

John E. Fleming
Integrity Commissioner
The Town of Caledon

Report to the Council
RE: CODE OF CONDUCT COMPLAINTS
COUNCILLOR BARB SHAUGHNESSY
April 11, 2017

Background

I have been appointed by Council as the Integrity Commissioner for the Town of Caledon to serve in that role for the full 2014-2018 term (and previously) of the incumbent Council.

As Integrity Commissioner, it is my function to:

- a. Provide information and education to the Council and the public regarding the Code of Conduct and the role of the Integrity Commissioner
- b. Provide advice to members of Council regarding their ethical obligations and responsibilities under the Code of Conduct, and any other procedures, rules or policies covering their ethical behaviour; and
- c. Conduct inquiries and investigations of alleged contraventions of the Code of Conduct in accordance with the procedures set out in the Code, and make decisions, including the imposition of penalties, in regard to such alleged contraventions.

I received on February 1, 2 and 3 three Code of Conduct complaints of alleged breaches by Councillor Barb Shaughnessy.

The Code requires that a series of steps be followed when formal complaints are filed with the General Manager of Corporate Services/Town Clerk. All three of the complaints were fully compliant with the requirements of the Code, and all required steps have been followed. A copy of each complaint was forwarded to the respondent, Councillor Shaughnessy, providing her with the opportunity to respond to each within 10 days. She did respond, and her responses were in turn forwarded to the respective complainants, who then had a further 10 days to comment on the response, to me. Each of the complainants did respond in a timely way.

I have been provided with extensive documentation by both the complainants and the respondent, and in each case I have reviewed that documentation carefully. Copies of numerous emails have been provided to me, as well as links to recordings of relevant meetings of Council and committees, to which I have listened.

Finally, I have conducted interviews wherever I felt it necessary to do so with individuals who have knowledge of the matters complained about. With specific reference to complaint number three, filed by the Chief Administrative Officer on his own behalf and on behalf of numerous staff concerned, I have conducted interviews with 10 members of Town staff.

I note that under the Code I am to determine whether or not complaints fall within the jurisdiction of the Integrity Commissioner, and whether or not they are frivolous or vexatious. Given the number and nature of the complaints, I determined that the substance of those complaints falls within the provisions of the Code, and that they were neither frivolous nor vexatious. On that basis, I proceeded with my investigation.

While there are *three separate complaints* this single report will comment on my investigation, findings, conclusions and sanctions of all three, as they are all in respect of the actions and behaviour of one member of Council. **Each specific complaint will be addressed separately within this report.**

For easy reference, I have attached to this report Appendix A, which sets out the wording of the relevant sections of Caledon's Code of Conduct.

The context

I believe that it is important to set out the context as I see it and as it pertains to the Council of the Town, and the issues facing Caledon generally, today and in the future.

The Town is and will be addressing in the future significant change. Within the "Places to Grow" strategy of the Province of Ontario, significant growth will come to Caledon, resulting in a number of pressures on the elected council, as development moves the Town forward from its long tradition as an agricultural community. The Council itself changed significantly in the 2014 election, with a number of new members taking office.

Complainant	#	Code Section	The Complaint
Coun. J. Downey	1a	2.3	Matters pertaining to a confidential issue (negotiations concerning an OMB matter) were commented on in a public letter to the editor.
	1b/c	3.1/3.2	Lack of respect for the decision-making process of Council. The accurate communication of the decisions of Council was not reflected in public blog comments. Is very suggestive about the intent of other council members.
Coun. J. Innis	2a	4.4	Made it appear as though staff are not following standard procedures for this matter (pertaining to the OMB hearing); and called into question the integrity of Town staff.
	2b	2.4	Concerned that there was a violation of confidentiality regarding requests for information pertaining to a confidential matter (the OMB hearing).
Mike Galloway, CAO (on his own behalf, and that of numerous staff concerned)	3a	Policy Statement/1.1	Repeated portrayal of staff in a negative manner is not in accordance with the policy statement "perform their duties in a manner that promotes confidence".
	3b	2.4	Requested confidential information that is not appropriate for her to obtain.
	3c	4.2	Undermining staff
	3d	4.3	Constant interference to matters that have been directed by Council is contravening the requirement that Councillors refrain from using their position to improperly influence employees.
	3e	4.4	Repeatedly portrayed staff in a negative manner in letters to newspapers and in her blog.

In my work as the Integrity Commissioner since that 2014 election, I have noted, and discussed with Council, the differences of opinion and perspective that arise as political working relationships change, stressing the need for members of Council to find ways to disagree with each other in a manner that reflects the expectations of the Code of Conduct. Tensions arise from time to time as policy issues come before Council, and as the differences in perspective and positions taken become clear between and amongst the members of the Council. This is of course normal in a political body.

Councillor Barb Shaughnessy, about whom these alleged breaches are centred, finds herself from time to time in a minority of one or two members, when votes are called. Councillor Shaughnessy, from what I understand, has a relatively long history in Caledon as an “activist” community member, and appears to have carried that stance into the Council chamber as a member, and has been outspoken on issues of concern to her.

Central to these complaints is the *manner* in which Councillor Shaughnessy has conducted herself in Council meetings, in committee meetings, in the community and – importantly – in her dealings with Town staff.

The specific complaints

Findings

Complaint 1a:

The complaint alleges that Councillor Shaughnessy wrote letters to the editor of the local newspaper with regard to a Committee of Adjustment/Ontario Municipal Board matter which was the subject of confidential negotiations between the parties, thereby breaching section 2.3 of the Code.

The reference in the letter to the editor was to an email of December 29 which stated “we have had productive discussions with counsel for the Town and believed that the settlement is likely”. In reviewing the documentation, I have learned that December 29 email was a communication between lawyers involved in the hearing, which led me to question how the document came into the hands of Councillor Shaughnessy. In fact, the Case Coordinator for the Ontario Municipal Board forwarded the email in question to Mr. Tim Forster, who I understand to be Councillor Shaughnessy’s spouse. There is no indication in the communication from the OMB Case Coordinator that the attached message of December 29 was indeed confidential. Therefore I am unable to make the determination that Councillor Shaughnessy, as she was writing to the editor of the local newspaper, knew that she was sharing information pertaining to a confidential matter.

I have no understanding of the role of Mr. Forster might play in this matter; however, I make the general observation that any confidential information in the hands of Councillor Shaughnessy, as a result of her position on Council, should never be shared with parties other than those authorized by the Town to be in possession of such information.

Therefore, with respect to that *specific* allegation in the complaint, i.e. that the letter to the editor was breach of the Code; I do not find that it was a breach.

There are, however, other matters that arise from this letter to the editor in other complaints, addressed below.

Complaint 1B:

The complaint alleges that Councillor Shaughnessy in her letters to the editor and in her blog did not accurately portray decisions made by Council, failed to show respect for the decision-making process of Council and was “suggestive towards the intent of other council members.”

The substance of this complaint centres on the matter of Council’s consideration of the decision to approve a new pool in the community. Councillor Shaughnessy’s blog was highly critical of the decision made by Council, using such terms as “egregious decision”; the decision was “myopic and defies logic” and references key points “ignored by some Council members.”

Numerous incidents have been related to me, describing occasions when Councillor Shaughnessy during meetings of Council or committees has used unparliamentary language, engaged in name-calling and stormed out of meetings.

Such behaviour does not reflect respect for the decision-making process of Council, nor does it promote public confidence.

Such incidents, taken on an individual basis, might not be considered overly serious; taken collectively, however, **I find them to be a breach of the provision of the Code in Section 3.1, as well as section 7.1** (although not referenced in the complaint) which requires members to "conduct themselves with the decorum" as well as the general statement of purpose of the Code of Conduct which requires "respect for differences."

Central to this aspect of the complaint is the apparent disregard Councillor Shaughnessy demonstrates for the rules and processes approved by the whole Council for the efficient and orderly conduct of meetings in the Town of Caledon. These are defined in the Council Procedural Bylaw. It is unclear whether Councillor Shaughnessy has not had sufficient orientation and training to that bylaw, does not fully understand the bylaw, or chooses to wilfully disregard it in the way she conducts herself at meetings. I am aware that staff, the Mayor and other members of Council have drawn this to her attention. Again, taken individually, isolated incidents might be overlooked; taken collectively the Councillor's persistent failure to "conduct [herself] with decorum and in accordance with the Town's Procedural Bylaw" (section 7.1) in my opinion **constitutes a further breach of the Code.**

Complaint 2a:

The complaints of Councillor Innis and Chief Administrative Officer Galloway allege that Councillor Shaughnessy breached section 4.4 of the Code, that "a member shall refrain from publicly criticizing employees in a way that casts aspersions on their professional confidence and credibility."

The complaint specifically references Councillor Shaughnessy's January 30 letter to the editor of the local newspaper, in which she states "someone at the Town must've given approval to enter into settlement negotiations" and "someone was misguided and took more authority and they should have" with the implication that staff were not following proper procedures. The letter went further, drawing attention to timing of the staff report on the Committee of Adjustment appeal process, making use of the word "suspicious", implying that staff had not acted properly or with integrity in this matter.

I'm satisfied, following my review of the decision by the Town's legal staff to enter into negotiations around settlement of an OMB matter that the steps taken and processes followed were indeed appropriate. It is unfortunate that Councillor Shaughnessy chose to publicly criticize Town staff, albeit in a somewhat indirect manner, when they were following proper process.

It is clear that Councillor Shaughnessy does not agree with the process in place, but publicly maligning professional staff of the Town is not the way to address that disagreement.

There is a clear implication in the use of the word "suspicious" by the Councillor in her public statements that Town staff's motives in preparing and submitting a policy report regarding the appeal of Committee of Adjustment decisions were improper. I have carefully reviewed with the General Manager Corporate Services/Town Clerk the complete history of the development of this policy report, and satisfied myself that the report, whose preparation had occurred over a period of time, was motivated by a growing awareness of a number of Committee of Adjustment decisions about which Town staff were concerned, and would benefit from a clear Council policy on the appeal of such decisions. Nowhere in the several drafts of that report that I have reviewed is there reference to the matter of settlement negotiations. The insinuation that the report to Council was motivated by the legal matter in question was, in my opinion, unfounded and inappropriate.

To my mind, there was no justification for the implicit allegation in Councillor Shaughnessy's public statements on this matter, and they constituted an inappropriate criticism of those staff. It goes without saying that, given the nature of the public service and its relationship with elected officials, staff have no opportunity to defend themselves when such allegations are made. This is, I believe, the core reason why section 4.4 was included in the Code of Conduct when it was first drafted.

Given the language used, **I find that particular statement by Councillor Shaughnessy to be a breach of the Code, Section 4.4.**

Complaint 2b

Councillor Innis expressed concern in her complaint regarding the confidential matters pertaining to the OMB case earlier referenced.

My comments on this complaint were addressed under complaint 1a above.

Complaint 3a

The complaint alleges that by publicly criticizing Town employees, and calling their integrity into question, the Councillor has breached her duty to conduct herself in a manner that promotes public confidence and will bear close scrutiny.

This aspect of the complaint pertains primarily to the allegation that section 4.4 of the Code has been breached; this matter is addressed below section pertaining to complaints 3c, 3d and 3e.

Complaint 3b:

The complaint alleges that Councillor Shaughnessy contravened section 2.4 of the Code of Conduct by requesting confidential information that is not appropriate for her to obtain. This is in reference to her numerous communications seeking information with respect to the appeal before the Ontario Municipal Board regarding a Committee of Adjustment decision under appeal by the Town.

Reference to this aspect of the complaint has already been made in my comments respecting complaint 1a above. Since I cannot, with certainty, determine whether or not Councillor Shaughnessy was aware that she was seeking confidential information, and whether the request for such information was clearly enough stated to make such a determination, I make no finding with respect to a breach in this specific matter.

Complaint 3c, 3d and 3e:

These three aspects of the complaint filed by Mr. Galloway, on his own behalf and that of a number of other Town employees pertain to the relationship between Councillor Shaughnessy and numerous employees of the Town, and her ongoing interactions with them. I took the time to interview 10 employees of the Town, including Mr. Galloway, and will in large measure make my determination on these three aspects of the complaint based on those conversations and a number of supporting documents.

Complaint 3c focuses on the requirement of the Code of Conduct (sections 4.2 and 4.3) to "acknowledge and respect the fact that employees work for the Town as a corporate body, and are responsible for making recommendations that reflect their professional expertise and corporate objectives, without undue influence from any members." This raises two concerns:

- **Proper lines of communication**

There is a common thread raised in my conversations with Town staff, indicating that Councillor Shaughnessy persistently approaches employees at many levels in the organization seeking information, input, and advice. I am advised that she does so, on occasion, in an aggressive manner, making it clear that as an elected member of Council she is entitled to do so. Several staff used the word "intimidated" when relating to me their experiences in dealing with the Councillor.

There is in place a Council and Staff Communications Procedure which makes it clear to whom members of Council are directed, within the staff, when they have questions or requests for information. Staff expressed frustration with the fact that Councillor Shaughnessy will disregard those mandated communication channels, seeking out the information she wishes, at times "shopping" her request to numerous individuals, despite being regularly and on occasion repeatedly directed to speak to the appropriate manager, as per the protocol.

- **Influencing staff on reports for Council**

Councillor Shaughnessy has expressed her dissatisfaction to her Council colleagues, and on occasion to staff, when she is not successful in her quest to have input into the preparation of professional staff reports for Council and its committees. These are matters directly addressed in sections 4.2 and 4.3 of the Code of Conduct, and are the subject of complaints 3c and 3d.

Staff are placed in a very difficult position when faced with this type of conduct from a member of Council.

This issue was recently discussed during a Committee of the Whole meeting, wherein another member of Council commented as follows:

"I just wanted to say from my perspective; there should not be influence of council on a staff report. We are there to let staff do their work, their professional work, unencumbered, and then we speak to it when it comes to this Council table. So I'm not sure, but I just want to make clear for me that if there's a big ward 5 issue, I don't expect to, by that very nature, be able to influence a report that comes to council. My job is to have my influence here, amongst my peers."

In my opinion, eloquently expressed.

In my comments regarding complaint 2a I have already addressed the allegations of a breach of section 4.4 of the Code. As a result of the interviews with numerous Town employees, I am similarly convinced that in her many interactions with Town employees, **Councillor Shaughnessy has also breached section 4.2 and section 4.3.**

Conclusions

Since the inception of the 2014 – 2018 Council, I have come to know Councillor Shaughnessy quite well. We have interacted on a series of occasions, as I have carried out my advisory functions as Integrity Commissioner. I have come to know her as a dedicated, hard-working and highly determined representative of her community.

As stated at the beginning of this report the issue that lies at the centre of all three complaints is the *manner* in which Councillor Shaughnessy has conducted herself in Council meetings, committee meetings, the community and – importantly – in her dealings with Town staff.

Considering:

- the substance of all three complaints
- the comments of the many people I have interviewed, including members of Council and staff
- previous matters which have been raised with me informally regarding Councillor Shaughnessy's conduct
- together with the numerous documents, newspaper commentaries, audio recordings blogs and emails that I have reviewed

I have come to the conclusion that the manner in which Councillor Shaughnessy has conducted herself falls short of the standard required by the Code, as evidenced in my findings of several breaches.

I do not arrive at that conclusion lightly, and in fact have gone to considerable lengths to ensure the complaints against Councillor Shaughnessy have been dealt with as fairly as I have promised to her in the past when we have, together, met to consider various concerns she has raised with me.

The Bylaw that established the Code of Conduct in Caledon, and the Code itself, assign to me the responsibility for imposing appropriate sanctions (within the limits set out in *The Municipal Act*) where a breach of the Code has occurred. I will be imposing a sanction here, considering the fact that the Code has been breached on more than one occasion in more than one area.

I also wish to make recommendations to the Council for its consideration, recommendations which in my view go somewhat beyond my mandate.

Central to several of the issues within these complaints is the lack of alignment between the role and authority that Councillor Shaughnessy sees for herself as a member of Council, and the roles generally perceived by others, and embodied in Caledon's Procedural Bylaw, the Code of Conduct, and the Council and Staff Communications Procedure. While I know that these have been drawn to Councillor Shaughnessy's attention in numerous venues since her election, the conduct which has resulted in these complaints does not appear to have lessened as she gains experience as a member of Council. It's my sincere hope that as a result of this process, together with what I am both recommending and imposing, that the Councillor will modify her approaches to better align herself with both the "rules" and her colleagues on Council.

I do have some concern that despite the results of these complaints and my subsequent investigation and sanctions Councillor Shaughnessy may find it difficult to modify her approach. I wish to make it clear that, should the conduct that I have found to be in breach of the Code of Conduct in this investigation continue, I will expect that further complaints will be filed with my office, and I will treat such complaints in the context of this investigation. For clarity, in the event that further conduct that I conclude is offensive to the Code occurs, I will impose more onerous sanctions.

Put plainly, while this investigation is now complete, my file will remain open.

As I have done previously, I urge all members of Council to continue to make every effort to work collaboratively and respectfully, despite obvious differences.... which are normal in the political environment.... amongst the various members. Similarly, I urge the Mayor and those charged with chairing meetings of the Council and its various committees to continue their efforts to ensure that all members of Council adhere to those rules and protocols, and Code, going forward.

Sanctions:

- i. I recommend that Council put in place a special training session on the rules, protocols, and procedures of the Town pertaining to the Members of Council, specifically for Councillor Barb Shaughnessy. I am aware that the Town on occasion has engaged the services of firms such as Amberley Gavel Inc., a knowledgeable and expert resource which may be able to assist the Councillor in understanding the precise dimensions of her role and authority within the municipality.
- ii. Within the mandate granted to me as Integrity Commissioner, I direct the following:
 - a. That The Treasurer suspend the remuneration paid to Councillor Barb Shaughnessy for one week, commencing as soon as possible following the meeting at which this report is considered by the Council.
 - b. That Councillor Shaughnessy be required to attend the meeting recommended in I, in the event that Council adopts my recommendation.

APPENDIX A

Relevant excerpts from

The Council Code of Conduct

Schedule A to By-law 2015-090

Purpose:

The Code of Conduct for Council Members ("Member or Members") and related policies identify the Town of Caledon's expectations of Members and establishes guidelines for appropriate conduct to ensure that:

- Caledon residents have confidence in the integrity of their elected Members and local government;
- The decision-making process of Council is open, transparent, equitable and accountable;
- Decisions are made through appropriate channels of government structure;
- Public office is not used for personal gain;
- There is fairness and respect for differences and a duty to work together for the common good of the community and the residents;
- Members behave in a manner that is both ethically responsible and accountable at all times in upholding the public interest and will withstand public scrutiny;
- Members demonstrate an understanding of the fundamental rights, privileges and obligations of their elected position;
- Members are provided with and able to obtain information on the ethical propriety of conduct in different situations;
- Members seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario Legislature, and the Town.

1.1 Members must recognize their responsibility to:

- Represent the diversity of community views in a fair and equitable manner, while developing an overall strategy for the future of the Town;
- Endeavour to demonstrate sound financial management, planning and accountability;
- Be aware of and understand statutory obligations imposed upon individual Members and Council as a statutory body.

1.2 The onus is on Members to ensure that they adhere to and uphold the Code.

2.3 Members shall not disclose the content of a matter that has been discussed or the substance of deliberations of a closed session, except for content that has been authorized by Council to be released to the public.

Examples of the types of content that Members must keep confidential under this section include but are not limited to:

- Items under litigation, negotiation, or personnel matters;
- The source of a complaint;
- Price schedules in contract tender or Request for Proposal submissions if so specified;
- Information deemed to be personal information under the *Municipal Freedom of Information and Protection of Privacy Act*;
- Statistical data required by law not to be released (e.g., certain census or assessment data).

- 2.4 Members shall not access or attempt to gain access to confidential information in the possession of the Town unless it is necessary for the performance of their duties and not prohibited by law or Council policy.
- 3.1 Members shall show respect for the decision making process of Council. Information concerning adopting policies, procedures and decisions of the Council shall be conveyed openly and accurately.
- 3.2 Members shall accurately communicate the decisions of Council even if they disagree with the decision.
- 4.2 Members shall acknowledge and respect the fact that employees work for the Town as a corporate body and are responsible for making recommendations that reflect their professional expertise and corporate objectives, without undue influence from any Members.
- 4.3 In addition, Members shall acknowledge and respect the fact that Town employees carry out directions of Council as a whole and administer the policies of the Town. Members shall refrain from using their position to improperly influence employees in their duties or functions to gain an advantage for themselves or others.
- 4.4 Members shall refrain from publicly criticizing employees, in a way that casts aspersions on their professional competence and credibility.