

# Councillor Conduct Tribunal: Councillor misconduct complaint – decision and summary of 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 (s150AS(5)(a)). The summary of the decision included in the register must not include the name of the person who made the complaint or information that could reasonably be expected to result in identification of the complainant (s150DY(4)).

## 1. Complaint:

<b>CCT Reference</b>	F20/3730
<b>Subject Councillor</b>	Former Councillor John Kremastos (the councillor)
<b>Council</b>	Cassowary Coast Regional Council

## 2. Decision (s150AQ):

<b>Date:</b>	25 March 2022
<b>Decision:</b>	<p>The Tribunal has determined, on the balance of probabilities, that:</p> <p>On 6 December 2018, Councillor John Kremastos, the Mayor and a councillor of Cassowary Coast Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the <i>Local Government Act 2009</i> (the Act), in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly, in that it was inconsistent with local government principles 4(2)(a), ‘transparent and effective processes and decision – making in the public interest’ and or 4(2)(e), ‘ethical and legal behaviour of councillors and local government employees, in that Councillor John Kremastos did not inform the meeting about his personal interests in the matter as required by section 175E(2) of the Act, has been <b>sustained</b>.</p> <p>The particulars of the allegation are as follows:</p> <ol style="list-style-type: none"><li>a. On 6 December 2018, a general Council meeting was held. One of the matters on the agenda was Item 9.1 Confidential Report –</li></ol>

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	<p>Legal Proceedings – Cassowary Coast Regional Council v Toogoods (item 9.1).</p> <ul style="list-style-type: none"> <li>b. The matter was not an ordinary business matter.</li> <li>c. Councillor Kremastos attended the general Council meeting and was the Chairperson.</li> <li>d. Item 9.1 listed the following recommendation: <ul style="list-style-type: none"> <li>i. That the Council confirm and endorse commencement and resolves to continue legal proceedings against Steven Paul Toogood and Julianne Toogood to be declared as vexatious litigants.</li> </ul> </li> <li>e. The motion placed before Council was “That the Recommendation be adopted”.</li> <li>f. Councillor Kremastos voted in favour of the motion.</li> <li>g. Councillor Kremastos failed to inform the meeting of the following interests: <ul style="list-style-type: none"> <li>i. An interest in a related Queensland Civil Administrative Tribunal matter OCL O52-17 which was commenced by Mr Stephen Paul Toogood against Cassowary Coast Regional Council in relation to a breach of the privacy principles under the <i>Information Privacy Act 2009</i>.</li> <li>ii. An interest due to an involvement in the Vexatious Litigant Application filed on 9 November 2018;</li> <li>iii. An interest in the defamation matter D169 of 2017 (proceedings instituted by Mr James Gott against Mr Steven Paul Toogood and Mrs Julianne Toogood) from 7 September 2017.</li> </ul> </li> <li>h. The possible effect of the vexatious litigant proceeding on each matter would be as follows: <ul style="list-style-type: none"> <li>i. The vexatious litigant proceedings would stay all or part of the Queensland Civil Administrative Tribunal matter OCL O52-17 already instituted by Steven Paul and Julianne Toogood.</li> <li>ii. The vexatious litigant proceedings would protect Councillor Kremastos from Steven Paul and Julianne Toogood starting proceedings or a certain type of proceeding, in Queensland without the Court’s permission.</li> <li>iii. The vexatious litigant proceedings could be introduced into the defamation matter D169 of 2017 and cast doubts as to the credibility of Steven Paul and Julianne Toogood.</li> <li>iv. The vexatious litigant proceedings would prevent Steven Paul and Julianne Toogood from commencing a proceeding including any interlocutory proceedings taken in connection with or incidental to the defamation matter D169 of 2017 and Queensland Civil Administrative Tribunal matter OCL O52-17.</li> </ul> </li> <li>i. Councillor Kremastos’ personal interest in the matter did not arise merely because of the circumstances specified in section 173(3)(a) of the Act.</li> </ul>
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<p><b>Reasons:</b></p>	<ol style="list-style-type: none"> <li>1. The Tribunal found that, on 6 December 2018, the Councillor attended a Council meeting and voted on a recommendation to continue vexatious litigant proceedings against two constituents of Council, Mr and Mrs X.</li> <li>2. At that time, Cr Kremastos was also a witness (but not a party) in proceedings filed in the Queensland Civil and Administrative Tribunal (QCAT). A live issue in those proceedings was an allegation that Cr Kremastos had, as Mayor of Council, acted in a way that breached the privacy of Mr X.</li> <li>3. Because of that involvement, Cr Kremastos had a conflict of interest in the recommendation to continue vexatious litigant proceedings. If the vexatious litigant proceedings had been successful, the QCAT proceedings would have been stopped and no potentially adverse or improper acts by Cr Kremastos would have been ventilated during those QCAT proceedings.</li> <li>4. Cr Kremastos' actions were front and centre in the QCAT proceedings. His conduct as Mayor of Council stood to be scrutinised in a public and thorough way. At the conclusion of the hearing, QCAT would reach a decision as to whether the Respondent had breached Mr X's privacy.</li> <li>5. The Tribunal found that this personal interest of Cr Kremastos was in conflict with the public interest. The public interest in this case was the making of a decision by Council impartially, transparently and without bias.</li> <li>6. The Tribunal noted that in <i>Deputy Secretary, Local Government, Planning and Policy v Byrne</i> (a NSW case relating to local government and Councillors), the NSW Civil and Administrative Tribunal held that a Councillor could hold a personal interest in "<i>maintenance of his personal reputation</i>", and that interest could conflict with the public interest to make impartial, defensible decisions..</li> <li>7. The Tribunal found that having failed to disclose his involvement in the QCAT proceedings at the Council meeting of 6 December 2018, Cr Kremastos breached the trust reposed in him as Councillor and Mayor.</li> <li>8. The Tribunal wishes to remind Councillors that it has repeatedly observed that, to discharge their obligations, Councillors need only raise their hand and advise a meeting of the possibility of a conflict. It is then for other Councillors at the meeting to determine the impact of that conflict and, if necessary, mitigate it accordingly.</li> </ol>
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### 3. Orders and/or recommendations (s150AR - disciplinary action):

<b>Date of orders:</b>	25 March 2022
<b>Order/s and/or recommendations:</b>	The Tribunal orders pursuant to s 150AR(1)(a) of the Act that no further action be taken in relation to the Respondent.
<b>Reasons:</b>	<ol style="list-style-type: none"><li>1. The Tribunal does not accept that as the Respondent is no longer a Councillor, the "<i>potential for future abuses of trust or departures from the Act are effectively nullified</i>", as the Respondent is free to seek re-election as a Councillor at any time following this hearing.</li><li>2. The breach was a "<i>technical</i>" one and arose from complex litigious circumstances. The Respondent is no longer a Councillor, and so there is a significant reduction in risk to any further potential for instances of misconduct. Based on these factors, the Tribunal considers that no further order should be made in the circumstances.</li><li>3. The Tribunal considers it important for the integrity of the local government system that the Respondent is made abundantly aware of the Tribunal's position regarding his conduct. It is hoped that the Respondent's situation will be instructive of other Councillors placed in a similar position.</li></ol>