

IN THE MATTER OF AN APPLICATION FOR AN INTERNAL ARBITRATION PROCESS

CITY OF KINGSTON

IAP 2026-3

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

Applicant: Councillor Jane Agirtan
Respondent: Councillor Hadi Saab
Date of hearing: Wednesday, 8 April 2026
Place of hearing: City of Kingston, 1230 Nepean Highway, Cheltenham
Arbiter: Simon Heath

DETERMINATION:

Councillor Agirtan has made Application for an Internal Arbitration Process seeking a finding of misconduct against Councillor Saab. The finding is sought in relation an alleged breach of Clause 2 of the Model Councillor Code of Conduct by Councillor Saab by allowing a post by a third party to remain on Councillor Saab's Facebook page for a number of weeks.

I find that Councillor Saab has not breached Clause 2 and, as such, I make no finding of misconduct against him. The Application is therefore dismissed.

STATEMENT OF REASONS

The Application

1. The 'Application for an Internal Arbitration Process' is dated 27 January 2026 (**Application**).
2. In the Application, the Applicant seeks a finding of misconduct against the Respondent in relation to an alleged breach of the 'Model Councillor Code of Conduct' (**Code**).
3. The breach of the Code is alleged to be by reason of the Respondent allowing a post by a third party, 'Damien Williams', (**post**) to remain on his Facebook page (**page**) for several weeks.
4. The Applicant says she was alerted to the post on 1 November 2025 and that it remained on the page until 5 January 2026.
5. The post was as follows:

"All this motion needed to do was to condemn the nazi terror attack on Camp Sovereignty on 31 August. To state clearly that Kingston rejects ethnonationalism in all its forms and to stand shoulder-to-shoulder with mob who are calling for that attack to be investigated as a hate crime.

It should have come sooner and been expressed in those clear terms – before the likes of Cr Agirtan encouraged her followers to attend the second nazi rally on 19 October. Reframing this as a statement about diversity simply allows someone like her to stand up and say that her views ought to be equally taken into account, even when she has a record of publishing racist comments about Aboriginal people.”

6. The Applicant alleges that in allowing the post to remain, the Respondent breached Clause 2 of the Standards of Conduct (**Standards**) in the Code relating to ‘Behaviours’. Details of that Clause are set out below.

Arbiter’s jurisdiction

7. I was appointed pursuant to sections 144 and 149 of the *Local Government Act 2020 (Act)*.
8. Section 143 of the Act provides that an Arbiter may hear an application that alleges misconduct by a Councillor.
9. Section 143(3) of the Act provides that an Application “must be made within 3 months of the alleged misconduct occurring”. The alleged misconduct is alleged to have occurred on and after 1 November 2025 so this requirement is satisfied.
10. Pursuant to section 147 of the Act, an Arbiter may determine whether or not a Councillor has engaged in misconduct.
11. “Misconduct” is defined in Section 3 of the Act as follows:
“... any breach by a Councillor of the Model Councillor Code of Conduct”.
12. Section 139(3)(b) of the Act specifies that the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions are to be included in the Code.
13. The Code is set out in Schedule 1 to the *Local Government (Governance and Integrity) Regulations 2020*.
14. As required by Section 139(4) of the Act, the Code is published on the Council’s website, and a copy thereof is attached hereto.

Hearing

15. The internal arbitration process comprised directions made on 25 February 2026, further directions made on 10 March 2026, a video-conference directions hearing on 13 March 2026, even further directions made on 13 March 2026, and an in-person hearing on 8 April 2026.

Applicant’s evidence

16. The Applicant’s evidence comprised the Application and a document titled ‘Response to Documents provided by Cr Saab’ with seven attachments.
17. The Applicant also gave evidence and made submissions at the hearing.

Respondent's evidence

18. The Respondent lodged the following documents in response to the Application:
- (a) 'Summary Response to Arbitration Application';
 - (b) 'Sample examples of Cr Jane Agirtan's conduct towards members of the public';
 - (c) 'Character Witness Statements';
 - (d) 'Social Media Profiles';
 - (e) 'Mordialloc Incident Precedence (sic)';
 - (f) 'Police Statement';
 - (g) 'Conciliation Application';
 - (h) 'Police Statement';
 - (i) 'Detailed Response to Arbitration Application'; and,
 - (j) 'Character Reference'.

19. The Respondent also gave evidence and made submissions at the hearing.

Arbiter's finding

20. I determine that the Respondent has not breached clause 2 of the Standards, make no finding of misconduct against him, and dismiss the Application.

Arbiter's reasons

21. Both parties lodged a significant amount of material which had limited or no relevance to the allegation in the Application. I give the 'benefit of doubt' that their intention was to provide 'background and context' to the Application, and not to use the hearing to ventilate their fractured relationship. Provision of irrelevant material does not assist the process, and simply adds to the cost of the arbitration to be borne by ratepayers.
22. At an Ordinary Council Meeting on 27 October 2025, the Respondent moved a Notice of Motion entitled 'Supporting our Diverse Community' which was deferred for further consideration. The post on the Respondent's Facebook page was made by the third party after that meeting.
23. As mentioned, a resident alerted the Applicant to the post on 1 November 2025 by providing a screenshot thereof.
24. The Applicant however did not contact the Respondent raising concerns about the post and asking for it to be removed. Instead, the Applicant submitted an application for conciliation to the Council on 2 December 2025 (**conciliation application**).
25. In the absence of evidence to the contrary, I accept the Respondent's evidence that his first awareness of the post was on 17 December 2025 when he received the conciliation application. At that time the Applicant was away from Melbourne for the Christmas period.
26. I also accept the Respondent's evidence that he returned to Melbourne on 28 December 2025 and, after reviewing the conciliation application, he voluntarily removed the post from the page the next day (**post removal**).
27. It is important to note that, consistent with the Respondent's evidence that he was not aware of the third party's post until 17 December 2025, the Respondent did not "like", comment on, or

otherwise approve the post before removing it. Further, there is no evidence that the Respondent facilitated the post. Accordingly, the decision of Arbiter Noel Harvey OAM in *Councillor Jay Iwasaki v Councillor Oscar Yildiz* (IAP 2025-3) is not an applicable precedent.

28. Despite an acknowledgment on 5 January 2026 that the post had been removed, the Applicant elected to continue with her conciliation application and then, once that process had ended, to submit the Application.
29. As mentioned, the Applicant alleges that the Respondent breached Clause 2 of the Standards which relates to 'Behaviours'. That Clause is as follows:
- '(1) A Councillor must treat others, including other Councillors, members of Council staff and members of the public, with dignity, fairness, objectivity, courtesy and respect, including by-*
- (a) not engaging in demeaning, abusive, obscene or threatening behaviour, including where the behaviour is of a sexual nature; and*
 - (b) not engaging in behaviour that intentionally causes or perpetuates stigma, stereotyping, prejudice or aggression against a person or class of persons; and*
 - (c) not engaging in discrimination or vilification ...'*
30. Given that the post was by a third party, was not accepted or impliedly endorsed by the Respondent, and voluntarily removed when it was brought to his attention, I do not find that the Respondent failed to treat the Applicant with *'dignity, fairness, objectivity, courtesy or respect'*. On the basis that there is no finding of misconduct, the Application is dismissed,
31. I caution the Respondent however that if he believes that he is not able to regularly monitor his Facebook page, the page should be deleted, or at least temporarily deactivated. Otherwise, the Respondent is at risk of being held liable as publisher of any inappropriate posts he fails to notice and remove.

Simon Heath

Arbiter

Dated: 16 April 2026

Model Councillor Code of Conduct



VERSION NO.	1
APPROVAL	<i>Local Government (Governance and Integrity) Regulations 2020</i> S.R. No. 116/2020 Schedule 1 Model Councillor Code of Conduct Authorised by the Chief Parliamentary Council
TRIM REFERENCE	24/410136
RESPONSIBLE EXECUTIVE	General Manager Customer and Corporate Support
POLICY TYPE	Council
POLICY OWNER	Manager Governance, Risk & Integrity

Definitions

In this Schedule

Discrimination means unfair or unfavourable treatment of a person on the grounds of an attribute specified in section 6 of the *Equal Opportunity Act 2010*.

1. Performing the role of a Councillor

A Councillor must do everything reasonably necessary to ensure that they perform the role of a Councillor effectively and responsibly, including by:

- (a) representing the interests of the municipal community by considering and being responsive to the diversity of interests and needs of the municipal community; and
- (b) being fit to perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (c) diligently using Council processes to become informed about matters which are subject to Council decisions; and
- (d) not performing or purporting to perform any responsibilities or functions of the Chief Executive Officer; and
- (e) acknowledging and supporting the Mayor in the performance of the role of the Mayor, including by:
 - (i) respecting and complying with a ruling of the Mayor as the chair of Council meetings (unless dissenting from the ruling in accordance with the Council's Governance Rules); and
 - (ii) refraining from making public comment, including to the media, that could reasonably be perceived to be an official comment on behalf of the Council where the Councillor has not been authorised by the Mayor to make such a comment.

2. Behaviours

- (1) A Councillor must treat others, including other Councillors, members of Council staff and members of the public, with dignity, fairness, objectivity, courtesy and respect, including by:
 - (a) not engaging in demeaning, abusive, obscene or threatening behaviour, including where the behaviour is of a sexual nature; and
 - (b) not engaging in behaviour that intentionally causes or perpetuates stigma, stereotyping, prejudice or aggression against a person or class of persons; and
 - (c) not engaging in discrimination or vilification; and
 - (d) supporting the Council, when applying the Council's community engagement policy, to develop respectful relationships and partnerships with Traditional Owners, Aboriginal community controlled organisations and the Aboriginal community; and
 - (e) supporting the Council in fulfilling its obligation under the *Local Government Act 2020* or any other Act (*including the Gender Equality Act 2020*) to achieve and promote gender equality; and
 - (f) ensuring their behaviours and interactions with children are in line with the Council's policies and procedures as a child safe organisation and obligations under the *Child Wellbeing and Safety Act 2005* to the extent that they apply to Councillors.
- (2) A Councillor, as an individual at the workplace, must take reasonable care for their own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons by:
 - (a) adhering to applicable systems and policies put in place by the Chief Executive Officer to manage risks to health and safety in the workplace; and
 - (b) complying, so far as the Councillor is reasonably able, with any reasonable instruction that is given by the Chief Executive Officer to manage risks to health and safety.
- (3) A Councillor must act in accordance with any policies, practices and protocols developed and implemented under section 46 of the Act that support arrangements for interactions between members of Council staff and Councillors.

3. Good governance

A Councillor must comply with the following Council policies and procedures required for delivering good governance for the benefit and wellbeing of the municipal community:

- (a) Council's expenses policy adopted and maintained under section 41 of the Act;
 - (b) the Council's Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act, including in relation to
 - (i) conduct in Council meetings or meetings of delegated committees; and
 - (ii) requesting and approval of attendance at Council meetings and meetings of delegated committees by electronic means of communication; and
 - (iii) the Council's election period policy included in the Council's Governance Rules under section 69 of the Act, including in ensuring that Council resources are not used in a way that is intended to influence, or is likely to influence, voting at a general election or by-election;
 - (c) the Council's Councillor gift policy adopted under section 138 of the Act;
 - (d) any direction of the Minister given under section 175 of the Act.
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4. Integrity

- (1) A Councillor must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government, including by:
 - (a) ensuring that their behaviour does not bring discredit upon the Council; and
 - (b) not deliberately misleading the Council or the public about any matter related to the performance of their public duties; and
 - (c) not making Council information publicly available where public availability of the information would be contrary to the public interest.

Note See the public transparency principles set out in section 58 of the Act.

- (2) A Councillor must not, in their personal dealings with the Council (for example as a ratepayer, recipient of a Council service or planning applicant), expressly or impliedly request preferential treatment for themselves or a related person or entity.

5. The Model Councillor Code of Conduct does not limit robust public debate

Nothing in the Model Councillor Code of Conduct is intended to limit, restrict or detract from robust public debate of issues in a democracy.