

Councillor Conduct Tribunal: Expedited Misconduct Application Summary of Decision and Reasons

Local Government Act 2009: Sections 150DV, Practice Direction #1 of 2022 and section 150AS(2)(c) and 150AS(5)

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).

1. Application details

- (i) Contested Misconduct Application filed 10 June 2022
- (ii) Non-contested Misconduct Application filed 13 January 2023.

Tribunal Reference	F22/3888
Subject Councillor	Councillor Brett Qualischefski (the Councillor)
Council	Lockyer Valley Regional Council (the Council)

2. “The Agreement” for the Expedited hearing

The Expedited hearing took place pursuant to the Tribunal Practice Direction #1 of 2022 and the Agreement reached between the Councillor and the Independent Assessor and filed with the Tribunal on 13 January 2023.

This Agreement is attached - Annexure A.

The Statutory Declaration of Councillor Brett Qualischefski is attached – Annexure B.

3. Decision (section 150AQ Local Government Act 2009)

Date:	15 May 2023
Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation that between 24 March 2021 and 1 April 2021 Councillor Brett Qualischefski, a councillor of the Lockyer Valley Regional Council, engaged in misconduct pursuant to section 150L(1)(b)(i) of the <i>Local Government Act 2009</i> (Qld) ('the Act'), in that his conduct involved a breach of the trust placed in him as a councillor, in that he failed to provide high quality

Councillor Conduct Tribunal

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Particulars:	<p>leadership as required by section 12(3)(b) of the Act and failed to comply with the local government principle of ‘ethical and legal behaviour of councillors contained in section 4(2)(e) of the Act was sustained and that therefore the councillor has engaged in misconduct.</p> <p>The Particulars of the alleged conduct are:</p> <ol style="list-style-type: none"> a. Councillor Brett Qualischefski was at all material times an elected councillor of the Council. b. Council owns a facility known as the Lockyer Valley Sports and Aquatic Centre (‘LVSAC’), located at 136 Spencer Street, Gatton QLD. c. The LVSAC is leased to and operated by a company known as Swim Fit. d. The LVSAC relevantly contains a gymnasium with weightlifting and exercise equipment (‘the gym’). e. At all material times, Councillor Qualischefski was a member of the gym and would regularly attend the gym for the purpose of physical exercise. f. Ms. A¹ used the gym for exercise in her personal time for the purpose of physical exercise. g. On 25 March 2021, Councillor Qualischefski and Ms. A were both in attendance at the gym and the following occurred: <ol style="list-style-type: none"> i. At approximately 8:00am on 25 March 2021, Ms. A observed Councillor Qualischefski pointing his phone at her as she finished using a ‘leg press machine’ as part of her exercise routine; ii. It appeared to Ms. A that Councillor Qualischefski was using his phone to take a photo or video of her; iii. Councillor Qualischefski did in fact take a photo of Ms. A at approximately 8:00am on 25 March 2021; iv. Ms. A had not consented to Councillor Qualischefski taking a photo of her; and v. Councillor Qualischefski sent the photo taken at approximately 8:00am on 25 March 2021 to another person. h. On 30 March 2021, Councillor Qualischefski and Ms. A were both in attendance at the gym and the following occurred: <ol style="list-style-type: none"> i. At approximately 8:30am on 30 March 2021, Ms. A noticed Councillor Qualischefski watching her while she performed various exercises; ii. Ms. A subsequently moved to an exercise mat in a different part of the gym;
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¹ Identifying details of the person photographed by the Councillor, has been redacted by the Tribunal and is identified as Ms A throughout this report.

	<ul style="list-style-type: none"> iii. While on the exercise mat, Ms. A observed that Councillor Qualischefski had relocated to be on the other side of a window from the exercise mat; iv. Ms. A observed Councillor Qualischefski standing on the other side of the window and pointing his phone at her as she was exercising; v. It appeared to Ms. A that Councillor Qualischefski was using his phone to take a photo or video of her; vi. Councillor Qualischefski did in fact take a photo of Ms. A at approximately 9:20am on 30 March 2021; vii. Ms. A had not consented to Councillor Qualischefski taking a photo of her; and viii. Councillor Qualischefski sent the photo taken at approximately 9:20am on 30 March 2021 to another person. <p>i. On 31 March 2021, Councillor Qualischefski and Ms. A were both in attendance at the gym and the following occurred:</p> <ul style="list-style-type: none"> i. At approximately 8:10am on 31 March 2021, Ms. A was performing an exercise known as ‘hip thrusts’, which she was performing in ‘sets’ consisting of twelve repetitions; ii. As Ms. A commenced her second set of hip thrusts, she observed Councillor Qualischefski looking at her groin for approximately 5 seconds; and iii. A witness also observed Councillor Qualischefski repeatedly watching Ms. A at various times during her exercise routine on 31 March 2021. <p>j.² Councillor Qualischefski’s conduct had a negative impact on Ms. A, in that she:</p> <ul style="list-style-type: none"> i. Tried to avoid Councillor Qualischefski at all times; ii. (As)... his behaviour made her uncomfortable and she did not wish to encourage or entertain that behaviour; iii. Felt sick in the stomach and anxious, especially when she saw Councillor Qualischefski’s car in the carpark; iv. She was unable to perform her normal exercise routine when Councillor Qualischefski was present because she did not wish to attract his attention by bending over or extending her buttocks while performing particular exercises; and v. She felt uncomfortable about leaving the gym on her own at night.
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² Details in Particular jii, jiii, and jv, have been redacted to protect the identity of the Complainant.

	<p>k. On 20 April 2021, the Queensland Police Service issued Councillor Qualischefski with a Notice of Adult Caution for the offence of 'Unlawful Stalking' under section 359E(1) of the <i>Criminal Code Act 1899</i> (Qld), with the offence date being 30 March 2021 and offence location being 136 Spencer Street, Gatton QLD.</p> <p>l. By inappropriately observing Ms. A in a manner that negatively impacted her and caused her to modify her behaviour, Councillor Qualischefski has failed to provide high quality leadership as required by section 12(3)(b) of the <i>Local Government Act 2009</i> (Qld) ('the Act') and has failed to behave in accordance with the local government principle of 'ethical and legal behaviour of councillors and local government employees' as contained in section 4(2)(e) of the Act.</p> <p>m. By taking photos of Ms. A without her consent and in a manner that negatively impacted her and caused her to modify her usual behaviour, and by sending those photos to a third party, Councillor Qualischefski has failed to provide high quality leadership as required by section 12(3)(b) of the Act and has failed to behave in accordance with the local government principle of 'ethical and legal behaviour of councillors and local government employees' as contained in section 4(2)(e) of the Act.</p> <p>n. By engaging in behaviour that caused him to be issued with a Notice of Adult Caution for the offence of Unlawful Stalking as contained in section 359E(1) of the <i>Criminal Code Act 1899</i>, Councillor Qualischefski has failed to provide high quality leadership as required by section 12(3)(b) of the Act and has failed to behave in accordance with the local government principle of 'ethical and legal behaviour of councillors and local government employees' as contained in section 4(2)(e) of the Act.</p>
<p>Reasons:</p>	<p>Conduct not contested</p> <ol style="list-style-type: none"> 1. An agreement dated 13 January 2023 and signed by the Applicant and the Councillor (See Annexures A and B) confirmed the facts, allegation of misconduct and the particulars of the conduct were accepted by the Councillor. 2. Notwithstanding this acceptance of the allegation and the conduct the Tribunal is required to hear and determine all misconduct matters pursuant to section 150AL of the Act. 3. In reaching the final decision and findings the Tribunal must also be satisfied that sufficient evidence is before it to establish the allegation is made out to the required civil standard of proof being the balance of probabilities. <p>The Expedited Hearing -13 April 2023.</p> <ol style="list-style-type: none"> 4. The Expedited hearing process is conducted only on the documents. This process is outlined by the Practice Direction (section 150DV of the Act) published on the Tribunal website.

5. The Tribunal considered all evidence and written submissions provided by the Councillor and the Applicant during the hearing without the parties appearing.

Human Rights Act considerations

6. As an administrative Tribunal the provisions of the *Human Rights Act 2019*(Qld) are acknowledged, considered and applied to the decision-making process by the Tribunal. The Tribunal was satisfied in conducting a procedurally fair hearing pursuant to the provisions of the Act³ the Councillor's human rights were protected.

7. **Section 150L(1)(b)(i)** of the Act in force at the date of the alleged conduct, states –

*(a) The conduct of a councillor is **misconduct** if the conduct-*

...

(b) is or involves –

(i) a breach of the trust placed in the councillor, either knowingly or recklessly - (emphasis in the original)

8. The Applicant placed reliance upon the Local Government Principles provided by section 4 of the Act. The Principles impose a general obligation on all councillors *..." performing a responsibility under this Act to do so in accordance with the local government principles"*. It was alleged the Councillor failed to uphold the duty imposed by the local government principle that requires –

'ethical and legal behaviour of councillors and local government employees'. (Section 4(2)(e))

9. **Section 12** of the Act outlines the responsibilities and standards required to be observed by councillors –

12(3) *All councillors have the following responsibilities –*

...

12(3)(b) *providing high quality leadership to the local government and community.*

Misconduct and breach of trust

10. The Tribunal considers an allegation premised on the breach of trust reposed in the Councillor is generally established upon proof that the conduct did occur either *knowingly or recklessly*, and the conduct fell below the acceptable community expectations of conduct by a councillor provided under sections 4(1), 4(2)(e) and section 12(3)(b) of the Act.

Tribunal findings

³ Section 213(1) and 213(3) of the Act; section 298 of the Regulation permits a decision-maker to direct the matter be heard in private.

	<p>11. The affidavit evidence provided to the Tribunal confirmed to the satisfaction of the Tribunal that Ms A was adversely impacted by the conduct of the Councillor.</p> <p>12. The Councillor also confirmed and accepted the evidence that his conduct had been the subject of a police investigation. The Tribunal noted the investigation was finalised with a Notice of Adult Caution issued to the Councillor by the Police on 21 April 2021 (by consent).</p> <p>13. The conduct by the Councillor took place in a local gymnasium and was unrelated to council business or council matters. Conduct that falls below community expectations and standards has the potential to reflect negatively on the reputation of the Councillor and to undermine the community and public trust placed in the Councillor leading to a breach of trust. The Tribunal considers any breach of this trust by a councillor can have a corrosive effect on the community and its confidence in local government generally.</p> <p>14. The Act provides that elected local government councillors by virtue of their appointment are required to uphold the behavioural standards and responsibilities contained in the Act, which includes ethical and legal behaviour and the responsibility to provide high quality leadership to the local government and the community.</p> <p>15. The Tribunal found the Councillor, by taking photographs on various times and dates of a young woman undertaking a workout at a local gymnasium, without her consent, conducted himself in a manner that was unacceptable and inappropriate conduct by any adult person and particularly by an elected local government councillor appointed to represent the community interests.</p> <p>16. Based on the undisputed evidence, including the admission and acceptance by the Councillor that the conduct as alleged did occur, the Tribunal was satisfied on the balance of probabilities the Councillor engaged in misconduct and a breach of the trust placed in him as an elected councillor.</p>
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4. Orders and/or recommendations (s150AR - disciplinary action):

Discussion:	<p>17. The Tribunal’s jurisdiction to determine orders and recommendations is provided by sections 150AR and 150AQ(2)(a) and (2)(c) of the Act.</p> <p>18. The jurisdiction is considered to be protective rather than punitive with the focus of the orders directed towards achieving high standards of councillor conduct and integrity through the provision of meaningful and relevant education or counselling to address the misconduct and to support the councillor.</p>
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19. The sanctions made will also reflect the expectations of the community and when appropriate may be directed to deterrence or be compensatory.
20. The Tribunal considered the Councillor's misconduct and the relevant circumstances to be inappropriate however noted certain mitigating factors in favour of the Councillor relevant to the orders to be made. These mitigating factors included:
 - a) The Councillor has no previous disciplinary history and had limited experienced as councillor at the time of the conduct, having completed 12 months of his first term as a councillor,
 - b) The Councillor demonstrated early co-operation with the investigation and the Tribunal process, including his request to the Applicant on 7 June 2022 for a resolution of the matter.
 - c) The Councillor by written submissions provided an expression of remorse and an apology for his conduct in "... particular to the individuals involved, my Council colleagues and the community..." The Tribunal also noted an indication of some awareness and insight by the Councillor into his conduct by his statement "...I have learned from my behaviour and will ensure that nothing like this will happen again..."
21. The Tribunal in determining the appropriate orders also considered the harassing and disrespectful nature of the conduct.
22. In considering the potential effectiveness of any order or recommendation and the purpose to be achieved by it, including a focus on remediation of the conduct, the Tribunal took into account the submissions by both the Applicant and the Councillor that requested "*the councillor attend training or counselling to address the conduct*".
23. The Councillor's early co-operation with the investigation process and his election to fast track the matter, was found by the Tribunal to be demonstrative of some insight into the serious, unacceptable and inappropriate nature of the conduct.
24. However the Tribunal considered suitable protective measures should be implemented to ensure that such conduct was not repeated. In the circumstances, the Tribunal considered the conduct was of a serious nature and consequently a reprimand was appropriate, together with an order that the Councillor undertake counselling sessions with a registered psychologist to address any relevant and potential underlying issues.
25. The Tribunal further considered it to be appropriate that the Councillor reimburse the Local Government for part of the costs incurred by the misconduct proceedings.

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5. Orders (section 150AR-disciplinary action):

Date of orders:	15 May 2023
Orders:	<p>The Tribunal orders in respect of the allegation that:</p> <ol style="list-style-type: none">a. Pursuant to section 150AR(1)(b)(ii) of the Act, Councillor Brett Qualischefski is reprimanded for the conduct; andb. Pursuant to section 150AR(1)(b)(iii) of the Act, Councillor Brett Qualischefski attend counselling sessions to address the conduct. The counselling sessions to be provided by a registered psychologist, including at the expense of the Councillor. The counselling sessions to commence within 90 days from the date that a copy of these orders and the decision are provided to the Councillor by the Tribunal Registry.c. Pursuant to section 150AR(1)(b)(v) of the Act, the Councillor reimburse the local government for the amount of \$2,000.00 representing some of the costs incurred by the local government 'arising from the Councillor's misconduct'. The payment to be made within 90 days from the date that a copy of these orders and the decision are provided to the Councillor by the Tribunal Registry.

ANNEXURE A
**AGREEMENT REACHED BETWEEN THE APPLICANT
AND THE COUNCILLOR**

Office of the **Independent Assessor**



Agreement of parties for matter to be expedited

Practice Direction #1 of 2022 – General Hearing Protocol – Expedited Misconduct Applications, effective 18 July 2022 (section 150DV Local Government Act 2009)

Application Details:

CCT Matter Reference Number	CCT Ref: F22/3888
Application filed on	10 June 2022
Name of Subject Councillor	Councillor Brett Qualischefski
Council	Lockyer Valley Regional Council

Compliance with Practice Direction #1 of 2022

1. Councillor Qualischefski accepts the allegation the subject of the Independent Assessor's Application dated 10 June 2022.
2. Councillor Qualischefski agrees that the allegation the subject of this Application constitutes misconduct.
3. Councillor Qualischefski accepts the facts as set out in the Statement of Facts which is attached to that Application.
4. Councillor Qualischefski accepts the evidence contained in the Brief of Evidence which is attached to that Application.
5. The allegation, facts and evidence filed by the Independent Assessor, are not contested and the parties agree for this matter to be expedited to the Councillor Conduct Tribunal pursuant to Practice Direction #1 of 2022 – General Hearing Protocol – Expedited Misconduct Applications²:

Signature:

Councillor Brett Qualischefski
Lockyer Valley Regional Council

Dated: 11/06/23.

Signature:

Kathleen Florian
Independent Assessor

Dated: 13/01/23

² https://www.statedevelopment.qld.gov.au/_data/assets/pdf_file/0031/73777/practice-direction-1-hearing-protocol-expedited-misconduct-applications.pdf-direction-1-hearing-protocol-expedited-misconduct-applications.pdf

ANNEXURE B
STATUTORY DECLARATION

Oaths Act 1867

Statutory Declaration

QUEENSLAND
TO WIT

I, Brett John QUALISCHEFSKI

of 13 Randall Street LAIDLEY, QLD, 4341.

in the State of Queensland

do solemnly and sincerely declare that

in relation to the Councillor Conduct Tribunal Matter No. F22 / 3888, that I, Brett John QUALISCHEFSKI, confirm that;

1. (a) the agreement reached with the Independent Assessor represents an acceptance by me of the allegation and particulars and Statement of Facts as alleged; and
- (b) I was afforded a reasonable opportunity to obtain independent legal advice prior to signing the agreement.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1867.



Signature of declarant/deponent

Taken and declared before me at GATTON

this 15th day of March, 2023.



Vivie Mae Wieland
Vivie Mae Wieland

A Justice of the
Peace/Commissioner for
Declarations.