

Councillor Conduct Tribunal: Councillor misconduct complaint – Summary of decision and reasons for department’s website

Local Government Act 2009: Sections 150AS(2)(c)

Note that the Tribunal is prohibited from giving another entity information that is part of a Public Interest Disclosure unless required or permitted under another Act; or including in this summary the name of the person who made the complaint or information that could reasonably be expected to result in identification of the person: S150AS(5)(a) and (b).

1. Complaint:

CCT Reference	F19/6508
Subject Councillor	Councillor Paul Gleeson (the councillor)
Council	Redland City Council

2. Decision (s150AQ):

Date:	15 December 2019
Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation that, on 31 June 2019, Councillor Gleeson engaged in misconduct as defined in section 150L(1)(b)(i) of the <i>Local Government Act 2009</i> (the Act), in that the conduct constituted a breach of trust placed in him as a councillor, either knowingly or recklessly, has been sustained .
Reasons:	<p>On the basis of the Statement of Facts (SOF) and the material before it, the Tribunal finds that the Respondent sent text messages to [REDACTED] (the complainant) and her husband on 30 June 2019 and threatened legal action (for "slander and defamation") whilst Councillor Gleeson was party to proceedings before this Tribunal with respect to another (now concluded) complaint made by the complainant against him.</p> <p>It is also found that the sending of the message to the complainant was intended to intimidate her, and did cause her to be fearful of the public release of information from the Tribunal proceedings and repercussions</p>

Councillor Conduct Tribunal

GPO Box 15009, City East, Q 4002

from her complaint to the IA, such that she contacted the IA to find out what she should do ¹. The texts were clearly related to the then current proceedings before the Tribunal, and the sending of the texts could be perceived to be an attempt at interference with a witness before the Tribunal. The texts were at least directed to intimidating the witness from making any further complaints or disclosures to the IA or other authorities regarding the Respondent.

The claims made by the Respondent that in sending the texts he was exercising some sort of lawful right in regard to his grievances against the complainant, are not accepted. The manner in which the communication was made (by text) and the correlation to the progress of the previous proceedings, are indicative that such issues were not being raised in respect of a genuine and separate lawful and valid claim against the complainant but for a wrongful purpose.

Further it is also found that the nature of the submissions made by the Respondent in this matter, are further evidence that the Respondent considers it appropriate to continue to use Tribunal proceedings to further intimidate the complainant.

Breach of trust and misconduct

The issue to be determined is whether the conduct as found above, is sufficient to amount to a breach of trust for the purposes of the application of section 150L of the Act.

The Applicant referred to the decision in *Flori v Winter* ² and noted that Her Honour, Bowskill J referred to the dictionary meaning of "trust", and also that to constitute a breach of the trust placed in a person as a police officer, that there must be some relation between the conduct and the performance of the functions or exercise of the powers conferred on the officer.

It is noted that since the submissions were made and the matter heard, the decision in *Flori* at first instance was overturned on appeal by the Court of Appeal. Of most relevance to the issues before this Tribunal is the finding of His Honour Fraser J (with whom the other members of the Court agreed) that:

"a serious criminal offence committed by a police officer that is apt to undermine public confidence in the integrity of that police officer is appropriately described as 'a breach of the trust placed in' that person as a member of the police force". ³

¹ Emails of 1 and 2 July 2019 in brief of evidence at 1.1 NS`.1

² [2019] QSC 106.

³ *Flori v Winter & Ors* [2019] QCA 281 at [59].

	<p>Accordingly, the decision is no longer to be taken as illustrative of a particularly high threshold for the finding of misconduct. Further, it would appear that the Court of Appeal has also confirmed that it is not necessary that the impugned conduct be related to the role or an abuse of power ⁴. The key appears to be the potential for the undermining of public confidence in the integrity of the person, in the role they are occupying ⁵.</p> <p>The concept of ‘trust in a councillor’ is viewed broadly, in relation to the trust that the community has in the <i>position of councillor</i>, rather than a specific trust or limited focus trust, such as a fiduciary trust. Councillors are ‘entrusted’ by electors in the community with the power to make policy and decisions in many areas affecting the life, lifestyle and well-being of the members of the relevant community. There is little day to day close monitoring of conduct of councillors by anyone in a supervisory role, as may apply to many workers. As elected representatives in responsible positions with significant powers, councillors have great discretion and are entrusted to use their powers appropriately in the public interest. Any breach of this trust can have a corrosive effect on the community and its confidence in local government.</p> <p>The behaviour of the Councillor as found in this matter, is improper, and would in the view of the Tribunal be considered to breach the trust of the community in him as a Councillor.</p> <p>In this context, having regard to the local government principles in section 4 of the Act, and also to section 150L(1)(b)(i), the Tribunal finds on the balance of probabilities that the allegation is sustained.</p>
--	--

3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	15 December 2019
Orders and/or recommendations:	<p>Having found that the councillor engaged in misconduct, pursuant to section 150AR(1) of the Act, the Tribunal ordered that:</p> <ul style="list-style-type: none"> a) pursuant to section 150AR(1)(b)(ii) of the Act, Cr Gleeson is reprimanded for the conduct; b) pursuant to section 150AR(1)(b)(i) of the Act, Cr Gleeson must make a public admission that he has engaged in misconduct, within 90 days of the date that a copy of this decision and orders is given to him by the Registrar.

⁴ Ibid at [57] and [58]

⁵ Ibid at [59]

	<p>c) pursuant to section 150AR(1)(b)(iv) of the Act, Cr Gleeson pay to the local government in the amount of \$700 within 90 days of the date that a copy of this decision and orders is given to him by the Registrar.</p>
<p>Reasons:</p>	<p>The purpose of civil disciplinary proceedings is generally not punitive, but protective. However, the orders made must also reflect the expectations of the community and may also be directed to deterrence or be compensatory. Ensuring that the Councillor is equipped with sufficient assistance to make it less likely that the conduct will be repeated is also a desirable outcome in crafting suitable orders.</p> <p>The conduct of the Councillor in regard to the allegation, is accepted by the Tribunal as constituting misconduct. The Tribunal has had regard to the Respondent's previous disciplinary history and notes that the allegation currently before the Tribunal arose during other proceedings of this Tribunal, to decide another allegation by the same complainant. As a result, the Tribunal accepts that the Respondent has demonstrated a lack of insight and remorse for the conduct.</p> <p>Further, that the conduct is escalating in nature, indicating a need for a similar escalation in the response in the orders and to ensure that that deterrence from similar conduct in the future by the Councillor and other Councillors is achieved. There is no evidence to suggest that the Respondent has been cooperative with the OIA, in circumstances where the Respondent denies the conduct.</p> <p>Since filing submissions, the Respondent informed the Tribunal on 14 November 2019 that he has requested a leave of absence from Council to allow him to deal with personal matters that are affecting his health.⁶</p> <p>While serious consideration has been given to the order proposed by the Applicant i.e. that there be a recommendation to the Minister for dismissal, it is noted that the Applicant has not provided any comparative decisions to support such an order being made, or provided detailed submissions as to how this course of action is the appropriate measure to be taken as opposed to alternative orders available. It is also an important consideration that such an order (if the recommendation was accepted by the Minister) would deprive the Councillor's constituents of representation, until a new councillor could be appointed. On balance, it is not considered that such action is appropriate in the circumstances of this matter, particularly where a period of suspension has not previously been ordered.</p> <p>Had not the Applicant determined to take leave of absence, a recommendation for a period of suspension may have been ordered by the Tribunal. Such a period of suspension may have been considered</p>

⁶ Email from the Respondent dated 14 November 2019.

Councillor Conduct Tribunal

GPO Box 15009, City East, Q 4002

appropriate in order to ensure that the Councillor took the time needed to obtain any support necessary to develop greater insight into his past behaviour, and how such behaviour should change if he were to continue in the role as a Councillor. It may also have been appropriate having regard to the level of seriousness of the conduct in this matter, and to ensure that the requisite degree of deterrence for future conduct was indicated.

However, the Tribunal considers that the voluntary leave of absence taken by the Councillor is appropriate and demonstrates some insight (albeit late in these proceedings). A further period away from the needs of his constituents would not necessarily be in the public interest. The comments by Adams J of the NSW Supreme Court are apposite:

"It seems to me that the difference between the punishments involving suspension of a councillor's service and those which do not is of considerable significance, for the reasons already mentioned. It should also be borne in mind that suspension from civic office involves far more than not being able to attend meetings or be otherwise able to contribute to the work of the Council but also the inability to assist constituents as a Councillor".

7

It is, important to note that the Tribunal considers that the conduct of the Councillor in this matter, is entirely unacceptable, and suitable measures must and will be taken as necessary to ensure that the conduct is not repeated by the Councillor or engaged in by other councillors.

The Tribunal notes that the Councillor did apparently receive some training. However, the nature and extent to which such training dealt with the responsibilities of a Councillor, is unclear from the submissions and material before the Tribunal. The Tribunal further notes that the Respondent claims to be suffering from current mental health and financial issues.

Accordingly, it is determined that the Respondent would benefit from being required to publicly acknowledge that the conduct is misconduct by being required to make a public admission to that effect, under section 150AR(1)(b)(i) of the Act. Further, the Respondent is reprimanded for the conduct pursuant to section 150AR(1)(b)(ii) of the Act. The Respondent must also pay \$700 to the local government within 90 days of a copy of the decision and orders being given to him by the Registrar.

⁷ Mehajer v Chief Executive of the Office of Local Government [2014] NSWSC 1804 at [17]