
JURISDICTION : STATE ADMINISTRATIVE TRIBUNAL

ACT : LOCAL GOVERNMENT ACT 1995 (WA)

CITATION : KEPERT and LOCAL GOVERNMENT
STANDARDS PANEL [2019] WASAT 78

MEMBER : MS D QUINLAN, MEMBER

HEARD : 24 JULY 2019

DELIVERED : 25 SEPTEMBER 2019

FILE NO/S : CC 2764 of 2018

BETWEEN : STEVE KEPERT
Applicant

AND

LOCAL GOVERNMENT STANDARDS PANEL
Respondent

ATTORNEY GENERAL FOR WESTERN
AUSTRALIA
Intervenor

Catchwords:

Local Government - Review of decision of Local Government Standards Panel - Three alleged minor breaches - Facebook posts - Onus of proof - Whether making use of office as a councillor - Whether improper use of office - Whether intent to cause detriment - Credibility

Legislation:

Local Government (Rules of Conduct) Regulations 2007 (WA), reg 3, reg 7, reg 7(1), reg 7(1)(b)

Local Government Act 1995 (WA), s 2.10(a), s 2.10(b), s 5.103, s 5.104(1), s 5.105(1)(a), s 5.106, s 5.107, s 5.110, s 5.110(6), s 5.110(6)(b), s 5.125, Pt 5, Div 9

State Administrative Tribunal Act 2004 (WA), s 24, s 27, s 29(1), s 37(1), Pt 3, Div 3

Result:

Decision as to breach is affirmed and the sanctions are varied

Category: B

Representation:

Counsel:

Applicant : In Person
Respondent : Ms R Paljetak
Intervenor : Ms R Paljetak

Solicitors:

Applicant : N/A
Respondent : State Solicitor's Office
Intervenor : State Solicitor's Office

Case(s) referred to in decision(s):

Hipkins and Local Government Standards Panel [2014] WASAT 48
King and Local Government Standards Panel [2018] WASAT 42
Ord Irrigation Cooperative Ltd v Department of Water [2018] WASCA 83
Treby and Local Government Standards Panel (2010) 73 SR (WA) 66;
[2010] WASAT 81

REASONS FOR DECISION OF THE TRIBUNAL:

Introduction

1 These proceedings arise in the Tribunal pursuant to an application under s 5.125 of the *Local Government Act 1995* (WA) (LG Act). The applicant, Councillor Steve Kepert (Cr Kepert) a council member of the City of Melville (City) seeks a review in the Tribunal of findings made by the Local Government Standards Panel (Panel) on 1 October 2018 of three minor breaches and orders as to sanction made by the Panel on 20 November 2018.

2 The respondent in these proceedings is the Panel. The role in these proceedings of the Panel was limited to the production of a bundle of documents provided pursuant to s 24 of the *State Administrative Tribunal Act 2004* (WA) (SAT Act).

3 The Attorney General for Western Australia exercised his right to intervene in these proceedings under s 37(1) of the SAT Act to assist the Tribunal in its determination of these proceedings and, where necessary, by acting as a contradictor to the case presented by Cr Kepert.

4 The hearing of this review was held in the Tribunal on 24 July 2019.

5 Pt 3, Div 3 of the SAT Act sets out the scope of the Tribunal's review jurisdiction. Section 29(1) of the SAT Act provides the Tribunal with the corresponding jurisdiction, functions and discretions as those of the Panel under the LG Act.

6 Pursuant to s 27 of the SAT Act, the purpose of the review by the Tribunal is to produce the correct and preferable decision at the time of the review. Section 27 of the SAT Act also provides that the Tribunal:

- (a) is not limited to the reasons given by the Panel or the grounds for review set out in the application;
- (b) considers the decision afresh at the time of the review; and
- (c) may take into account any additional or new information which was not provided at the time the original decision was made.

The three complaints - SP 19, 20 and 22 of 2018

7 On 13 and 15 March 2018, the Panel received three separate complaints forwarded by the complaints officer at the City all complaining of a minor breach under s 5.107 of the LG Act in that Cr Kepert had allegedly breached reg 7 of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (the Regulations).

8 Relevantly, it is alleged that Cr Kepert breached reg 7(1)(b) of the Regulations which provides that a council member must not make improper use of their office to cause detriment to another person.

9 The three complaints were made as follows:

- (a) a complaint of minor breach made by Mr Keiran Emery on 6 March 2018 (SP 19 of 2018): see pp 39-43 of the respondent's bundle;
- (b) a complaint of minor breach made by Mr Carlin on 16 February 2018 (SP 20 of 2018): see pp 44-51 of the respondent's bundle; and
- (c) a complaint of minor breach made by Ms Lorna Hardy on 16 February 2018 (SP 20 of 2018): see pp 52-56 of the respondent's bundle.

Issues for determination

10 The principal issue for the Tribunal to determine in these proceedings is whether Cr Kepert has committed any of the alleged three minor breaches (SP 19, 20 and 22 of 2018) and, if so, to impose the appropriate sanction or sanctions.

11 In determining the principal issue, the Tribunal must also progressively determine the following sub-issues:

- Issue 1: Whether Cr Kepert was a councillor of the City at all material times.
- Issue 2: Whether Cr Kepert made a series of posts to Facebook as alleged on or around 28 January 2018.
- Issue 3: If the Tribunal finds that Cr Kepert made any, or all, of the posts to Facebook identified in

Issue 2, whether when doing so was Cr Kepert making use of his office as a council member.

Issue 4: If the Tribunal finds that Cr Kepert was making use of his office as a council member, whether that use was improper.

Issue 5: If Issues 1 to 4 are found to be 'yes', whether Cr Kepert made improper use of his office as a council member to cause detriment to Mr Thomas Carlin.

Issue 6: If Issues 1 to 5 are found to be 'yes', what is the appropriate sanction to impose under s 5.110(6) of the LG Act.

Background and alleged facts

12 A number of background facts are not in dispute between the parties. Where alleged facts are in dispute, the Tribunal will indicate that they are alleged facts which are disputed by Cr Kepert and determine the alleged disputed fact later in these reasons.

13 Cr Kepert was elected to the position of councillor of the City in an ordinary election held on 21 October 2017. Cr Kepert has continued to remain an elected councillor, and his term is due to expire on 16 October 2021.

14 On or about 28 January 2018, it is alleged that Cr Kepert made the following comments on what is known as the Melville City Chat Facebook page:

Steve Kepert

Tom Carlin Are you sure you want to damage your reputation in the Melville area? This is obscene. Remove these trolls immediately or I consider you complicit in the facilitation of cyber bullying in our community.

(which is the subject of complaints SP 19 and 20 of 2018 and hereafter referred to in these reasons as 'Post 1')

Steve Kepert

Tom Carlin Absolutely disgusting behaviour. You've made a very big mistake Tom. You have crossed the line and are facilitating cyber

bullying. As a community leader I have to recommend to the residents that they will be unsafe on your page.

(which is the subject of complaints SP 19 and 20 of 2018 and hereafter referred to in these reasons as 'Post 2')

- 15 On or about 28 January 2018, it is alleged that Cr Kepert made the following post on his own personal Facebook page, Post 3A, which is the subject of complaint SP 20 of 2018:

Steve Kepert

Dear friends and Melville community, as a community leader I must act on the explosion in cyber bullying in the Melville community. It is being perpetrated by individuals poised to benefit from Melville Council matters and members of certain political parties.

Concerned for community safety I advise people not to engage on these pages.

I consider Melville City Chat, administered by real estate agent Tom Carlin, to facilitate cyber bullying in the community. Melville Community Chat is administered by a fake profile named Jamie Kay (formerly Jamie Krakour) and was obviously purpose-built to slander anyone critical of the Melville City's operations and certain elected members.

I advise all users to leave these pages immediately. Please share in your networks.

Councillor Steve Kepert
City of Melville

(which is the subject of complaint SP 20 of 2018 and hereafter referred to in these reasons as 'Post 3A')

- 16 On or about 28 January 2018, Cr Kepert agrees that he wrote a post on a Facebook page titled 'Steve Kepert, Councillor for Applecross-Mt Pleasant Ward'. This post is the subject of complaint SP 20 of 2018 and hereafter referred to in these reasons as 'Post 3B'. Post 3B is identical to the alleged Post 3A except it does not include the words 'named Jamie Kay (formerly Jamie Krakour)' which had been included in the alleged Post 3A.

- 17 On or about 28 January 2018, it is alleged that Cr Kepert made the following posts on Councillor Karen Wheatland's Facebook page:

Steve Kepert

Absolutely disgusting behaviour by Tom Carlin. He is about to find out how well connected we are.

(which is the subject of complaints SP 20 and SP 22 of 2018 and hereafter referred to in these reasons as 'Post 4')

Steve Kepert

Yes, sadly cyber bullying is rife in Melville and nurtured by a few nutters who can't stand democracy. I intend to draw bigger attention to this issue and point out the neighbourhood trolls[.]

(which is the subject of complaint SP 20 of 2018 and hereafter referred to in these reasons as 'Post 5')

18 On 1 October 2018, the Panel found that Cr Kepert had committed three minor breaches under the LG Act. The Panel found that it was more likely than not that the screenshots provided were accurate and that Cr Kepert had made all of the Posts 1 to 5: see paragraphs 30-32 at p 11 of the respondent's bundle.

19 The Panel found that Cr Kepert was a councillor of the City at the relevant times and that he used his office when making those posts: see paragraphs 34 and 39 at p 11 of the respondent's bundle.

20 The Panel detailed the applicable legal principles regarding whether conduct could be found to be an improper use of a councillor's office at paragraphs 41-45 as follows:

41. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom.
42. Impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, powers and authority of that person's position as a councillor and the circumstances of the case.
43. It requires unsuitable or inappropriate behaviour that a councillor knew (or ought to have known) was not authorised.
44. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent.

45. In addition, any decision as to what is 'improper' cannot be made in isolation but must be considered in the relevant context. Such context will include the specifics of the relevant event as well as councillor's formal role and responsibilities.

(footnotes omitted, see page 12 of the respondent's bundle)

21 As to whether Posts 1 to 5 were an improper use of Cr Kepert's office as a councillor, the Panel then went on to find at paragraphs 46-47 and 49-53 as follows:

46. It is clear that there were ongoing issues in relation to Cr Kepert, other councillors of the City, the Melville City Chat Facebook Page and other Facebook chat sites and that concerns were held as to online behaviours in the community.

47. The role of a councillor includes 'representing the interests of electors, ratepayers and residents of the district, providing leadership and guidance to the community in the district'. However, in undertaking this role a councillor must act in accordance with their fiduciary duties and any relevant code of conduct.

...

49. The language used in the various Posts is intimidating and can be construed both as threatening and intending to damage Mr Carlin. In particular, the following comments directed to Mr Carlin are of concern:

- a. *'Tom Carlin Are you sure you want to damage your reputation in the Melville area?'*;
- b. *'You've made a very big mistake Tom'*;
- c. *'I have to recommend to the residents that they will be unsafe on your page.'*; and
- d. *'He is about to find out how well connected we are.'*

50. Several comments are also derogatory and specifically focused on Mr Carlin's actions such as:

- a. *'This is obscene'*;
- b. *'Absolutely disgusting behaviour.'*; and
- c. *'Absolutely disgusting behaviour by Tom Carlin'*.

51. The above comments are not in keeping with Cr Kepert's obligations pursuant to the Code to act with respect and courtesy and not to cause unwarranted offence or embarrassment.
52. If Cr Kepert's aim was to raise concern in the local community as to dangerous online activities, this could have been done in a respectful manner without using Mr Carlin's name or directing aggressive and negative comments directly to Mr Carlin. As such, the manner in which the comments were made was unwarranted.
53. In respect to [Complaint] 1, [Complaint] 2 and Complaint 3, the Panel considers that Cr Kepert's Facebook posts are of such a nature that a reasonable individual would consider the same to:
 - a. be inappropriate;
 - b. constitute an improper use of Cr Kepert's position; and
 - c. be deserving of a penalty.

(footnotes omitted, see pages 12-13 of the respondent's bundle)

22 As to whether Cr Kepert intended to cause detriment to be suffered by Mr Carlin, the Panel noted the legal principles and went on to find at paragraphs 54-60 as follows:

54. 'Detriment' means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination or disadvantage.
55. Irrespective of the observations in Cr Kepert's response, it is not necessary to find whether any detriment was actually suffered and only an intent to cause detriment must be established.
56. In Post 1, Post 2, Post 3A, Post 3B and Post 4 Cr Kepert mentions, or makes comments directly to, Mr Carlin.
57. In Post 3A and 3B Cr Kepert also specifically identifies Mr Carlin as a local business owner and uses language that a reasonable person would see either as threatening the reputation of Mr Carlin or as being derogatory.
58. The Panel finds that it is more likely than not that in Post 1, Post 2, Post 3A and 3B and Post 4 Cr Kepert did intend to single Mr Carlin out for derision and humiliation and to thereby cause detriment.

59. The Panel does not consider, however, that Post 5 can, to the required standard, be seen as Cr Kepert specifically targeting Mr Carlin to cause a detriment. Such Post is much more general in nature and does not mention Mr Carlin.

60. The Panel finds that it is more likely than not that, for the purposes of Complaint 1, Complaint 2 and Complaint 3, the Facebook posts were intended by Cr Kepert to cause a detriment to Mr Carlin.

(footnotes omitted, see page 14 of the respondent's bundle)

23 On 20 November 2018, the Panel provided further reasoning as to sanction for each of the complaints SP 19, 20 and 22 of 2018. The Panel took into account that on the same date it was determining three penalties for the same series of conduct and determined that the appropriate sanction pursuant to s 5.110(6)(b) of the LG Act for each complaint was, in summary, as follows:

- (a) in SP 19 of 2018 that Cr Kepert undertake specific training for elected council members and make a public apology in the specific terms ordered;
- (b) in SP 20 of 2018 that Cr Kepert make a public apology in the specific terms ordered; and
- (c) in SP 22 of 2018 that Cr Kepert make a public apology in the specific terms ordered.

Legislative framework

24 Part 5 Div 9 of the LG Act legislates the conduct of officials operating in local government including local government councillors and provides for sanctions when it is found that councillors have committed either minor or major breaches of the LG Act. These proceedings relate to allegations of minor breaches of the LG Act.

25 Section 5.103 of the LG Act provides as follows:

5.103. Codes of conduct

- (1) Every local government is to prepare or adopt a code of conduct to be observed by council members, committee members and employees.

[(2) *deleted*]

- (3) Regulations may prescribe codes of conduct or the content of, and matters in relation to, codes of conduct and any code of conduct or provision of a code of conduct applying to a local government under subsection (1) is of effect only to the extent to which it is not inconsistent with regulations.

26 Section 5.104(1) of the LG Act enables regulations to be made prescribing rules of conduct for council members that council members are required to observe. Section 5.105(1)(a) of the LG Act provides that a council member commits a minor breach if he or she contravenes a rule of conduct made under s 5.104(1) of the LG Act.

27 Regulation 3 of the Regulations provides general principles to guide the behaviour of council members in their capacity as council members. Relevantly, these principles include that council members should act with honesty and integrity as well as treat others with respect and fairness.

28 Regulation 7(1) of the Regulations provides:

7. Securing personal advantage or disadvantaging others

- (1) A person who is a council member must not make improper use of the person's office as a council member
-
- (a) to gain directly or indirectly an advantage for the person or any other person; or
- (b) to cause detriment to the local government or any other person.

29 Councillors of the City are also subject to the City of Melville Code of Conduct (Elected Members) Policy CP-041 adopted on 18 March 2014 (Melville Code of Conduct): see the respondent's bundle at pages 69-98.

30 Clause 1.4.6 of the Melville Code of Conduct, headed 'Respect', sets out the key principle that council members are to 'treat people with respect, courtesy and sensitivity and recognise their interests, rights, safety and welfare'.

31 Clause 2.1 of the Melville Code of Conduct relevantly provides:

2.1 PERSONAL BEHAVIOUR

Elected Members will:

- (a) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;
- ...
- (d) 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 any reasonable person unwarranted offence or embarrassment; and
- ...
- (f) act in observance of the General and Key Principles (Sections 1.3 and 1.4 of this Code).

32 Clause 3.5 of the Melville Code of Conduct relevantly provides:

3.5 BEHAVIOUR OF MEMBERS

...

- (d) Elected Members should make no allegations which are improper or derogatory. In the performance of their official duties they should refrain from any form of conduct which may cause any reasonable person unwarranted offence or embarrassment[.]

33 Section 5.106 of the LG Act outlines that the standard of proof required for finding that a breach has occurred is that it is to be based on evidence from which it may be concluded that it is more likely than not that the breach occurred.

34 In the decision of the Court of Appeal in *Ord Irrigation Cooperative Ltd v Department of Water* [2018] WASCA 83 at [124]-[125] the Court of Appeal found, subject of course to the enabling legislation, that no party bears an onus, legal or practical, in review proceedings in the Tribunal. The Court of Appeal at [115] considered that the incorrect placement of an 'onus' on a party in review proceedings can distract the Tribunal from critical focus on the terms of the legislation which define and delimit the Tribunal's powers and the circumstances in which those powers may be exercised.

35

Section 5.110 of the LG Act provides that the Panel (and in these proceedings, the Tribunal) may deal with a minor breach in the following manner:

5.110 Dealing with complaint of minor breach

- (1) The member of the primary standards panel who receives a complaint from a complaints officer under section 5.107(3)(c), 5.108(2)(c) or 5.109(1)(c) is to -
 - (a) allocate that complaint to a standards panel; and
 - (b) send the complaint and anything received from the complaints officer to the member of that standards panel who is appointed under Schedule 5.1 clause 2(a).
- (2) After receiving a complaint allocated to it under subsection (1), a standards panel is required to -
 - (a) make a finding as to whether the breach alleged in the complaint occurred; or
 - (b) send the complaint to the Departmental CEO under section 5.111.
- ...
- (6) The breach is to be dealt with by -
 - (a) dismissing the complaint; or
 - (b) ordering that -
 - (i) the person against whom the complaint was made be publicly censured as specified in the order; or
 - (ii) the person against whom the complaint was made apologise publicly as specified in the order; or
 - (iii) the person against whom the complaint was made undertake training as specified in the order; or
 - ...
 - (c) ordering 2 or more of the sanctions described in paragraph (b)[.]

36 In the decision of the Tribunal in *King and Local Government Standards Panel* [2018] WASAT 42 (*King*) his Honour Judge Sharp recently gave consideration to the principles to be applied in these proceedings alleging a minor breach under the LG Act. Sharp J relied on the oft quoted decision of the Tribunal by her Honour Judge Pritchard (as her Honour then was) in *Treby and Local Government Standards Panel* (2010) 73 SR (WA) 66; [2010] WASAT 81 (*Treby*).

37 His Honour Judge Sharp considered at [32]-[36] that the principles to be applied are as follows:

The principles to be applied

32 The meaning of the phrases 'improper use of the person's office as a council member' and 'to cause detriment to ... any ... person' as they appear in reg 7(1) of the Regulation has been previously considered by this Tribunal in *Treby and Local Government Standards Panel* (2010) 73 SR (WA) 66; [2010] WASAT 81 (*Treby*). The conclusions drawn in *Treby* are set out below.

33 These conclusions continue to reflect the Tribunal's interpretation of the meaning of the expression 'improper use of a person's office as a council member' and the word 'detriment'.

Improper use

34 In *Treby*, Pritchard DCJ (as her Honour then was) referred to the Shorter Oxford English Dictionary meaning of 'improper' and noted that it includes 'unsuitable' and 'inappropriate'. Her Honour then went on, at [29]-[33], to summarise what the case law in the context of similar provisions to reg 7(1) of the Regulations suggested as to the meaning of 'improper'. She drew the following conclusions in relation to the meaning and application of the term 'improper use of the person's office' within the context of reg 7(1) (citations omitted):

29 First, impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of the [councillor] by reasonable persons with knowledge of the duties, powers and authority of his position as a councillor and the circumstances of the case.

30 Secondly, impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent.

- 31 Thirdly, impropriety may arise in a number of ways. It may consist of an abuse of power, that is, if a councillor uses his or her position in a way that is inconsistent with the discharge of the duties arising from that office or employment. Alternatively, impropriety will arise from the doing of an act which a councillor knows or ought to know that he has no authority to do.
- 32 Fourthly, in the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power will be important factors in determining whether the power has been abused.
- 33 Fifthly, a councillor's use of his or her office can be improper even though it is for the purpose or with the intention of benefiting the Council.

To cause detriment to any person

- 35 In *Treby*, her Honour discussed the meaning of the word 'detriment' under reg 7(1)(b) of the Regulations. It was concluded that the word 'detriment' should be given its ordinary and natural meaning; *Treby* at [103]. Her Honour noted the ordinary and natural meaning of 'detriment' is loss or damage done or caused to, or sustained by, any person or thing; *Treby* at [94].
- 36 In *Treby* at [96] her Honour then went on to say (citations omitted):

A contravention of reg 7(1)(b) does not depend on actual detriment being suffered by a person. However, it must be established that the councillor believed that the intended result of his or her conduct would be that the other person would suffer detriment.

- 38 In *King Sharp J* considered the extent of any application of principle from another decision of the Tribunal in *Hipkins and Local Government Standards Panel* [2014] WASAT 48 (*Hipkins*) and his Honour found at [46]-[48] that:

- 46 To the extent that *Hipkins* is authority for the proposition that what is improper will depend on the context of the conduct in question, then I agree. However, I do not intend to take anything more from *Hipkins* and I rely on *Treby* for the meaning of the expression 'improper use of a person's office as a council member'.

47 However, while context is relevant, when the context in question amounts to a clear breach of the Code of Conduct, the context is of little assistance to the applicant.

48 Further, while the applicant submits that at [56] in *Treby*:

... regulation 7 of the regulations does not prohibit a council member from discussing council business, to question and, in some cases no doubt, to criticise the actions of others which impact on matters relevant to the affairs of a local government and the community it serves[.]

the Tribunal draws attention to the remainder of this paragraph in *Treby*, where her Honour Judge Pritchard, as she then was, quoted at [56]-[57]:

...

In dealing with the finding made by the Panel of a breach of cl 11.9 of the Standing Orders in *Treby*, Senior Member Parry observed (at [19]):

A councillor is able to meaningfully participate in the good government of the persons in the district and to duly, faithfully, honestly and with integrity fulfil the duties of the office for the people in the district according to his or her best judgment and ability, without reflecting adversely upon the character or actions of, or imputing any motive to, another member or an officer of the local government. Indeed, good government requires courtesy amongst those elected to govern.

The sentiment behind that observation is equally apt to reg 7(1)(b).

Cr Kepert's submissions

39 Cr Kepert agrees that he made Post 3B and submitted in this regard as follows:

Around this time the Applicant announced to the Melville community that the Facebook pages 'Melville Community Chat' and 'Melville City Chat' were unsafe to the public due to their harbouring of bullying, harassment, intimidation, public humiliation and threats of violence towards the Melville community. The announcement was chiefly made

as a result of the page administrators being personally responsible for the harassment.

One of the attachments made by one of the Complainants [Post 3B] is a screenshot of [the] post the Applicant made on a Facebook page he maintains. This is the only attachment provided by the complainants that can be verified[.]

(see paragraphs 48 and 49 of Cr Kepert's statement of issues, facts and contentions, emphasis added)

40 Cr Kepert submits that his actions in warning the community of these Facebook pages was made in response to a campaign of vitriolic behaviour towards Melville residents over local political matters. Cr Kepert stated that many Melville residents were contacting him in his role as a councillor of the City regarding the abuse towards Melville residents on these Facebook pages relating to local government matters with such abuse being harboured and even condoned by the page administrators: see paragraph 51 of Cr Kepert's statement of facts, issues and contentions.

41 Cr Kepert submits that Post 3B was removed from his Facebook page soon afterwards 'to avoid confusion' once it was known Mr Carlin considered this offensive and indicated he would be making a complaint to the Panel: see paragraph 60 of Cr Kepert's statement of facts, issues and contentions.

42 Cr Kepert submits that the Panel had been misled by complaints made against him that were vexatious and did not provide conclusive or credible evidence to support their allegations: see paragraph 63 of Cr Kepert's statement of facts, issues and contentions.

43 Cr Kepert submits that he has always acted in accordance with the LG Act. In making 'announcements' to the Melville community, Cr Kepert states he was guided by and acted in compliance with s 2.10(a) and (b) of the LG Act in that he was representing the interests of electors, ratepayers and residents of the district and providing leadership and guidance to the community in the district: see paragraph 70 of Cr Kepert's statement of facts, issues and contentions.

44 Cr Kepert submits as follows:

Any comments by the Applicant which are discussed in the course of this matter 'were made in good faith, in an attempt to protect, and provide leadership to, the community as to appropriate online

behaviours', as with those found in SP 21 of 2018 and in accordance with Section 2.10 of the *Local Government Act 1995*.

(see paragraph 72 of Cr Kepert's statement of facts, issues and contentions)

45 In his closing submissions at the end of the hearing Cr Kepert also submitted, if the Tribunal were to find that any of the allegations in Post 3B were improper or derogatory, in accordance with the exception in the Melville Code of Conduct, that the allegations were true and in the public interest: see ts 116, 24 July 2019.

46 Finally, Cr Kepert submits that the lack of credible evidence and absence of any breach by him of either the LG Act or Regulations or the Melville Code of Conduct demonstrates that the findings made against him by the Panel should be set aside.

Intervener's submissions

47 The intervener submits in summary as follows:

- (a) It is accepted that there is a broader context of a toxic environment of online bullying, at least as Cr Kepert perceives it to be.
- (b) Cr Kepert's submissions in relation to onus are misconceived as to the statutory task to be undertaken by the Tribunal.
- (c) Any such belief held by Cr Kepert that he was protecting the community from cyber bullying cannot excuse or justify Posts 1 to 5 if they contain derogatory, threatening or improper statements.
- (d) It is Cr Kepert who is the elected official with the responsibilities under the LG Act, Regulations and Melville Code of Conduct.
- (e) Cr Kepert was not a credible witness in many respects, in particular where he was equivocal and evasive in cross examination.
- (f) All of Issues 1 to 5 should be answered in the affirmative.

- (g) That it is open on the evidence for the Tribunal to find differently from the Panel in relation to Post 5 where Mr Carlin is not specifically mentioned by name. When Post 5 is read in context with the other posts, it can be inferred that the reference to 'nutters' and 'neighbourhood trolls' should be understood as referring to at least Mr Carlin.
- (h) The decision of the Panel in relation to SP 19, 20 and 22 of 2018 should all be affirmed by the Tribunal.
- (i) The penalties imposed by the Panel were appropriate in the circumstances.

Issue 1 - whether Cr Kepert was a councillor at all material times

48 Cr Kepert agrees that he was a councillor of the City at all material times and the Tribunal so finds.

Issue 2 - whether Cr Kepert made Posts 1 to 5 on Facebook

49 Apart from Post 3B which Cr Kepert agrees he made on his second Facebook page entitled 'Steve Kepert, Councillor for Applecross-Mt Pleasant Ward', as to whether Cr Kepert made the other five posts is a contested factual issue by Cr Kepert.

50 Therefore, the next question for the Tribunal to determine is whether Cr Kepert made any, or all, of the other five contested posts. In order to determine this question, the Tribunal must consider all of the documentary evidence and, more importantly, the veracity of the evidence of Cr Kepert.

51 The Tribunal considers the submission from Cr Kepert that the three complainants have failed to discharge some onus of proof is misconceived regarding the nature of the statutory task to be undertaken by the Tribunal to determine whether a minor breach has occurred. Section 5.106 of the LG Act outlines that the standard of proof required for finding that a breach has occurred is that it is to be based on evidence from which it may be concluded that it is more likely than not that the breach occurred. No party or individual bears any onus.

52 Cr Kepert has submitted that the screenshots accompanying the complaints should not be accepted as evidence on a number of grounds. To quote counsel for the intervenor in closing submissions, Cr Kepert

has questioned the screenshots as to 'their provenance, their credibility and their authenticity': see ts 82, 24 July 2019.

53 Cr Kepert put evidence before the Tribunal of screenshots of what he suggests is some of the alleged cyber bullying regarding local City issues. However, Cr Kepert makes the somewhat incongruous or illogical submission that the screenshots attached to the complaints can only 'exist' and be authentic evidence if they can presently be located or verified online by him. The intervenor correctly submits that this is not an appropriate yardstick to assess the reliability or accuracy of the screenshots as evidence in these proceedings.

54 It was accepted by Cr Kepert in his own oral evidence that posts (or content) that have previously appeared on Facebook may not necessarily appear on Facebook today as they could have been deleted not just by the administrator of that particular Facebook page but also perhaps deleted by the person who made the post on someone else's Facebook page.

55 The appropriate question for the Tribunal is to determine whether it is more likely than not that the screenshots attached to the complaints accurately capture information or material that was posted on Facebook. The Tribunal finds on assessing the whole of the evidence that it is more likely than not that the Tribunal can reach that conclusion. Some of Posts 1 to 5 are replicated, or attached as screenshots to more than one complaint, in circumstances where the complaints, whilst similar, are not identical. The Tribunal finds that because they are similar but not identical that the evidence attached to the three complaints corroborate one another as to their accuracy.

56 The Tribunal finds that an examination of Posts 1 to 5 (including Post 3B which is admitted) reveals that they share the following similar features:

- (a) five posts bear the name 'Steve Kepert' with the admitted Post 3B bearing the name 'Steve Kepert, Councillor for Applecross-Mt Pleasant Ward';
- (b) Posts 1, 2, 4 and 5 are about the same topic and are written in predominantly similar language by containing similar content as well as repeating a number of identical words and phrases; and

- (c) Post 3A is identical to the admitted Post 3B, except that Post 3B omits reference to 'named Jamie Kay (formerly Jamie Krakouer)'.

57 Cr Kepert stated in his oral evidence that his account had been 'hacked' before thereby seeking to indirectly suggest that the five contested posts may be manufactured. Cr Kepert also submitted that the complaints were vexatious and implied that the three complainants may be colluding against him. However, Cr Kepert provided no credible evidence to support any such allegations. Indeed, when Cr Kepert was asked directly by the Tribunal as to whether he was producing any evidence about his Facebook account being 'hacked' in relation to the three complaints, Cr Kepert answered he was not: ts 68, 24 July 2019.

58 When questioned by the Tribunal as to the case he was presenting in response to the allegations and cross-examined by the intervener's counsel about whether he had made the five contested posts Cr Kepert oscillated between suggesting:

- (a) the posts could not be authenticated as he could not find a record of them;
- (b) he could not remember posting them 'if they exist'; and
- (c) finally, an equivocal denial of having posted them.

(ts, 28-29 and 45-55, 24 July 2019)

59 Cr Kepert's inability to remember whether he had posted the other five posts appears inconsistent with the fact that cyber bullying in the City surrounding controversial projects, such as the proposed wave park, has clearly been, and continues to be, an issue of great importance to Cr Kepert.

60 When cross-examined by the intervener regarding his inconsistent answers Cr Kepert became even more evasive and, occasionally, obtuse. Cr Kepert feigned being confused by the questioning when it is apparent that he speaks English well and is intelligent (informing the Tribunal on more than one occasion he has studied philosophy at a post graduate level). Moreover, it was also apparent from observing Cr Kepert throughout the hearing that he well understands nuances that can exist in a person's choice of language, for instance where he

suggested (inconsistent with the context in this instance) that the term 'troll' can be worn as a 'badge of honour': see ts 58, 24 July 2019.

61 The Tribunal finds that Cr Keper's evidence was inconsistent in circumstances where he could remember posting Post 3B but could not remember, or vaguely denied, having made any of the other five contested posts.

62 Having considered the evidence as a whole and the demeanour of Cr Keper as a witness, the Tribunal finds that it was not impressed with Cr Keper as a witness of fact. The Tribunal finds that Cr Keper in his evidence was evasive and inconsistent to such an extent that the Tribunal finds he is a witness who is unreliable and lacks credibility in many respects. In particular, Cr Keper lacks credibility concerning whether he made the five contested posts.

63 The Tribunal therefore finds, on consideration of all of the evidence, that the only reasonable inference to draw (or conclusion) for the Tribunal is it is more likely than not that Cr Keper made the five contested posts. Therefore the Tribunal finds, along with the agreed Post 3B, that Cr Keper made all of the Posts 1 to 5 on Facebook.

Issue 3 - if Cr Keper made any of the posts whether he was making use of his office as a councillor

64 The Tribunal finds it is clear that Cr Keper self-identifies as an advocate for his community in relation to cyber bullying concerning matters of interest in the City's local government area. The Tribunal finds that Cr Keper makes this self-identification in connection with his role as a councillor. This finding is supported by the following comments in Posts 1 to 5:

- (a) in Post 1, Cr Keper refers to the 'Melville area' and 'cyber bullying in our community';
- (b) in Post 2 Cr Keper identifies as a community leader;
- (c) in posts 3A and 3B, Cr Keper identifies as a councillor of the City and makes recommendations for community safety;
- (d) in Post 4, Cr Keper made a post on Cr Wheatland's Facebook page and referred to Mr Carlin being about to find out how 'well connected we are'; and

- (e) finally, in Post 5, Cr Kepert makes reference to 'Melville', as well as 'democracy' and his intention to draw attention to the issue of cyber bullying.

65 Therefore, the Tribunal finds, when Cr Kepert was writing Posts 1 to 5, that it is more likely than not Cr Kepert was making use of his office as a councillor.

Issue 4 - if Cr Kepert was making use of his office, whether that use was improper

66 When applying the principles enunciated in *Treby*, the Tribunal finds that Cr Kepert in making Posts 1 to 5, has objectively contravened the standard of conduct that would be expected of a person in Cr Kepert's position by reasonable persons with knowledge of the duties, powers and authority of a councillor.

67 The Tribunal does not need to make a finding that Cr Kepert was aware of his impropriety when making Posts 1 to 5. *Treby* found that a councillor's use of their office can be improper even though it is for the purpose or with the intention of benefiting the council. The Tribunal in this instance finds that Cr Kepert's use of his office was improper even though it was done with the stated, and well intentioned, purpose of protecting the Melville community from cyber bullying.

68 Cr Kepert's case relied heavily on context, as considered in *Hipkins* and *King*, and the importance of cyber bullying to Cr Kepert as a self-identified community leader on this issue. Cr Kepert was keen for the Tribunal to take into account his genuine concern for the community by listening to his ABC radio interview on the subject.

69 In following the reasoning in *King*, the Tribunal finds that while context is relevant it is of little assistance when the context amounts to a clear breach of the Melville Code of Conduct not to make allegations which are improper or derogatory (unless true and in the public interest). Cr Kepert has produced no evidence in order to satisfy the Tribunal that the allegations made against Mr Carlin were true or in the public interest.

70 The Tribunal finds, when Cr Kepert made Posts 1 to 5 on Facebook, that Cr Kepert failed to meet the standards of conduct expected of a councillor of the City, as reflected in the Regulations and the Melville Code of Conduct. Cr Kepert fell short of the standards of conduct expected of a councillor by using threatening and derogatory

language, by failing to treat others with respect and courtesy, and by causing unwarranted offence. In particular, Cr Kepert's singling out of Mr Carlin was lacking in the respect demanded by the standards of conduct. It is of particular concern to the Tribunal (as it was to the Panel) that Cr Kepert behaved in a manner that any reasonable person would view as intimidating and threatening to Mr Carlin as well as damaging to his reputation.

71 The Tribunal finds that Cr Kepert could have easily raised his concerns about online behaviour within the Melville community in a respectful manner and without making derogatory comments directed to Mr Carlin. Cr Kepert displayed how easy it is to raise an issue of community concern but still conduct himself respectfully when he participated in the interview for the ABC radio.

72 Therefore, the Tribunal finds, when Cr Kepert was making use of his office as a councillor in writing Posts 1 to 5, that it is more likely than not that this use was improper.

Issue 5 - if Issues 1 to 4 are 'yes', whether Cr Kepert made improper use of his office to cause detriment to Mr Carlin

73 ***Treby*** concluded that the ordinary and natural meaning of the word 'detriment' under reg 7(1)(b) of the Regulations is loss or damage done or caused to, or sustained by, any person or thing.

74 A contravention of reg 7(1)(b) of the Regulations does not depend on actual detriment being suffered by Mr Carlin. However, it must be established that Cr Kepert believed that the intended result of his conduct would be that Mr Carlin would suffer detriment.

75 Cr Kepert gave evidence, at least in relation to Post 3B which he admitted, that he did not intend to cause detriment to Mr Carlin as his only intention was to warn the community about Melville City Chat and Melville Community Chat being unsafe. The Tribunal does not accept the evidence from Cr Kepert as to his intention as the Tribunal has formed the view that Cr Kepert is not a credible witness in this regard. Cr Kepert could have easily achieved his objective to warn the community without mentioning Mr Carlin which leads to the Tribunal concluding it is more likely than not that Cr Kepert intended a detriment to Mr Carlin by specifically naming him as part of his warning to the community.

76 The Tribunal finds, given the derogatory nature of the language used in direct reference to Mr Carlin in Posts 1 to 4, that the only reasonable inference open to be drawn is that Cr Kepert knew that his Facebook posts would offend, embarrass or threaten Mr Carlin, thus causing him detriment. Cr Kepert's derogatory and threatening language concerning Mr Carlin was prolific throughout Posts 1 to 4 which further supports the Tribunal finding it is more likely than not that Cr Kepert intended Posts 1 to 4 to make others think less favourably of Mr Carlin, thereby intending to cause detriment.

77 Cr Kepert's explanations as to why he wrote Post 3B in the way that he did were nonsensical. The fact that Cr Kepert removed reference to another person from the otherwise identical Post 3A whilst keeping the deliberate reference to Mr Carlin's employment as a real estate agent, supports the conclusion by the Tribunal it is more likely than not that Cr Kepert intended in Posts 1 to 4 to cause a detriment to Mr Carlin's personal reputation as well as his business and employment prospects.

78 The Tribunal concurs with the observation of the Panel at paragraph [52] of its decision on 1 October 2018 as follows:

If Cr Kepert's aim was to raise concern in the local community as to dangerous online activities, this could have been done in a respectful manner without using Mr Carlin's name or directing aggressive and negative comments directly to Mr Carlin. As such, the manner in which the comments were made was unwarranted.

79 Contrary to the Panel's findings in relation to Post 5, the Tribunal finds that Post 5 should not be looked at in isolation and should be considered in context with the other posts. Although Mr Carlin is not mentioned by name, when read in context with all of the other posts made by Cr Kepert at around the same time in late January 2018, the Tribunal finds it is more likely than not that the terms 'nutters' and 'neighbourhood trolls' should be understood as including a reference to Mr Carlin either being one of those things or being complicit in providing those so-called 'nutters' and 'neighbourhood trolls' with an online voice.

80 Therefore, the Tribunal finds, when Cr Kepert was making improper use of his office as a councillor in writing Posts 1 to 5, it is more likely than not that Posts 1 to 5 were intended by Cr Kepert to cause detriment to Mr Carlin.

Conclusion - Issues 1 to 5

81 The Tribunal is satisfied that its findings on the evidence and the issues identified supports its conclusion it is more likely than not that Cr Kepert, when writing Posts 1 to 5 was making improper use of his office as a council member to cause detriment to Mr Carlin, and thereby contravened reg 7(1)(b) of the Regulations.

82 As those three contraventions relate directly to the three complaints SP 19, 20 and 22 of 2018 the three contraventions, therefore, also constitute a finding that Cr Kepert has committed three minor breaches under s 5.105(1)(a) of the LG Act.

83 Therefore, the Tribunal will affirm the decision of the Panel of 1 October 2018 in relation to the finding of three minor breaches.

Issue 6 - sanction

84 The Tribunal finds throughout the course of the hearing, as well as the submissions made to the Panel, where Cr Kepert sought to advance his political agenda concerning cyber bullying in the City (even if well intentioned) displayed a fundamental misunderstanding of his own obligation as a council member not to make improper use of his office to cause detriment to Mr Carlin. Ironically, Cr Kepert when contravening the Regulations and Melville Code of Conduct, himself displayed what can be described as the same bullying behaviour that he was seeking to advocate against and protect his local community from.

85 The Tribunal finds, for instance when submitting the complaints were vexatious, that Cr Kepert displays a fundamental misunderstanding of the right for a person to make a complaint against a councillor under the LG Act. Cr Kepert also misconceives his obligation as a councillor to comply with, as well as the meaning of, reg 7(1)(b) of the Regulations. Cr Kepert requires training in this regard.

86 The three minor breaches are not identical as they involve some duplicate and some different posts. However, the three minor breaches do all relate to the same series of conduct by Cr Kepert on or about 28 January 2018. Therefore, the Tribunal has given consideration as to whether a global penalty or sanction can be imposed under s 5.110(6) of the LG Act.

87 The Tribunal agrees with the intervener's submission that the Tribunal is unable to issue a global penalty in respect of all three minor

breaches, and that is because the decision to issue a sanction must be made in respect of each minor breach where the Tribunal has found, in consideration of each individual complaint, that a breach has occurred. However, as did the Panel in its reasoning, the Tribunal can properly take into account when determining the appropriate sanction that the Tribunal is imposing three sanctions for three minor breaches that relate to a series of similar conduct. This is to ensure that Cr Kepert is not sanctioned twice for the exact same behaviour.

88 Accordingly, in the exercise of the Tribunal's discretion as to the appropriate sanction for the three minor breaches, taking into account that whilst the three minor breaches are not identical they do relate to the same series of conduct on or about 28 January 2018, the Tribunal finds it predominantly agrees with the Panel that the three appropriate penalties are as ordered by the Panel on 20 November 2019. However, the Tribunal has determined that it will vary those orders to remove from the three separate oral apologies any duplicate reference to the same comments made in the same posts. The Tribunal has also determined to make small modifications to the referenced comments made by Cr Kepert to better reflect the conduct that is being sanctioned.

89 The Tribunal also considers it appropriate in the circumstances that Cr Kepert must personally provide these three apologies at a council meeting and not have the option of publishing the apologies in the local newspaper.

90 Therefore, Cr Kepert will be ordered to make the three separate apologies at the next available council meeting following 28 days from this decision and within four months to undertake further training regarding his role as an elected member.

91 The terms of the orders to apologise are attached to these reasons and marked 'Annexure A' and will also be attached to the orders provided to the parties.

Orders

In accordance with these reasons, the Tribunal orders as follows:

1. The decision of the Local Government Standards Panel on 1 October 2018 in relation to SP 19, 20 and 22 of

2018, that the applicant committed three minor breaches of the *Local Government Act 1995* (WA) by three times contravening reg 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA), is affirmed.

2. The orders of the Local Government Standards Panel on 20 November 2018 as to the appropriate sanction for the three minor breaches in SP 19, 20 and 22 of 2018 are varied as attached to this order and marked 'Annexure A'.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

MS D QUINLAN, MEMBER

25 SEPTEMBER 2019

Annexure A

THE STATE ADMINISTRATIVE TRIBUNAL ORDERS THAT:

SP 19 of 2018:

1. Within 4 months of the date of this Order, Councillor Steve Kepert a Councillor for the City of Melville, shall undertake:
 - a. the training course for Elected Members 'Serving on Council' provided by WA Local Government Association (WALGA) for a period of no less than 7 and a half hours; or
 - b. a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a period of not less than 7 and a half hours.
2. Councillor Steve Kepert, a Councillor for the City of Melville publically apologise to Mr Tom Carlin, the public and his fellow City Councillors, as specified in paragraph 3 below.
3. On the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on him, Councillor Kepert shall:
 - a. attend the relevant ordinary council meeting;
 - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
 - c. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - d. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

SP 19 of 2018

I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) on about 28 January 2018 when I posted various comments in my capacity as local councillor on the Melville City Chat Facebook page:
 - A. that named Mr Tom Carlin personally and accused Mr Carlin of being complicit in the facilitation of cyber bullying;
 - B. stating that Mr Carlin's behaviour was absolutely disgusting; and
 - C. stating that Mr Carlin had made a big mistake, crossed the line and that I would recommend to residents that they would be unsafe on the Melville City Chat Facebook Page.
- ii. The State Administrative Tribunal has found that by posting the relevant comments I made improper use of my office as a Councillor with the intention of causing detriment to Mr Tom Carlin thereby committing a breach of regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 (WA).
- iii. I accept that I should not have posted the comments directed at Mr Carlin personally and that such comments were inappropriate in content.
- iv. I now apologise to Mr Carlin, the public and my fellow Councillors.

SP 20 of 2018:

1. Councillor Steve Kepert, a Councillor for the City of Melville publically apologise to Mr Tom Carlin, the public and his fellow City Councillors, as specified in paragraph 2 below.
2. On the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on him, Councillor Kepert shall:
 - a. attend the relevant ordinary council meeting;
 - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
 - c. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - d. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) on 28 January 2018:
 - A. firstly, when I made a post both on my personal and councillor Facebook pages that named Mr Tom Carlin as the administrator of Melville City Chat and stated that such group facilitated cyber bullying and was unsafe;
 - B. secondly, when I posted a comment on another Councillor's Facebook Page stating that cyber bullying in Melville was nurtured by a few nutters and I intended to point out the neighbourhood trolls.
- ii. The State Administrative Tribunal has found that by posting the relevant comments I made improper use of my office as a Councillor with the intention of causing detriment to Mr Tom Carlin thereby committing a breach of regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 (WA).
- iii. I accept that I should not have posted the comments directed at Mr Carlin personally and that such comments were inappropriate in content.
- iv. I now apologise to Mr Carlin, the public and my fellow Councillors.

SP 22 of 2018:

1. Councillor Steve Kepert, a Councillor for the City of Melville publically apologise to Mr Tom Carlin, the public and his fellow City Councillors, as specified in paragraph 2 below.
2. On the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on him, Councillor Kepert shall:
 - a. attend the relevant ordinary council meeting;
 - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
 - c. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
 - d. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) on 28 January 2018 when I posted a comment on another Councillor's Facebook Page which:
 - A. stated that Mr Tom Carlin's behaviour was absolutely disgusting; and
 - B. stated that Mr Carlin was about to find out how well connected we are.
- ii. The State Administrative Tribunal has found that by posting the relevant comment I made improper use of my office as a Councillor with the intention of causing detriment to Mr Tom Carlin thereby committing a breach of regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 (WA).
- iii. I accept that I should not have posted the comment directed at Mr Carlin personally and that such comment was inappropriate in content.
- iv. I now apologise to Mr Carlin, the public and my fellow Councillors.