

INTERNAL ARBITRATION PROCESS – SOUTHERN GRAMPIANS SHIRE COUNCIL

In the matter of an Application by Councillors Mary-Ann Brown and Helen Henry concerning
Councillor Katrina Rainsford

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

Applicants: Councillor Mary-Ann Brown and Councillor Helen Henry
Respondent: Councillor Katrina Rainsford
Date of Hearing: 22 October 2021 at the Shire Offices in Hamilton
Arbiter: Ms Jan Boynton

DETERMINATION

The Arbiter determined that there has been a breach of the prescribed standards of conduct by the Respondent, Cr Rainsford in that she failed to show respect to the Applicant councillors and therefore makes a finding of misconduct against the Respondent.

As there has been a finding of misconduct, the Arbiter directs the Respondent to make a written apology in the form stipulated by the Arbiter.

STATEMENT OF REASONS FOR DECISION

The Application

1. The Application dated 12 July 2021 by the Applicants seeks a finding of misconduct against the Respondent in relation to an alleged breach of the prescribed standards of conduct.
2. The Application made by Crs Brown and Henry alleges that an email dated 31 May 2021 sent by Cr Rainsford to Ms Naomi Turner, a Community Development Officer with Western District Health and one of the organisers of a Panel to celebrate International Women's Day, and cc'd to Cr Helen Henry, 'showed a lack of respect for councillors' in that it implied that the Applicant Councillors participated in 'behind the scenes, disgraceful treatment of (a) councillor' which was a breach of Clause 1 of Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020 (the Regulations).

The jurisdiction of the Arbiter in relation to this Application

3. Section 143 of the *Local Government Act 2020* (the Act) provides that an Arbiter may hear an Application that alleges misconduct by a Councillor.
4. Pursuant to section 147 of the Act an Arbiter may determine whether or not a Councillor has engaged in misconduct.
5. "Misconduct" is defined in section 3 of the Act and is defined as follows:
 "... any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct."
6. The standards of conduct are set out in Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020, a full copy of which is included as Appendix A.
7. The relevant standard of conduct pertaining to this matter is:
 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.

Hearings in this matter

8. The internal arbitration process in this matter included two hearings: a directions hearing held at 10am on 22 September 2021 on-line, and the hearing held at 3pm on 22 October 2021 in the Martin J. Hynes Room, Southern Grampians Shire Council Offices, Hamilton. The hearing was initially scheduled for 18 October 2021 but was rescheduled at the request of the Respondent who was commencing shearing on her farm.

Evidence provided

9. The Applicants both provided written evidence as set out in the Application, and further expanded upon in impact statements which were sent prior to 30th September 2021 in accordance with the Directions.
10. The Respondent provided written evidence which was lodged by 7th October 2021 in accordance with the Directions.
11. The Applicants and the Respondent verbally expanded on their written statements at the hearing.

Evidence of the Applicant

12. The Application identified Cr Mary-Ann Brown as the appointed Applicant representative. Cr Brown stated that in June 2021, Cr Helen Henry had forwarded an email to her that had been sent by Cr Katrina Rainsford to Naomi Turner of Western District Health Service on 31 May 2021. Cr Henry had been “carbon copied” into this email.
13. The email was responding to an invitation to attend an International Women’s Day (IWD) function which included a panel of speakers of which Cr Henry was one. The email by Cr Rainsford to Naomi Turner stated:

“Thank you for the invitation.

“As a current female elected councillor on your local Southern Grampians Shire Council and the longest serving councillor on Southern Grampians Shire Council. A

councillor who has experienced behind the scenes disgraceful treatment by councillor ignored or inflicted by women as well and men, I read your invitation to a WDHS event where colleague female councillor will profile, who recently quoted "I would (not) have let it happen to me" Cr Helen Henry.

First, they (the women councillors) did nothing. Then they (the women councillors) joined in.

I could give a really great women in leadership address....if only I was asked.

Ask Cr Henry and Cr Brown why they did not support a six time elected female councillor for deputy of mayoral position. That's the first women in leadership question to ask at this forum. That will test the credibility of their case to speak of women in leadership."

14. Cr Brown advised that she was extremely disappointed by the email as it implied that female councillors had participated in or ignored disgraceful treatment of Cr Rainsford. As she was one of three female councillors in the period from 2016-2021, the clear implication was that she was one of those councillors and she totally rejected that suggestion.
15. Cr Brown further added that she found the comments made by Cr Rainsford offensive and disrespectful and viewed Cr Rainsford's expression of disappointment about not being invited to be a speaker as discourteous to her and Cr Henry. Cr Brown also expressed further displeasure that Cr Rainsford chose to express her views in an email to the event organizer and attacked the behaviour and integrity of both herself and Cr Henry.
16. Cr Brown referred to Cr Rainsford's comment querying why she and Cr Henry did not support Cr Rainsford for election to the deputy mayor's position. Cr Brown explained that there is no obligation to support other councillors in their election attempts to the positions of Mayor or Deputy Mayor just because of their gender or length of service. The discussion about who was interested in nominating for the positions of Mayor and Deputy Mayor occurred behind closed doors so there was no public discussion of why a particular councillor was nominated or elected.
17. In reference to Cr Rainsford questioning the credibility of the Applicants to speak on the subject of women in leadership, Cr Brown provided her extensive leadership experience in both her professional life and community activities including President, Board of Western District Health Service for 7 years, Chair of the Dunkeld Community Centre for 13 years, Mayor from 2016 to 2019, Chair of the Great South Coast Group of Councils for 2 years and Chair of Rural Councils Victoria since 2018 to date.
18. Cr Brown concluded by saying "Since I was elected to Council in 2016, I have often felt that my integrity has been attacked by Cr Rainsford, which I find stressful and hurtful".

Evidence of the Witness

19. As one of the Applicants, Cr Henry appeared as a witness. She advised that as a new councillor she was “baffled and quite hurt” by the email.
20. Cr Henry explained she was not a part of the Council during the time that Cr Rainsford alleges that she “experienced behind the scenes disgraceful treatment” and secondly, she did not understand the quote allegedly attributed to her being: “I would (not) have let it happen to me”. Cr Henry said she “objected to being quoted incorrectly and out of context, with the implication that I am somewhat complicit in some sort of unethical behaviour”. She stated she actually said: “It’s not going to happen to me”.
21. Cr Henry highlighted the implication in Cr Rainsford’s email that she and Cr Brown colluded in some sort of bullying: “First they (the women councillors) did nothing. Then they (the women councillors) joined in.” Cr Henry emphasised that she had never participated in, nor been accused of, bullying.
22. Similarly to Cr Brown, Cr Henry advised longevity and gender were not precursors for Mayoral elections and that she made her decision on who to elect on ability to lead, experience and vision.
23. Cr Henry asserted that questioning her credibility to speak on women in leadership was both hurtful and inaccurate. She explained she was elected as a first-time candidate with an overwhelming number of votes, which she viewed as a testament to her leadership in the community over the past decade.
24. Cr Henry pointed out that she did not seek to be a speaker at the International Women’s Day Forum but was happy to accept the invitation, and that as her first official role as a new Councillor, she “was nervous enough without the undermining comments from Cr Rainsford.”
25. Cr Henry concluded by saying she “was embarrassed that an email of this nature was sent to an organisation outside of the Council, not so much as it sought to denigrate myself and Cr Brown, but that it tried to show the Southern Grampians Shire Council as unprofessional and unethical which in my brief experience to date, could not be further from the truth.”

Evidence of the Respondent

26. The Respondent spoke to her detailed statement that had been lodged in accordance with the Directions. She referred to a number of historical incidents that have occurred over her 17 years as a Councillor and which have obviously weighed on her mind and caused her anguish. Some of the incidents related to being criticised for sitting in the wrong chair at Council meetings, not being recognised publicly for an MAV award and 9 points of order being called against her. However, much of what Cr Rainsford

referred to was outside the scope of this hearing as it was not directly relevant to the subject of the Application.

27. Cr Rainsford acknowledged that whilst longevity and gender are not precursors for Mayoral elections, one of the four goals of International Women's Day (IWD) is to lobby for accelerated gender parity, and that she was very surprised to "not even gain the support for deputy if not Mayor, by women who were speaking on IWD when I was a respected and competent candidate". Cr Rainsford said she felt "the spirit of IWD was not being reflected on Southern Grampians Shire Council when women supported two men in leadership positions of Mayor and Deputy Mayor." She continued "it's the hypocrisy of these IWD and White Ribbon Days that cause me grief. The rest of the year I just get on with whatever I can do to help the community of Southern Grampians".
28. Cr Rainsford referred to an informal meeting at a local Wine Bar and Restaurant held one afternoon to prepare for an item of council business. During these discussions Cr Rainsford apparently raised issues of how she had been treated as a councillor and Cr Henry allegedly made the comment "I would not have let that happen to me". (We heard from Cr Henry that what she actually said was: "That will not happen to me").
29. Cr Rainsford said she was quietly shocked at the comment at the time, she felt it was insulting and was a form of "victim blaming" and that she brooded over the comment and the perspective it reflected.
30. Cr Rainsford believes that she has been let down by other female councillors over the years in that they have not supported her or reported behaviours that she (Cr Rainsford) found hurtful, insulting and abusive. She sees this history as legitimising the email which is the subject of the Application. However, Cr Rainsford did admit at the hearing that she does regret sending the email.
31. Following the Directions hearing, Cr Rainsford provided an apology to the Applicants which stated:

"I do sincerely apologise for the manner I raised my concerns about the treatment of myself as a woman councillor in the email dated 31 May 2021 which addressed to Naomi Turner.

It is sad that three capable but diverse women, that all have a great deal to offer and have all already served their communities well, are at odds with each other due to the actions of others and the failure of others to take appropriate actions when they had the leadership and moral responsibility to do so.

I look forward to working constructively with all of the councillors that the community elects to represent them, putting the needs of the community first whilst upholding the standards required of a serving councillor."

32. This apology was unsurprisingly not accepted by the Applicants as it did not address the hurt and disrespect that the original email caused them.

Findings of the Arbiter

33. After consideration of all the information from the Applicants and the Respondent, the Arbiter finds that there has been a breach of the prescribed standards of conduct by the Respondent in that the email she sent to a third party, with implied serious criticisms of the other two female councillors, was disrespectful. Therefore, the Arbiter determines that the behaviour of the Respondent constitutes misconduct.

Reasons for the Arbiter's Decision

34. The Arbiter is of the view that the email to a third party, not connected to Council, was inappropriate and inadvisable. The email clearly implied that the other women councillors, ie the Applicants, had participated in or had ignored "disgraceful treatment" of the Respondent. The email also questioned the suitability of the Applicants to provide a leadership address and participate in an IWD function. The email potentially undermined the reputation of the Applicants and therefore was a clear breach of Clause 1 of Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020 (the Regulations) which states:

"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,....."

35. The contents of the subject email did not treat the other female councillors with dignity, fairness objectivity, courtesy nor respect.
36. The Respondent has shown a serious lack of judgement by writing and sending the subject email. Whilst in the hearing the Respondent did acknowledge regret for the email, she persisted in emphasising she was the victim in this issue and did not acknowledge the hurt and distress she had caused the Applicants.

Sanction

37. Given the finding of misconduct, the sanction the Arbiter imposes is that the Respondent be required within 10 days of tabling the Arbiter's report in Council, to provide a written, meaningful apology to each of the Applicants, acknowledging that the email she composed and sent to a third party has caused hurt and potentially undermined the integrity and reputation of each of the Applicants.

The apology should also advise that the Respondent will seek in future to be more considered in her actions and, should there be issues that arise with the other female councillors, the Respondent will undertake to address them personally with the individuals concerned.

Jan Boynton

Arbiter

Date: 5th November 2021

Appendix A

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.