel has not addressed this allegation.

Jurisdiction and Procedural Fairness

19. On the 30 May 2018 the Panel received a letter dated 30 May 2018 from Ms Anthea Bird, the complaints officer of the Town (**“the Complaints Officer”**).
20. In his letter of complaint Mayor Blanco makes the following allegations:
- a. **Allegation 1** - Cr Daccache breached regulation 4 of the Regulations when at the OCM he contravention of the Standing Orders and made an adverse reflection on the character of the Mayor as set out in paragraph 26;
- b. **Allegation 2** – Cr Daccache breached Regulation 7(1)(b) and caused detriment to the Local Government and the Mayor by making the comments set out in paragraph 26;
- c. **Allegation 3** – Cr Daccache breached Regulation 8(b) by improperly using the live streaming resources of the Town at the OCM to broadcast the comments set out in paragraph 26 to gain a large local audience,
- (together **“the Complaint”**).
21. As noted above, Regulation 10 is ticked on the Complaint of Minor Breach Form, however, the same has not been addressed in the Complaint. As such, the Panel cannot address this allegation.
22. The Complaints Officer confirmed that a copy of the Complaint had been sent to Cr Daccache setting out the specifics of the alleged conduct and minor breaches.
23. The Panel convened on 12 October 2018 to consider the Complaint.



24. The Panel:
- a. accepted the advice of the Department that, based on information published on the Western Australian Electoral Commission's website, the Cr Daccache was:
 - i. last elected to the Council of the Town in October 2017 for a term expiring in October 2021;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 12 October 2018;
 - b. was satisfied the Complaint was made within two years after the alleged breach occurred⁷;
 - c. was satisfied that the Town's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁸;
 - d. was satisfied the Department had provided procedural fairness to Cr Daccache; and
 - e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

25. In the Complaint to the Department, Mayor Camillo Blanco provided:
- a. a letter dated the 28 May 2018 setting out the specifics of the Complaint;
 - b. a newspaper article from the North West telegraph dated 23 May 2018 titled "Councillors speak out"; and
 - c. video footage of the portion of the OCM relating to the Complaint.
26. The relevant comments the subject of the Complaint are as follows:
- Cr Daccache:** *Alright councillors you probably read, and Mr Mayor, you read today's North West Telegraph, I can assure you that I didn't state the words that's in the newspaper.*
- What I did state is that the Mayor, the major problem in this town, should immediately resign and that we get a Mayor whose responsibility will be for the betterment of the town now and in the future, so, again I'm stating that.*
- Mayor Blanco:** *Is that a question?*
- Cr Daccache:** *No that's a statement, I told you it's not question it's a statement*
- Mayor Blanco:** *Cr Daccache, we are in question time.*
- Cr Daccache:** *The question is listen to my statement, please Mr Mayor. "*
27. Mayor Blanco also makes the following assertions:
- a. Cr Daccache's comments were an adverse reflection the local government and the Mayor;
 - b. Cr Daccache's comments indicate that the Mayor lacks the required responsibility and gives a perception of wrongdoing;

⁷ Section 5.107(4) and 5.109(2) of the Act

⁸ Section 5.107 and 5.109 of the Act



- c. the comments were made in public and Cr Daccache used the Town's live streaming resources so that the comments would be witnessed by a large audience; and
- d. Cr Daccache intended to purposefully breach the Code of Conduct in the Regulations.

Respondent's Response

28. By an email dated 3 July 2018 Cr Daccache provided a response to the Complaint.
29. Cr Daccache does not accept he has committed a minor breach.
30. Cr Daccache specifically asserts that:
 - a. at no time did he adversely affect any employee of the Town;
 - b. all councillors had an opportunity to comment in the North West Telegraph and his published comments were not true and correct;
 - c. as an elected Member he is duty bound to tell the truth; and
 - d. a majority of the public agreed with his true version.
31. The Panel notes that the response by Cr Daccache does not adequately address the alleged breaches and offers little by way of explanation or defence.

Panel's Consideration

Allegation 1 - Regulation 4

32. To make a finding of a minor breach of regulation 4 of the Regulations the Panel must be satisfied, to the required standard, that:
 - a. Cr Daccache was a councillor at the time of the alleged breach and the time of the determination;
 - b. the conduct occurred during a council or committee meeting; and
 - c. Cr Daccache breached a valid provision of the Town of Port Hedland Standing Orders Local Law 2014.

Was Cr Daccache a Councillor at the relevant times

33. Cr Daccache was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.

The conduct occurred at a council or committee meeting

34. This element is met as the conduct occurred during a Town of Port Hedland Ordinary Council Meeting of 23 May 2018.

Cr Daccache breached a valid provision of the Town of Port Hedland's Standing Orders Local Law 2014

35. A standing orders local law is a local law relating to conduct of people at council or committee meetings⁹.

⁹ See *Ryan and Local Government Standards Panel* [2009] WASAT 154 and *Steck and Local Government Standards Panel* [2011] WASAT 117.



36. SAT has previously established that a local government's standing orders that refer to the prohibition on a Member's conduct in terms substantially similar to Order 9.14 of the Standing Orders (in relation to adverse reflection on the character or actions of another Member or employee) is a validly constituted local law which relates to the conduct of elected members for the purposes of Regulation 4.
37. As such, the Panel finds that Standing Order 9.14 is a local law as to conduct within the meaning of regulation 4(1), and that a contravention of Order 9.14(2) would be a minor breach under the Act and regulation 4.
38. An adverse reflection is an assertion relating to the moral or mental characteristics of another member, or anything done by the other member, that would be perceived, by a reasonable person, as tending to lower a person in the estimation of his or her fellow persons by making them think less of him or her.
39. In this case Cr Daccache appears to have gone out of his way to make an adverse comment about Mayor Blanco. The same was during question time in the OCM which was clearly not an appropriate forum to bring up such views.
40. In addition, there was no relevant question relating to the matter then being debated to permit the exception in Standing Order 9.14(2) to apply.
41. Cr Daccache's response that he is "duty bound" to tell the truth is not compelling. Cr Daccache is bound by the Act and Regulations and, in particular, the code of conduct prescribed in the Regulations and the Standing Orders of the Town.
42. The Panel finds that the comments made by Cr Daccache:
 - a. infer that Mayor Blanco was not a suitable person to be Mayor; and
 - b. comprise an adverse reflection upon the character of the Mayor in a manner intended to cause public humiliation.
43. The Panel finds that it is more likely than not that any reasonable person would consider that Cr Daccache's comments were inappropriate and were intended to lower the public's estimation of the Mayor.
44. This element is met.

Conclusion

45. Given the above, the elements required to find a breach of regulation 4 of the Regulations have been met.

Allegation 2 – Regulation 7(1)(b)

46. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied to the required standard:
 - a. Cr Daccache was a councillor at the time of the alleged breach and the time of the determination; and
 - b. Cr Daccache made use of his office as Council member of the Town;
 - c. when viewed objectively, such use was an improper use of Cr Daccache's office in that it:
 - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
 - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty;

- d. Cr Daccache engaged in the conduct in the belief that detriment would be suffered by another person.

Was Cr Daccache a Councillor at the relevant times

47. Cr Daccache was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.

Cr Daccache made use of his office as Council member of the Town

48. Cr Daccache made the relevant comments during the OCM of the Town and was therefore acting in his role as councillor and therefore making use of his office as a council member.

Cr Daccache's use was improper

49. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom¹⁰. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.
50. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent¹¹.
51. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context.
52. The role of a councillor includes "representing the interests of electors, ratepayers and residents of the district, providing leadership and guidance to the community in the district"¹².
53. However, representing the interests of the community does not extend to making adverse comments as to the character or capabilities of another councillor or an employee of the Town.
54. In this case, Cr Daccache elected to make the relevant comments during question time of the OCM and in a very public forum. In the context, the comments were unprovoked and unnecessary.
55. In this case, the Panel considers that Cr Daccache's comments are improper in that they:
- 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
 - are deserving of a penalty.
56. This element is therefore met.

Cr Daccache intended detriment to be suffered by another person

57. "Detriment" means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.

¹⁰ Complaint of Minor Breach No. SP 3 of 2013

¹¹ *Chew v R* [1992] HCA 18

¹² *Treby and Local Government Standards Panel* [2010] WASAT 81 at [27] and *Hipkins and Local Government Standards Panel* [2014] WASAT 48 at [8] to [11]

58. It is not necessary to find whether any detriment was actually suffered¹³, but an intent to cause such detriment must be established.
59. As noted above, the comments were deliberately brought up in a public forum and at an inappropriate time during the OCM. This would indicate an action calculated to denigrate the Mayor, his suitability for the office of Mayor and his abilities in general.
60. Further, Cr Daccache does not contend that he did not intend to cause a detriment to Mayor Blanco, but asserts he was telling the “truth”.
61. The Panel finds that it is more likely than not that the comments were intended by Cr Daccache to cause a detriment to the Mayor of the Town.
62. This element is met.

Conclusion

63. Given the above, the elements required to find a breach of regulation 7(1)(b) of the Regulations have been met.

Allegation 3 – Regulation 8

64. To find a breach of Regulation 8 the Panel must be satisfied that it is more likely than it is not that:
 - a. a Councillor directly or indirectly used;
 - b. his or her local government’s resources;
 - c. for the identified electoral purpose or any other purpose; and
 - d. such purpose was not authorised under the Act or by the council or the local government’s CEO.
65. Mayor Blanco’s argument that the use of the Town’s live video streaming resources is an unauthorised use of the Town’s resources is not compelling.
66. The Panel finds that the video streaming service would not be considered a local government resource. The same comprises nothing more than a broadcast of proceedings of the council meeting. It does not involve production or any other manipulation, nor is there payment for the service.
67. As such, the essential element required to make a finding of a minor breach cannot be met.

Conclusion

68. The elements required to find a breach of regulation 8 of the Regulations have not been met.

Panel’s Finding

69. Cr Daccache did breach:
 - a. Regulation 4; and
 - b. Regulation 7(1)(b),and thereby committed 2 minor breaches

¹³ *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



70. Cr Daccache did not commit a breach of Regulation 8 and no finding of a minor breach is made in that respect.

S. Siekierka

Sheryl Siekierka (Presiding Member)

EP

Emma Power (Member)

RA

Rebecca Aubrey (Deputy Member)

Date of Reasons – 6 November 2018