

LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995* (WA)

Complaint Number	SP 22 & SP 25 of 2016 [DLGC 20160110 20160116]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Geoffrey Beaton
Subject of complaint	Councillor Toni Collins
Local Government	Shire of Boddington
Regulation	Regulation 11(2) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
Heard	21 December 2016 Determined on the documents
Outcome	Two breaches

FINDING AND REASONS FOR FINDING

Published 16 March 2017

DEFAMATION CAUTION

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Summary of the Panel's decision

1. The Panel found that Councillor Toni Collins (Cr Collins) a councillor for the Shire of Boddington (the Shire), committed two minor breaches under the Local Government Act 1995 (WA) (the Act) and regulation 11(2) of the Local Government (Rules of Conduct) Regulations 2007 (the Regulations) when failing to disclose impartiality interests at ordinary council meetings on 20 October 2015 and 19 April 2016.

Jurisdiction

2. The Act provides for the circumstances in which a council member commits a minor breach.¹
3. On 30 May 2016 the Panel received four complaints from the Shire's Complaints Officer made by Mr Geoffrey Beaton (Mr Beaton) alleging Cr Collins committed four minor breaches. These Findings and Reasons relate to two of the four complaints. Mr Beaton alleges that Cr Collins breached regulation 11(2) of the Regulations by failing to disclose interests affecting her impartiality at ordinary council meetings (OCMs) on 20 October 2015 and 19 April 2016 (Complaints 1 and 2 respectively).
4. Under the Act the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breach occurred.²
5. If the alleged conduct may amount to a "recurrent breach", the Panel may instead send the complaint to the Chief Executive Officer of the Department of Local Government and Communities (the Department).³
6. On 21 December 2016 the Panel met to consider Complaints 1 and 2.
7. The Panel considered the documents listed in Attachment A to these Reasons including the Statement of Facts in Attachment B to these Reasons in so far as they apply to these Complaints.
8. Cr Collins responded to the Complaints in two emails dated 14 August 2016.
9. The Panel was satisfied the Complaints had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches.⁴
10. The Panel accepted the Department's advice that Cr Collins was a councillor at the time of the alleged breaches and on 21 December 2016 when the Panel considered the Complaints.
11. Cr Collins had not previously been found to have committed a minor breach, so the Panel was not required to consider sending these Complaints to the Chief Executive Officer of the Department.⁵

¹ Section 5.105 of the Act.

² Section 5.110(2)(a) of the Act.

³ Sections 5.110(2)(b), 5.111(1) of the Act.

⁴ Sections 5.107, 5.108, 5.109 of the Act.

⁵ Sections 5.110(2)(b), 5.111(1) of the Act.

12. Based on the information referred to in paragraphs 2 to 11 above the Panel found it had jurisdiction to determine whether Cr Collins had committed the two alleged minor breaches of regulation 11(2).

Panel's role

13. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
14. Any finding that a councillor has committed a minor breach must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).⁶
15. Where direct proof of an alleged fact, proposition or conduct is not available, in order to find the allegation, proposition or conduct has been established, the Panel must be satisfied on the evidence that it is more probable than not that the alleged fact, proposition or conduct occurred. The Panel cannot make a finding that the alleged fact, proposition or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.⁷
16. For a finding that a councillor has breached a particular regulation the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

Regulation 11

17. A councillor commits a minor breach if he or she breaches regulation 11(2). Regulation 11 provides:

"11. Disclosure of interest

(1) In this regulation —

interest means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.

(2) A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the member must disclose the nature of the interest —

(a) in a written notice given to the CEO before the meeting; or

(b) at the meeting immediately before the matter is discussed.

(3) Subregulation (2) does not apply to an interest referred to in section 5.60 of the Act.

(4) Subregulation (2) does not apply if —

⁶ Section 5.106 of the Act.

⁷ Bradshaw v McEwens Pty Ltd (1951) 217 ALR 1, paragraph 5.

(a) a person who is a council member fails to disclose an interest because the person did not know he or she had an interest in the matter; or

(b) a person who is a council member fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.”

Complaint 1 – OCM 20 October 2015 (SP 25 of 2016)

18. In his Complaint Form dated 26 May 2016 Mr Beaton alleged:

At the Ordinary Meeting of Council on 20 October 2015 Cr Toni Collins failed to disclose an impartiality interest in item 9.2.2 in relation to an application by the Boddington Community Resource Centre for waiver of fees. Cr Toni Collins seconded the motion.

Cr Toni Collins was a management committee member of the Boddington Community Resource Centre at the time.

Cr Elizabeth Hoek declared a financial interest and left the meeting. This should have prompted Cr Collins to declare an interest.

On 20 October 2015 Cr Toni Collins was a council member and had an interest in a matter to be discussed at a council meeting attended by the member and did not disclose the nature of the interest in breach of the Local Government (Rules of Conduct) Regulations 2007, clause 11 (2).

Copy of minute attached.

Copy of management committee members attached.

19. The minutes of the OCM on 20 October 2015 (the OCM Minutes) relating to item 9.2.2 record that:

- Since 2003 the Boddington Community Resource Centre (BCRC) had been using the Old School Oval (the Oval) to run annual Friday Night Community Festivals, Street Parades and Boddington Music Festivals.
- The BCRC wanted to use the Oval in November 2015 and 13 February 2016 for these events. In previous years the Shire had not charged the BCRC to use the Oval for these events, however a change in circumstances resulted in the Shire wanting the BCRC to pay hire fees.
- The BCRC had asked Council to waive the hire fees because these were free events for the Boddington community and visitors and provided opportunities for recreation and community development.
- Cr Collins seconded a motion that Council support the waiver of hire fees for using the Oval for these events. The motion was carried.

20. The BCRC's Minutes of its Annual General Meeting on 10 February 2015 record that Cr Collins became a member of the BCRC Management Committee on that date.
21. The OCM Minutes do not record that Cr Collins declared any interest in item 9.2.2 at any time during the OCM or before the OCM began. The OCM Minutes record that another councillor declared a financial interest in this agenda item before the item was debated because she was an employee of the BCRC. That councillor left the Council chamber before the matter was debated because of her interest.

Cr Collins' response

22. In her two emails dated 14 August 2016 Cr Collins said:

"My role on the (BCRC) committee is purely voluntary and the BCRC provides many positive outcomes to the community of Boddington. I make no personal gain and, therefore, my interest would only be one of impartiality.

...

I would not intentionally not disclose an interest or denigrate a person.

...

I apologise for not disclosing an interest. I think that it is significant that my vote did not have any influence of the outcome of this agenda item.

At the time of this agenda item, I had quite recently become a member of the BCRC committee. Since this disclosure has been brought to my attention I have resigned from this committee and will not be joining this organisation in the future."

Essential elements for contravention of regulation 11(2)

23. In order to find that Cr Collins breached regulation 11(2) the Panel must be satisfied to the required standard of proof that:
 - Cr Collins had an "interest" as defined in regulation 11(1) (an impartiality interest) in the matter being debated;
 - she failed to disclose the nature of her interest before or at the OCM (regulation 11(2)); and
 - regulation 11(4) does not excuse the non-disclosure.
24. Regulation 11(4) provides that a councillor does not breach regulation 11(2) if she:
 - did not know she had an interest in the matter; or
 - did not know the matter would be discussed at the meeting, provided she disclosed the interest as soon as possible after the discussion about the item began.

Did Cr Collins have an impartiality interest in the matter?

25. Cr Collins was a member of a local organisation set to benefit (in that it would save money) from a favourable Council decision. The Panel found that in these

circumstances a reasonable person could perceive that Cr Collins would not be impartial when deciding whether the BCRC should be exempt from hire charges.

26. The Panel is therefore satisfied that Cr Collins had an interest as defined in regulation 11(1).

Did Cr Collins disclose her impartiality interest?

27. The OCM Minutes do not record any disclosure by Cr Collins in relation to item 9.2.2 and Cr Collins acknowledges her lack of disclosure in her response.
28. This element is satisfied because Cr Collins did not disclose her impartiality interest.

Does regulation 11(4)(a) excuse the non-disclosure?

29. Cr Collins did not breach regulation 11(2) if she did not know she had an impartiality interest. In her response Cr Collins neither admits nor denies she knew about the impartiality interest.
30. It is possible for a person to know the facts which together lead to a conclusion, without forming the conclusion themselves. That is, a person may not process the facts in a way which leads them to a particular conclusion even if that conclusion is obvious to another person, or is the only reasonable conclusion.
31. In *Corr and Local Government Standards Panel* [2014] WASAT 86, paragraphs 24, 25 and 27, Senior Member McNab said:

“24. However, in my view, the standard required in conflict of interest matters is generally an objective standard - one that can be satisfied without the need for proof that Councillor Corr had any direct, conscious or actual knowledge of the relevant conflict. The conflict arises from objective or constructive circumstances, not from the subjective knowledge of the particular Councillor.

25. This is not to say, however, that such matters are irrelevant to the question of any sanction to be imposed should a breach occur.

...

27. Regulation 11(4) of the Regulations provides, in my view, no defences, as Councillor Corr had Council material in his possession that it was his duty to read or to be appraised of and which, had he discharged that duty, he would have - or should have - noticed a potential conflict of interest.”

32. The Minutes of the Annual General Meeting of the Boddington Community Resource Centre on 10 February 2015 do not include Cr Collins in the list of attendees. They record that the Chairperson accepted nominations for the various positions on the Management Committee without an election “as each position was filled”, and that Cr Collins became a Committee member.
33. In her response Cr Collins said she had recently become a Committee member. Although it appears she was not present at the AGM there is no evidence from which the Panel could reasonably conclude that Cr Collins did not know she was a Committee member at the time of the OCM.

34. As a councillor, Cr Collins is expected to read meeting papers before council meetings and consider, for each agenda item, whether she has any actual or potential conflicts or any interests to disclose.
35. Even if Cr Collins had not formed the view before the OCM that she had an impartiality interest, she had a duty to be diligent about conflicts of interest and should have realised she had an impartiality interest when the other councillor declared an interest before item 9.2.2 was debated and left the chamber. This should have prompted Cr Collins to consider her position, as she, like the other councillor, was part of the BCRC, albeit as a Committee member rather than an employee.
36. The Panel is satisfied that Cr Collins knew, or should have known, that she had an interest in the matter and that therefore regulation 11(4)(a) does not apply.

Does regulation 11(4)(b) excuse the non-disclosure?

37. Cr Collins did not breach regulation 11(2) if she did not know the BCRC fee waiver issue was going to be discussed, provided she declared her interest as soon as soon as possible after the discussion began.
38. There is no evidence that Cr Collins didn't know the matter was going to be discussed. As a councillor, Cr Collins is expected to read agendas before council meetings to prepare for debate and decision-making. If Cr Collins didn't know the BCRC fee issue was going to be discussed, she should have known.
39. There is no record in the OCM Minutes for item 9.2.2 of Cr Collins raising any conflict or interest issues at any time, in fact she seconded the motion that the Council support the waiver of fees, indicating she continued to be involved in the decision-making after Council had considered the background to the issue and other information relevant to its decision.
40. Therefore the Panel finds that the exceptions in regulation 11(4) do not apply and Cr Collins failed to declare an impartiality interest in breach of regulation 11(2).

Complaint 2 – OCM 19 April 2016 (SP 22 of 2016)

41. In his Complaint Form dated 26 May 2016 Mr Beaton alleged:

At the Ordinary Meeting of Council on 19 April 2016 Cr Toni Collins failed to disclose an impartiality interest in item 8.5.3 in relation to approving a grant applied for by the Boddington Community Resource Centre, a LOAF – Women’s Networking Forum. Cr Toni Collins moved the motion.

Cr Toni Collins was a management committee member of the Boddington Community Resource Centre at the time.

Cr Toni Collins was aware of the need to declare an interest at the meeting on 19 April 2016 as she had previously declared an interest in item 8.6.3 at the Ordinary Council Meeting on 19 January 2016 in relation to the Main Street Vision which incorporated the Boddington Community Resource Centre and therefore affected it.

Cr Elizabeth Hoek declared a financial interest in item 8.5.3 and left the meeting. This should have prompted Cr Collins to declare an interest.

On 19 April 2016 Cr Toni Collins was a council member and had an interest in a matter to be discussed at a council meeting attended by the member and did not disclose the nature of the interest in breach of the Local Government (Rules of Conduct) Regulations 2007, clause 11 (2).

42. The minutes of the OCM on 19 April 2016 (the OCM Minutes) record that:
- Shire Policy 9.8 provides for a Local Organisation Assistance Fund (LOAF). Under this policy local organisations can apply to the Council for funding to support local projects.
 - The Boddington Community Resource Centre (BCRC) applied for LOAF funds to host a series of Women’s Network Forums to provide opportunities for local women to develop their career pathways and personal and professional networks.
 - Cr Collins moved a motion that Council approve funding of \$1,125.00 for the Women’s Network Forum project. Council voted unanimously in favour of the motion.
43. The BCRC’s Minutes of its Annual General Meeting on 10 February 2015 record that Cr Collins became a member of the BCRC Management Committee on that date.
44. The OCM Minutes do not record that Cr Collins declared any interest in item 8.5.3 at any time during the OCM or that she had disclosed an interest before the OCM began. The Minutes record that another councillor declared a financial interest in item 8.5.3 at the beginning of the OCM.

Cr Collins’ response

45. Cr Collins’ response to this Complaint was the same as her response to Complaint 1, set out in paragraph 22 above.

Essential elements for contravention of regulation 11(2)

46. The elements are the same as set out in paragraphs 23 and 24 above.

Did Cr Collins have an impartiality interest in the matter?

47. Cr Collins was a member of a local association set to benefit (in that it would receive a grant) from a favourable Council decision. Any person could reasonably perceive that Cr Collins may not be impartial when Council was making a decision whether to give the BCRC money to run its LOAF programme.

48. This element is satisfied because Cr Collins had an interest in the matter as defined by regulation 11(1).

Did Cr Collins disclose an interest?

49. The OCM Minutes do not record any disclosure by Cr Collins and Cr Collins acknowledges her lack of disclosure in her response.

50. This element is satisfied because Cr Collins did not disclose her impartiality interest.

Does regulation 11(4)(a) excuse the non-disclosure?

51. The Panel refers to paragraphs 29 to 34 above, which also apply in relation to this Complaint.

52. Even if Cr Collins had not formed the view before the OCM that she had an impartiality interest, she had a duty to be diligent about conflicts of interest and should have realised she had an impartiality interest in item 8.5.3 when the other councillor declared an interest at the start of the meeting (item 3). This should have prompted Cr Collins to consider her position, as she, like the other councillor, was part of the BCRC, albeit as a Committee member rather than an employee.

53. The Panel is satisfied that Cr Collins knew, or should have known, that she had an impartiality interest in the matter and finds that regulation 11(4)(a) does not apply.

Does regulation 11(4)(b) excuse the non-disclosure?

54. Cr Collins did not breach regulation 11(2) if she did not know the LOAF funding matter was going to be discussed, provided she declared her interest as soon as soon as possible after the discussion began.

55. There is no evidence that Cr Collins didn't know the matter was going to be discussed, in fact she moved the motion that the Council support the funding, so she must have been fully aware of the agenda item and the issues involved. Regulation 11(4)(b) does not excuse Cr Collins' failure to disclose.

56. Therefore the Panel finds that the exceptions in regulation 11(4) do not apply and Cr Collins failed to declare an impartiality interest in breach of regulation 11(2).

Panel's finding

57. The Panel finds that Cr Collins breached regulation 11(2) on 20 October 2015 and 19 April 2016, thereby committing two minor breaches.



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Merranie Strauss (Member)

Date of Reasons – 15 March 2017

Attachment A
The Available Information

Doc ID	Description	Page #
Attachment B	Statement of Facts	15
01.Doc	Copy of <i>Complaints of Minor Breach No. SP 22, 23, 25 and 26 of 2016</i> and supporting information dated 26 and 30 May 2016 made by Mr Geoffrey Beaton.	16
02.Doc	Copy of Request for Comments letter including attachments (Complaint Summary, relevant legislation, Form A) to Councillor Toni Collins dated 2 August 2016.	57
03.Doc	Copy of Cr Collins' response to the allegations, dated 14 August 2016.	64
04.Doc	Extract of minutes of OCM 19 April 2016	69
05.Doc	Copy of Local Organisation Assistance Fund policy of the Shire of Boddington	75
06.Doc	Copy of Facebook posts provided by complainant dated 1 April 2016	77
07.Doc	Copy of Shire of Boddington Code of Conduct	78
08.Doc	Extract of minutes of OCM 20 October 2015	82
09.Doc	Extract of minutes of OCM 19 January 2016.	87

Attachment B
Statement of Facts

- The complaint was received by the Presiding Member of the Standards Panel on 30 May 2016
- The Complaints Officer complied with his obligations under section 5.107(3) and the complaint was made in writing in the form approved by the Minister pursuant to section 5.107(2).
- The complaint was sent to the Complaints Officer within two years after the breaches alleged in it occurred, as required by section 5.107(4).
- Regulation 7 and Regulation 11(2) are rules of conduct for the purposes of section 5.104(1). Accordingly, a contravention of Regulation 7(1)(b) or 11(2) is a minor breach under section 5.105(1)(a).
- Cr Collins was elected to Council on 19 October 2013.

BODDINGTON WARD	
Vacancies	(4) Councillors
Expiry of term	21 October 2017
Total electors	1,047
Turnout rate	62.66%

Candidates	Votes	Percentage	Expiry of Term
NELSON, Mel	289	13.14%	21 October 2017
BEATON, Geoffrey	103	4.68%	
ALLERT, John	273	12.41%	21 October 2017
DAVIES, Keith	162	7.36%	
BATT, Joan	250	11.36%	
COLLINS, Toni	425	19.32%	21 October 2017
HEWTON, Jeff	354	16.09%	21 October 2017
DAY, Gregory	230	10.45%	
VEITCH, Dennis	114	5.18%	
Total valid votes	2,200	100%	

- At the time of the alleged contravention of the Regulations, Cr Collins was an elected member of the Shire of Boddington and continues to be so.
- On 2 August 2016 the Department advised Cr Collins of the complaint and provided her with an opportunity to provide her comments and any information she desires in relation to the allegation contained within.
- On 14 August 2016, Cr Collins provided a response to the allegations.
- Cr Collins has not previously been found under Part 5 Division 9 of the Act to have committed a minor breach.