

**LOCAL GOVERNMENT PECUNIARY INTEREST
AND DISCIPLINARY TRIBUNAL**

LOCAL GOVERNMENT ACT 1993

PIT No.3/ 2005

**DIRECTOR GENERAL, DEPARTMENT OF
LOCAL GOVERNMENT**

**RE: COUNCILLOR CAROLINE STOTT,
ASHFIELD MUNICIPAL COUNCIL**

STATEMENT OF DECISION

Dated: 10 September 2006

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STATEMENT OF DECISION

INTRODUCTION

1. On 2 March 2006 the Tribunal received from the Director General, Department of Local Government, a report, as required by the *Local Government Act 1993* of an investigation into the conduct of Councillor Caroline Stott of Ashfield Municipal Council, it having been alleged that Councillor Stott committed a breach of s.449 of the Act in that she failed to complete and lodge with the General Manager of the said Council within 3 months after 30 June 2003 a pecuniary interest return in the form prescribed by the Regulations.
2. Following a request from the Tribunal, the Director General furnished further information and documents concerning the complaint.
3. By Notice of Decision dated 16 June 2006 the Tribunal determined to conduct proceedings into the said complaint.

DETERMINATION OF COMPLAINT WITHOUT A HEARING

4. By letters dated 16 June 2006 the Tribunal notified the Director General and Councillor Stott that it was considering exercising its powers pursuant to s.470 of the Act to determine the proceedings without a hearing and that as presently minded, subject to any submissions to the contrary, the Tribunal considered that there were no material facts in dispute between the Director General and Councillor Stott and that the proceedings could be determined upon the basis that the complaint had been established and that the appropriate course of action was for Councillor Stott to be counselled in relation to the said breach. The Director General and Councillor Stott were invited, if they saw fit, to consent to that course of action.

5. By letter dated 25 June 2006 to the Tribunal Councillor Stott advised:
 - (a) that she did not contest that there was a breach of s.449 of the *Local Government Act 1993* as alleged;
 - (b) she did not intend to seek legal representation in the matter;
 - (c) she did not seek to call witnesses in any proceedings of the Tribunal or tender any documents;
 - (d) she did not wish to furnish oral or written submissions on any matter relevant to this issue;
 - (e) she agreed to the proceedings being determined, as the Tribunal had suggested, without a hearing.

6. By letter dated 29 June 2006 the Director General advised the Tribunal that he agreed to the determination of the proceedings without a hearing on the basis suggested.

BACKGROUND

7. Councillor Caroline Stott was first elected to Ashfield Municipal Council in 1999. She has served as a councillor continuously since then. Following the local government elections held on 27 March 2004, Councillor Stott was elected Deputy Mayor of Council.
8. The Tribunal has been furnished with copies of the pecuniary interest returns lodged by Councillor Stott, in accordance with the Act and Regulations, for the periods from her first election up to and including 30 June 2005. There is no suggestion but that the returns are accurate and in accordance with the Act and Regulations. It is not necessary for present purposes to set out the detail of those returns, save to say they disclose shareholdings in some public companies, a bank account and an interest in the family home. Councillor Stott's spouse's interest in two pieces of real estate are also disclosed. Councillor Stott's sources of income are likewise disclosed. With some minor variations, the interests disclosed have remained constant over the said period.

THE SUBJECT PECUNIARY INTEREST RETURN

9. There is no issue but that the return which ought to have been lodged within 3 months after 30 June 2003 was not lodged within that time period and indeed was not lodged until 28 February 2005. In late 2004 Dr Niven, the General Manager of Ashfield Municipal Council, spoke to Councillor Stott and mentioned that her failure to lodge the pecuniary interest return within time was being investigated by the Department of Local Government. Councillor Stott presumed that a late return would not be accepted and it was not suggested to her by Dr Niven that she should lodge a late return. Upon receipt by Councillor Stott of a letter from the Department of Local Government on 14 February 2005 advising of the investigation and asking for her comments., Councillor Stott decided she would attempt to lodge a "retrospective return" for 2003. She did so and it was accepted by Ashfield Council as a late return. While the explanation is, in the Tribunal's opinion, unsatisfactory, the Tribunal accepts, in the circumstances, that the above was Councillor Stott's state of mind in relation to the late lodgment of a return.

REMINDER PROCEDURES

10. As at June to September 2003, Ashfield Municipal Council had a procedure to remind councillors in respect of the lodgment of pecuniary interest returns by way of notification via the General Manager's Report. In the reports dated 23 June 2003 and 22 August 2003 councillors were reminded that pecuniary interest returns had to be completed and lodged as soon as possible and, if assistance was required, a contact within the Council was provided.
11. Councillor Stott acknowledges that she received a General Manager's Report most weeks, delivered to her home by Councillor Ranger. She says that she does not recall the reminders and certainly received no other written reminders or oral reminders from Council regarding her failure to lodge a pecuniary interest return. The evidence establishes that the first oral discussion with Councillor Stott concerning her non-lodgment of the return is the discussion referred to above with Dr Niven in late 2004.

COUNCILLOR STOTT'S EXPLANATION

12. Councillor Stott says that her failure to lodge within the prescribed period the pecuniary interest return after 30 June 2003 was an oversight. She had lodged the returns before that date within the prescribed time limit. She says, and the Tribunal accepts, that for the subject return, its non-lodgment within the time limit was contributed to by medical considerations which made her life very demanding, coping with her duties as a councillor as well as looking after her family, home and other commitments. It is not necessary for present purposes to go into the detail of the medical considerations, save to say it involved very invasive surgery and expensive rehabilitation. Councillor Stott as at 2006 is still required to attend a physiotherapist 2-3 days per week. The Tribunal accepts, and there is no issue, that this medical condition was a material contributing factor in Councillor Stott not lodging the subject return within the prescribed period.

NO CONFLICT

13. Ashfield Municipal Council advises the Department that there is no evidence that any property on Councillor Stott's return has been affected by Council's business being transacted. Councillor Stott advises that she has "never voted on any matters in which I had a pecuniary interest." The Department of Local Government has no evidence to the contrary.

DETERMINATION WITHOUT A HEARING

14. Both the Director General, Department of Local Government and Councillor Stott have agreed that the within proceedings be determined without a hearing. There are no material facts in dispute between the Director General and Councillor Stott. The Tribunal is of the opinion that public interest considerations do not require a hearing and it so determines in accordance with the provisions of s.470 of the *Local Government Act 1993*.

FINDINGS AND CONCLUSIONS

15. This Tribunal has on several occasions emphasised the importance of the due and complete lodgment of pecuniary interest returns. As was said by this Tribunal in Councillor Ian Longbottom, Lane Cove Council (PIT No.1/2004):

"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 detail required for inclusion in the return."

And:

"In light of the importance of the due and complete lodgment of the returns, it is not an acceptable excuse for councillors to be ignorant of, or to pay careless attention to, either the legislation or the guidelines issued by the Department or the previous decisions of this Tribunal. Undue

haste is no excuse."

16. This Tribunal again emphasises the importance of the careful, complete and due compliance with the legislation in respect of the lodgment of pecuniary interest returns.
17. In the present case, however, the Tribunal is of the opinion that, while there was clearly and admittedly a breach by Councillor Stott of s.449 of the *Local Government Act 1993* in her failure to lodge and complete with the General Manager within 3 months after 30 June 2003 a pecuniary interest return, there are special and unique extenuating circumstances. In particular, as set out above, the Tribunal accepts that for good and cogent reason Councillor Stott was distracted from lodging her pecuniary interest return. Until then she had complied. The Tribunal also takes into consideration, as a secondary matter, that there is no evidence that Councillor Stott's interests has ever been affected by Council's business being transacted or that she has ever voted on matters in which she had a pecuniary interest.
18. In the unusual circumstances of this matter, the Tribunal is of the opinion that the appropriate response for the admitted breach of the Act is that Councillor Stott be counselled to take greater care in the future to ensure that her obligations in respect of the lodgment of the pecuniary interest returns are complied with.

The Tribunal so orders.

Date: 10 September 2006

