

**JOINT STANDING COMMITTEE ON
DELEGATED LEGISLATION**

CITY OF PERTH CODE OF CONDUCT LOCAL LAW

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH,
WEDNESDAY, 8 MAY 2002**

SESSION 3

Members

**Ms Quirk (Chairman)
Hon Ray Halligan (Deputy Chairman)
Hon Ljiljanna Ravlich
Hon Robin Chapple
Hon Alan Cadby
Mr Sweetman
Mr Watson
Mr Waldron**

JENNINGS, MS NOELENE
Director, Corporate Services, City of Perth,
examined:

DOUGLAS, MR NEIL
Lawyer, Minter Ellison,
examined:

PARRY, MR JAMIE
Manager, Corporate Support, City of Perth,
examined:

The CHAIRMAN: Thank you for attending this committee. Did you understand the information for witnesses sheet which you signed?

The Witnesses: Yes.

The CHAIRMAN: This transcript is a matter for public record. If, for some reason, you want to make a confidential statement, you should request that the evidence be taken in closed session. If the committee grants your request, any members of the public and media that are present will be excluded. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. The committee advises that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Mr Douglas, I understand that you will make an opening statement.

Mr Douglas: I did not understand that.

The CHAIRMAN: Would someone like to make an opening statement?

Ms Jennings: I can provide the background, which might help. We will provide the committee with copies of documents that contain letters that we have sent to ministers and others regarding the status of the code of conduct and where the Act may or may not be changed to accommodate what the council was after. They date back to 1997. In 1999 the City of Perth held a special meeting of council. The minutes of that meeting state -

- (ii) *Chief Executive Officer be requested to investigate the creation of local law provisions to enable the Council to take disciplinary action in respect of breaches of the Code of Conduct;*
- (iii) *Lord Mayor advise the Minister for Local Government of the proposal outlined in the above decision.*

The CHAIRMAN: When was that special meeting held?

Ms Jennings: It was held on 30 July 1999.

Hon LJILJANNA RAVLICH: What precipitated that meeting? What events led to that resolution?

Ms Jennings: A councillor was censured.

Hon LJILJANNA RAVLICH: Who was that?

Ms Jennings: It was Councillor Tudori. It is on the public record. The council subsequently asked for an investigation of the code because it found that the Act did not give it any choice but to censure.

[11.30 am]

Since July 1999, we have been working on researching codes of conduct and local laws across Australia at all tiers of government. At a council meeting in August 2000, we decided it was important to get agreement on the principles upon which the local law would be based. The motion stated -

- (i) *Council endorses the intent and ethical principles of the Code of Conduct, being:-*

Intent

To provide the rules and guidelines which ensure that, in the best interests of the local community and the public generally, the highest ethical standards are practised by Elected Members and staff of the City of Perth.

Ethical Principles

The ethical principles of justice, respect for persons, and responsible care.

- (ii) *Council endorses the guiding principles of the Code of Conduct local law review, being that -*

- (a) *clear standards of conduct be established upon which behaviour can be assessed;*
- (b) *independent review procedures be established which support the maintenance of the Code of Conduct;*
- (c) *the Code of Conduct provide a foundation for responding to unacceptable behaviour;*
- (d) *the Code of Conduct provisions are transparent and open to scrutiny, ensuring the community that the trust placed in the Elected Members and staff is well placed;*

- (iii) *Code of Conduct enforcement provisions be reviewed by the City's legal representatives, prior to further reporting back to the Council.*

Neil has been involved in that procedure since 2000 in further developing the local law and code of conduct which we are here to talk about. That went through the local law procedure in council from October 2001 to February 2002, including public comment.

Hon LJILJANNA RAVLICH: Prior to your preparatory work on the background, had your council had a range of problems with a number of wayward councillors or was Councillor Tudori the first problematic person the council could not deal with? Did the results of his behaviour lead to the motion and the consequent review involving all the preparatory work?

Ms Jennings: Over the history of the City of Perth, I believe there have been a number of occasions on which such a code of conduct was used. Our Lord Mayor has

been on the council for over 22 years, so he does mention occasions when these kinds of provisions were needed.

Hon LJILJANNA RAVLICH: Is this a vehicle by which you can silence certain people when the council does not like their views? Is it a mechanism by which the council will be able to sanction people who do not conform to the expectations of the majority of the council?

Ms Jennings: No is my simple answer.

Hon LJILJANNA RAVLICH: Why would you have it?

Ms Jennings: It is not about silencing people.

Hon LJILJANNA RAVLICH: Provision 6.2(4) is clearly a mechanism by which a councillor can be prohibited from taking part in a debate, other than by recording his or her vote in any specified meeting or meetings of the council or a committee of which he or she is a member. That quite clearly gives the capacity to silence a member of the council from actively participating in debate. I direct my question to Ms Jennings.

Ms Jennings: The provision for not taking part in the debate already exists in the City of Perth standing orders local law. These regulations are tying that in with the standing orders local law. There is nothing new in respect of the code of conduct local law in the case of paragraphs (e) and (f).

Hon LJILJANNA RAVLICH: The council already has the ability to do that. If it already has that power, why would it be contained in these regulations?

Ms Jennings: The standing orders are for that particular meeting.

Hon LJILJANNA RAVLICH: That is not very clear.

Mr Douglas: Perhaps I might make two distinctions. One is that standing orders apply only to the conduct of a particular meeting. The code of conduct is more general. That is one distinction. The other distinction, which was not part of the earlier discussion, is that there is a very major protection. It is not the case that the council in the heat of the moment makes a decision and a penalty is imposed. A complaint must be made in writing. It then goes to an independent body to investigate. That independent body is not part of the faction. Any talk about a faction controlling or suppressing statements made by another does not apply.

Hon LJILJANNA RAVLICH: I understand that independent body consists of the chief executive officer of the Australian Institute of Management or his or her representative, the president of the Local Government Managers Australia (WA Division) or his or her representative, and the president of the Law Society of Western Australia or his or her representative. One could argue the point that, given that those people will be employed by the City of Perth, they would have some sort of interest from a financial gain. They may therefore be a bit inclined to take the view of the majority or the complainant against an individual member of the council. Do you see that is at least a possibility?

Mr Douglas: If you are alleging that any member holding those offices is subject to influence in the way you describe, that is certainly not the case. Our whole system would fall down if it were the case. If that is the suggestion, any independent inquiry is open to that allegation. The point I was making was much more general. The body is independent. Its time and personnel are removed from the council. The council cannot make any determination that has any adverse effect on an individual without

the recommendation being made by this independent body after careful consideration and a fair bit of time.

The CHAIRMAN: The independent body reports to the council, which makes the ultimate decision, so it is not totally within the purview of the independent body, is it?

Mr Douglas: The members of the body are independent.

The CHAIRMAN: They are not the ultimate decision-makers, are they?

Mr Douglas: I do not want to miss the point, because it is a critical one. It is not as though the independent body could say that its recommendation is that nothing should happen and then a penalty is imposed; it is the other way around. The independent body must find that there is a problem, and not a frivolous one, but one that has been established after investigation. Only if it gets to that point can the council then take the step of imposing a penalty. If it does not get to that point, there is no penalty. All the debate about influence, suppressing debate and factions, unless one takes the point the three independent people can be subject to financial interest, falls away.

Hon LJILJANNA RAVLICH: They will be paid by the council for their services, will they not?

Mr Douglas: Yes, as would any independent body - as a judge is. Everyone is paid.

Hon ALAN CADBY: Our earlier questions were of a general nature and not specifically aimed at your code of conduct. Our concerns were looking at the 142 councils, not specifically yours. We are now talking about your council specifically. I think you have misunderstood our earlier questioning.

Mr Douglas: I am sorry if that is the case. We gave a lot of consideration to this, including the very matters that have been raised. They are very serious matters.

Hon ALAN CADBY: We are concerned that other councils look at it in the same way.

Mr Douglas: We would be very concerned - we rejected the idea - about the council's being the determining body for imposing a penalty. That would not apply. It is fundamental to this issue. It will not proceed on that basis. The most fundamental part is that investigation and determination be given to an independent body. That is critical to the whole process.

The CHAIRMAN: In the scenario you have given us, there may be a minor infraction and the independent body might say that there is a minor infraction and send the case back to the council for it to impose a penalty. The council might then impose a penalty that is quite disproportionate to the infraction.

Mr Douglas: That is not the way that I see it. If the infraction is minor, it can be dismissed at an early stage.

The CHAIRMAN: It may not be. The independent body's finding is only whether or not the code of conduct has been effectively breached.

Mr Douglas: Any frivolous or minor infraction can be dismissed early.

The CHAIRMAN: There is a difference between "frivolous" and "minor", is there not?

Mr Douglas: Yes. If it is what is called a technical breach, the investigative body not only determines whether there has been a breach but also the penalty. It will not say that there has been a minor breach and therefore the penalty should be \$1 000. It

will say that there has been a minor breach and therefore there will be a penalty that reflects that. It is outside the council's purview. The council does not have the ability to say that the independent body has found a breach and therefore the council will impose a major penalty. It does not have the power. It can impose a penalty only at the level recommended by the independent body.

The CHAIRMAN: In other words, the council is ratifying the independent body's finding?

Mr Douglas: Yes.

The CHAIRMAN: Ms Jennings, you indicated that the standing orders provide the power to exclude a member from a meeting, did you not?

Ms Jennings: Not "exclude from a meeting"; a member can only vote.

The CHAIRMAN: The local laws go further and extend to meetings - plural. Do you accept that?

Ms Jennings: Yes.

The CHAIRMAN: Ms Jennings, you said earlier that the whole process of drafting local laws came about because a councillor was considered recalcitrant. You said that one particular incident created a difficulty. Would you accept that?

Ms Jennings: Those were not my words. I gave you the history of where it came from.

The CHAIRMAN: Would you agree that there was an isolated incident rather than endemic misbehaviour and inappropriate conduct?

Ms Jennings: It was certainly not endemic in that it was not the whole of the council all of the time, but the council certainly experienced three, four or five occasions when it felt frustrated that there was nothing it could do.

The CHAIRMAN: Have you had any consultation in the course of considering these local laws with the Department of Local Government and Regional Development?

Ms Jennings: Yes, we have. We have continually asked the department whether it was doing anything and we have given the department copies of all the work that we have been doing along the way.

The CHAIRMAN: What sort of response have you had or what discussions have evolved out of that consultation?

Ms Jennings: There has not been much response at all really. The ministers have responded, but the department has not responded a lot, apart from acknowledging that it is interested in what we are doing and that we should continue to send it information.

The CHAIRMAN: Was there any discussion that the local laws you were looking at might have a broader application for other councils?

Ms Jennings: We certainly made people aware that an independent investigative committee could be used by any other council and that it was not set up just for the City of Perth. We have chosen people from relevant groups. We need to encourage other local governments, if they put together a code of conduct, to use a similar investigative committee.

The CHAIRMAN: We will have to adjourn in about five minutes. I apologise that we got more involved in the last two witnesses than we expected to. If members wish

to ask questions now, we will discuss at the conclusion of your evidence when will be a convenient time for you to return.

Mr SWEETMAN: From 1997 when you first started looking at putting some sort of mechanisms in place to manage unruly councillors from time to time, have you kept a tab of the costs involved for your council? Do you have a bill for what it will finally cost the City of Perth ratepayers?

[11.45 am]

Ms Jennings: I do not have them with me, but obviously we can provide them.

Mr SWEETMAN: It would be handy to know. I do not want to create problems. I am from a country electorate. I have discussed it briefly with some councillors and staff. This could be used as a model or template for other councils to adopt in its entirety to apply as quickly as possible so they have the power available to them in the event of ongoing problems with existing councillors. I am anxious about that, particularly in country areas. I do not mean to demean country councils; I spent eight years as a councillor in the Shire of Carnarvon. However, many people put their hand up to be involved in local government to do something about the rubbish or the roads, and let us not forget the dogs. They are not Queen's Counsels; they do not undertake a comprehensive study of the Local Government Act. In fact, they rarely undertake anything more than a scant study of the council's standing orders. I am anxious that there will be a sophisticated code of conduct as an appendix to the legislation to which those councils will be subject. Even if they spend 20 years in local government, some of them will never understand the subtleties and nuances of the Act and the code of conduct. There are broader implications. At the end of the day, it will provide other councils with a mechanism to try to further sterilise local government as a sphere of government.

Hon LJILJANNA RAVLICH: There is a view that some parts of this code of conduct could be ultra vires the Local Government Act. Specifically, provision 6.2(4)(c)(iv) appears to permit withdrawal of reimbursement of expenses to which a councillor has a statutory entitlement under provision 5.98(2)(a) of the Act. How has that arisen in view of the fact that the drafting has been overseen by a top-shelf legal organisation? We have some concerns that that provision looks to be ultra vires the Act and other parts of the code of conduct. Can you comment specifically about provision 6.2(4)(c)(iv), which deals with the reimbursement of expenses? Is this going too far? Even though it may never be implemented, the fact that it is there is important. Is it too extreme?

Mr Douglas: Perhaps we need to come back to the whole issue of ultra vires. There is no specific power in the Act for any appendices. Given that, there will always be a question about whether it is compliant. It will always be open to question, because there is no express power. Our view, which was considered very carefully, is that it is within power. I am happy to go through those issues individually. For example, the member referred to allowances being statutory entitlements. That is not what it says. One can read that into it, but we prefer to read in that there is a discretion. If we confine that to allowances when it is at the council's discretion not to pay rather than statutory entitlements, it is within power not outside.

Hon LJILJANNA RAVLICH: Provision 5.98(2) states -

a council member who incurs an expense of a kind prescribed as being an expense -

- (a) to be reimbursed by all local governments; or
- (b) which may be approved by any local government for reimbursement by the local government and which has been approved by the local government for reimbursement,

is entitled to be reimbursed in accordance with subsection (3).

That clearly indicates they have an entitlement.

The CHAIRMAN: We have a number of issues we want to canvass, but this committee does not have the power to sit while Parliament is sitting. As Parliament is about to sit, we will need to adjourn the hearing. Can you appear at 9.30 am next Wednesday?

Mr Douglas: Yes.

The CHAIRMAN: Ms Jennings, you also mentioned some documents. Please provide them to the committee.

Ms Jennings: Yes.

The CHAIRMAN: Thank you very much for your attendance. I apologise for having to adjourn the hearing. These committee members are a dispassionate lot, but their passions have been excited. We usually deal with issues such as the Dandaragan cemetery regulations. This is a rare treat for us.

Committee adjourned at 11.50 am.