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## Local Government Standards Panel

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Complaint Number	20230267
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Rashelle Predovnik</b>
<b>Respondent</b>	<b>Councillor Ian Johnson</b>
Local Government	<b>City of Swan</b>
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Peter Rogers (Member)
Heard	8 August 2023 Determined on the documents
Finding	Breach x 1 Regulation 18

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### FINDING AND REASONS FOR FINDING

06 October 2023

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#### DEFAMATION CAUTION

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## Summary of the Panel's decision

1. On 8 August 2023, the Panel found that Councillor Ian Johnson a councillor of the City of Swan (**"the City"**):
  - a. did not commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and Division 4 and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* (**"the Regulations"**) when in his newsletter issued in June 2023 he made a comment regarding the order of motions at the Special Council Meeting of 30 May 2023; and
  - b. did commit a minor breach pursuant to the Act and Division 4 and Regulation 18 of the Regulations when he referred to an alternative motion raised at the Special Council Meeting of 30 May 2023 as "tightly scripted",  
as further set out in paragraph 17 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 and the *Local Government (Administration) Regulations 1996* provide for the circumstances in which a council member commits a minor breach.
4. Section 5.105(1) of the Act provides that a council or committee member commits a minor breach if the council or committee member contravenes a rule of conduct. Division 4 of the Regulations sets out the rules of conduct for council members and candidates.
5. Regulation 34D of the *Local Government (Administration) Regulations 1996* also provides that the contravention of a "*local law as to conduct*" is a minor breach pursuant to the Act.
6. 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.<sup>1</sup>
7. 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.
8. 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 accurate<sup>2</sup>; and
  - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>3</sup>.

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<sup>1</sup> Section 5.106 of the Act

<sup>2</sup> *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

<sup>3</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336



9. The Panel does not possess investigative or supervisory powers.<sup>4</sup> The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials in the public domain or published by the relevant local authority's website.
10. 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.
11. The Panel also must have regard to the general interests of local government in Western Australia<sup>5</sup>.
12. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

### **Jurisdiction and Procedural Fairness**

13. On 30 June 2023 the Panel received a complaint from Mr Stephen Cain acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 27 June 2023.
14. In the complaint form, the Complainant asserts that Cr Johnson has breached regulation 18 of the Regulations when in his newsletter issued in June 2023:
  - a. he made a comment regarding the order of motions at the Special Council Meeting of 30 May 2023 ("**Allegation 1**"); and
  - b. he referred to an alternative motion raised at the Special Council Meeting of 30 May 2023 as "tightly scripted" ("**Allegation 2**"),as further referred to in paragraph 17 below (together "**the Complaint**").
15. The Panel convened on 8 August 2023 to consider the Complaint.
16. The Panel:
  - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries ("**the Department**") that, based on information published on the Western Australian Electoral Commission's website, Cr Johnson was:
    - i. last elected to the Council of the City in October 2019 for a term expiring in October 2023;
    - ii. a Councillor at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 8 August 2022;
  - b. was satisfied the Complaint was made within six months after the alleged breach occurred<sup>6</sup>;

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<sup>4</sup> Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

<sup>5</sup> Section 8(6) of Schedule 5.1 of the Act

<sup>6</sup> Section 5.107(4) and 5.109(2) of the Act



- c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach<sup>7</sup>;
- d. was satisfied the Department had provided procedural fairness to Cr Johnson; and
- e. found it had jurisdiction to consider the Complaint.

### **The Specifics of the Complaint**

17. The Complainant provided the following comments and arguments in respect to the Complaint as summarised by the Panel:
  - a. Cr Johnson's latest newsletter of June 2023 ("**the Newsletter**") breaches Division 2 (Section 4), Division 3 (Sections 8 & 9) and Division 4 (Section 18) in the Regulations.
  - b. Cr Johnson has made improper use of his office as a councillor by publishing mistruths about council proceedings. He has also singled the Complainant out to cause detriment and gain a personal advantage over a fellow council member in the lead up to an election.
  - c. Cr Johnson has made statements that impute the Complainant is dishonest in his councillor newsletter – in his capacity as a councillor reporting on council meetings to electors.
  - d. Cr Johnson is clearly seeking to gain a personal advantage by disadvantaging a rival councillor he will shortly run against in the local government elections (in October).
  - e. Cr Johnson has also caused detriment to the local government by publishing and disseminating a false narrative in his newsletter that has damaged the reputation of the council, in his capacity as a councillor.
  - f. Cr Johnson published a misleading narrative in the Newsletter to disadvantage as follows:

*" My motion for a zero per cent rate rise was not debated. Instead, Cr Zannino's motion for a 3.25 per cent rate rise was successful.*

*I had circulated my zero per cent rate rise motion to all Councillors by Tuesday May 23. At that stage, no other alternate motions had been sent in.*

*Unexpectedly, at the special meeting on May 30, I found Cr Zannino's motion ahead of mine on the run sheet.*

*It was revealed in the meeting that his had been submitted on Saturday May 27 at 6pm. I queried why his motion was before mine when I had submitted mine first.*

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<sup>7</sup> Section 5.107 and 5.109 of the Act



*Basically, the CEO said my motion required computer modelling which had not been completed until Monday. I said, but mine was in there first. The mayor took the advice of the CEO."*

- g. In the excerpt above from his Newsletter, Cr Johnson presents this Special Council Meeting's procedure as 'unexpected' – where proper process was perverted to score political points.
- h. He goes on to present Cr Zaninno's motion (which went before his) as an example of the Council following an improper process.
- i. Cr Johnson's claims are false.
  - i. Emails from the CEO of the City confirm that Cr Johnson was informed in writing and fully aware before the meeting that Cr Zannino's motion had been lodged before his - in accordance with the City's Meeting Procedures Local Law.
  - ii. Cr Johnson's comment that this was 'unexpected' news was therefore untrue. Despite already providing information to Cr Johnson before the meeting, the CEO reiterated that same advice verbally at the Special Meeting.
  - iii. Nevertheless, Cr Johnson proceeded to publish a version of events that misled readers when he said the order of motions on the run sheet was 'unexpected' – when he presented the Guildford Library motion as a political football in a game orchestrated to score political points. His false narrative misled readers into believing there were 'tricks' being done and 'council shenanigans.'
- j. Cr Johnson further published a misleading narrative to disadvantage as follows:

*" When the motion was put, what followed appeared to be a tightly scripted performance. In rapid succession Cr Zannino moved the motion, Cr Congerton seconded it and Cr Predovnik moved an amendment. "*
- k. The background of the matter is that the Complainant raised an amendment to Cr Charlie Zaninno's motion that sought to close down the Guildford Library in a bid to save money.
- l. It is not factually correct that the Complainant was involved in any 'play acting' as this sentence above imputes.
  - i. This presents the Complainant as dishonest and untrustworthy and that she was part of a ruse - a '*tightly scripted performance*' - crafted to mislead the community.
  - ii. The imputation in Cr Johnson's newsletter is that the Complainant acted dishonestly in collusion with Cr Zaninno to pervert the proper process. This was pure fabrication with no basis.
  - iii. The Complainant had no knowledge or involvement in the crafting of Cr Zanninos motion.
- m. Evidence of the detrimental impact of Cr Johnson publishing mistruths had a detrimental impact including:



- i. a critical email from a local resident;
    - ii. an online publication in Ellenbrook with 61,453 subscribers which republished that story from the Newsletter with the headline "*Council shenanigans and a quick easy way to save \$400,000*"; and
    - iii. personal messages to the Complainant on social media.
  - n. The conduct is in breach of the Division 2 Code of Conduct general principles set out in the Regulations, and in particular:
    - i. Regulation 4(1) as to Personal Integrity;
    - ii. Regulation 8(1) as to Personal integrity; and
    - iii. Regulation 9 as to Relationship with others.
  - o. The conduct is in breach of Regulation 18.
18. The Complainant also supplied the following supporting documentation :
  - a. a copy of the Newsletter.
  - b. Email from the CEO to the Complainant dated 11 June 2023 with various email chains annexed;
  - c. Unofficial transcript of portion of the Special Council Meeting of 30 May 2023;
  - d. Email from the Complainant to the COE dated 29 May 2023 regarding proposed motion by Cr Zannino;
  - e. Letter from local resident;
  - f. Ellenbrook Times article date 6 June 2023 entitled *Council shenanigans and a quick easy way to save \$400,000*"; and
  - g. Screenshot of Facebook message to the Complainant.

### **The Respondent's Response**

19. By an email dated 30 July 2023, Cr Johnson provided a response to the Complaint.
20. Cr Johnson denies that he has committed any minor breach.
21. Cr Johnson provided the following comments and arguments regarding the Complaint as summarised by the Panel:
  - a. Cr Johnson accepts the facts in the form of quotes from the Newsletter but Cr Johnson doesn't agree with the narrative that the Complainant has created.
  - b. It can be seen from the emails provided to Cr Predovnik by the CEO that Cr Johnson's factual account is correct.
  - c. Cr Johnson has asked the CEO why he has given Cr Predovnik access to his emails. This unlawful and the Panel should refuse to deal with this complaint as it is partly based on information that has not been lawfully obtained.



- d. From the emails exchanged with the CEO, Cr Johnson took for granted, based upon previous convention and the Meeting Procedures local law that his motion would be first to be debated.
- e. The Meeting Procedures Local Law states at 2.11(7) that when two notices of motion dealing with the same matter are included on the agenda, the presiding member is to determine the order.
- f. This has always been interpreted to mean the first motion to be submitted is first on the agenda. Cr Johnson's motion was submitted first and the CEO had plenty of time to do the needed modelling which had to be done by the City as a specialised model is needed.
- g. Cr Zannino's motion was submitted later.
- h. Based on the past convention that the first motion submitted goes first, and Cr Johnson motion was first proposed on Monday 22 May, and circulated on 23 May, thus disclosing it to Councillors.
- i. The CEO had no reason to advise the Mayor as he did.
- j. The convention has been that the first motion goes first. There is nothing in the MPLL about completeness of motions. If completeness was a valid consideration, then Cr Johnson's motion was as complete as it could be.
- k. In the meeting Cr Johnson asked questions in the public forum to question the order of motions, as Cr Johnson had already advised the community through Facebook that he intended a zero percent rate rise and he fully expected to debate his motion.
- l. Based on the foregoing it is clear that Cr Johnson expected his motion to go first, based on law, convention, precedence and the basic principles of a fair go.
- m. When Cr Johnson's motion did not go first, it was unexpected for the reasons given. It is still unexpected and incorrect that my motion did not go first.
- n. My newsletter did not mislead anyone or present anything improper. It presented the facts as Cr Johnson saw them.
- o. Cr Johnson:
  - i. has acted with honesty and integrity by reporting the events in a well-established Newsletter.
  - ii. does not have any conflict of interest No impartiality interest, no proximity interest, no financial interest, no indirect financial interest.
  - iii. has not damaged local government. How does he prove a negative?
  - iv. has not done anything improper, he has reported the facts and described the events in a newsletter. In line with section 2.10 (c) of the Act.
  - v. has not created an advantage for anyone, see above. The Newsletter is in line with the role of a Councillor in the Act, specifically 2.10 (c).
- p. With the decline of local newspapers, my email newsletter is one of the very few sources of information for the local community.



- q. Cr Predovnik creates a fantasy narrative in the Complaint around the observational statement in the Newsletter as to what seemed to be a tightly scripted performance.
- r. It quite normal for Councillors to plan their alternate motions and amendments, the CEO publishes an order paper (or schedule) with the alternate motion prior to the meeting.
- s. Councillors commonly agree who will move and second a motion, and any amendments that may be needed. Sometimes the amendments are on the order paper as well.
- t. It's quite normal at any Council meeting to plan or script the sequence of mover, seconder and any amendments. On this occasion the amendment was clearly scripted in advance as Cr Predovnik says herself in her complaint.
- u. During the meeting Cr Johnson was ready to amend the motion himself, but Cr Predovnik had so well planned her amendment that she was able to get in before him. You can see this on the video of the meeting. It's also in the transcript provided.
- v. Cr Predovnik says that she had sought advice from the CEO on her motion.
- w. However, unexpectedly, the amendment planned well in advance, is not on the schedule or order paper for the meeting. Yet Cr Congerton clearly knew about it in advance. Clearly this was a planned move.
- x. It was scripted and judging by the speed with which it unfolded it was tightly scripted. Cr Predovnik confirms it was planned or scripted in advance.
- y. "Tightly" is an adjective to describe the speed with which events unfolded.
- z. If it looks to the community like a cynical ploy by Cr Predovnik to work with Cr Congerton, and perhaps Cr Zannini, to "save the Guildford Library" then that is the impression Cr Predovnik gave. The Newsletter is just reporting the facts not the impression.
- aa. This is how it appeared to the large numbers in the public gallery and watching the live streaming.
- bb. There have been several attempts to close the Guildford library, which is a modest community led low-cost library that has a strong Friends of Guildford Library Group
- cc. Cr Johnson has not done or said anything improper. He is merely reporting what Cr Predovnik, Zannino and Congerton did.
- dd. They have not done anything in breach of the meeting procedures, and he has not suggested that. It is normal proper and actually expected for Councillors to plan their motions and amendments in advance. It's not improper. It's also not improper to report events, particularly in a well-established newsletter.
- ee. If the community are dismayed by the events that transpired then that's the responsibility of the Councillors involved in the motions and amendments.



- ff. To be sending in complaints to the standards panel at a time when Councillors at Swan have been asked to stop sending in trivial complaints like this one, is contrary to the intent of the recent letter sent by Council to Mr Tim Fraser.
- gg. Cr Johnson:
- i. has acted with honesty and integrity by reporting the events as facts in a well-established newsletter.
  - ii. does not have any conflict of interest, impartiality interest, no financial interest, no indirect financial interest.
  - iii. has not damaged local government. How does he prove a negative?
  - iv. Has published factual information that is factually correct. The code of conduct does not prevent me from having opinions or making observations about what appears to be happening.
  - v. has not disparaged anyone's character. How does he prove a negative?
  - vi. Has not imputed any dishonesty or unethical motives to anyone.
  - vii. has not created an advantage for anyone, see above. The Newsletter is in line with the role of a Councillor in the Act, specifically 2.10 (c).
  - viii. has not caused a detriment – far from it, Cr Johnson is providing a communication service for the community in line with section 2.10(c) of the Act.
22. Cr Johnson also provided a copy of the Agenda for the Special Council Meeting of 30 May 2023.

### **Regulation 18**

23. Regulation 18 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:
- “ 18. Securing personal advantage or disadvantaging others**
- (1) *A council member must not make improper use of their office —*
- (a) *to gain, directly or indirectly, an advantage for the council member or any other person; or*
  - (b) *to cause detriment to the local government or any other person.*
- (2) *Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.”*
24. To make a finding of a minor breach of regulation 18(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr Johnson was an elected member at the time of the alleged breach and the time of the determination;
  - b. Cr Johnson made use of his office as Council member of the City;



- c. when viewed objectively, such use was an improper use of Cr Johnson'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; and
  - d. Either:
    - i. In respect to regulation 18(1)(a) – Cr Johnson engaged in the conduct with the intention of gaining an advantage for himself or another party; and
    - ii. In respect to regulation 18(1)(b) - Cr Johnson engaged in the conduct in the belief that detriment would be suffered by another person.
25. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or lack of wisdom. 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.
26. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent.
27. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
28. In the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power will be important factors in determining whether the power has been abused<sup>8</sup>.
29. 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 or pecuniary profit.
30. The Panel considers the term 'advantage' in regulation 18(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.
31. It is not necessary to find whether any advantage actually gained but an intent to gain such advantage must be established.
32. "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.
33. It is not necessary to find whether any detriment was actually suffered<sup>9</sup>, but an *intent* to cause such detriment must be established.

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<sup>8</sup> Treby and Local Government Standards Panel [2010] WASAT 81 (at 31); *Chew v The Queen* (1992) 173 CLR 626 (at 640 - 641 [Dawson JJ]); *R v Byrnes* (1995) 183 CLR 501 – (at 514 - 515 [Brennan, Deane, Toohey and Gaudron JJ] and at 521 [McHugh J]).

<sup>9</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



## **Code of Conduct**

34. The City has a Code of Conduct Elected Members, Committee Members and Candidates adopted by Council 3 May 2021 (**“the Code”**).

35. The relevant provisions of the Code are as follows:

### **“ 4. Personal integrity**

(1) *A council member, committee member or candidate should —*

(a) *act with reasonable care and diligence; and*

(b) *act with honesty and integrity; and*

.....

(e) *avoid damage to the reputation of the local government.”*

### **“ 5. Relationship with others**

(1) *A council member, committee member or candidate should —*

(a) *treat others with respect, courtesy and fairness; and*

(b) *respect and value diversity in the community.*

(2) *A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.”*

### **“ 8. Personal integrity**

(1) *A council member, committee member or candidate -*

(a) *must ensure that their use of social media and other forms of communication complies with this code; and*

(b) *must only publish material that is factually correct.*

....”

### **“ 9. Relationship with others**

*A council member, committee member or candidate —*

(a) *must not bully or harass another person in any way; and*

(b) *must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and*

(c) *must not use offensive or derogatory language when referring to another person; and*

(d) *must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and*



- (e) *must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.”*

## **PANEL CONSIDERATION**

### **Allegation 1**

#### Cr Johnson was an Elected Member at the relevant times

36. Cr Johnson was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
37. This element is met.

#### Cr Johnson made use of his office as Council Member of the City

38. It is not in dispute that Cr Johnson issued the Newsletter in his capacity as a elected member in order to comply with his obligations under the Act to facilitate communication between the community and Council and encourage leadership.
39. The Panel therefore finds that it is more likely than not that Cr Johnson was acting in his capacity as an elected member made use of his office as a council member when undertaking the relevant conduct.
40. This element is met.

#### Cr Johnson’s use was improper

41. In this case the Complaint has alleged that Cr Johnson acted improperly as he presents the Special Council Meeting’s procedure as ‘unexpected’ and that proper process was perverted to score political points.
42. Cr Johnson has argued he was only making factual statements and that it was unexpected to him.
43. The Panel has carefully reviewed the relevant quote and considers that, although the tone of the comment definitely indicates Cr Johnson was not happy with the order of motions, and he felt a different order should have applied, the comment does not go so far as to imply that the proper process was “perverted”, just that he was unhappy with the outcome.
44. The Panel would request Cr Johnson carefully choose his wording as to a matter that could possibly be taken to reflect badly on the City as a whole, but considers this comment to be more imprudent in nature rather than improper.
45. Given the above, the Panel finds that it is more likely than not that the relevant conduct was not improper as:
- a. the conduct was not in breach of the Code of Conduct;



- b. the conduct was not of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
- c. the conduct is not deserving of a penalty.

46. This element is not met.

Regulation 18(1)(a) - Cr Johnson intended to gain an advantage and Regulation 18(1)(b) - Cr Johnson intended to cause a disadvantage

47. As the above element is not met, the Panel has not further considered the remaining elements.

48. Despite this the Panel considers that the comment was predominantly an expression of surprise and disappointment that Cr Johnson did not get to debate his proposed motion as he had planned.

Conclusion

49. Given the above, the elements required to find a breach of regulation 18 of the Regulations have not been met.

## **Allegation 2**

Cr Johnson was an Elected Member at the relevant times

50. Cr Johnson was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

51. This element is met.

Cr Johnson made use of his office as Council Member of the City

52. As noted above, finds that it is more likely than not that Cr Johnson was acting in his capacity as an elected member made use of his office as a council member when he published his comments in the Newsletter.

53. This element is met.

Cr Johnson's use was improper

54. In this case the Complaint has alleged that Cr Johnson acted improperly as his comment:

- a. presents the Complainant as dishonest and untrustworthy and that she was part of a ruse crafted to mislead the community.
- b. implies the Complainant acted dishonestly in collusion with Cr Zaninno to pervert the proper process.

55. Cr Johnson argues that he only reported facts and that it is normal proper and actually expected for Councillors to plan their motions and amendments in advance.



56. In this case the Panel consider that the relevant comment goes further than simply stating the facts or including an observation that councillors often plan their motions in advance.
57. In particular the words “*tightly scripted*” hold an implication that something more than usual planning occurred, but rather imply that something was especially orchestrated between two or more parties that was not a genuine exercise of those parties’ role as elected members.
58. Further, the comment imputes a motive that those councillors had engaged in pre-fabricated block voting and therefore not properly undertaken their obligations as elected members to properly consider and make a decision based on the materials before them.
59. In the context of the entire article, the planning aspect was portrayed as a negative incident, that occurred in an underhanded manner, to prevent Cr Johnson from making his own alternative motion.
60. Although a breach of the Division 2 provisions (or the Code which largely reflects those provisions) is not considered a minor breach of the Regulations, a breach of the same may indicate, in all the circumstances that the relevant conduct is improper.
61. The Panel finds to the required standard that in making the relevant comments Cr Johnson breached the following provisions of the Code:
  - a. Clause 4(1)(b) – Cr Johnson did not act with honesty and integrity when he implied that the Complainant and other councillor had operated in an improperly orchestrated manner;
  - b. Clause 5(1)(a) – Cr Johnson did treat the Complainant or other councillors referred to with respect, courtesy or fairness;
  - c. Clause 8(1)(a) – Cr Johnson did not comply with the Code when making the relevant comment;
  - d. Clause 9(a) – Cr Johnson disparaged the character of the Complainant and the other councillors being referred to in the comment in the performance of their duties as elected members; and
  - e. Clause 9(a) – Cr Johnson imputed the Complainant and other councillors had dishonest or unethical motives in making and amending motions.
62. Given the above, the Panel finds that it is more likely than not that the relevant conduct was improper as:
  - a. the conduct was in breach of the Code of Conduct;
  - b. the conduct was of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
  - c. the conduct is deserving of a penalty.
63. This element is met.

Regulation 18(1)(a) - Cr Johnson intended to gain an advantage



64. The Complainant has alleged that Cr Johnson undertook the conduct to gain a personal advantage over a fellow council member in the lead up to an election.
65. In respect to the issue of Cr Johnson comparing himself favourably to other elected members, the Panel has previously found that the “advantage” gained by make oneself look better, or generally attempting to gain support of your stance is not the type of advantage which falls under regulation 18(1)(a). These are general (and somewhat necessary) personality traits for people in the public eye.
66. As such, although “advantage” is to be construed widely, the Panel does not consider that merely aiming to be looked on favourably by electors the type of “advantage” contemplated to be controlled by regulation 18(1)(a) of the Regulations.
67. Further, the Panel does not find that the relevant comment can reasonably be said to be related to any election campaign by Cr Johnson.
68. The Panel therefore finds that it is more likely than not that a part of the motivation of Cr Johnson was not to gain an advantage in the upcoming election.
69. This element is not met.

Regulation 18(1)(b) - Cr Johnson intended to cause a disadvantage

70. In this case the Complainant has argued that she was deliberately targeted and vilified to a large audience and that Cr Johnson also damaged the reputation of the local government.
71. Cr Johnson asserts that he was:
  - a. merely reporting what happened; and
  - b. providing a communication service for the community in line with section 2.10(c) of the Act,and no detriment occurred.
72. In the context of the Newsletter and the relevant article, the Panel finds that in choosing the words “tightly scripted” Cr Johnson had the intention:
  - a. to impute an underhanded or dishonest motive to of the Complainant (and the other mentioned elected members) in the manner in which the motion was presented; and
  - b. for the audience of his Newsletter to think less of the Complainant (and the other mentioned elected members).
73. Cr Johnson’s arguments that he could not have intended to cause any detriment as there is nothing wrong with planning a motion are not supported by the tone and context of the article and Cr Johnson’s other assertions in his response that refer to the motion as being seen as a “cynical ploy”.
74. Cr Johnson is clearly attempting to rally an unjustified negative public response to the councillors that made the motion by implying that the same was undertaken in improper manner.
75. The Panel, however, does not find to the required standard that it was Cr Johnson’s intent to disadvantage the local government as a whole and that the



negative reflections are limited to the actions of the Complainant and the other Councillors specifically referred to.

76. The Panel finds to the required standard Cr Johnson did have an intention to cause a detriment to the Complainant as well as the other elected members he specifically referred to in the same article in the Newsletter.
77. This element is met.

### Conclusion

78. Given the above, the elements required to find a breach of regulation 18 of the Regulations have been met.

### Panel's Findings

79. In respect to Allegation 1, Cr Johnson did not commit a breach of Regulation 18 of the Regulations and therefore did not commit a minor breach.
80. In respect to Allegation 2, Cr Johnson did commit a breach of Regulation 18 of the Regulations and therefore did commit a minor breach.

### Signing

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Tim Fraser (Presiding Member)

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Emma Power (Member)

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Peter Rogers (Deputy Member)



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## Local Government Standards Panel

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Complaint Number	20230267
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Rashelle Predovnik</b>
<b>Respondent</b>	<b>Councillor Ian Johnson</b>
Local Government	<b>City of Swan</b>
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members for Penalty Consideration	Mr Tim Fraser (Presiding Member) Councillor Peter Rogers (Member) Ms Elanor Rowe (Deputy Member)
Heard	8 August 2023 Determined on the documents
Penalty Considered	31 October 2023
Outcome	Public Apology

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### DECISION AND REASONS FOR DECISION

19 December 2023

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#### DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, 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. At its meeting on 8 August 2023, the Panel found that Councillor Ian Johnson (“Cr Johnson”), a councillor for the City of Swan (“the City”), committed one minor breach under the Local Government Act 1995 (WA) (“the Act”) and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* (“the Regulations”) when he referred to an alternative motion raised at the Special Council Meeting held on 30 May 2023 as “*tightly scripted*” (“Minor Breach”).
2. On 6 October 2023, the Panel published its Finding and Reasons for Finding (“Findings”) stating that Cr Johnson had breached Regulation 18.

## Jurisdiction and Law

3. The Panel convened on 31 October 2023, to consider how it should deal with the Minor Breach. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (“the Department”) that on this date there was no available information to indicate that Cr Johnson 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) *ordering that no sanction be imposed; 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*
    - (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;*

*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. Under section 5.110(6)(a), the Panel may order that no sanction be imposed; not to reverse the finding of a breach, but to however indicate that in all the circumstances the relevant councillor should not be penalised further.



6. Sub-section 5.110(6)(b)(iv) (in respect of a monetary sanction) was introduced in 2019 to allow the Panel to require a councillor to personally bear the cost of dealing with a complaint, which in other circumstances, would be paid by the local government concerned. This ensures the cost of a breach is borne by the councillor individually, and not simply passed onto the local government and therefore, ultimately, rate payers.

### **Cr Johnson's Submissions**

7. 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).<sup>1</sup>
8. By a letter dated 6 October 2023, Cr Johnson was:
- i. notified of the Panel's Finding of the Minor Breach;
  - ii. provided with a copy of the Panel's Findings; and
  - iii. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.
9. On 20 October 2023, the Department received a response ("Response") from Cr Johnson. Cr Johnson suggested that the Panel order him to publish an apology in his monthly electronic Councillor Newsletter.

### **Panel's Consideration**

10. The purpose of the imposition of a sanction under the Act is generally for the protection of the public and the maintenance of standards of council members. Furthermore, it reflects the disapproval of a contravention of the Regulations, dissuades councillors from other local governments from engaging in similar conduct and facilitates the maintenance of appropriate standards of behaviour by councillors. Guidance on the factors which the Panel may consider in determining the appropriate penalty to impose, include, but are not limited to:
- a. the nature and seriousness of the breaches;
  - b. the councillor's motivation for the contravention;
  - c. whether or not the councillor has shown any insight and remorse into his / her conduct;
  - d. whether the councillor has breached the Act knowingly or carelessly;
  - e. the councillor's disciplinary history;
  - f. the likelihood or not of the councillor committing further breaches of the Act;
  - g. the councillor's personal circumstances at the time of the conduct, and at the time of imposing the sanction;

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<sup>1</sup> *Local Government Act 1995* (WA), s 5.110(5).



- h. the need to protect the public through general deterrence and maintain public confidence in local government; and
  - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness.
- 11. As per the Panel's Finding, Cr Johnson made the following improper comment in his Newsletter regarding an alternative motion raised at the Special Council Meeting held on 30 May 2023:

*"When the motion was put, what followed appeared to be a tightly scripted performance. In rapid succession Cr Zannino moved the motion, Cr Congerton seconded it and Cr Predovnik moved an amendment."*
- 12. His behaviour, the subject of the Minor Breach Finding, was considered a serious matter. When deciding what sanction to impose, the Panel must consider how the penalty will help to guide other councillors and dissuade them from engaging in similar conduct.
- 13. The Panel does not consider it appropriate to impose no sanction in relation to the Minor Breach, as this would indicate that it was so minor that no penalty is warranted.
- 14. In this case, the Panel finds it fair and reasonable that Cr Johnson makes a public apology to the Complainant, Councillor Charlie Zannino and former Councillor, Mr Mel Congerton, being the parties who he acted improperly towards. Notably, in his Response to how the matter should be dealt with, Cr Johnson acknowledged that a public apology was the appropriate sanction.
- 15. The standards of behaviour expected of elected members are of a generally higher standard than a member of the public, due to their prominent positions in the community. Cr Johnson's conduct was clearly highly offensive and potentially damaging.
- 16. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when an elected member's conduct:
  - a. adversely affects a particular individual or party; and / or
  - b. does not meet the standards other councillors seek to uphold.
- 17. An apology will go a little way to make amends for Cr Johnson's conduct and to help repair the damage caused.



## 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 Cr Johnson is ordered to make a public apology pursuant to subsection (b)(ii) in terms as set out in the attached Order.

## Signing

A handwritten signature in black ink, appearing to be 'T Fraser'.

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Tim Fraser (Presiding Member)

A handwritten signature in black ink, appearing to be 'P Rogers'.

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Peter Rogers (Member)

A handwritten signature in black ink, appearing to be 'E Rowe'.

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Elanor Rowe (Deputy Member)



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## ORDER

19 December 2023

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### DEFAMATION CAUTION

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Ian Johnson (“Cr Johnson”), a councillor for the City of Swan, publicly apologise, as specified in paragraph 2 below, or failing compliance with paragraph 2, then paragraph 3 below.

### Public Apology

2. At the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on him, Cr Johnson shall:
  - a. attend the relevant ordinary council meeting;
  - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
  - c. 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; and
  - d. address the Council and public 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 the *Local Government (Model Code of Conduct) 2021* when I made certain comments in a newsletter in relation to an alternative motion raised at the Special



Council Meeting held on 30 May 2023.

- ii. The Panel found that by behaving in this manner I committed one breach of Regulation 18 of the said Regulations.
- iii. I accept that I should not have acted in such a manner and I now apologise to Councillor Rashelle Predovnik, Councillor Charlie Zannino and former Councillor, Mr Mel Congerton, for having done so.”

3. If Cr Johnson fails to, or is unable to, comply with the requirements of paragraph 2 above in the required timeframe then, within the next 28 days following the ordinary council meeting referred to in paragraph 2 above:
  - a. Cr Johnson 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 “*Echo*” newspaper; and
  - b. the Chief Executive Officer of the City of Swan shall arrange for the following notice of public apology to be published in no less than 10-point print or font:
    - i. on the Facebook page of the City of Swan; and
    - ii. in an appropriate place on the website of the City of Swan; and
    - iii. in the next occurring issues of all City of Swan community and public newsletters (if any) (whether in electronic or print copy).

#### **PUBLIC APOLOGY BY COUNCILLOR IAN JOHNSON**

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the *Local Government (Model Code of Conduct) 2021* when I made certain comments in a newsletter in relation to an alternative motion raised at the Special Council Meeting held on 30 May 2023.

The Panel found that by behaving in this manner I committed one breach of Regulation 18 of the said Regulations.

I accept that I should not have acted in such a manner and I now apologise to Councillor Rashelle Predovnik, Councillor Charlie Zannino and former Councillor, Mr Mel Congerton, for having done so.

**Date of Order: 19 December 2023**



## 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."