

INTERNAL ARBITRATION PROCESS - KINGSTON CITY COUNCIL

In the matter of an Application by Cr Hadi Saab concerning
The Mayor, Cr Georgina Oxley

DECISION PURSUANT TO DIVISION 5 OF PART 6 OF THE *LOCAL GOVERNMENT ACT 2020*

Application Number:	IAP 2026-11
Applicant:	Councillor Hadi Saab
Respondent:	The Mayor, Cr Georgina Oxley
Before:	Arbiter Matt Evans

DETERMINATION

Pursuant to regulation 11, sub regulation 3(c)(i) of the Local Government (Governance and Integrity) Regulations 2020, the Arbiter has decided to discontinue the hearing as the Application is vexatious. As a consequence, the Application is dismissed.

STATEMENT OF REASONS FOR DECISION

The Application

1. Pursuant to section 143 of the *Local Government Act 2020* (the Act), Councillor Hadi Saab submitted an 'Application for an Internal Arbitration Process IAP 2026-11' ('the Application') to the Principal Councillor Conduct Registrar (PCCR) on 22 March 2026. The Application was for an internal arbitration process to make a finding of misconduct against the Mayor, Cr Georgina Oxley.
2. The Application alleges that 'On 24 December 2025, the Respondent, using the Facebook Page titled 'Mayor, Cr Georgina Oxley - City of Kingston' published a post headed 'Statement from Mayor, Cr Georgina Oxley and Deputy Mayor, Cr Sarah O'Donnell regarding the extension of monitors at Kingston Council (This statement is not made on behalf of Kingston Council)'.
3. The Applicant alleges that the Facebook post ('the post') displayed a media release formatted as an official City of Kingston media release, which conveyed to an ordinary reader that this was, or closely resembled, an official Council communication. Furthermore, it is alleged this included statements that were misleading and politically loaded, including that ratepayers would be paying for another six months of monitors, and that there was no documented or public process and no reasons provided for the extension. This was considered by the Applicant to be inaccurate in the context of the Minister's letter extending the monitors, which had been sent to councillors and set out the reasons for extension.
4. The Applicant alleges that this implied that the position expressed in the post reflected councillors collectively, including by use of phrases such as 'we are a group of councillors' and 'councillors are perplexed' and by otherwise presenting the matter as if the broader councillor cohort shared the same view. According to the Applicant, this was false and misleading and had an impact upon his and the Council's reputation.
5. Part 5 of the Application form¹ provides for the Applicant to 'Specify any steps taken by Council to resolve the matter and the reason why the matter was not resolved by the taking of those steps' as required by regulation 11(1)(e)(i). In the alternate, Part 6 requires the Applicant to specify 'the reason why the Council did not take any steps to resolve the matter' as required by regulation 11(1)(e)(ii).

Jurisdiction of the Arbiter

6. Pursuant to sections 144 and 149 of the Act, the PCCR appointed the Arbiter on 4 May 2026.
7. Section 143 of the Act provides that an Arbiter may hear an application that alleges misconduct by a Councillor.
8. Section 143(3) of the Act provides that an application "must be made within 3 months of the alleged misconduct occurring". The alleged misconduct occurred on 24 December 2025, so this requirement is satisfied, noting that the Application was made on 22 March 2026.
9. Pursuant to section 147 of the Act, an Arbiter may determine whether or not a Councillor has engaged in misconduct.

¹ Form 3 - Application for Internal Arbitration Process
https://www.localgovernment.vic.gov.au/_data/assets/word_doc/0018/212166/Application-for-Internal-Arbitration-Process-section-143-Form-3-November-2024.docx

The Directions Hearing

10. Following appointment of the Arbiter, it is common for a 'Directions Hearing' to be held primarily to address procedural arrangements for the forthcoming hearing. Before the Directions Hearing was scheduled, a written submission was received by the Arbiter on 18 May 2026 from the Respondent. This questioned the veracity of the information contained in part 5 of the Application, and alleged that the Applicant failed to meaningfully initiate or participate in the staged internal dispute resolution process contained in Kingston Council's Councillor Internal Resolution Procedure² ('the Procedure'), prior to lodging the Application.
11. In the submission, the Respondent explained that 'The applicant did not make any genuine attempt to discuss this matter. Other conduct matters (being that of a conciliation and separate IAP application where Cr Saab is the respondent) and other Council matters have been discussed, however Cr Saab has not raised this matter in any way prior to lodging this IAP application. The applicant also made no attempts to lodge the form required to commence an internal dispute resolution process, under the Procedure. A process that the applicant has experience before in other disputes with other Councillors'.
12. This was despite the Applicant advising in part 5 of the Application that they had 'exhausted all reasonable and available internal avenues.'
13. The Arbiter wrote to the Council's Councillor Conduct Officer (CCO) and the parties on 20 May 2026 advising that a 'Directions Hearing' would be held via Council's online meeting platform on 22 May 2026. The Respondent's written submission referred to above was also circulated. The Parties were advised that one of the preliminary matters to be considered at the Directions Hearing would be the Respondent's submission.
14. During the Directions Hearing, verbal submissions were heard on the Respondent's claim that the Applicant had failed to meaningfully initiate or participate in the staged internal dispute resolution process contained in the Procedure, prior to lodging Application IAP 2026-11. Despite several opportunities being provided to the Applicant, he did not provide any further specific detail on the steps that had been taken to meaningfully initiate or participate in the staged internal dispute resolution process contained in the Procedure for this Application.
15. The Respondent noted the lack of procedural fairness she encountered with not being able to participate in the internal dispute resolution process. The Respondent also advised that the post that is the focus of the Application had been removed and that this occurred not long after receiving the Application, and most certainly prior appointment of the Arbiter. The Respondent's best estimate was that this occurred within 7-10 days or so of receiving the Application.
16. Towards the conclusion of the Directions Hearing, the Arbiter advised the Applicant that this matter would not be proceeding to a Hearing as the Applicant's submissions on the specific attempts to comply with the Procedure continued to fall short and remained inadequate. The Arbiter advised that a written Direction would be issued on Monday 25 May 2026 providing yet a further opportunity for the Applicant to provide that detailed information in writing about the steps taken to resolve this specific matter, and details about the Applicant's response in part 5 of section D of the Application.

² Kingston Council's Councillor Internal Resolution Procedure (version 1, 24 March 2025),

17. The Arbiter requested that a response be provided by the Applicant to the request for information in that Direction by Friday 29 May 2026, and the Applicant agreed to this deadline. A written response was provided by the Applicant.

Findings of the Arbiter

18. The Arbiter has reviewed the Applicant's written response to questions in relation to Part 5 of the Application for an Internal Arbitration process. It is noted that no specific information (such as reference to emails) was provided. Instead, general information was noted, such as 'This matter directly involves both the Mayor and Deputy Mayor in broader conduct concerns and breakdown of communication. Both have refused to engage in communication or respond to correspondence. This created a conflict and practical inability to utilise the prescribed internal mediator pathway'.
19. Also, in the Applicant's response to Part 5, in relation to the potential escalation to an external mediator, the Applicant noted that 'this requires CEO approval and procedural progression within defined timeframes', and 'Due to delays caused by non-engagement and the ongoing nature of the conduct, the matter has now exceeded the applicable timeframe for that pathway'.
20. In accordance with section 144 of the Act the PCCR first conducts an examination of the Application. The PCCR does not conduct a hearing or investigate disputed matters. The PCCR's role is to assess whether the statutory threshold for referral to arbitration has been met, based on the contents of the Application, including the response provided by the Applicant in part 5 (or 6) of the form. Based upon this the PCCR determined to appoint the Arbiter.
21. The Applicant's 24-page written response to specific questions from the Arbiter arising from the Directions Hearing contained few responses providing the requisite details to expand upon what was included in Part 5 of the Application form.
22. The Applicant explained the challenges associated with the internal resolution processes associated with other concurrent arbitration processes, referred to general breakdowns in communication, and provided context around the internal divisions within Council and the pressure this created for the Applicant. All of this is acknowledged and has been considered, but it falls well short of providing the details requested to demonstrate any meaningful attempt at following Council's Procedure.
23. In relation to the first step in the Procedure, which seeks discussion between the parties, the Applicant states in Part 5 of the Application that 'I made multiple attempts to initiate direct communication with the Mayor regarding conduct concerns.' In response the Respondent advised that the Applicant did not make any genuine attempt to discuss the matter that is the focus of the Application IAP 2026-11. No clear evidence was presented in the response to the Arbiter's request for further information that the first step had been pursued by the Applicant, and the Applicant appears to deliberately conflate his efforts about this first step from a concurrent but separate arbitration application. Only vague comments and no specific evidence was presented that this matter was raised by the Applicant and discussed at an 18 February 2026 meeting with the Respondent and CEO.
24. It was acknowledged by the Respondent that whilst she is firmly of the view that 'The applicant made no genuine attempt to engage in Step 1 of the Internal Dispute Resolution Procedure', she did acknowledge the constraints in communicating with the Applicant and conceded this made discussion as part of Step 1 more challenging. Regardless, the Procedure factors this in, providing for a second and third step.

25. In relation to the second step, the Procedure requires that 'where a direct conversation between Councillors has not been successful in resolving the dispute, a Councillor does not feel comfortable communicating directly with another Councillor or Councillors, or a request for discussion has been refused, it will be escalated to Conciliation'. A complainant initiating conciliation must notify the Mayor and the Respondent of the dispute by completing a Conciliation Application Form.
26. In the written response resulting from the Directions Hearing, the Applicant states 'I acknowledge that I did not formally submit a separate Conciliation Application Form' and explains that this position was informed by direct experience with another matter during the same period whereby it took 36 days to reach conciliation. The Arbiter considers that in the context of an 80-day process afforded by the Procedure this is not unreasonable and is not a valid reason to disregard this second step. No other actions akin to conciliation appear to have been initiated by the Applicant.
27. The third step of this Procedure is engaging an external mediator. This occurs where a conciliation process has been performed and has not been successful in resolving the dispute, or on occasion, the Mayor may make a request to the CCO to bypass the conciliation process to commence external mediation. Unsubstantiated claims were made by the Applicant that he had already participated in external mediation involving the same parties during the same period and had raised these concerns. The Arbiter notes that no evidence was provided of actions taken by the Applicant to initiate this third step specifically in relation to the matters in application IAP 2026-11.
28. In general, the Applicant claimed, 'The internal resolution pathway became practically dysfunctional due to the complete breakdown in communication, the Respondent's refusal or unwillingness to meaningfully engage with concerns raised, and the broader acknowledged dysfunction within Council'.
29. The Applicant has also noted several times that section 144 of the Act does not require perfect procedural completion of every step within Council's internal policy framework before an arbitration may proceed. That is true, and the Arbiter does not as a matter of course re-conduct the section 144 examination. That examination is conducted by the PCCR.
30. But what is missing from the Applicant's approach in this case is any meaningful attempt to specifically undertake the completion of any of the steps within the Procedure. Discussion, conciliation and mediation provide the Respondent with an important opportunity to understand the nature of the concerns being raised and to engage and respond before formal proceedings are commenced.
31. The fact that the Applicant was engaged in the internal dispute resolution process on another application concurrently demonstrates that Council dysfunction was not the blocker it was purported to be. Furthermore, claims that the 80-day process within the Procedure did not provide enough time does not withstand scrutiny, when the onus is on the Applicant to perform the most straightforward of tasks, such as lodging the application for conciliation, and this was not completed.
32. With the Applicant making no genuine effort to engage in the process, it demonstrates he had no intention of resolving the dispute. The Respondent explained that the Applicant had not expressed 'a genuine and immediate concern arising from conduct he witnessed and felt he had a duty to address'. If he had done so, he would have provided the Arbiter with the details of efforts he made to specifically request the Respondent to remove the post. The Applicant did not.

33. The Applicant claimed at the Directions Hearing that the process was never going to be successful, but that is not the issue. Parties in a dispute resolution process cannot be required to reach agreement. Rather, the question is whether the Applicant made a genuine and reasonable effort to participate in the process. The Applicant did not.
34. The Respondent submitted that 'In these circumstances, the statements in the Application are objectively incorrect and gives a false impression of compliance with the statutory preconditions for this process under the Local Government Act 2020'. I accept that submission from the Respondent.
35. The requirement in Council's Procedure to work through a process of discussion, conciliation and mediation is intended to ensure that misconduct applications are a last resort. The Applicant has failed to afford the Respondent that opportunity, and as a result the procedural fairness objectives of the conduct framework have been undermined.
36. It is noteworthy that the Applicant recently benefited from the operation of Council's Procedure when he was afforded the benefit of receiving a conciliation notice in a recently reported arbitration matter (IAP 2026-3). In that case, he was the Respondent, and upon receiving the notice he removed a social media post. This is the way the process is meant to work. In that case, the voluntarily removal of the post when it was brought to his attention, was one factor that contributed to Arbiter Simon Heath making no finding of misconduct and dismissing that application.

Conclusion

37. Based on the available evidence, there has been a clear failure by the Applicant to make a genuine attempt to undertake the steps required by Council's Procedure in relation to the matter subject of application IAP 2026-11. This did not provide the Council or Respondent with any adequate opportunity to resolve the matter prior to the Application being made. In addition, the information provided by the Applicant in Part 5 of 'Form 3 - Application for Internal Arbitration Process' was misleading.
38. Therefore, the Arbiter finds that the Application is vexatious, as it is based upon incomplete and misleading information, and represents a tokenistic approach to internal resolution and an abuse of the arbitration process; a process that is intended to be invoked as a last resort, only after reasonable attempts at internal resolution have been exhausted.
39. Pursuant to regulation 11, sub regulation 3(c)(i) of the Local Government (Governance and Integrity) Regulations 2020, the Arbiter has decided to discontinue the hearing as the Application is vexatious. As a consequence, the Application is dismissed.
40. The Arbiter shares the disappointment of Arbiter Sarah Fowler who in another recent Internal Arbitration Decision at Kingston Council (IAP 2026-5) involving the same parties concluded 'It is disappointing this matter was not resolved through mediation and that so much time and effort have been expended on this process. I sincerely hope this decision will enable the Applicants and Respondent to all move on from this grievance now'.

Matt Evans
Arbiter

Date: 11 June 2026