

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

Internal Arbitration Process – IAP 2022-2 and IAP 2022-3

Applicant in both matters: Councillor Sahana Ramesh

Respondent in both matters: Councillor Josh Gilligan

DETERMINATION

In relation to IAP 2022-2, the Arbiter has determined that there is a breach of the relevant standards of conduct, however given the context in which this breach occurred, no sanction is warranted.

In relation to IAP 2022-3, the Arbiter has determined that there is no breach of the relevant standards of conduct, and that therefore no finding of misconduct can be made.

REASONS FOR DECISION

The Applications

1. There are two Applications in this matter, both dated 3 March 2022 by the Applicant, Councillor Sahana Ramesh. Both relate to emails sent by the Respondent, Councillor Josh Gilligan.

The First Application IAP 2022-2

2. This Application alleges breaches of the '1 Treatment of Others', in particular (c) and (d), and '4 Councillor must not discredit or mislead Council or public' standards of conduct' as contained in the Local Government (Governance and Integrity) Regulations 2020 (Vic) ("the Regulations").

These read:

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— ...

(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.

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.

3. The email chain at issue in this matter is fairly lengthy, and originally related to a technical debate about council procedure, but the part being complained about is a reply to an email from Cr Gilligan to a [REDACTED], resident of Wyndham, copying numerous Wyndham councillors. It reads:

Thanks [REDACTED]. I note your opinion/feedback on good governance and public administration at Wyndham City Council.

I do also note a media article (attached) by a suburban newspaper in which it was reported you willingly participated in a criminal court matter to provide a personal character reference for a Centrelink rorter that was then used by his lawyer to argue he avoid jail time.

The fraud cost taxpayers more than \$73,000 spanning eight years with the judge moving to jail the man, reportedly your partner, in recognition of the heinous nature of his crimes.

Notwithstanding these facts, your opinion and observations on governance and public administration at Wyndham City including feedback on our draft governance rules are noted.

JG

The Second Application IAP 2022-3

4. This Application also alleges a breach of the '1 Treatment of Others', in particular (c) and (d).

5. The application further states that 'the actions of the councillor in question has a clear component of sexism and racism in the lack of consideration for the variances in personality an mindset that comes from background diversity - this was explicitly evident in the February OCM and is implicit in the email below'.

6. The email chain is almost the same as the one in the first application. The part being complained about is from Cr Gilligan to Cr Ramesh, copying numerous Wyndham councillors and staff, but omitting [REDACTED]. It reads:

I won't be lectured to by someone who engaged in a coup for her own personal gain and divided a council right after she was accidentally elected at the top of the ballot in the ward.

You chose to blatantly ignore two forms of democratic ballots - one by residents in Chaffey Ward and another by councils across Victoria.

Total LOL logic.

JG

7. In summary, these Applications rest on whether or not these emails from Cr Gilligan breached the Standards of Conduct.

Respondent's Pre-Hearing Material

8. I will start with the Respondent's evidence as this is what all the parties received first. In relation to the first application, I summarise Cr Gilligan's relevant material as follows:

- [REDACTED] is a 'vexatious political activist ... who has been publicly antagonistic towards my position as a local government councillor for a number of years.'
- That the emails contained 'statements of fact' which 'do not surmount to abusive, obscene or threatening behaviour.'
- 'Cr Ramesh's [application] ...is likely to be politically motivated in collaboration with a vexatious political activist, [REDACTED]'.

- 'The evidence in this submission establishes a longstanding obsession by [REDACTED] towards me in my role as a local government councillor. This is important in determining the character of [REDACTED], and, the motivations for the alleged breach claim. This evidence includes substantive proof of social media posts engaging in discriminatory and even defamatory conduct by [REDACTED] including the misuse of my photograph, the satirical use of my surname, requesting personal information on my employment status as well as posts designed to generate online negative comments about me on Facebook over several years.'
- I conclude by stating that a reasonable person would accept that the behaviour displayed by [REDACTED] over several years would surmount to obscene and abusive behaviour that would not be tolerated in any workplace or environment regulated by law and order.

9. Cr Gilligan also provided numerous documents, primarily from social media, in which [REDACTED] describes herself as 'an avid follower of council proceedings', and, among other comments:

- Refers to Councillor Gilligan as 'childishly laughing';
- Refers to Councillor Gilligan as 'Gilligan's Island';
- Photoshops images from the TV show 'Gilligan's Island' with faces of councillors, including Councillor Gilligan;
- Refers to Councillor Gilligan as 'immature, rude, childish';
- Amends the theme song to the TV show 'Gilligan's Island' so that lyrics reference Councillor Gilligan and other councillors in a derogatory way;
- Posts a photograph of [REDACTED] 50th Birthday Celebrations' that show Councillor Ramesh present;
- Implies that Councillor Gilligan was involved in the 'Red Shirts' ALP electioneering scandal using a photograph taken several years before the scandal.

10. In relation to the second application, I summarise Cr Gilligan's relevant material as follows:

- The remarks in the email were factually correct, and were not 'abusive, obscene or threatening';
- The email was an internal email, not received by any people external to the Council;
- The 'coup' referred to in the email was a December 2020 Council Meeting vote in which Councillor Ramesh and others voted to overturn a ... recommendation to appoint him, Councillor Gilligan, as the Municipal Association of Victoria (MAV) delegate. This resulted in Councillor Gilligan being removed as the President of MAV under MAV Rules. Councillor Gilligan referred to this episode as 'heartless and selfish' by Councillor Ramesh, that 'resulted in great personal and mental health costs to me and she has never apologised or shown any remorse for her actions.'
- The initial email by Cr Ramesh in the email reply to [REDACTED] contained a subtle 'cheeky comment' about 'listening to the community' directed at Councillor Gilligan;

- The remark about Councillor Ramesh being ‘accidentally elected’ is supported by Victorian Electoral Commission (VEC) data.

11. Cr Gilligan noted that: ‘I am willing to provide a written apology to Cr Ramesh for suggesting she was “accidentally elected” in order to resolve the matter.’

Applicant’s Pre-Hearing Material

12. In relation to the first application, I summarise Cr Ramesh’s relevant material contained in her pre-hearing material as follows:

- ‘That [REDACTED] has historically directed loaded statements towards Cr Gilligan – again this claim even if true does not negate her rights as a resident of Wyndham. Nor does the negative actions of one person justify the negative actions of another.’
- ‘A personal relationship may exist between [REDACTED] and myself – regardless of the truth or otherwise behind this claim, the relationships held by [REDACTED] does not waive her identity and rights as a resident of Wyndham.’

13. In relation to the second application, I summarise Cr Ramesh’s relevant material as follows:

- In relation to the MAV representative role, Cr Ramesh states that ‘the majority of the council agreed that the roles of NGAA, MAV and Justice Precinct should be considered by the councillors and not simply adopted on the basis of incumbency.’
- In relation to the ‘accidentally elected’ comment, Cr Ramesh states that ‘This statement is designed to deliberately negate the significant time and financial contribution in the election campaign, and the thousands of local residents that by choice (and not accident) voted for me. His attempt to justify my results shows a material lack of appreciation for the significant South Asian migrant community present in Harrison Ward that I know provided a solid base for my election results, along with my frequent public interaction that provided an intelligent and robust position in on many matters.’

The Hearing

14. The hearing was heard in person at the Wyndham City Council office on 1 July 2022. In attendance was Ms Emily Keogh, Council Conduct Officer, Cr Ramesh, Cr Gilligan and arbiter Dr Lily O’Neill. Cr Ramesh also called four witnesses, being:

1. Cr Peter Maynard;
2. Cr Jasmine Hill;
3. Cr Robert Szatkowski; and
4. [REDACTED].

15. The evidence of the three councillors can be summarised by saying that they all believed that the tone of Cr Gilligan’s emails was in keeping with Cr Gilligan’s email approach. However, I do not consider that the evidence of the three councillors added any relevant

evidence to the matters subject to the two applications, which is whether the emails breached the relevant standards.

Further evidence in relation to the first application

16. The evidence of [REDACTED] can be summarised by saying that she took the email from Cr Gilligan as a “personal attack”, and it was “upsetting”. When asked by me whether she had previously made derogatory comments in the past about Cr Gilligan, [REDACTED] responded “Yeah, that would be 100% correct, I have on occasion described him as being childish in council chambers”. She accepted that the contents of the email were true.

17. Cr Gilligan stated in relation to the context in which he sent the email to [REDACTED]:

I would never send a response back to a – perceived in my opinion – an ordinary non-politically engaged resident but in this instance many years of questions about my employment status, the misuse of my surname, the misuse of my photo, there has to be a regard to why I would make a reference to public governance and administration and yet be lectured by someone who has engaged in years of abuse ... so on top of that and saying it is a bit ironic that someone would reference a character assassination when I have gone through one for some years.

Further evidence in relation to the second application

18. In her application, Cr Ramesh stated that Cr Gilligan’s actions had ‘clear component of sexism and racism’. I asked Cr Ramesh about this allegation with the question “I think also you said that it was implicitly sexist and racist?” to which Cr Ramesh responded “Yes, it is, yes”. However, she did not provide any evidence or further arguments on these points.

Arbiter’s Findings and Reasoning

Findings in relation to the first application

19. I find that Cr Gilligan did breach the ‘Treatment of Others’ standard in relation to [REDACTED]. His email to her clearly did not treat her with ‘dignity, fairness, objectivity, courtesy and respect’.

20. However, I note that under the *Local Government Act 2020* (Vic) I have discretion as to whether or not I sanction a councillor found to have breached the standards of conduct. For example, s 147 (2) states ‘If an arbiter has made a finding of misconduct against a Councillor, the arbiter *may* do any one or more of the following ...’ (emphasis added).

21. I think that the very significant history of attacks made by [REDACTED] on Cr Gilligan’s character gives relevant context to his email. I therefore do not think it appropriate that he be sanctioned in this instance. If this behaviour continued towards residents into the future, a sanction would be appropriate.

Findings in relation to the second application

22. I find that Cr Gilligan did not breach any of the relevant standards of conduct in relation to his email to Cr Gilligan. I was not persuaded by Cr Ramesh's allegation of sexism or racism, particularly because she did not make any arguments or bring any evidence to further this allegation.

23. I think that Cr Gilligan skirts the boundaries of good manners in his email correspondence. I highly recommend he reflect on this and alter his email behaviour accordingly. However, I find that this email, directed to an internal Council audience, does not breach the relevant standards as outlined in the application. While it contains stronger language than is prudent, it expresses a valid opinion on past events that Cr Gilligan considered relevant to the matters subject of the email chain.

24. Finally, I add that I believe that these are not matters that should have reached the point of requiring arbitration. This is in no way a criticism of the Registrar's decision to appoint an Arbiter in this matter. Indeed, the nature of the allegations contained in the applications, and the involvement of a community member, necessitated my appointment.

25. However, having now heard the allegations tested in a hearing and despite having made an adverse finding against the respondent, I do not believe that these matters should have been brought to arbitration. This is because of the context of the first application, as outlined above and which was known to the applicant, and the lack of evidence on the most serious allegations contained in the second application, again as outlined above.

26. Arbitrations are a very expensive way to resolve minor matters such as these. From the many witnesses I heard from, it was apparent that there appear to be many complaints about behaviour between the current cohort group of councillors. I implore councillors to think about the expense to ratepayers, as well as the time of council staff, before bringing any more applications in relation to matters such as these.

Dr Lily O'Neill
Arbiter

17 August 2022