

**LOCAL GOVERNMENT PECUNIARY INTEREST & DISCIPLINARY  
TRIBUNAL**

**LOCAL GOVERNMENT ACT, 1993**

**PIDT No 1/2006**

**DIRECTOR-GENERAL, DEPARTMENT OF LOCAL  
GOVERNMENT**

**RE: COUNCILLOR JOANNE MORRIS,  
HURSTVILLE CITY COUNCIL**

**DETERMINATION**

1. By its Decision dated 30 June 2008 the Local Government Pecuniary Interest & Disciplinary Tribunal determined as proved a complaint that Ms Joanne Morris, previously an elected member of the Hurstville City Council, lodged a written disclosure of interests return for the period 1 July 2003 to 30 June 2004 knowing it to be false. That determination was undertaken pursuant to s.470 of the *Local Government Act*, being a determination of the proceedings without a hearing. That determination was concerned solely with the issue of the alleged breach, with the issue of the consequences that flow from any breach that may be proved being agreed between the parties to be addressed separately, and consequently.
2. This Determination is concerned with a matter of consequence flowing from the Tribunal's determination of breach.

### **Determination Without a Hearing**

3. For the purposes of determining the matter of consequence the Director-General and Ms Morris have agreed that the proceedings may be determined without a hearing. The Director-General has filed with the Tribunal and reads (without objection) an Affidavit by Warren James Park dated 8 August 2008 concerning a memorandum issued to all councillors regarding the lodgment of returns and the information contained with that memorandum. Ms Morris has filed with the Tribunal and reads her "Affidavit" (August 2008). Although labeled in that way the document is unsworn; but that notwithstanding the Tribunal has had regard to it as evidence representing Ms Morris's position with respect to consequence. That document was not objected to save with respect to paragraphs 29 and 30 which the Director-General, in his submissions, submits is not relevant to the matter of consequence. Those paragraphs detail the circumstances in which the complaint against Ms Morris was made, being brought by members of other political parties other than the party of which Ms Morris was a member. In the circumstances of this determination the Tribunal has regarded those paragraphs as being read.
4. In the circumstances of this determination the Tribunal observes that even having regard to the objection to the certain paragraphs of Ms Morris's Affidavit as above referred there are no material facts in dispute between the person who made the complaint and the person against whom the complaint is made. For the purposes of s.470(1)(c) the Tribunal is of the opinion that public interest considerations do not require a hearing.

### **Factual Background**

5. The Tribunal refers to its Determination of 30 June 2008 for the background to this complaint.

6. Ms Joanne Natalie Morris was first elected as a councillor of Hurstville City Council on 27 March 2004. Ms Morris was elected as Mayor of Hurstville City Council for the period 14 April to 14 September 2005. Ms Morris resigned as a councillor of Hurstville City Council with effect from 1 October 2007.
  
7. In evidence before the Tribunal Ms Morris states that she did not have any qualifications relating to business management or commercial activity and that she was not familiar with company laws or laws concerning trusts. She states that the corporation that was not identified on her return was set up as a part of a trust to assist franchisees who were the subject of unfair treatment by franchisors, that her role was in effect voluntary and she did not expect to receive any remuneration or benefit for her role. The trust structure was set up so that members of the trust could remain anonymous to avoid any anticipated reprisals that might occur if franchisors became aware of their participation. She states that when she lodged her statutory return she was unaware that she was a director, secretary and shareholder of the relevant corporation, a matter which the Tribunal will address further, below. She states that her involvement with the corporation was limited and shortlived and that upon becoming aware of the allegation of the failure to disclose her role with the corporation she informed the General Manager of her omission and sought to make the necessary disclosure. She also states that the complaint did not arise as the result of any conflict between her interest (or more correctly stated, duty) as a councillor and her interest in the relevant corporation. She also stated that the complaint came from the floor of a council meeting sometime after her participation in the corporation had ceased, and from political opponents. Ms Morris also tendered in evidence three character references attesting to her good fame and character.
  
8. As set out above, the Director-General tendered in evidence before the Tribunal an affidavit from Mr Park, Senior Manager, Administration, of the Hurstville City Council. That evidence establishes that well before Ms Morris lodged her completed return all councillors, including Ms Morris, were sent a copy of the

relevant regulations which included Regulation 40G relating to the disclosure of interests and positions in corporations.

### **The Tribunal's Powers**

9. The Tribunal's powers in relation to the matter of consequence are set out in s.482(1) of the *Local Government Act* which provided (at the date of the breaches of the Act, namely 14 September 2004) that:

“(1) The Pecuniary Interest Tribunal may, if it finds a complaint a councillor is proved:

- (a) counsel the councillor, or
- (b) reprimand the councillor, or
- (c) suspend the councillor from civic office for a period not exceeding six months, or
- (d) disqualify the councillor from holding civic office for a period not exceeding five years.”

10. An additional power to suspend a councillor's right to be paid any fee or other remuneration for up to six months was inserted into s.482(1) by the *Local Government Amendment (Discipline) Act 2004* with effect from 1 January 2005. That power does not apply in the present case.

### **Submissions on Consequence**

11. The Director-General submits that the breaches of the Act are serious but does not submit that disqualification (s.482(1)(d)) is appropriate, and observes that, having regard to the fact that Ms Morris has resigned from the Council from 1 October 2007, suspension is not practically available. The Director-General submits that the appropriate consequence is a reprimand pursuant to s.482(1)(b).

12. The Director-General accepts that the breach caused little or no practical or adverse consequence in respect of Council business and that Ms Morris made no profit or gain, and that she took positive steps to seek to rectify the return by notification to the General Manager, albeit that that course was not in the form contemplated by the Regulation (by submitting a fresh return). The Director-General acknowledges Ms Morris's embarrassment and remorse at the breaches of the Act and her acknowledgement that her understanding of the obligations are now much clearer. The Director-General also observes that Ms Morris was self evidently very lax about the conduct of her own personal and professional affairs primarily in not reading documents put to her by her advisers.
13. Ms Morris, through her counsel, makes reference to the factual circumstances concerning the breach and her role as a councillor, as set out above, and directs attention to the character references provided in support of a finding that Ms Morris is a person of good character and that it is not in her character to deliberately the disclosure provisions of the Act. In this respect the Tribunal would observe that Ms Morris is undoubtedly a person of good character. As submitted by Ms Morris her involvement with the corporation the subject of the breach was shortlived. The Tribunal notes however that the duration of involvement with the corporation is not relevant to the duty of disclosure pursuant to the Regulation, and of marginal weight with respect to the issue of consequence.
14. In evidence tendered before the Tribunal, and in submissions made to the Tribunal, Ms Morris emphasises her lack of knowledge that she in fact was a director and shareholder in the corporation the subject of the breach. She claims that she simply signed documents that were placed before her, and accepts that if she would have read the documents then she would have become aware that she was being made a director, secretary and shareholder.
15. The Tribunal finds such an assertion as insufficient to operate to mitigate any consequence following from a breach of the Act. It is generally no defence to the

consequence of signing a document that a person did not make the effort to at least read the document: see for example *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd* (2004) 79 ALJR 129. In circumstances in which the effect of signing the document is to make the person an office bearer within a corporation, the consequences even beyond the consequences under the *Local Government Act* and addressed in this Determination, are far reaching. For the purposes of this Determination the Tribunal does not regard as a mitigating factor a claim of lack of knowledge that she in fact was made a director by executing various trust documents or other forms.

16. That approach would be the position even without recourse to those documents. However recourse to those documents shows that where Ms Morris signed the documents she was described as “Name of **Director/Secretary**” (emphasis added). Additionally, in her first communication to the General Manager of the Council following the raising of the complaint no mention is made of the lack of knowledge of her becoming a director; rather the correspondence is concerned with whether her role in the corporation was exempt pursuant to Clause 40G(2).
  
17. In this respect it is apparent that in that correspondence, and subsequent correspondence, including legal advice obtained by the Council’s external lawyers, there was some discussion and uncertainty as to whether Ms Morris’s role was exempt pursuant to Clause 40G(2). That clause exempts disclosure for corporations that satisfy the three components of that clause. In that correspondence Ms Morris sought to argue that the corporation was effectively for a community purpose, that it applied its profits in promoting objectives, and did not (actually) pay a dividend to its members. The provisions of Clause 40G(2) however are quite clear and reflect prescriptions as to the matters which qualify as an exemption; however they do not leave as open to interpretation satisfaction of the clause in instances where a particular councillor considers that because profits happen to be applied in promoting objectives, or no dividends are in fact paid, the exemption may exist. This is because the terms of Clause 40G(2) are mandatory in nature; but the clause

is not engaged simply because a corporation happens to apply its profits in a particular way or happens to not pay dividends, either as a discretion or as a trading result.

18. The Tribunal acknowledges that there is no evidence that Ms Morris derived any income from the corporation the subject of the breach, that she sought to correct (as above referred) her failure to disclose her involvement in the corporation, and that there is no evidence of a conflict between the company and any matter before the Council.
19. In this last respect though it is to be observed that the disclosure requirements relevant to annual returns in the *Local Government Act* and *Regulation* are not engaged in response to or in anticipation of any conflict or other pecuniary interest. The disclosure requirements are requirements in a vacuum of any such potential conflict. When and if any conflict later arises then there are separate obligations under the *Local Government Act* (see for example s.451). Strictly speaking therefore the absence of any actual conflict is not a matter that should operate to significantly affect the matter of consequence for a breach.
20. The Tribunal also acknowledges Ms Morris's agreement that the matter be determined without a hearing, and the acknowledgement of her breach of the Act at an early time in the proceedings before the Tribunal. In submissions before the Tribunal Ms Morris candidly accepts the findings of the Tribunal with respect to breach and that she ought reasonably to have known that the form that she lodged was false and misleading.

### **Finding on Consequence**

21. In *Counsellor Stott* (Ashfield Municipal Council) [PIT3/2005] dated 10 September 2006 the Tribunal considered a breach of s.449 and emphasised, by reference to its decision in *Longbottom*, the importance of the due and complete lodgment of

pecuniary interest returns, being predominantly concerned with the proper transparent and accountable decision making process.

22. In *Longbottom* (Lane Cove Council) [PIT1/2004] dated 7 April 2005 the Tribunal stated (para.42, page 20) that:

“Careful, complete and due compliance with the legislation is of great significance to the proper transparent and accountable decision-making process in local government. It is not an obligation to be taken lightly by councillors, either in the lodgment of the return or in the careful attention to the detail required for inclusion in the return.”

At paragraph 26 (page 21) it said similarly:

“The incompleteness of a return can have ... the very serious consequence of frustrating the very object of the policy where councillors and members of the public cannot readily ascertain from an incomplete pecuniary interest form whether or not a potential conflict of interest arises. The breaches are made more serious in a sense that they were committed by a very experienced councillor and the explanation of an oversight or haste, while accepted by this Tribunal as factually accurate, are totally unsatisfactory.”

“This Tribunal wishes to make it plain, if it is not already plain from the terms of this decision, that this Tribunal is fast losing patience with those who do not, in a timely manner, fully and accurately disclose what is required by the Regulations. There have been more than ample warnings from this Tribunal and the Department of the importance of timely and careful and complete returns. If a person takes on the responsibility of the office of a councillor then part and parcel of that responsibility is an obligation to comply with the provisions of the Act relating to the pecuniary interest returns and to do so in a thorough and complete manner. An incomplete return can frustrate the very policy behind the legislation ...” (paragraph 49, page 21).



23. Ms Morris was an experienced councillor and had lodged pecuniary interest returns, including a return for the relevant period which, although failing to disclose a corporation, disclosed her participation in another corporation. The Tribunal, to the extent that it needs to, wishes to repeat what was said in previous decisions concerning returns. The disclosure requirements are part and parcel of the privilege, rights and duties that a councillor gains from participation in local government, as sourced in the *Local Government Act*. Their importance cannot be understated.
24. Ms Morris does not submit that no consequence should flow from her breach of the Act given the seriousness of that breach, but submits that the consequence of counselling is appropriate. It is to be noted in this respect that she has resigned as a Councillor, and describes as unlikely any future need to lodge a return.
25. Having regard to all of the circumstances set out above the Tribunal is of the opinion that the appropriate consequence is that Ms Morris be reprimanded pursuant to s.482(1)(b) of the *Local Government Act*.
26. Pursuant to S484(3)(b), the Tribunal will make this Determination and its Determination of 30 June 2008 in relation to this matter publicly available.

Dated: 1 October 2008

  
**ADRIAN GALASSO SC**

**Local Government**

**Pecuniary Interest and Disciplinary Tribunal**



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**RE: COUNCILLOR JOANNE MORRIS,  
HURSTVILLE CITY COUNCIL**

**ORDER**

The Tribunal finds as proved a complaint made by the Director-General, Department of Local Government, pursuant to s.460 of the *Local Government Act 1993*, that Ms Joanne Morris, then being a Councillor of the Hurstville City Council, contrary to Chapter 14, Part 2 of that Act did not lodge her 2003 – 2004 Pecuniary Interest return in accordance with s.449 of the *Local Government Act 1993* and in the form prescribed by the Regulations.

Pursuant to s.482(1) of the *Local Government Act 1993* the Tribunal reprimands Ms Joanne Morris.

DATED: 1 October 2008



**ADRIAN GALASSO SC**

**Local Government**

**Pecuniary Interest**

**And Disciplinary Tribunal**

