

MINUTES - MEETING OF THE PORT PHILLIP CITY COUNCIL - 17 JULY 2024



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

Internal Arbitration Process – City of Port Phillip (IAP 2024-23)

Applicants: Councillors Christina Sirakoff and Andrew Bond
Respondent: Councillor Robbie Nyaguy
Arbiter: Yehudi Blacher

DECISION AND STATEMENT OF REASONS

Background

1. The applicants in this matter are Crs. Christina Sirakoff and Andrew Bond.
2. The respondent is Cr. Robbie Nyaguy.
3. On 1 May 2024 Crs. Sirakoff and Bond made a joint application under s 143 of the *Local Government Act 2020* for an internal arbitration process to make a finding of misconduct against Cr. Nyaguy in relation to a Facebook posting made on 4 February 2024 by Cr. Nyaguy ([Attachment 1](#)). The posting was made immediately prior to the beginning of the annual pride March in the City of Port Phillip.
4. Specifically, councillors Sirakoff and Bond allege that Cr. Nyaguy's posting breached the standards of conduct set out in Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020.

The Application

5. In her section of the complaint Cr. Sirakoff stated that Cr. Nyaguy made a number of statements in his posting which were inaccurate, misleading and disrespectful. She referenced his use of the words "fair-weather friends" to inaccurately describe her lack of commitment to the LGBTIQA+ community in Port Phillip. She also stated that Cr. Nyaguy's reference to actions of Neo-Nazi's by imputation associated her with that group.

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Specifically, Cr. Sirakoff accused Cr. Nyaguy of breaching Clause 1 - Treatment of Others, Clause 2 - Performing the role of a Councillor and Clause 4 - Must not mislead the public, of the standards of conduct.

6. In his section of the application Cr. Bond stated that Cr. Nyaguy made a number of false statements. He also stated that by using the words "Don't forget that when they walk past you smiling in their rainbow t-shirts" Cr. Nyaguy was implying that Crs. Bond, Clark and Sirakoff supported actions taken by Neo Nazi's the previous year. In doing so Cr. Bond accused Cr. Nyaguy of encouraging members of the public to harm the three councillors either verbally, or physically or both. Cr. Bond accused Cr. Nyaguy of breaching Clause 2 of the standards of conduct.

Directions Hearing

7. A Directions Hearing on this matter was held on 6 May 2024. In attendance were Crs. Sirakoff, Bond and Nyaguy and the Council's Councillor Conduct Officer, Ms. Joanne McNeill. At the hearing the Arbiter explained the arbitration process to the parties. He advised Cr. Nyaguy, that he would consider any submission made by him relevant to the complaint lodged by the applicants. He requested that Cr. Nyaguy, specifically address the reasons why he did not think his comments breached the standards of conduct set out in Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020. Cr. Nyaguy provided his response on 22 May 2024.

Cr. Nyaguy's response

8. In his response Cr. Nyaguy made the following points.
 - a) He was shocked that two of his councillor colleagues had lodged the complaint and did not believe that the comments made in the posting 'violated' his commitments and obligations as a councillor.
 - b) Following a complaint to the Mayor from Cr. Bond, Cr. Nyaguy met with the Mayor and Cr. Bond. At that meeting Cr. Nyaguy disagreed with Cr. Bond's view that by using the words "fair-weather friends" he was endangering Cr. Bond and his fellow councillors.
 - c) He stated that the use of the term "fair-weather friends" accurately described the three councillors referred to in the posting.

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- d) Cr. Nyaguy stated that he made the posting on the day of the annual Midsumma Pride March as a reflection of the importance of the day to the queer community. He said that the posting reached 250-300 people.
- e) Cr. Nyaguy concluded his response by stating that after Cr. Sirakoff contacted him about the posting he told her that he disagreed with her concerns and invited her to contact him. He also noted that when he had contacted her on other matters she had had not responded to him.

Substantive Hearing and considerations

- 9. The Hearing on this matter was held on 19 June 2024. In attendance were Crs. Sirakoff, Bond and Nyaguy. The Councillor Conduct Officer Ms. Joanne McNeill was also in attendance.
- 10. At the Hearing the applicants reiterated the points made in their complaint. The respondent did likewise.
- 11. The applicants emphasised that:
 - a) Cr. Nyaguy was factually incorrect to state in his posting that the councillors had voted against the LGBTIQA+ Action Plan.
 - b) Cr. Nyaguy was factually incorrect to state that they supported the cancelling of the drag storytime event.
 - c) Cr. Bond stated that the use of the term “fair-weather friends” could potentially have resulted in verbal or physical harm to the named councillors.
 - d) The language used by Cr. Nyaguy had caused Cr. Sirakoff considerable distress by linking her to pressure from Neo-Nazis to cancel the storytime event.
- 12. In response, Cr. Nyaguy acknowledged that he had not been at the meeting at which the decision on the Action Plan was made nor had he checked the record of the meeting. A check of the records of meetings the relevant meetings relating to the Action Plan showed that both councillors supported the release of the Action Plan for public consultation and abstained from the final vote endorsing the report.

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13. In relation to the applicants' interpretation that his posting linked them to actions by Neo-Nazis, Cr. Nyaguy stated that it was not his intention. The relevant words are- "Last year, Neo-Nazi's succeeded in cancelling a drag storytime for local kids, and our fair-weather friends supported it and some said we shouldn't run such events. Don't forget that when they walk past you smiling in their rainbow t-shirts."
14. Whatever Cr. Nyaguy intention, a common sense understanding of his use of the word 'that' clearly makes the link. At the hearing Cr. Nyaguy acknowledged that he could have made his point about the councillors being "fair-weather friends" without reference to Neo-Nazis. In addition, his reference to their support of the decision to cancel the storytime event is incorrect as it was not made by the Council but by the Council's Chief Executive Officer.
15. Despite his acknowledgment of the errors at the Hearing, Cr. Nyaguy indicated that he would not delete the posting or to apologise to the complainants.

Arbitration Decision

16. There are two relevant considerations in determining this matter. Firstly, whether the statements made by Cr. Nyaguy are factually correct. Secondly, if not, whether the words used by him breached the relevant standards of conduct.
17. By his own admission Cr. Nyaguy has acknowledged that his assertion that the applicants voted against the Action Plan was incorrect as was his reference to their support of the decision to cancel the event.
18. He also acknowledged that he could have better phrased the paragraph referring to fair-weather friends and Neo-Nazis.
19. As to whether his words contravened the relevant standards of conduct, I find that they were abusive, disrespectful, and mislead the public as to the views of the applicants, and make a finding of misconduct against Cr. Nyaguy. Further, I am satisfied that Cr. Nyaguy's words did have the potential to incite others to cause physical harm to the applicants.

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Sanctions

20. I acknowledge the importance of the Action Plan for Cr. Nyaguy and the distress caused to him by the disgraceful actions of Neo-Nazis at the Midsumma Pride march the year before. However, as a councillor Cr. Nyaguy has the responsibility to comply with all the provisions of the Local Government Act. It is unfortunate that Cr. Nyaguy did not take up the opportunities to amend his posting once he became aware, prior to the Hearing, of the distress caused to the applicants.
21. Moreover, at the Hearing, having acknowledged his factual errors in the posting and that he could have used his word more judiciously, he again indicated that he would not change the relevant words in the posting.
22. Accordingly, I direct that, at the next meeting of the Council, Cr. Nyaguy should publicly apologise to Crs. Sirakoff and Bond. The apology should be unequivocal in acknowledging that he made false accusations regarding the councillors voting on the LGBTIQA+ Action Plan and used words which could reasonably be understood by them as abusive, disrespectful. The apology should also acknowledge that he mislead the public as to their views regarding the Action Plan and in relation to Cr. Sirakoff caused her great distress by the linking the decision to cancel the drag storytime event with actions taken by Neo-Nazis.
23. I further direct that Cr. Nyaguy make a public apology no later than 2 days after the next meeting of Council, by deleting the posting on Facebook and any other social media platform on which it may appear and replacing it with the words used in his apology.
24. Finally, I direct that Cr. Nyaguy undertake training in the appropriate use of social media and that he not make any posting on social media in relation to Council matters until the Mayor is satisfied that he understands how to use such platforms consistent with his statutory obligations as a councillor. This training should be done by a trainer approved by the Council.

Yehudi Blacher

Arbiter

16 July 2024

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Attachment 1 - Facebook posting by Cr. Nyaguy

Dear Port Phillip rainbow friends and family,

Beware fair-weather friends. They love to play with rainbows but disappear when it rains.

Today I'll be matching (*sic*) in the Midsumma Pride Parade alongside my fellow Port Phillip Councillors and staff. Some of these Councillors took our votes, attend our parties, and then abandon us when it matters

During the 2020 election eight of the nine councillors elected to Port Phillip signed the 'Rainbow Pledge' from the Victorian Pride Lobby. The pledge is a program of actions to make local government more inclusive, responsive and accessible to LGBTIQ+ people. Three of them broken (*sic*) their pledge.

Last year, when our LGBTIQ+ Action Plan was put to Council - Crs Bond, Clark and Sirakoff - voted against it. They did the same a year before when it was first proposed. Delivering an Action Plan was core to the Rainbow Pledge.

Last year, Neo-Nazi's succeeded in cancelling a drag storytime for local kids, and our fair-weather friends supported it and some said we shouldn't run such events.

Don't forget that when they walk past you smiling in their rainbow t-shirts.

I'd rather they keep their promises and protect us when we're attacked.

Nobody needs fair-weather friends.

With you under rainbows and rain,

Robbie

P.S here's a photo below of me marching, and meaning it. Happy Midsumma!