

Local Government Act 1989

IN THE MATTER OF AN APPLICATION FOR A COUNCILLOR CONDUCT PANEL BY COUNCILLOR JULIE WILLIAMS CONCERNING COUNCILLOR ANGELA VILLELLA - CITY OF DAREBIN

DECISION OF THE PANEL

**Councillor Julie Williams' application to the Panel made on 12 June 2015
for a finding of misconduct against Councillor Angela Villella is dismissed.**

REASONS FOR THE PANEL'S DECISION

1. Councillor Julie Williams complains that Councillor Angela Villella breached the Code of Conduct of the City of Darebin by submitting a Notice of Motion for consideration at the Ordinary Meeting of the Council to be held on 18 May 2015. That Notice of Motion proposed that the Council resolve to censure Councillor Williams.
2. The motion was recorded in the Agenda for the meeting as follows:

10.2	CENSURE MOTION	
NOTICE OF MOTION NO.	192	CR. ANGELA VILLELLA
Take notice that at the Ordinary meeting to be held on 18 May 2015, it is my intention to move:		
THAT Council censure Cr. Laurence and Cr. Williams for distributing confidential information via email on certain matters, to individuals who have disclosed conflicts of interest in these matters.		
Notice Received:	13 May 2015	
Notice Given to Councillors:	14 May 2015	
Date of Meeting:	18 May 2015	

3. The allegation that Cr. Williams had distributed confidential information was based upon the following email, sent on 11 May 2015 to Ms Jacinta Stevens, Manager, Corporate Governance and Performance, with copies to Councillors Greco, Walsh, McCarthy, Fontana, Villella, Li, Laurence and Lewinsky and Mayor Tsitias and the Chief Executive Officer, Mr Rasiah Dev.
4. The email read as follows:

Hi Jacinta

From my recollection from Friday's meeting Cr Bo Li has verbally told Rasiah Dev that he has been reappointed as CEO, that he has a contract of three years, and that his pay is \$358. Highlighting terms and conditions needs to be renegotiated in line with the motion carried in December last year.

On the contrary, Cr Bo Li has emailed an [sic] motion to set aside everything and put Mr Dev as acting CEO which contradicts what he said on Friday.

Where are we going from here?

*Kind regards
Cr Julie Williams*

Sent from my iPhone

5. The Panel was informed at the hearing that the Notice of Motion was removed from the Web-based Agenda for the meeting apparently over the following weekend.
6. The Agenda for the meeting of 18 May 2015 was published on Council's Web page on Thursday 14 May 2015. All Councillors received the agenda that evening. As is apparent from the Notice of Motion set out above, Councillor Villella sought that the Council censure both Cr Williams and Cr Laurence.
7. The Agenda having been circulated, Cr Laurence wrote to the CEO and the Mayor on Saturday 16 May 2015 advising he had received legal advice concerning the censure motion. The Notice of Motion was removed from the website on the evening of Saturday 16 May due to action Cr Laurence was proposing to take against Cr Villella and against the Council for publishing it. The agenda was re-printed on the Monday without the censure motion for the meeting that evening.
8. Under clause 25 of the *City of Darebin Governance Local Law 2013* it is provided that:
 - (1) The Chief Executive Officer may reject a notice of motion if he or she is of the opinion that it is:
 - a) Defamatory;
 - b) Objectionable in language or nature;
 - c) Vague or unclear in intention; or
 - d) Outside the powers of the Council.
9. There is no provision under clause 24 of the *Governance Local Law 2013* for the withdrawal of a Notice of Motion. In any event the Notice of Motion was

Sub-clause 25(2) allows for a Notice of Motion, where it has been rejected by the CEO, to be amended and resubmitted, subject to time considerations. In the present case, it may be assumed that the CEO accepted the Notice of Motion.

not referred to in the Minutes for the Ordinary Meeting of the Council held on 18 May 2015.

10. Councillor Williams objects to Councillor Villella's lodging of the Notice of Motion for the following reasons:
 - (a) Cr. Villella did not inform her of her intention to lodge the Notice of Motion, which was subsequently recorded as an Agenda item;
 - (b) The Notice of Motion was circulated as an Agenda item, published on the Council Web site, seen by many people – including close family, friends and residents who approached her about the matter and sought an explanation.
 - (c) Circulation of the Notice of Motion meant that she would be questioned at length about the alleged impropriety, including by a journalist, and was damaging to her reputation in the community.
 - (d) She feared that the Notice of Motion, being a censure motion, might have led to her being removed from her position on the Council, or painted her as an inappropriate person to hold office.
 - (e) Cr. Villella has not acknowledged any wrongdoing in the matter.

11. At the hearing before the Panel, Councillor Williams said that she believed the Notice of Motion to have asked for her removal from the Council, as the Notice of Motion suggested that she had been guilty of misconduct. She was also concerned that the allegation contained in the Notice of Motion might be used against her during the next election campaign. She said that the Notice of Motion has now affected the way in which she conducts herself at Council meetings. In light of these matters, Councillor Williams sought that there be an apology from Councillor Villella.

12. Councillor Williams says that, in submitting the Notice of Motion Councillor Villella breached the City of Darebin Councillor Code of Conduct 2013 (Amended February 2014). In particular, she argues that Councillor Villella:
 - (a) Failed to act with integrity, by not informing her that she proposed the Notice of Motion, contrary to clause 2.2.1 of the Code;
 - (b) Inappropriately conferred a disadvantage of her, contrary to clause 2.2.3 of the Code;
 - (c) Made a statement that was intended to mislead or deceive a person, contrary to clause 2.3.2 of the Code; and
 - (d) Did not treat her with respect and demonstrated a failure of appropriate behaviour, contrary to clause 2.3.3 and 3.1.2 of the Code.

Councillor Villella's explanation

13. Councillor Villella told the Panel that at the time she lodged the Notice of Motion it was "a toxic time" for Council. There had been issues concerning the re-appointment of the CEO and issues about the terms of his contract. A Monitor had been appointed to observe the operation of the Council. There had been communication with the Minister. There had been evident conflicts

of interest involving Mayor Tsitas. The Council was “in disarray”, and there had been several email exchanges between various Councillors.

14. In that “toxic atmosphere”, as she described it, Councillor Villella said that she had not had a good relationship with Councillor Williams. Had she had a better relationship, she might have handled things differently. Councillor Villella said that she put forward the censure motion to stop the breaches that had been occurring. It was not intended as a personal attack upon Councillor Williams and was not intended to harm Councillor Williams’ reputation.
15. On Sunday 15 May 2015, Councillor Villella received a telephone call from the CEO who told her that Councillor Laurence wanted the Notice of Motion withdrawn, and was seeking legal advice as to whether the allegation made in the Notice of Motion was defamatory. According to Cr. Villella, the Notice of Motion was not put to the meeting (the Panel has noted that the matter is not referred to in the Minutes of the meeting of 18 May 2015). The Panel notes that, pursuant to clause 24(8) of the *Governance Local Law*, a Notice of Motion that is not put, lapses.
16. With regard to Councillor Williams’ explanation as to how she came to include the CEO in the list of recipients of her email, Councillor Villella was uncertain whether Councillor Williams’ action was merely careless, or deliberate.

Was there a proper basis in fact for the Notice of Motion?

17. It is not immediately obvious that the information in Councillor Williams’ email was “confidential”. There is no evidence that Councillor Bo Li intended his email communication, referred to in Councillor Williams’ email, to be “confidential”. Councillor Villella has not provided any evidence that the communication by Councillor Li to Councillor Williams (or for that matter Councillor Laurence) was confidential, or that the communication was to be confidential even in respect of the CEO, Mr Dev.
18. Nor was any evidence was presented to the Panel by Cr Villella that the information conveyed in the email was considered to be Confidential Information as defined in the *Local Government Act 1989* Section 77, and in particular that the information in the email was confidential as per subsection 77(2). The allegation that a Councillor has conveyed “confidential” information is a serious one and, if such allegation is made, ought to be well founded, or not made.
19. Whilst the act of including the CEO in the list of recipients of the email would not amount to the disclosure of confidential information, it was certainly careless for Councillor Williams to include the CEO in the distribution list of her email, and her so doing presumably complicated an already complex negotiation between the Council and the CEO. Neither Cr Williams nor Cr

Villella were able to convey to the Panel the procedure adopted at Darebin for appointing a person to the position of CEO.

20. Councillor Williams gave to the Panel an explanation as to how the email came to be addressed to a group of councilors and to the CEO. That explanation had to do with her unfamiliarity with the use of her iPhone and that she did notice that the phone's email client had defaulted to a list addresses that would commonly be used. In effect, her explanation was that she had inadvertently included the CEO in the list of addressees. Whilst the Panel has some reservations about the credibility of this explanation, in the absence of evidence to the contrary we will accept Cr Williams' explanation.
21. On this basis, the Panel takes Councillor Williams to assert that she did not intentionally disclose confidential information to the CEO.

Conclusion

Did Councillor Villella engage in misconduct by lodging the Notice of Motion?

22. The use of "censure motion" has no foundation in Council's Local Law relating to meeting procedure. It is borrowed from procedures in the Federal Parliament to express dissatisfaction with performance of a particular Minister or Government¹. Against that background, and having regard to the extract from the House of Representatives Practice footnoted below, it is understandable that Councillor Williams felt that the motion was damaging to her reputation and amounted to an attack on her fitness to hold office.
23. It was not an appropriate mechanism to employ where the Local Laws do not provide for it and to do so was especially inappropriate to be employed in circumstances where to do so was only likely to inflame problems in a divided Council. It is fortunate that the Notice of Motion was removed from the Agenda by reason of Cr. Laurence's intervention on the basis of legal advice.
24. It is to be hoped that, in the future, Councillor Villella will confine herself to the procedures available under the Local Laws when seeking to resolve disputes. The Panel notes that Councillor Villella said that she did not approach Councillor Williams about her concerns because, at the time, she had a poor relationship with her. Councillor Villella would have been justified in approaching Councillor Williams about her email, because the appointment of the CEO was a controversial and divisive matter within the Council. Had she done so, she may have been given the explanation that Councillor Williams gave to the Panel.

¹ See for example the following description of parliamentary practice:
http://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice6/Practice6HTML?file=Chapter9§ion=07

25. In the absence of any evidence to the contrary, the Panel accepts Councillor Williams' evidence as to how the CEO came to be included as a recipient of her subject email. Even accepting her explanation, Councillor Williams was clearly careless and should have ensured that the email was addressed only to persons who were properly concerned with the matter - certainly not the CEO. That was particularly important in view of the high degree of disagreement and conflict amongst Councillors as to the contractual position of the CEO.
26. The making of a finding of misconduct against a Councillor is a serious matter. The *Local Government Act 1989* at section 81A tells us that misconduct is "(a) conduct by a Councillor that is in breach of the Councillor Code of Conduct".
27. It has to be remembered that in Council processes are very often contentious and involve debate and disagreement between Councillors over issues of policy and procedure. Procedural rules, such as those in the Local Laws are designed to promote the efficient disposition of Council business and, so far as possible in formal meetings of Council, to regulate relationships between Councillors.
28. The Panel has said that it would have been desirable and appropriate for Councillor Villella to approach Councillor Williams about her concerns. In light of her response, she may not have prepared the subject Notice of Motion. The Panel has also expressed the view that the device of proposing a censure motion was not something contemplated by the Local Law. It was an inappropriate and excessive response to Councillor Williams' email. It is hard to escape the conclusion that, in putting forward the Notice of Motion Councillor Villella intended to isolate and to punish Councillor Williams.
29. With regard to the specific grounds raised by Councillor Williams in her Application, the following are noted. As to the allegation that Councillor Villella failed to act with integrity in lodging the Notice of Motion (clause 2.2.1 of the Code), the Panel is of the view that the concept of failing to act with "integrity" requires some substantial degree of dishonesty. The Panel does not accept that Councillor Villella acted dishonestly in submitting the Notice of Motion.
30. As to the ground based on clause 2.2.3 of the Code – that Councillor Villella inappropriately conferred a disadvantage on Councillor Williams – the Panel notes that the text of the clause uses the word "improperly" seek to confer a disadvantage on any person and does not use the word "inappropriately". Again, the word "improperly" requires that there be some conduct on the part of Councillor Williams that is outside the bounds of accepted proper conduct and appears to require some reprehensible intention. Whilst the Panel agrees that it was "inappropriate" for Councillor Villella to lodge the Notice of Motion, we are unable to say that she did so "improperly".

31. With regard to the complaint made by Councillor Williams that, in breach of cl. 2.3.2 of the Code, Councillor Villella made statements of actions in an attempt to mislead or deceive a person, the Panel does not regard a Notice of Motion as being a statement in writing or an action that was likely to mislead or deceive a person envisaged by the sub-clause. In the Panel's view the deliberative processes of the Council in respect of motions before it are not what was envisaged by this provision in the Code.
32. As to Councillor Williams' complaint that the Notice of Motion was in breach of the Code in that it was evidence that Councillor Villella did not treat her with respect and did not constitute appropriate behaviour – reliance being placed on cl. 2.3.3 and 3.1.2. Again, in the Panel's view, these provisions are not apt to apply to the lodging of a Notice of Motion – though they might well apply to the conduct and statements of a Councillor, during the course of a debate or otherwise in a Council meeting, in respect of a Councillor or another person.

Disposition

33. The *Local Government Act 1989* gives the Panel the option of either dismissing the application or making one or other of the formal orders allowed namely a reprimand, an apology or requirement to take a period of leave.
34. Although the Panel has been critical of Councillor Villella's conduct, both in failing to directly raise her concerns with Councillor Williams, and in proposing a censure motion which was both outside the procedural rules governing the Council, in circumstances where there was no evidence of any conflict of interest. Despite those findings, the Panel is not able to say, for the technical reasons given above, that there has been a breach of the Code of Conduct by Councillor Villella. In future, the Panel suggests that Councillor Villella should confine her actions to the agreed processes in the Councillor Code of Conduct and the Local Laws of the City of Darebin.

The Panel was informed by the parties that one or two special inspectors of Municipal Administration who that are currently working with the Councillors have been tasked with helping to improve Council's working relationship and procedures for resolving disputes. Although under sub-section 81J(1)(c) of the Act, the Panel may make findings as to such remedial action as may be required, such as amendment of the Code of Conduct – even where misconduct is not found to have occurred – the Panel will not do so on this occasion (other than as explained above) in order to avoid any duplication of the work being undertaken by the Inspectorate.

Dated: 6 December 2015



PETER HARRIS
Chairperson, Legal Member



MATT EVANS
Governance Member