

Reiche Law

Professional Corporation

203 NELSON STREET
PEMBROKE, ONTARIO
K8A 3N1
PHONE: (613) 735-2313
FAX: (613) 735-2013

ROY C. REICHE, BA, JD
(1950-2019)
SHELDON R. REICHE, BA, MA, JD
JAYME L. PINKHAM, BA, MA, JD
General E-mail: rcr@reiche.ca

“PRIVILEGED AND CONFIDENTIAL”

February 23, 2026

Corporation of the Township of
Killaloe, Hagarty and Richards
1 John Street
Box 39
Killaloe, ON
K0J 2A0

ATTENTION: TAMMY GORGERAT, CAO-CLERK-TREASURER

Dear Ms. Gorgerat,

Re: Code of Conduct Complaint – Report – Mayor David Mayville

The Township received a letter dated February 17th, 2026 from Mr. Timothy Phelan. Mr. Phelan represents Mayor Mayville with respect to the Integrity Commissioner Report of January 30th, 2026. The letter suggests the “sanctions” proposed by the Integrity Commissioner and imposed by Council on Mayor Mayville violate express provisions of the *Municipal Act* and are *ultra vires* to the authority of Council. There is a request that these “sanctions” be reversed by Council immediately and if Council fails to do so, he will advise his client to commence a legal action against the Township.

For ease of reference, Council agreed to adopt the recommendations contained within the Integrity Commissioner’s Report. These were the following:

1. a penalty of a 90 day suspension of pay pertaining to the issuance of Directives 7-10 and Decisions 1 and 2 as outlined in the Report;
2. a penalty of an additional 90 day suspension of pay pertaining to a series of correspondence sent by the Mayor as outlined in the Report;
3. three additional measures being the following:

- i. For the remainder of Council's term, the Mayor be prohibited from communicating with staff except verbally at Council or Committee meetings;
- ii. For the remainder of Council's term, the Mayor may only communicate with staff through Council. Should the Mayor need to communicate with staff, he shall send his communication to "all of Council" only. Council shall determine whether the request is appropriate and then provide staff with direction.
- iii. That Staff shall delay implementing any Directive or Decision until a legal opinion as to the validity of the Direction or Decision is obtained. Staff will act on the Directive or Decision based on the legal advice received.

I have been advised that the Township has since modified its adoption of bullet point #3 ii above and communication with staff is to be through two designated Councillors rather than "all of Council".

I have been asked to provide comment on the letter for the Township's consideration. The letter raises a number of items, but I will restrict my comments to what I view as the "main items".

Comments on the Letter

The Two Enumerated Penalties

The letter states the following:

"Section 223.4(5) of the Act provides that a Municipality may impose either of two enumerated penalties on a member of Council who contravenes the Code of Conduct: (a) impose a reprimand, or (b) suspend the member's remuneration for up to 90 days.

Firstly, Council has no authority to impose any penalty or sanction that is not enumerated in section 223.4(5)....."

For ease of reference, section 223.4(5) states the following:

(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.*

For clarity, even though the section only references two enumerated penalties, it does not preclude additional "remedial measures" being imposed to deal with Code of Conduct infractions

(see *Villeneuve v. North Stormont (Township)* 2022 ONSC 6551; *Dhillon v. The Corporation of the City of Brampton*, 2021 ONSC 4165 and *Magder v. Ford*, 2013 ONSC 263 (Div. Ct)).

However, these “additional remedial measures” are not to be used for a “punitive purpose”. What is “remedial” or “punitive” is, at least in part, dependent on circumstance. For example, jurisprudence has indicated that a request for an apology or a return of municipal property that was used improperly could be viewed as a “remedial measure”. Alternatively, an order for a Council member to repay funds the Council member donated to charity has been viewed as an unauthorized penalty and a resolution that provided a Councillor only communicate with constituents using the individual’s “municipal email address” has been quashed. As another example, a nine month prohibition for a Councillor contacting a municipal employee except through the Mayor was found to be appropriate; however, in the same circumstance, an approximate 14.5 month prohibition on restrictions to emailing all of staff was found to be unreasonable. I wish to stress that these examples are not to say that such “orders” would always be viewed as “acceptable” or “punitive”, but in those circumstances they were found to be.

In summary, notwithstanding that there are two enumerated penalties referenced in the *Act*, additional remedial measures can be imposed. However, these measures cannot be used for a “punitive purpose”. What is acceptable, and not acceptable as an “additional measure” will be dependent on circumstance.

Again, in the Township’s circumstance, the three additional measures were the following:

1. *For the remainder of Council’s term, the Mayor be prohibited from communicating with staff except verbally at Council or Committee meetings;*
2. *For the remainder of Council’s term, the Mayor may only communicate with staff through Council. Should the Mayor need to communicate with staff, he shall send his communication to “all of Council” only. Council shall determine whether the request is appropriate and then provide staff with direction. (which has since been modified so that communications be through two designated Councillors).*
3. *That Staff shall delay implementing any Directive or Decision until a legal opinion as to the validity of the Direction or Decision is obtained. Staff will act on the Directive or Decision based on the legal advice received.*

The Integrity Commissioner provides a rationale for these additional measures in his report which are not related to a “penalty”. There are limits being placed on the Mayor’s communications, but alternative communication methods are put in place and the additional measures do not expressly prohibit the Mayor from completing statutory duties. These additional measures, in the context of the circumstances detailed in the report, also appear as though they are intended to respond to the conduct underlying the complaint and provide a remedy.

Given this, in my opinion, the additional measures would likely be viewed as remedial in nature and seen as acceptable upon a judicial review. I wish to stress, however, that this is not to say that they could not be “judicially challenged” given that what is acceptable is dependent on circumstance and is ultimately determined by the Court upon a judicial review.

A Suspension of Pay

The letter also states the following:

“Secondly, the Act is equally clear that any suspension of pay, if imposed, must be “for a period of up to 90 days.” Section 223.4(5) caps any suspension of remuneration arising from a single Integrity Commissioner’s report at 90 days, regardless of the number of breaches or findings contained in that report”.

Section 223.4(5) (which is above for ease of reference) does not explicitly “cap any suspension of remuneration arising from a single Integrity Commissioner’s report at 90 days, regardless of the number of breaches or findings contained in that report”. The subsection speaks to contraventions of the Code of Conduct, and does not specifically reference a “cap” being imposed from a single report.

So you are aware, in *Chiarelli v. Ottawa (City of)*, 2021 ONSC 8256 the Court imposed a penalty of a suspension of salary for 270 days which was found to be appropriate in that circumstance. This was based on “one report” in respect to “three complaints”. Due to this case, there is an example of “one report” resulting in a suspension of pay being imposed on a member beyond a period of 90 days.

In the circumstance of the Township, there is “one report” and “a complaint pertaining to multiple instances of conduct”. The Integrity Commissioner recommended: 1) a penalty of a 90 day suspension of pay pertaining to the issuance of Directives 7-10 and Decisions 1 and 2 as outlined in the report, and 2) a penalty of an additional 90 day suspension of pay pertaining to a series of correspondence sent by the Mayor as outlined in the report.

There is no express legislative limitation or direction that expresses that “one report” cannot deal with “multiple infractions”, nor that if there are “multiple infractions” based on “a complaint” that there cannot be a separate penalty imposed on “each infraction” which collectively would exceed a 90 day suspension in pay. However, to require a limitation of “one penalty” based on the fact there was only “one report”, and/or even a limitation based on “one complaint which may, or may not encompass multiple infractions” does not make procedural sense in the context of an Integrity Commissioner investigation or report. Presumably, this issue could be rectified by an Integrity Commissioner creating “multiple reports” and/or a complainant making “multiple complaints”, but to require this would be administratively burdensome on the complainants and Integrity Commissioners. Such a requirement would also run contrary to the broad powers afforded to an Integrity Commissioner under the *Act* and at least part of the purpose of the legislative scheme being to hold elected officials accountable. My impression, from the legislation, is the legislature was concerned with “contraventions of the code of conduct” and was not overly concerned with the “number of reports an Integrity Commissioner has to make”.

Here, the Integrity Commissioner’s recommended penalties were for “different contraventions” as outlined in the report. The Integrity Commissioner elected to “group the contraventions” into two categories and recommended a penalty for each category. Presumably, the Integrity Commissioner could have also made separate recommendations based on “each singular contravention”, but he chose not to do so, which was within his prerogative. Council then accepted the recommendations of the Integrity Commissioner.

In my opinion, “multiple penalties” which result in exceeding the “90 day suspension of pay” (as referenced in the *Act*) are permissible provided there are multiple contraventions of a Code of Conduct that also result in the penalties being appropriate. This is notwithstanding that there may be only one Integrity Commissioner report and one complaint. Here, the Integrity Commissioner determined there were multiple contraventions of the Code of Conduct and recommended “two 90 day suspensions of pay” for the multiple contraventions of the Code of Conduct which he grouped into two categories. These penalties were then imposed by Council. This practice, in my opinion, is permissible under the *Act*.

So Council is aware, as a caveat, there is no specific case law on this issue, and similar to the “additional measures” the “multiple 90 day penalties based on one report” could be judicially challenged and ultimately be determined by a Court.

Conclusion

I wish to stress that the above opinions and comments do not determine if there were contraventions of the *Municipal Code of Conduct* or not. That was the role of the Integrity Commissioner. I also wish to stress that the above is intended to advise Council if the imposed penalties and additional measures are contrary to the *Act* – it is not to state if they are appropriate or not – just if they are legally permissible. In my opinion, the penalties and additional measures are consistent with the *Act*, what was intended by the legislature and are legally permissible. The legislature was concerned primarily with “contraventions” and “accountability” in enacting this legislation and I have given strong consideration to those principles in surmising my opinion on this matter.

The Mayor’s legal Counsel has essentially advised that if Council does not reverse and/or alter its decision that he will advise the Mayor to commence a legal action against the Township. I suspect that this would be an application for a Judicial Review of Council’s decision. This is within the Mayor’s legal rights to do so if he so chooses. Every other member of Council would also have this right if they found themselves in similar circumstances. Again, what is “acceptable” and what is “not acceptable” is very circumstance and fact dependent and it is possible that under Judicial Review, the penalties and additional measures which were imposed could be quashed, modified or set aside by the Court.

Both sides will incur legal costs for such an exercise if it is initiated. I anticipate that this would easily be in the “tens of thousands” of dollars for both parties. Typically (but not always), a Court will award costs on a partial basis in such proceedings payable from the unsuccessful party to the successful party. I suspect such an award, in this circumstance, would be upwards of \$20,000.00 if it were awarded.

I hope the above comments are of use for the Township. In the event the Township is served with a Court Application, please advise my office immediately.

Yours truly,



Sheldon Reiche
SRR:do