

## **Councillor Conduct Panel - Bayside City Council**

### **Hearing Pursuant to Division 1B of the Local Government Act 1989 (as amended)**

Applicant: Councillor Felicity Frederico

Respondent: Councillor James Long

Council: Bayside City Council

Place of hearing: Council Chambers, Brighton

Date of Application: 9 May 2010

Date of Hearing; Wednesday 30 June 2010

Panel Members: Mr. Sav Korica (Chair); Mr. Terry Maher

CCP Registrar: Ms. Sharon Pearsons (substitute Mr. Terry Callant, Governance Manager)

Witness: Councillor Clifford Hayes, Mayor

### **The Decision**

The decision of the Panel is that it makes a finding that the actions of Councillor James Long in comments he allegedly made at the Council meeting held on 16 March 2010 did not constitute a breach of parts of **sections 3, 7 & 8** of the Council's Code of Conduct adopted by resolution of the Bayside City Council on 22 September 2009.

1. The Councillor Conduct Panel (CCP) dismisses the application of Cr. Frederico for 'lacking in substance' under **section 81C** of *the Local Government Act 1989*. (the Act).
2. The Panel makes the finding that the actions of Cr Long do not constitute 'misconduct' with the meaning of **section 81A** of *the Local Government Act 1989*.

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Witness: Councillor Clifford Hayes, Mayor

#### **The application**

1. The application dated 9 May 2010 was made by Councillor Felicity Frederico by way of email to the Director of Corporate Services and the Council's appointed Council Conduct Panel Registrar.
2. The subject of the application was Councillor James Long.
3. The applicant sought a finding of misconduct under Section 81A of *the Local Government Act 1989*.

## **Background**

At the Council Assembly meeting in November 2009, Cr Long presented a draft Notice of Motion (NOM) recommending an appointment of a Female Ambassador to promote Year of Women in Local Government for 2010. The general consensus at this meeting was that it would be good public relations if two Councillors were accepted for the role.

In February 2010 at an informal Councillor only discussion, Councillor Long announced that the notice of motion would be ready for the March meeting.

However, there was no NOM listed on the agenda. Just prior to the March Council meeting, Councillor Long instead presented the motion 'recommending an appointment for a Female Ambassador to promote Year of Women in Local Government under urgent business. The chair (Mayor) accepted this item. Councillor Long claimed during his debate that he had spoken to Cr. Louise Cooper-Shaw and that she had agreed to accept the role in a solo capacity.

During the debate, Cr Long suggested that there be a substitute representative. Cr Long then led the debate where he spoke in favour of another Councillor suitable for the role. Cr Frederico perceived the speech of Cr Long as both 'degrading and insulting' to her as a Councillor and as a person.

Cr Frederico was concerned about the breach of the Councillor Code of Conduct and in particular:

- lack of respect to her as a Councillor;
- to treat her with due respect;
- to treat her with courtesy and respect; and
- to debate contentious issues without resorting to insults.

In her application Cr Frederico alleges that Cr.Long refused to communicate with her as part of the mediation process and that he was unable to apologise for what was said at the Council meeting on March 16, 2010.

Cr Frederico formally requested that a Councillor Conduct Panel be appointed.

### **The Panel**

A Councillor Conduct Panel was constituted by the Municipal Association of Victoria (MAV) comprising Mr. Sav Korica (Chair) and Mr. Terry Maher. Ms Sharon Pearsons, Director of Corporate Services at Bayside City Council was appointed as the Councillor Conduct Panel Registrar. Ms Pearsons was unable to attend on the day of the hearing due to ill health. Mr. Terry Callant, Manager Governance, Bayside City Council fulfilled the role of Registrar.

### **The Hearing**

The Councillor Conduct Panel convened on Wednesday 30 June 2010 at the Brighton Council Chambers building of the Bayside City Council.

1. Evidence was received from Cr. Felicity Frederico, Cr. James Long and Cr. Clifford Hayes in his capacity as Mayor and as the Chairperson of the Council at the meeting of 16 March 2010.
2. The Panel also received documentation from the Council's CCP Registrar, Ms. Sharon Pearsons including a chronology of the events that led to the application for the appointment of a Panel.
3. Attempts were made to resolve the dispute initially by internal processes consistent with the dispute resolution procedures under Section 11 of the Council's Code of Conduct, including an offer by Cr. Hayes to meet with both Cr.Frederico and Cr.Long as well as an offer by the Acting Manager Commercial

Services, Ms. Liana Thompson and the Chief Executive Officer to meet with both Councillors.

4. In addition, an offer of mediation by an independent party was made and agreed by both Cr.Frederico and Cr. Long. The mediator provided advice to the CCP registrar by way of letter dated 22 May, 2010 that agreement on the matter could not be reached.
5. In her submission to the Panel Cr Frederico stated that she did not expect the late inclusion of the notice of motion under 'urgent business' nor the subsequent motion nominating Cr Cooper-Shaw as the Council's Ambassador and relegate her as a substitute representative.
6. Cr. Frederico informed the Panel that her assertion that Cr. Long had not spoken with Cr. Cooper Shaw had changed and that she accepted that a conversation had taken place. Cr. Long tabled a Statutory Declaration to this effect at the hearing.
7. Cr. Frederico stated that the remarks made by Cr. Long were, by inference an insult to her character, demeaning and degrading. When asked by the Panel as to whether a point of order was called by the Mayor, any of the Councillors present or herself, Cr.Frederico stated that she did not do so as she was trying to be professional and in hindsight should have done so.
8. There is no record in the Council minutes of 16 March 2010 of a point of order being raised and this was confirmed by Cr.Frederico.
9. In his opening statement, Cr. Long apologised for any offence that he may have caused to Cr.Frederico and that he regretted that the mediation process did not resolve the matter. He stated that he had previously offered to apologise but that Cr.Frederico required a right of reply and that this was unacceptable to him.

10. It was argued by Cr. Long that Cr. Frederico could not recall the specific words used by him when he had responded to a question from Cr. Simon Russell to the Mayor.
11. In her submission, Cr. Frederico could not recall the specific remarks other than to reiterate that they were demeaning, degrading and an insult to her character.
12. Cr. Long submitted to the Panel his recollection of the words he used and in no way did he believe that he had broken the code of conduct or used words that were offensive. He shared those words with the Panel; however these were disputed by Cr. Frederico.
13. Cr. Hayes (Mayor) was interviewed separately to Crs. Frederico and Long. He stated that there had been no point of order and that there was nothing particularly out of the ordinary during the Council meeting on 16 March 2010. Cr. Hayes stated that he used his casting vote on the matter of the Council's appointment of a Local Government Women's Ambassador. He informed the Panel that he did not hear any demeaning language.
14. In response to a question from the Panel in relation to the sentiments in an email sent by Cr. Hayes to Cr. Frederico on 17 March 2010 in which he suggested that 'there may have been some action he could have taken at the Council meeting the previous evening', Cr. Hayes said that he felt 'compassion' for Cr. Frederico when the item was moved. Cr. Hayes reiterated that he did not believe that Cr. Frederico had been demeaned during the debate. He stated to the Panel that tensions have existed between the two Councillors for some time. Those tensions may have led to the request for a Panel.
15. The Panel acknowledges from the reading of the various emails that the Mayor Councillor Hayes and the Chief Executive Officer, Adrian Robb, together with Ms. Liana Thompson, Acting Manager Commercial Services have used their

best endeavours to resolve the impasse and that other Councillors also sought to assist but with the same result.

16. The Panel noted that a number of matters raised both in the documentation it had received and in submissions made to it at the hearing were beyond the scope of the Panel's authority under the Local Government Act 1989. Those matters should be dealt with separately by the Council.
17. The Panel notes that when this matter was first presented to the Council at the ordinary meeting in November 2009, it was by way of notice of motion moved by Councillor Frederico which in essence supported the declaration of 2010 as the National LGMA /ALGWA Year of Women in Local Government.
18. The question of appointing Ambassador/s was not formally raised until the notice of motion was considered at the March Council meeting. The Council minutes show that the notice of motion was lost on the casting vote of the Mayor and a subsequent motion resulted in the item being deferred until the next meeting cycle.
19. The minutes of the Council meeting on 13 April 2010 (next meeting cycle) record amongst other things, both Cr .Frederico and Cr. Cooper-Shaw were appointed as Local Government Ambassadors for the Calendar year 2010.
20. Based on the submissions made by Crs. Frederico, Long and Hayes as well as the supporting documentation provided by the CCP Registrar, the Panel concludes that there is insufficient evidence to make a finding in favour of the applicant that Cr. James Long breached the Council's Code of Conduct.

## **The Decision**

The decision of the Panel is that it makes a finding that the actions of Councillor James Long in comments he allegedly made at the Council meeting held on 16 March 2010 did not constitute a breach of parts of **sections 3, 7 & 8** of the Council's Code of Conduct adopted by resolution of the Bayside City Council on 22 September 2009.

The Councillor Conduct Panel (CCP) dismisses the application of Cr. Frederico for 'lacking in substance' under **section 81C** of *the Local Government Act 1989*. (the Act)

The Panel makes the finding that the actions of Cr Long do not constitute 'misconduct' with the meaning of **section 81A** of *the Local Government Act 1989*.

## **Reasons for the decision**

1. The conduct of Cr Long at the Bayside City Council meeting on 16 March 2010 did not transgress and therefore did not breach Bayside City Council's 'Governance Code', in particular specific parts of sections 3, 7 and 8 dealing with '...making oral or written statements and ...actions that may mislead a person;' and 'treat all persons with respect and ... show due respect for the opinions, beliefs, rights and responsibilities of other Councillors...'.debating contentious issues without resorting to personal acrimony or insult.
2. The Panel formed the view that Cr Frederico may have experienced anguish and distress resulting from the notice of motion submitted by Councillor Long as an item of urgent business at the March Council meeting. The motion called for a single Councillor appointment of a female ambassador to promote "Year of Women in Local Government" rather than two ambassadors as she understood was to occur.



3. The Panel also acknowledges that Cr Frederico might have had a reasonable expectation to share and be an 'equal partner' in a 'Female Ambassador' role. However, the Panel rejects the allegation that the action of Cr Long amounts to misconduct on the basis that an earlier informal discussion has not come to pass.
4. The Panel has not seen any direct evidence that links Cr Long to an overt or covert campaign to directly 'humiliate', 'degrade' and 'insult' Cr Frederico in relation to this matter.
5. Cr Long attended both the November 2009 and March 2010 Council meetings. He spoke in the favour of the motion that sought a 'single councillor' to be nominated as the City's 'Female Ambassador'. The Panel, however, is not convinced that Cr Long's support in favour of a 'single councillor' for this role contained 'humiliating', 'degrading' and 'insulting' passages that can readily be interpreted as such. The 'minutes of the March meeting' do not contain any record to suggest any such intent.
6. Cr Long in his submission emphasised his right to move and second motions, without fear and favour and speak on issues of interest affecting Bayside Council. This also includes his right to nominate a councillor for a post.
7. The Panel is satisfied that there were no breaches of the code of conduct under the Act. The Panel acknowledges that Cr Frederico might have had a reasonable expectation to share and be an 'equal partner' in a 'Female Ambassador' role.
8. The panel is equally satisfied that Cr Long exercised his common right to express and vote in a manner ascribed in the Act and Bayside City Council Governance Code;(Councillors Code of Conduct)

9. The Panel accepts that the events at the ordinary meeting held on 16 March may have had different affects on those present and may have caused different reactions to different issues but this does not necessarily constitute a breach of the Code of Conduct.

**Sav Korica (Chairperson)**

Legal Member, Councillor Conduct Panel (CCP)

**Terry Maher**

Municipal Governance Member, Councillor Conduct Panel (CCP)

**16 July, 2010**