

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

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

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

\*Note that the subject councillor provided his consent to his name being published in the summary relating to allegation 2, by email dated 31 January 2020, pursuant to section 150DY(3)(b) of the *Local Government Act 2009*.

## 1. Complaint:

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| <b>CCT Reference</b>      | F19/6509                                  |
| <b>Subject Councillor</b> | Councillor John Collins (the councillor)* |
| <b>Council</b>            | Whitsunday Regional Council               |

## 2. Decision (s150AQ):

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| <b>Date:</b>     | 29 November 2019  |
| <b>Decision:</b> | <ol style="list-style-type: none"><li>1. The Tribunal determined, on the balance of probabilities, that the allegation that on 1 May 2019, Councillor John Collins, a councillor of the Whitsunday Regional Council engaged in misconduct as defined in <i>section 150L(1)(c)(iv) of the Local Government Act 2009</i> (the Act), in that the conduct contravened section 171(3) of the Act, as it involved the release of information that the Councillor knew, or should reasonably have known, was information confidential to the local government, <b>has been sustained</b>.</li><li>2. The Tribunal determined on the balance of probabilities that the allegation that on 1 May 2019, Councillor John Collins, a councillor of the Whitsunday Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Local Government Act 2009 (the Act), in that his conduct involved a breach of the trust placed in him as a</li></ol> |

**Councillor Conduct Tribunal**

PO Box 15009, City East, Q 4002

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|                        | <p>councillor when he knowingly or recklessly provided <i>incorrect</i> information to Ms Denise Hadley about a council vote to appoint a councillor to the vacant Division 4 councillor position and that in so doing he breached the local government principle in section 4(2)(e ) of the Act <b>has not been sustained.</b></p>   |
| <p><b>Reasons:</b></p> | <p><b>Decision 1</b></p> <ol style="list-style-type: none"> <li>1. The statement of agreed facts, the material before the Tribunal and the acceptance by the Respondent of the facts and circumstances forming the basis of the allegation established that the allegation of misconduct is made out. However, the Tribunal must be satisfied on the evidence before it that the allegation is sustained.</li> <li>2. The Tribunal reviewed the evidence filed by the Independent Assessor and by the Councillor and is satisfied to the requisite standard of proof that the Councillor contravened section 171(3) of the Act when he disclosed information that was confidential to Council. The Tribunal found that the Councillor disclosed information to a member of the public who was an unsuccessful candidate for the Division 4 vacancy, regarding the confidential council deliberations and preferences for particular candidates and that this information was confidential to the local government. The Tribunal formed the view that the Councillor knew or should have reasonably known that the information should not have been disclosed. The behavior constituted a contravention of section 171(3) of the Act and is <i>'misconduct that could result in disciplinary action being taken against a councillor.'</i></li> <li>3. The Tribunal found that discussions and deliberations about candidates for a vacant councillor position is information that should reasonably be considered to be confidential to local government.</li> <li>4. The Tribunal noted the Councillor admitted to his error of judgment at an early stage and co-operated with the Independent Assessor. However, the Tribunal did not consider the explanation provided by the Councillor;<br/><i>"that the confidential information he divulged was already known to Ms Hadley"</i>, to be an acceptable explanation for conduct that contravened Council policy and the Misconduct provisions defined in section 150L(1)(c )(iv) of the Act.</li> <li>5. The Tribunal considered that the Councillor, <i>knowingly</i> divulged confidential Council information, as outlined above, and in the view of the Tribunal is conduct that lacks integrity and constitutes a breach of trust of the community in him as a councillor.</li> </ol> |

**Councillor Conduct Tribunal**

PO Box 15009, City East, Q 4002

In this context and having regard to the evidence presented by the parties and the provisions of section 171(3) of the Act the Tribunal is satisfied that the allegation is sustained.

#### **Decision 2**

1. The parties could not reach an agreement on the facts of this matter and the respondent councillor contested the allegation. 2.
2. The Applicant alleged that the councillor provided *incorrect* information to Ms Hadley, the unsuccessful candidate for the Division 4 vacancy, regarding the preferences discussed by councillors following the interviews of all candidates. The Tribunal noted that these discussions took place during the confidential council Briefing session on 1 May 2019. The formal resolution and vote for the preferred candidate was reached later that day at a Special meeting of council.
3. The Tribunal reviewed all the evidence and the submissions provided by the Applicant and the Respondent and determined that in all the circumstances of this matter a ‘fair minded observer’ would not consider that the councillor had released incorrect information to a member of the public.

#### **Breach of Trust**

4. The Tribunal considered whether such conduct is sufficient to amount to a breach of trust for the purpose of the application of of the principles that underpin the Act, section 4(2)(e) of the Act “*ethical and legal behavior of councillors*”.

The concept of ‘trust in a councillor’ is embodied in the principles of the Act and is viewed broadly, in relation to the trust that the community has in the position of councillor.

As elected representatives in responsible positions with significant powers, councillors have great discretion and are entrusted to use their powers appropriately in the public interest. Any breach of this trust can have a corrosive effect on the community and its confidence in local government. The concept of trust has recently been discussed in the Queensland Court of Appeal in the matter of *Fiori v Winter*<sup>1</sup>. The significance of this decision relates to the potential for the undermining of public confidence in the integrity of the person, in the role they are occupying.

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<sup>1</sup> *Fiori v Winter & Ors*[2019]QCA 281 at [59]

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|  | <p>The behavior of the Councillor in relation to the facts of this allegation was not found to be improper, and in the view of the Tribunal the conduct is not considered to be a breach of trust of the community in him as a Councillor.</p> <p>5. The Tribunal was not satisfied that the Applicant's evidence established on the balance of probabilities that <b>incorrect</b> information had been released by the Councillor.</p> <p>6. The Tribunal is satisfied that on the balance of probabilities there has been no breach of the Act, and thus no breach of the trust placed in the councillor that could constitute misconduct, as defined in section 150L(1)(b)(i) of the Act and section 4(2)( e) of the Act.</p> |
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### 3. Orders and/or recommendations (s150AR - disciplinary action):

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| <b>Date of orders:</b>                | 27 January 2020  |
| <b>Orders and/or recommendations:</b> | <p><b>Decision 1</b></p> <p>The Tribunal found that the councilor engaged in misconduct, pursuant to section 150AR(1) of the Act, and orders that:</p> <p>(a) Pursuant to section 150AR(1)(b)(i) of the Act the Councillor make a public admission at an ordinary meeting of the Whitsunday Regional Council, that he engaged in misconduct, within 60 days from the date of receipt of this order;</p> <p>(b) Pursuant to section 150AR(1)(b)(iii) the Councillor attend training or counseling to address the councillor's conduct at the expense of the Councillor within 90 days from the date of receipt of this order. The CEO is to report to the Independent Assessor at the end of 90 days, to confirm that such training or counseling has been undertaken;</p> <p>(c) Pursuant to section 150AR(1)(b)(iv) the Councillor pay to the Whitsunday Regional Council the amount of \$300.00 to be paid within 60 days of this order.</p> <p><b>Decision 2</b></p> <p>The allegation of misconduct has not been sustained and consequently the Tribunal has not made orders or recommendations.</p> |
| <b>Reasons:</b>                       | Allegation 1/Decision 1  |

1. The Tribunal considered the relevant factors in the agreed statement of facts. It also sought and considered submissions from the parties. The Respondent did not submit submissions in relation to the proposed orders.
2. The Orders made by the Tribunal took account of the relevant factors outlined in the agreed statement of facts including that:
  - the councillor has no previous disciplinary history;
  - the councillor is any his second term as a councillor ;
  - the councillor from the outset has not denied the essential circumstances as alleged in Allegation 1 and has accepted responsibility;
  - the councillor has co-operated at all stages of the proceedings with the inquiries made by the Applicant, including agreeing on the statement of facts and determining not to contest the substance of Allegation 1;
3. The Tribunal noted that the Councillor did receive and attend several training sessions for councillors between 2013 to 2019. However the nature and content to which this training dealt with the issues concerning the protection of confidential information to local government and measures to ensure that confidential information is not released through the internet and social media platforms when councillors are communicating with members of the public is unclear on the facts of this matter. The Tribunal considers there is some doubt that prior training and inservice has equipped the Councillor with sufficient guidance and information on this issue to date.

Accordingly it is determined that the Councillor would benefit from counselling pursuant to section 150AR(1)(b)(iii) to ensure he has a complete understanding of confidential council information and how not to release this information to unauthorized parties.

4. The Tribunal accepted that the conduct of the Councillor did not arise from any misunderstanding of the nature of the information as the Councillor recorded in the Facebook message that the information is "confidential". The Tribunal considered that the misconduct arose in circumstances where the Councillor knowingly released confidential local government information and consequently the disciplinary order should be at the mid- to upper range of the disciplinary order scale.

**Councillor Conduct Tribunal**

PO Box 15009, City East, Q 4002

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|  | <p>The Applicant submitted that the orders made in the matter of <i>Independent Assessor v Councillor Adam Hain</i><sup>2</sup> are comparable to the possible orders that could be made by the Tribunal in this case. The Tribunal considered that the Councillor made the disclosure intentionally and in the full knowledge that the information was confidential and that he understood that it should not be disclosed.</p> <p>The Act provides specifically that a breach of confidentiality is misconduct, accordingly it must be taken that the legislature considers that this type of conduct is serious or potentially serious.</p> <p><b>Allegation 2/Decision 1</b></p> <p>Allegation 2 was not sustained as the Tribunal found that the Councillor did not engage in misconduct and accordingly no Orders or recommendations were made.</p> |
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<sup>2</sup>Independent Assessor v Councillor Adam Hain [F19/4656]