

COMPLAINT BY MR STEPHEN KOBELKE AGAINST MAYOR TROY PICKARD IN RELATION TO A STATEMENT MADE AT THE APRIL 2008 COUNCIL MEETING

PRELIMINARY VIEW

The Complaint

The complaint relates to Mayor Troy Pickard's statement made during Public Statement Time at the 15 April 2008 Council meeting that Mr Kobelke was 'carrying on like a monkey'. The complaint is that this comment breaches sections 3.4(b) and 3.4(e) of the Code of Conduct.

The relevant provisions within the Code

Section 3.4 relates to personal behavior. This states that Council members shall:

- “(b) perform their duties impartially and to the best of their ability and in the best interests of the community, uninfluenced by fear or favour;
- (e) make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct in the performance of their official or professional duties, which may cause or is likely to cause any reasonable person any unwarranted offence or embarrassment”.

Assessment of Complaint

The reference to Mr Kobelke 'carrying on like a monkey' is considered to be an allegation which is derogatory under section 3.4(e) of the Code. As the Mayor was performing his official duty as presiding member at the Council meeting when the comment was made, this section of the Code applies. The Mayor's statement is also considered a form of conduct which would cause a reasonable person unwarranted offence or embarrassment. Consequently, the complaint is upheld in relation to section 3.4(e).

The statement is not considered to be in breach of section 3.4(b). The statement itself does not indicate that the Mayor was taking a position of partiality. This would have been the case had the Mayor limited Mr Kobelke from speaking. It is questionable whether the comment was in the best interests of the community as referenced in section 3.4(b). However, it is considered inappropriate to assess a comment directed at one specific individual against the broad criterion expressed in section 3.4(b) which relates to the whole community. Consequently, the complaint is not upheld in relation to section 3.4(b).

Conclusion

It is noted that soon after the Mayor made the comment, the Mayor offered a formal apology to Mr Kobelke for his statement. Such an apology at the Council meeting is considered appropriate in response to the breach of section 3.4(e) of the Code of Conduct. The apology has been minuted and thus appears on the public record.

It is acknowledged that the Mayor made this apology in advance of the receipt of the complaint. It is also noted that the Code of Conduct identifies no penalties for breaches of the Code.

Recommendation

That a copy of the minutes indicating the apology be provided to Mr Kobelke.

MAYOR'S RESPONSE TO ALLEGATIONS

The Chief Executive Officer wrote to the Mayor and Mr Kobelke on 9 July 2008 requesting comments on the Preliminary View of the complaint. The Mayor responded to the allegations made against him on 6 August 2008. No response was received from Mr Kobelke. The following discussion is in response to matters raised by the Mayor in his letter of 6 August.

It is the Chief Executive Officer's understanding that the allegation made against the Mayor was that his statement caused unwarranted offence and embarrassment, although Mr Kobelke framed his allegation in a slightly different way. For the avoidance of doubt, the allegation that was assessed was:

'The Mayor's comment "carry on like a monkey" addressed to Mr Kobelke made during the Council meeting on 15 April 2008 breached sections 3.4(b) and 3.4(e) of the Code of Conduct'.

It has been suggested that Mr Kobelke's preceding behaviour is relevant to assessing the context in which he made the statement. It could be said that Mr Kobelke's behaviour had in fact provoked the Mayor to make the statement. This undue provocation may be a mitigating factor. However, provocation does not obviate the need for the Mayor to comply with the Code.

More specifically, the comment which is the subject of the complaint has been assessed in its context and has not been isolated from the preceding or subsequent events that occurred in the Chamber. It is explicit that the Mayor's full comment to Mr Kobelke reflected the Mayor's view that Mr Kobelke's behaviour was inappropriate. The Mayor's view about appropriateness is clearly expressed in the phrase 'Your behaviour is absolutely inappropriate ... I did not ask you to raise your voice and carry on like a monkey.' These words would not have been used had Mr Kobelke, in the Mayor's view, been behaving appropriately. In other words, the Mayor would not have made the statement 'raise your voice and carry on like a monkey', if the Mayor did not believe Mr Kobelke had behaved inappropriately.

It has been suggested that because Mr Kobelke had been behaving unreasonably during Public Statement Time that section 3.4(e) of the Code of Conduct does not apply. However, the reasonable person test in section 3.4(e) is an objective test – would the ordinary, reasonable person have been offended or embarrassed? It does not require the complainant to act reasonably in order to avail him/herself of the provisions of section 3.4(e).

It has been suggested that Mr Kobelke has made an inaccurate statement in his complaint. The apparent inaccuracy relates to whether Mr Kobelke 'left the chamber immediately' when the Mayor made the comment. The Mayor's recollection is that Mr Kobelke was not in fact present in the Council Chamber at the time he made the statement. Regardless of whether Mr Kobelke was physically present in the Council Chamber at the time, it is considered that the statement could have caused him unwarranted offence or embarrassment because it appears on the public record. It is also noted that officers and members of the public were present when the comment was made. Whether the remark prompted Mr Kobelke to leave the Chamber is not relevant to the question of whether the comment could have offended or embarrassed a reasonable person.

The question of whether 'monkey' can be interpreted as a derogatory term has also been raised. While it is acknowledged that the word 'monkey' is not derogatory and insulting in many contexts, such common-use phrases as 'they made a monkey out of him' clearly are.

This example suggests that the person 'made a monkey out of' has been mocked, duped or made to appear a fool.

The Mayor advised in his letter of 6 August that he 'contemplated retracting the statement immediately'. The audio recording reveals the apology was framed as follows:

"I would just like to place on the public record my unreserved apology to Mr Kobelke for calling him a monkey. So that's on the public record. Highly inappropriate his behaviour but I shouldn't call him a monkey."

The wording of the apology suggests at the time it was made, the Mayor believed he had in fact called Mr Kobelke a monkey inappropriately which therefore warranted an apology.

The Mayor's conduct in contemplating retracting the statement immediately after he made it, and subsequently withdrawing it and apologising appears to acknowledge the inappropriateness of the statement. It is difficult to ascertain upon what other basis the Mayor would have withdrawn the statement and apologised if he didn't view the statement as improper.

FINAL VIEW

Taking into account the evidence supporting the allegation, the audio of the Council meeting and the Mayor's response to the draft report, the Final View of the complaint is:

- A breach of section 3.4(e) of the Code of Conduct has been substantiated;
- There has been no breach of section 3.4(b) of the Code of Conduct;
- In accordance with section 8 of the Code, this report will be presented to the Council.