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**VIA EMAIL -- [kevin.klingenberg@caledon.ca](mailto:kevin.klingenberg@caledon.ca)**

Mayor and Members of Council  
Town of Caledon  
6311 Old Church Road  
Caledon, Ontario L7C 1J6

Dear Mayor and Members of Council:

**RE: CALEDON INTEGRITY COMMISSIONER SERVICES  
Our File No. 975-100**

It has been brought to my attention by the Clerk that there is some confusion about the process related to Council's dealings with IC Reports and investigations, which I am hoping to clarify in this letter.

**Penalties and Other Recommended Corrective Action**

S. 18 of the Code of Conduct provides as follows:

**18. Non-Compliance with the Code**

Where the Integrity Commissioner determines that a Member has contravened this Code; *he/she is authorized to:*

- a) Reprimand the Member;
- b) Recommend that Council remove the Member from an advisory committee or local board;
- c) Recommend that the appropriate Committee or local board remove the Member as Chair of a Committee or local board;
- d) Require the Member to repay or reimburse monies received; e) Require the Member to return the property or item, or reimburse the value;

- f) Request the Member to apologize to Council, the complainant, or both;
- g) Suspend the remuneration paid to the Member in respect of their services as a Member for a period of up to ninety (90) days.

The relevant section of the *Municipal Act, 2001* with respect to Code of Conduct penalties states as follows:

### **Penalties**

223.4 (5) The *municipality* may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days. 2006, c. 32, Sched. A, s. 98.

As you can see, there is an apparent conflict between the provincial legislation, which places authority on the municipality (ie. Council) to impose penalties/sanctions and the Town's COC Bylaw, which authorizes the IC to do so on his/her own with respect to reprimands, requesting an apology and suspension of remuneration. In my view, as the Act does not give me those powers, I cannot exercise such powers (except perhaps requesting an apology, but I cannot enforce that except by recommending another penalty); rather, I can only recommend that Council do so. There is a possibility that Council could delegate that authority to me, however, I have not researched that point (you may wish to ask me or the Town Solicitor to do so) and even if that were possible, I would not feel comfortable with the current language in s. 18 ("is authorized"). In my view, a more direct delegation bylaw with respect to those powers would be necessary. It is for this reason that my first two investigation reports for the Town have only made recommendations to Council as to penalty, not directing that these penalties be imposed, and I will continue follow that approach until such time as Council passes a proper bylaw delegating that authority to me after having first confirmed that such delegation is legally permissible.

In terms of considering my recommendations for sanctions under s. 18, Council is also supposed to be acting in a quasi-judicial capacity, which means that it needs to turn its mind to the factors underlying the Code of Conduct and the appropriate considerations in imposing a penalty (such as individual behavioural correction, denunciation, deterrence of others and justice for the victim), not irrelevant political considerations like is the councillor under investigation an ally of mine on other matters such that I should side with him/her on this matter. Quasi-judicial decisions must be based on the evidence presented (in the IC's Report) and on relevant laws, regulations and policies, only. As a

rule of thumb in this regard, there should be sound evidentiary or legal reasons for not following the independent IC's recommendations regarding s. 18 penalties/sanctions.

On a second note, I do not regard myself as being limited in my recommendations to the penalties or sanctions set out in s. 18 of the Code. I say this because of the wording of s. 15.4 of the Code, which states as follows:

15.4 Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, terms of any settlement and/or any sanctions imposed by the Integrity Commissioner *as well as any recommended corrective actions*.

I regard the highlighted phrase to mean that I can recommend any corrective action I believe appropriate in the circumstances beyond the sanctions provided for in s. 18 as the "recommended corrective measures" are expressly stated to be in addition to imposing (actually, recommending from a legal standpoint) sanctions (which must refer to what is set out in s. 18 of the Code). I am confident in this interpretation as both I and many other ICs across the province have routinely made recommendations for ways of improving accountability and integrity beyond the penalties/sanctions set out in the *Municipal Act, 2001* or the local COC Bylaw.

I note that in considering these "recommended corrective actions," unlike with the s. 18 recommended sanctions, Council is not necessarily acting in a quasi-judicial capacity in my view and is therefore free to take political and other considerations into account.

### **Delegations Addressing COC Matters**

No other municipality for which I act as an IC permits delegations to address COC Reports issued by the Integrity Commissioner, and I know of no others where this occurs. The fact of the matter is, there is no scope for Council debate or resident input on my reports and findings (in contrast to penalties). My decisions are quasi-judicial in nature for which recourse can be had by way of a judicial review application to the Divisional Court. They are not matters that can be changed by Council on account of resident input. I reviewed the Town's Procedural Bylaw and was shocked to find that there are, on its face, absolutely no restrictions on what delegates can attend to speak to. They could request to speak on any matter they deemed fit, such as the Palestine-Israel situation or the war in the Ukraine, based on the plain terms of the Procedural Bylaw. I am not concerned about other issues but I do feel strongly that the circus that was the May meeting where my report on the Cllr. Kiernan Complaint was considered with multiple delegates raising issues of no relevance to Council (ie. debating the merits of my decision) should not be occurring and if necessary, an amendment to the Procedural Bylaw should be made prohibiting delegations addressing IC reports.

In terms of the member of Council who is the subject of a Report, there is no basis for them to attempt to debate or refute the merits of my findings with respect of breach of

the Code, as I have already made those findings after receiving their submissions and they are binding on Council, but they should be permitted to address penalty, which is ultimately the responsibility of Council to impose.

### **Need for Code of Conduct Overhaul**

Finally, I do not mean to be unduly critical but frankly, the Town's Code of Conduct is an outlier in terms of the Codes in place across most Ontario municipalities. It is deficient procedurally as I have already noted above and in terms of placing the obligation on the Clerk to engage in informal resolution efforts if requested to do so by the Complainant given his/her obvious conflict of interest. It is deficient substantively in failing to address matters dealt with by most Codes across the province, such as Dealings with the Public and Communications (section 3 of the Code does deal with this to some extent but not nearly as robustly as many other Codes of Conduct). There are also provisions, such as s. 1.1a) of the Code, that are so poorly drafted as to be effectively meaningless.

I strongly suggest that a comprehensive review of the Code be undertaken by the Town solicitor's office, the IC, a third party, or a combination of these to craft a more effective Code of Conduct.

I welcome a discussion of the foregoing issues at your convenience.

Yours very truly,



David G. Boghosian,  
Integrity Commissioner,  
Town of Caledon

DGB/dgb/ka

cc: Steven J. Dickson ,  
Commissioner of Corporate Services  
and Chief Legal Officer, Town of Caledon

(via email: steven.dickson@caledon.ca)