

OBERON COUNCIL – CODE OF CONDUCT COMPLAINTS

AGAINST COUNCILLOR Z. HANDELSMANN

BY GENERAL MANAGER, LEANNE MASH

**ALLEGED BREACHES OF SECTIONS
4.8, 6.1, 6.3, 9.2 (a) and (b), and 9.7
of Council's Code of Conduct.**

Preamble

By letter dated 21st February, 2011 Council's General Manager wrote to me in my capacity as a member of the Conduct Review Panel of the Alliance of Oberon, Lithgow and Mid-Western Councils and referred to me in accordance with Clause 11.1 of the Code a number of alleged breaches of the Code by Councillor Handelsmann. These complaints are as set out in Annexure "A" to this Report.

Pursuant to Clause 12.9 of the Code, the Reviewer is responsible for making inquiries into the complaints and must determine which course of action available under Clause 12.9 should be taken. In this instance, I have elected to make inquiries into the complaints.

Accordingly, pursuant to Clause 12.20 I must make findings on whether, in my view, the conduct complained of comprises a breach or breaches of the Code. Further, I may recommend Council take any of the actions provided for in the Code that I consider reasonable in the circumstances. I am required to report my findings and the reasons for those findings in writing to the Council, the complainant and the person the subject of the complaints.

Upon receipt of my Report, Council may make a determination that the Councillor did, or did not, breach the Code of Conduct. If Council determines that the Councillor did breach the Code, it may decide by Resolution to take any of the actions prescribed in Clause 12.25 of the Code.

Report on Reviewer's Enquiry.

(A) The Complaints.

The complaints by the General Manager are as set out in annexure "A".

(B) Investigation and Process

1. Material supplied by the General Manager in support of the complaints comprised a series of documents collectively forming annexure "B" to this Report. Upon receipt of this information, I discussed the material with the complainant by telephone. Having regard to the material then before me, I determined to conduct an inquiry into the complaints.
2. On 18th March, 2011, I sent by post and email a letter to Councillor Handelsmann wherein the full text of the General Manager's complaints were set out and copies of the supporting documents provided by the General Manager were attached. A detailed explanation was provided to the Councillor of the process of inquiry being undertaken by me and my requirement to report my findings to Council, the General Manager and the Councillor, and my ability to make recommendations to Council. I confirmed my decision to conduct an inquiry into the complaints. The Councillor was requested to provide a response within twenty-one days or as soon as possible thereafter if twenty-one days was insufficient. She was invited to put before me any matters she considered relevant. She was informed that when I had received her written response I would write to her and invite her to meet with me and address me in person should she so desire. She was advised that I would, when I had considered all the available material in respect of the complaints, prepare a draft Report and submit it to her and seek any final comments or material which she would like to submit, and that subject thereto I would make my final, formal Report to Council.
3. By letter of 18th March, 2011, I advised the General Manager that I had determined to inquire into her complaints, advised her that I had notified Councillor Handelsmann of the complaints and had invited her written response and had invited her to meet with me. I advised that after consideration of Councillor Handelsmann's response I would inform the General Manager of the Councillor's response and seek any further comment

from the General Manager and that when I had received all responses from both parties I would prepare a confidential draft Report and refer it to each party for final comment before submitting my final Report to Council.

4. On 31st March, 2011, the Councillor telephoned me and advised me that she would not be responding to my letter, that the matters the subject of the complaints were “beyond comment”, and she would allow me to deal with the complaints as I saw fit without any comment from her. She confirmed this position by email on that date advising “I have nothing to say in reference to the above complaint, I will leave you to make your Report without my engagement and I will accept your decision without objections”. A further email followed on the same day: “Firstly, my apologies for not responding earlier to your letter regarding Code of Conduct Complaint dated 18th March, 2011 but I only read it today as I was on holidays until yesterday. Unfortunately I have nothing to say of substance, other than that I regret the time, effort and most of all the public money that the matter must be consuming. I will accept whatever you and the Council may decide”.
5. I notified the complainant of the response and sought submission of any further material which the complainant may wish to present. The complainant had nothing more to add.
6. In light of the Councillor’s above response, I have deemed it unnecessary to provide to the Councillor a draft Report seeking further comment, and I have therefore prepared only this Report as my final Report.

FINDINGS

Complaint No. 1

Alleged breaches of Code arising from email of 12th November, 2010 to General Manager asserting that the General Manager is not receptive “to any genuine enquiry” in relation to financial statements “in light of Item 11.01.04 in the Business Paper”. That item in the Business Paper is no more than the supply of information as

requested by Councillors, accompanied by explanatory notes prepared by the General Manager.

Councillor Handelsmann's clear indication is that the General Manager is unwilling to participate in good faith in an inquiry into Council finances. This assertion is based solely on Item 11.01.04 of the Business Papers, with no further explanation or justification. I find this to be prima facie a breach of Code 4.8 and Code 6.3, in that it makes without any apparent justification, an assertion that the General Manager would not participate in good faith into an inquiry by Council into an aspect of Council's financial position; it impugnes the General Manager's integrity without justification.

Complaint No. 2

Alleged breach of Code arising out of an exchange of emails relating to delays in obtaining new business cards. These emails constitute a sequence of requests, and express frustration at the delay, apparently over a period of about six weeks. The Councillor suggests to the Mayor that the staff "don't give a damn" about her, or that the delay is symptomatic of Council administration. The emails of 25th November, 2010 and 16th December, 2010 to staff member Sharon Swannell I do not consider breach the Code.

Complaint No. 3

Alleged breach of Code arising out of emails relating to closure of library during the Christmas period. The tenor of these emails of 10th December, 2010 from the Councillor to the complainant is that Council's priorities and values are wanting; that the General Manager prefers to spend \$6,000.00 of allegedly un-budgeted funds on setting up her new office at the expense of public access to the library over the Christmas period. This allegation appears to be unfounded. Again, the General Manager's integrity is impugned without justification, and the email shows a lack of respect for the General Manager, is derogatory both to the General Manager and the

Library Manager, without justification. I consider this to prima facie constitute a breach of the Code 4.8 and 6.3.

Complaint No. 4

Alleged breach of Code arising out of email relating to FAGs. The Mayor sought Councillor Handelsmann's assistance in researching access to FAGs. The Councillor agreed to assist to "help the cause of getting Council through the hump, not only whine", but subsequently withdrew her offer due to the pressure of other personal commitments. I find no breach of the Code.

Complaint No. 5

Alleged breach of Code arising from exchange of emails concerning the closure of Jeld Wen. The General Manager circulated an advice to Councillors and senior staff that a local business, Jeld Wen, was to close. Councillor Handelsmann's response was gratuitously discourteous, critical and disrespectful. I consider this prima facie to be a breach of the Code 4.8 and 6.3.

Complaint No. 6

Alleged breach of Code arising from email from Councillor Handelsmann to Mayor declining invitation to Council's social gathering. The Councillor's reply to the Mayor implies that Councillors have a personal antipathy towards her and that the Councillors generally make decisions based not on merit, but on the basis of personal favour, i.e. corrupt decisions. Such an allegation must be supported by evidence, and the Councillor would be obliged pursuant to Clause 11.6 of the Code to report such suspected breaches of the Code. The appropriate way of making such accusations is by way of a report of breach, supported by evidence. This, however, is not the case in this instance. I consider this unsupported allegation to prima facie constitute a breach of Code 4.8 and 6.3, being gratuitously derogatory of fellow Councillors, and in effect accusing them of corrupt conduct, without justification.

Complaint No. 7

Alleged breach of Code arising out of email of 17th January, 2011 from Councillor Handelsmann to the Mayor and General Manager, and an article published on 20th January, 2011 in the Oberon Review, and telephone conversations between the Councillor and General Manager on 18th January, 2011 concerning Council's International Women's Day event. In this instance, Council Resolved (Councillor Handelsmann dissenting) to delegate to the General Manager to seek expressions of interest from community groups to conduct an International Women's Day event, establish criteria and deliver the event. In due course, the General Manager made arrangements which were publicised and which failed to meet with the approval of Councillor Handelsmann. Councillor Handelsmann published a letter in the Oberon Review on 20th January, 2011 highly critical of the International Women's Day proposal. She expresses an opinion contrary to that of the General Manager but does not name the General Manager. The letter expresses a strong opinion. Disagreement on viewpoints as such does not per se bring Council or its officers into disrepute. In any event, the letter was written by the Councillor as a private citizen and not in the course of carrying out her functions as a Councillor. I do not consider the letter published in the Oberon Review to constitute a breach of the Code.

The emails, sent as a Councillor, expressed a robust opinion, but make unsubstantiated allegations to the General Manager that she is making decisions for the wrong reasons, i.e. "working in league with the Mens' Shed to keep the women of Oberon down". This at least constitutes a display of disrespect and is prima facie a breach of Code 4.8 and 6.3.

Complaint No. 8

Alleged breach of Code arising out of email of 21st January, 2011. The Councillor wrongly claims that she did not know that the General Manager was involved in the "matters raised". In fact, the Councillor had voted against the appointment of the General Manager when Council approved of such appointment. Furthermore, the email implies that the General Manager is not adequately handling her job when

“occasional controversies that are unavoidable occur”. I find prima facie a breach of Code 6.1 (c), 4.8 and Code 6.3.

CONCLUSION

I have completed my deliberations on the matter and accordingly submit this Report to Council. Before Council may impose any sanction, it must make a determination that the Councillor has breached the Code. That is to say, Council may choose to simply note the Report, or it may make a determination that the Councillor has breached the Code, or that the Councillor has not breached the Code. If the Council determines that breaches have occurred, it must determine specifically what breaches have occurred, i.e. it should deal with each of the above breaches separately and find either that the breach has occurred, or has not.

If the Council determines that a breach or breaches have occurred, it may then elect to take a course or courses of action pursuant to Clause 12.25 of the Code.

RECOMMENDATION

I have found prima facie that there are a number of breaches and should Council determine that any or all of those breaches have in fact occurred, my recommendation to Council would be that Councillor Handelsmann be counselled, as the breaches which I have found prima facie constitute a pattern of behaviour which is detrimental to the effective working of Council, and destructive of the constructive relationships which should exist between Councillors, and between Councillors and senior management.

Dated: 6th May, 2011.



T.J. Le Fevre

Solicitor

Independent Reviewer