

TOWN OF CALEDON INTEGRITY COMMISSIONER, DAVID G. BOGHOSIAN

Citation: Complaint re: Councillor Lynn Kiernan re: April 25, 2024 Planning Committee Meeting – DGB-Caledon ICI-2024-01

Citation: Kiernan, Lynn (Re)

Date: May 10, 2024

REPORT ON COMPLAINT

Introduction

[1] I received a Complaint on April 26, 2024 from a complainant indicating her desire to remain anonymous regarding comments Ward 1 Councillor Lynn Kiernan made at a Planning and Development Committee public meeting on April 25, 2024 which was alleged to violate s. 8.1 of Caledon's Code of Conduct for Members of Council and Designated Boards ("the Code of Conduct," "the Code" or "the COC").

Facts Provided by Complainant

[2] The Complainant provided the following description of the relevant facts:

During the Planning and Development Committee meeting held on April 25, 2024, Councillor Kiernan made a comment about a fact sheet left on the chairs of the councillors, and that she didn't get one. She commented "Takes me back to WW2 and the propaganda by the Germans." This was said openly and publicly referring to the documentation left on chairs being German propaganda against a group of people during that time. In a council meeting, it's crucial to maintain a professional and respectful tone. The phrase "this takes me back to WW2 and the propaganda by the Germans" is inappropriate in this context. Comparing the documentation left on chairs to propaganda, is an extreme comparison and many people were offended. This poor conduct should not be taken lightly as her concerns or criticisms were not respectful and were an inflammatory historical comparison. The goal of public meetings is to be respectful, foster positive and productive discussions and not discriminate [sic] hateful and inflammatory speech.

[3] The Complaint was based on s. 8.1 of the COC which generally addresses the expected conduct of members of Council during Council and committee meetings.

Investigation

[4] The Complainant identified the allegedly offending statement as having been made at the 1 hr., 25 minute mark in the video on the Town's website of the said meeting. I reviewed the video and find that the following statement was made by Cllr. Kiernan starting at 1:18:59 of the video

after she interrupted the delegate, Niocla Ross,¹ who was speaking against the Mayor's commitment to use her "strong mayor powers" to expedite the addition of 35,000 new housing units in the Town:

"I'm curious as to this document left on chairs [referring to an earlier referenced fact sheet said to have been left on chairs in the Council chamber]. Um, I didn't get anything on my chair. And, you know, that's alarming to me, you know, it takes me back to my history lessons of World War II and the propaganda by the Germans [gasps can be heard from the audience]. Why did I not get a piece of paper on my chair? [Vice-chair: "yes, ok"]. I did not get a piece of paper...did anyone else on Council get a piece of paper on their chair? Thank you."

[5] I find that the tone of the comments by Cllr. Kiernan and her facial expressions as she made them reflected indignation and anger, and were accusatory.

[6] The "fact sheet" was referenced once by Ms. Ross, at the 1:15:27 mark of the video, as having been placed on the chairs of all attendees at the public meeting. It is not clear if this included the seats of members of Council. It appears from her brief summary of its contents that she had not written or distributed it, as its content (such as that the Mayor had consulted with all councillors and they all supported her use of strong Mayor powers to facilitate the construction of 35,000 new housing units) would not have been something within her knowledge and was also somewhat unhelpful to the position she was putting forward in her delegation against this use of strong Mayor powers.

[7] I later requested and received a copy of the "fact sheet" from the Complainant. It is on Town of Caledon letterhead and is titled "Learn the FACTS – not the FICTION." There is no indication on the document of its author or source. The Complainant advised that it was her understanding based on a discussion with the Mayor prior to the commencement of the April 25th meeting that it came from the Mayor's office but this was never revealed publicly during the meeting. It sets out six points, with the "Facts" in a column on the right half of the document and the "Presumptions" on the left side. It is generally defensive of the use of strong Mayor powers to facilitate housing development in the Town.

[8] To her credit, despite the disturbing nature of Cllr. Kiernan's remarks, Ms. Ross continued almost unphased with the rest of her presentation. I was unable to locate Ms. Ross in order to question her about the impact of Cllr. Kiernan's statement in the middle of her presentation.

Response of Councillor Kiernan

[9] In her Response delivered on May 7, 2024, Councillor Kiernan made the following points:

- The meeting of April 25, 2024 was a highly unusual meeting and one I have never experienced in my five years on Council. It's fair to say that there were many emotions coming from several different positions to the issue on

¹ Ms. Ross is described in a newspaper article as a volunteer of a newly-formed group of concerned Caledon residents, Democracy Caledon: see "*Strong mayor powers, zoning bylaws questioned at packed Democracy Caledon meeting*," Orangeville Citizen (per Zachary Roman), April 25, 2024.

the agenda. This is evident from viewing the meeting video. I was inundated with inquiries, phone calls and emails from constituents who were confused, concerned, angry, feeling completely blindsided and disrespected with what many of them described as an "undemocratic" and unfair process;

- It was my intent to find out why Council did not also receive a piece of paper that was referenced by Ms. Ross. As a member of Council, I was trying to follow along with the delegation but I was having trouble because I was unaware of the contents of the referenced piece of paper;
- My use of the word “propaganda” was a metaphor because it felt like Council was deliberately not provided the piece of paper;
- I did not interrupt or disrupt the flow of the delegation or undermine anyone’s credibility. I don’t believe Ms. Ross was insulted or felt disrespected;
- I have since learned that the piece of paper that was distributed to the gallery and overflow chairs was done by a public appointee of the Governance Committee of Council and the Mayor's Chief of Staff. That information was not given to Council or posted for the benefit of the broader public. I find this very concerning;
- At the meeting and to date, neither Chair Russo, the Municipal Clerk or any other member of Council has raised concerns with me about anything that I said that evening at the meeting. From what I understand of the Procedural By-law, it is the Chair’s role to address any disruptions or misconduct, none of which happened.

Relevant Legislation

Code of Conduct

[10] The relevant provisions of the Town’s COC are as follows:

8. Conduct at Meetings

- 8.1 During Council, Committee or any Designated Board meeting, Members shall conduct themselves with decorum and in accordance with the Town’s Procedural By-law and/or the approved rules of each Designated Board, and this Code of Conduct. As leaders in the community, decorum requires Members to be held to a higher standard of behaviour and conduct, and accordingly their behaviour should be exemplary. Respect for a delegate, a fellow Member, employees and for the public requires Members to be courteous and not disrupt business during any portion of the meeting including presentations and when another individual has the floor.

Procedural Bylaw, BL 2015-108

[11] The Town's Procedural Bylaw contains the following statement regarding conduct of members at Council meetings:

6.1.1 Members of Council shall:

(d) not use offensive words or insulting expressions at any time including speaking in a manner that is discriminatory in nature based on an individual's race, ancestry, place of origin, citizenship, creed, gender, sexual orientation, age, colour, marital status, family status or disability;

[12] Although, unlike in many other municipalities' codes of conduct, the terms of the Procedural Bylaw are not incorporated by reference into the Code such that a breach of that Bylaw constitutes a Code of Conduct violation,² I view this passage as instructive in informing the meaning of "decorum" as used in s. 8.1 of the Code of Conduct

Findings

[13] The Cambridge University Dictionary defines "decorum as "behavior that is socially correct, calm, and polite."³ Wiktionary defines "decorum as: "appropriate social behavior."⁴ The Britannica Dictionary defines the word to mean "correct or proper behavior that shows respect and good manners."⁵

[14] The comments made by Councillor Kiernan are concerning and unacceptable on a number of levels, including the following:

- The invocation of a reference to German propaganda during WWII to describe a document dealing with a planning/housing issue was an insult to those who were the targets of German propaganda;
- The reference was clearly intended to convey, or at least did convey, the Councillor's views that the contents of the fact sheet was "propaganda", thereby denigrating its contents to all concerned without identifying any aspect of it that she had an issue with (or even knowing of its contents);
- She interrupted the speaker's deputation to make the statement when the speaker was not even referring to the fact sheet;

² While the Procedural Bylaw is mentioned in the Code as another document governing the conduct of Members, there is no language indicating that a breach of the provisions of the Procedural Bylaw are deemed to be a breach of the Code, as I find there would need to be in order for a breach of the Procedural Bylaw to amount to a breach of the Code.

³ Cambridge Academic Content Dictionary © Cambridge University Press)

⁴ See <https://en.wiktionary.org/wiki/decorum>.

⁵ See <https://www.britannica.com/dictionary/decorum>.

- Although the comments were likely not directed at the delegate, it may have had the effect of undermining the speaker’s credibility in the eyes of the audience.

[15] Councillor Kiernan’s remarks were not “socially correct” or “appropriate social behavior.” I find that Councillor Kiernan’s comments on the occasion in question violate s. 8.1 of the Code of Conduct.

[16] In my opinion, not only does the Councillor’s comments fail to live up to the clause in s. 8.1 of the COC that “decorum requires Members to be held to a higher standard of behaviour and conduct, and accordingly their behaviour should be exemplary,” it fails to meet any reasonable standard of discourse in modern society.

[17] I further find that Cllr. Kiernan violated the last sentence of s. 8.1 in discourteously interrupting a delegate’s presentation with the aforementioned comments. Although Cllr. Kiernan’s wrath was not directed at the delegate, her comments nevertheless disrupted the flow of the delegate’s presentation, and could have foreseeably undermined the confidence of the delegate in her continued presentation and her credibility in the eyes of the audience. I specifically reject her claims to the contrary.

[18] I do not agree that the comment by Cllr. Kiernan was made in the heat of the moment. The reference to the “fact sheet” which prompted Cllr. Kiernan’s remark had been made some 3.5 minutes beforehand, so the Councillor had sufficient time to formulate a measured and appropriate response.

[19] Cllr. Kiernan has raised the oft-cited “defence” in cases of statements made at Council or committee meetings that since neither the Chair, her fellow Councillors or anyone else in attendance at the meeting with the authority to speak up objected to her remarks at the time, there is no basis for dealing with those remarks through the Code of Conduct.⁶ I reject that argument. Simply because available remedies were not exercised at the time does not rule out the application of the Code of Conduct. Among other reasons, the remedies under the Code are far more stringent than those available under the Procedural Bylaw, in that under that Bylaw, the maximum punishment would be to demand an apology or expel the offending member from the meeting,⁷ whereas under the Code, the Councillor’s pay can be suspended for up to 90 days. Furthermore, s. 8.1 of the Caledon Code of Conduct specifically makes conduct at Council and committee meetings a matter within the jurisdiction of the Integrity Commissioner. The drafters of the Code

⁶ This defence has at times been accepted in the context of codes of conduct that did not specifically render conduct at Council and committee meetings a code of conduct offence. For example, in the City of Toronto, integrity commissioners have consistently taken the position that they do not have jurisdiction over the behaviour of Council members during Council and committee meetings; however, other municipalities’ Integrity Commissioners have rejected this proposition in the context of codes that do specifically address conduct at Council and committee meetings: see, for example, [Pomponi v Eddy et al., 2017 ONMIC 11 \(CanLII\)](#).

⁷ See Caledon Bylaw BL-2015-108 (Procedural Bylaw), ss. 6.1.2 (Where a member has been called to order by the Presiding Officer for disregarding the rules of procedure and the member persists in such conduct, the Presiding Officer may order such member to vacate the meeting place) and 6.1.3 (Where the member apologizes, the Presiding Officer may permit the member to resume his/her seat).

must therefore have intended that conduct at Council and committee meetings be subject to the findings and penalties provided for in the Code of Conduct.

Appropriate Penalty

[20] I understand that Cllr. Kiernan, a second-term councillor, has not been found in violation of the Code of Conduct for statements made at Council or committee meetings in the past. Although I have found that the comment was not made “in the heat of the moment,” neither was it the product of extended thought as it might have been if sent as a message on social media. The comment was also not directly insulting to anyone in the room except the author/distributor of the “fact sheet”. I also regard the distribution of the anonymously-written fact sheet to be poor politics, especially if it was not shared with the councillors who were present, such that the Councillor had some reason to be upset by its distribution to others. On the other hand, there was a clear violation of s. 8.1. For these reasons, I recommend that Council formally reprimand Councillor Kiernan for the inappropriate comments she made at the Planning and Development Committee meeting of April 25, 2024.

[21] Had the comments been directed at the delegate speaking at the time of her interruption, I would have recommended that Cllr. Kiernan publicly apologize to the delegate. I am satisfied by Cllr. Kiernan’s response that she did not intend to direct her comments at the delegate.

Concluding Comments

[22] I have found that Councillor Kiernan breached s. 8.1 of the Code of Conduct for Members of Council and Designated Boards and, in light of all of the circumstances, the recommended penalty is a reprimand.

[23] This concludes my investigation.

Respectfully Submitted,



David G. Boghosian,
Integrity Commissioner