

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

**Internal Arbitration Process
HORSHAM RURAL CITY COUNCIL
(IAP 2023 - 9)**

Applicant: Councillor Ian Ross

Respondent: Councillor Robyn Gulline

Arbiter: Noel Harvey OAM

DETERMINATION.

The Arbiter determined that Cr. Robyn Gulline did not breach the prescribed standards of conduct, and therefore no findings of misconduct have been made.

As there have been no breaches of the prescribed standards of conduct, the Arbiter has dismissed the Application.

The "standards of conduct" are set out in Schedule I to the Local Government (Governance and Integrity) Regulations 2020. A copy is attached as Appendix A.

Hearings

The Internal Arbitration Process comprised of a Directions Hearing on 24th August 2023 held at the Horsham Rural City Council office.

The Full Hearing was held at Horsham Rural City Council office on 10th October 2023.

DECISION AND STATEMENT OF REASONS

BACKGROUND and EVIDENCE

1. The applicant in this matter is Cr. Ian Ross.
2. The respondent is Cr. Robyn Gulline.
3. On 11 June 2023 Cr Ross made an application under s 143 of the *Local Government Act 2020* (the Act) for an internal arbitration process to make a finding of misconduct against Cr. Robyn Gulline in relation to an exchange between Cr. Gulline in her role as Mayor of Horsham Rural City Council, and Horsham resident Mr. Bart Turgoose.
4. A second claim was made in relation to Cr. Gulline's attendance at a City Band function held on 23rd April 2023.
5. Cr Ross made the application following the receipt of a letter from Mr. Bart Turgoose regarding a conversation with Cr. Gulline at the Horsham College Debutant Ball on 31st March 2023 and at a subsequent encounter on 23 April 2023.
6. Based on the letter from Mr Turgoose, Cr. Ross alleged that Cr. Gulline had engaged in conduct that was abusive, threatening and intimidating towards a member of the public. Cr. Ross did not witness the alleged conduct.
7. The letter of complaint from Mr Turgoose alleged that "*Cr. Gulline approached me and proceeded to intimidate and chastise me regarding my Facebook posts.....*" and "*accused me of spreading misinformation about council.....*"
8. Mr Turgoose further claimed in his letter that "*Cr. Gulline's behaviour during this interaction was condescending and disrespectful...*".
9. Mr Turgoose claimed that at a later community function held on 23rd April 2023, "*Cr. Gulline stood behind me in what I perceived was a deliberate attempt to intimidate me*".
10. Cr. Ross acknowledged he had not witnessed these events.

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11. Based on the letter from Mr. Turgoose, Cr. Ross alleged that Cr. Gulline's behaviour breached the standards of conduct set out in schedule 1 of the Local Government (Governance and Integrity) Regulations 2020 (the Standards of Conduct) and therefore constituted misconduct under the Act.
12. Cr. Ross acknowledged that as the applicant, he had not witnessed the events which were the subject of the application but had received a letter of complaint from Mr. Turgoose and felt duty bound lodge the application.
13. The letter of complaint from Mr. Turgoose was submitted as part of application IAP 2023-9.
14. The alleged breach occurred at the Horsham College Debutant Ball on 31st March 2023. The ball was attended by a large crowd of people.
15. Mr Turgoose claims that during a private conversation between himself and Cr. Gulline after the official event had concluded, Cr Gulline behaved in a manner that was "*.....condescending and disrespectful.*" Mr. Turgoose claimed that several people who witnessed the conversation expressed their concern for him following the conversation.
16. Mr Turgoose claimed he felt "*intimidated and was chastised*" during the conversation.
17. Mr. Turgoose further claimed that at a later incident during an outdoor performance of the Horsham City Band on 23rd April 2023, Cr. Gulline made deliberate attempts to intimidate and bully him. This complaint was withdrawn during the hearing.
18. Cr. Ross tabled several Statutory declarations from individuals who witnessed the conversation. None of the witnesses actually heard the conversation but it was generally observed to be animated.
19. Cr. Ross claimed that he understood the conversation was "*very close contact and the finger was very much pointing*". Cr. Ross tabled to a 0.02sec video as evidence of this interaction.
20. Cr. Gulline indicated the video was less than 1 second, edited and out of context.
21. Cr. Ross acknowledged that the evidence is only based on body language as no one heard the conversation other than Mr. Turgoose.
22. It was clear that Cr. Gulline was attending the ball in her role as Mayor of Horsham Rural City Council and was acting in an official capacity. Cr. Gulline agreed.

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23. Cr. Ross acknowledged there is a history of infighting and ongoing cultural issues within the Horsham Rural City Council resulting in a lack of respect for different ideas.
24. During his remarks Cr. Ross claimed the community was unhappy with the performance of the Council and this complaint was further evidence of the dissatisfaction demonstrated in the recent Council Satisfaction Survey.
25. This was disputed by Cr. Gulline.
26. Cr. Ross tendered the CV of Mr Turgoose.
27. Cr. Ross described Mr Turgoose as an energetic, likable young man who is active in the community and has announced his intention to stand for council in the 2024 elections. Mr Turgoose has strong views on many local issues and can reasonably be described as a community activist.
28. Prior to hearing from Mr. Turgoose, Cr. Gulline acknowledged the conversation was *"a bit heated on both sides"* and that *"we hold very different views"*.
29. Cr. Ross spoke to the tabled Statutory Declarations. He acknowledged they were interpretations based on observations which may not be fully accurate.
30. Cr. Ross called Mr. Turgoose as a witness who had a prepared statement.
31. Cr. Ross had submitted a CV of Mr. Turgoose and Mr. Turgoose spoke to his background and community activities. He spoke about a number of matters where he disagreed with Council decisions, and his attendance at the Debutant Ball.
32. Regarding his conversation with Cr. Gulline he said, *"... I'm a pretty good reader of body language, and I could tell that she was quite frustrated at me, and I don't know whether it was that I had upset her or what had happened, but that was how I took it"*.
33. Mr. Turgoose said *"This incident left me feeling embarrassed, intimidated, as it occurred in a wholly inappropriate context and way. What was supposed to be a night of celebration turned sour with my family and friends and past teachers expressing their concern for my well-being"*.
34. On being questioned by Cr. Ross, Mr Turgoose said he *"felt intimidated in a way because I didn't know what to do because I was in front of so many people and it was like just happening. Like what - - I didn't know what to do, and I would say that the way that Robyn presents herself with her body language, it was quite - I found it quite aggressive, yes. I felt intimidated was definitely the word I would use"*.
35. While discussing a range of issues he has with council Mr. Turgoose claimed he believed the council was very dysfunctional in the way they behave.

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36. Cr. Ross explained that it's not necessarily words that are spoken, but also the way in which they are spoken, the methodology. He believed this is reflected in the Local Government Act and regulations.
37. Cr. Ross acknowledged that councillors develop a "*thick skin*" which Mr. Turgoose may not have at his stage of life experience.
38. Mr Turgoose spoke of his personal experiences which may have influenced his reaction to the conversation and the perceived lack of respect.
39. Cr. Gulline proceeded to ask several questions regarding the conversation and the context.
40. When asked, Mr. Turgoose was unable to recall much of what was discussed until he was reminded/questioned by Cr. Gulline of several matters they spoke about.
41. Cr. Gulline indicated that she had pointed out a number of factual errors and claims made by Mr Turgoose on Facebook and in statements to the local paper.
42. Cr. Gulline claimed to have complimented Mr. Turgoose on his knowledge and didn't recall ever getting heated or upset.
43. Cr. Gulline claimed to have said it was a good idea to check the facts before putting out posts or statements. Mr. Turgoose agreed that this was said.
44. Mr Turgoose claimed the conversation was very much one way, however Cr. Gulline clearly had a different view.
45. When questioned in detail about the conversation and the various topics covered Mr. Turgoose acknowledged his recollections may not be entirely accurate. Cr. Ross stated this was because Mr. Turgoose was under considerable stress.
46. Cr. Gulline expressed her disappointment at the reaction of Mr. Turgoose citing her many offers of support to Mr. Turgoose in the past, some of which she outlined.
47. Cr. Gulline described many past conversations with Mr. Turgoose on a wide range of matters. These were acknowledged by Mr. Turgoose.
48. Cr. Ross called a further witness. A long-standing and active member of the community who has acted as a mentor to Mr. Turgoose.
49. The witness spoke to the character of Mr. Turgoose and her many areas of community activity, some of which brought her into conflict with Council.

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50. Whilst she attended the ball, the witness did not observe the conversation which is the subject of this application.
51. The witness spoke about past conversations and interactions with Cr. Gulline and a later conversation with Mr. Turgoose regarding the conversation at the Debutant Ball. The witness believed that Mr Turgoose was upset by the conversation.
52. In her response to the application, Cr. Gulline described her personality and provided evidence of her integrity she described herself as genuine and honest. Citing recent conversations with acquaintances that said, *"You are forthright, which some people find very confronting."*
53. Cr. Gulline said *"that in no way means I'm disrespectful. I'm just very honest and blunt in my delivery. That is not in any way to infer that I am disrespectful"*.
54. Cr. Gulline rejected outright many of the claims made by Mr. Turgoose and detailed her recollection of the conversation with Mr. Turgoose.
55. Cr. Gulline claimed *"My sole motivation in pursuing this conversation and offering well-intentioned advice to Mr Turgoose was to help him get elected. I was concerned with some of the posts that he put up that he was going to tarnish his reputation if he continued down that path for the next 18 months, particularly when not all of his statements on Facebook were factually correct"*.
56. Cr. Gulline responded to the allegation of bullying in the application at a later event by the Horsham City Band.
57. The applicant withdrew this alleged breach claiming it was just intended as context.
58. In her presentation Cr Gulline referred to three bodies of work by Laney & Loftus, (2023). Wixted et al (2018). and Kopietz et al (2009). These works relate to personal bias, perception, and memory bias. These documents were not tendered and have not been read or considered as part of this hearing.
59. Cr. Gulline believes she politely and respectfully offered well intentioned and constructive feedback in a private conversation with Mr. Turgoose.
60. Cr. Gulline stated that none of the evidence presented to the hearing substantiates that she had breached any of the Standards of Conduct.
61. In closing, Cr. Ross stated that during the lunch break he had Googled "Body Language" which he found *"enlightening"*.
62. Cr. Ross stated he should have done some more research before the hearing because *"it's a very important point how that body language is perceived, and that's the basis of the evidence of the other five statutory declarations and the impact that it had on Mr Turgoose"*.

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63. Concluding, Cr. Gulline said *“I genuinely wanted to help him, and my offers of help were genuine. And they're still standing. I don't know what's going to happen in the next term of Council, but if Mr Turgoose and I end up on Council together, I absolutely would be happy to work with him and helping get in that role. Maybe finds my manner a bit confronting when I say things that he doesn't like or agree with, and that's okay. You know, we are entitled to different opinions, and just because I say something he didn't like, or I didn't agree with doesn't mean I was disrespectful”*.

CONCLUSION.

On the material provided to me I accept that the conversation between Mr. Turgoose and Cr. Gulline may have been robust, but the evidence provided does not support Cr. Ross' allegations that the behaviour of Cr Gulline was abusive, threatening or intimidating. It is important to note that nothing in the Standards of Conduct is intended to limit, restrict, or detract from robust public debate in a democracy.

I accept that no one other than the two participants heard the private conversation between Cr. Gulline and Mr. Turgoose.

I find both Mr. Turgoose and Cr. Gulline to be equally credible witnesses in this matter and based on the balance of probability I am unable to find that a breach of the Standards of Conduct has occurred.

I note the matter relating to the Horsham City Band function on 23rd April 2023 was withdrawn by the applicant.

Based on the evidence provided by the applicant in relation to body language, I am unable to find it constitutes a breach of the Standards of Conduct

Given the lack of any evidence to the contrary, I accept the respondent's evidence that she did not raise her voices during the conversation and that any perceived threat or aggression was unintended.

Noel Harvey OAM

Arbiter

Dated: 15 November 2023.

APPENDIX A

Local Government (Governance and Integrity) Regulations 2020
S.R. No. 116/2020

Schedule 1—Standards of conduct

Regulation 12

1. Treatment of others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor—

- (a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the **Equal Opportunity Act 2010**; and
- (b) supports the Council in fulfilling its obligation to achieve and promote gender equality; and
- (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and
- (d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

2. Performing the role of Councillor.

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor.

- a) undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and
- (b) diligently uses Council processes to become informed about matters which are subject to Council decisions; and
- (c) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (d) represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

3. Compliance with good governance measures.

A Councillor, in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following.

- (a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with section 46 of the Act for managing interactions between members of Council staff and Councillors;
- (b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;
- (c) the Governance Rules developed, adopted, and kept in force by the Council under

section 60 of the Act;

(d) any directions of the Minister issued under section 175 of the Act.

4. Councillor must not discredit or mislead Council or public.

(1) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.

(2) In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

5. Standards do not limit robust political debate.

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.