ADVISORY BULLETIN

COUNCIL MEMBERS' USE OF SOCIAL MEDIA

I. PURPOSE OF THE BULLETIN

The primary purpose of this Bulletin is to provide advice to Members of Council ("Members") in order to ensure that they comply with their obligations under the *Code of Conduct for Members of Council* (the "*Code*") when they use social media in connection with their work and role as a Member of Council.

This Bulletin also responds to Members' request to be given information regarding their ability to protect themselves and other users from being the subjects of abuse and harassment on social media.

Members may provide a link to this Bulletin on any social media accounts they use to issue communications about Council; their work and role as a Council Member; other Members of Council; or the business of the City.

Background

The term "social media' is a broad term which includes websites and online tools that allow users to interact with each other by sharing information, opinions, knowledge and interests. It is generally accessed through mobile devices, computers and tablets and exists on a number of different platforms with perhaps the most commonly used being: Facebook, Twitter and Instagram.

Social media can supplement and enhance a Member's interactions with constituents, stakeholders, media and the general public. It is an effective communication tool that gives the public a direct link to government - allowing it to obtain information at little cost in terms of time or resources. The internet, and social media in particular, allow more people to participate in public discussions and debates.[1] Social media is, in that regard, "the modern public square".[2]

When used in accordance with the *Code* and other applicable legislation, by-laws and policies, social media allows Members to demonstrate their service to their constituents and can enhance the public's trust and confidence in the work of Council and the City.[3] Further benefits for Members include the opportunity to clarify misinformation, publicize meetings and hearings,

[1] Public Policy Forum, Canadian Commission on Democratic Expression, Final Report 2020-21 ("CCDE")
[2] Knight First Amendment Institute: "Social Media for Public Officials 101", January 15, 2020 ("Social Media 101")
[3] Suzanne Craig, Integrity Commissioner for the City of Barrie, Complaint Investigation Report Under the City of Barrie Council and Committee Member Code of Conduct Concerning Councillor Keenan Aylwin, May 22, 2019 at p. 14 ("Aylwin Report")

promote programs, activities and events, inform citizens of emergency or public safety information, and market the City to potential tourists.[4]

Despite its many benefits, however, social media can also be a challenge for the unwary elected official. Members may find that their positions are vigorously challenged and criticized, even to the point of disrespect. They may also find themselves the victims of abuse, harassment or other unacceptable behaviour and may find their profiles to be targeted with spam and activity from bot accounts or malicious users in ways that compromise the utility of their social media communications.

To address these situations, social media platforms provide Members with the means to hide or delete unwanted content or to restrict access to users by "muting", "hiding", or "blocking".

In commenting on such actions, Integrity Commissioners in Ontario caution that the actions may be seen as undemocratic or even potentially unconstitutional, depending on the context of the specific situation.

For example, in his recently published *Interpretation Bulletin on the Use of Social Media*, the Integrity Commissioner for Ottawa said:

> To protect themselves and other users on their platforms, Members of Council may need to modify a user's access to their content. Social media applications allow users to do so in several ways, from disabling notifications when a user posts, to hiding a user's posts from view, to blocking a user's access entirely. In cases where such actions are required, Members of Council should opt to be minimally invasive, preserving as much access to information and expression as possible … [emphasis added][5]

Similar advice has been provided by Suzanne Craig, the Integrity Commissioner for the cities of Barrie and Vaughan. She commented that because social media provides the public with a direct link to government and is now an important part of the public's engagement with elected officials, in order to preserve the integrity of the democratic process Members must be careful not to block the public from having access to the social media accounts they use to perform their duties of office, simply because those users express criticism of the Member's conduct.[6]

II. WHEN IS A MEMBER'S USE OF SOCIAL MEDIA GOVERNED BY THE *CODE*?

- The *Code* applies to all communications a Member makes which are about: Council; their work and role as a Council Member; other Members of Council; or the business of the City, regardless of the social media account or device from which the communication is made.

[4] Alberta Urban Municipalities Association and the Alberta Association of Municipal District and Counties Social Media Resource Guide, 2015, p. 4 ("AUMA Resource Guide")
[5] Appendix 1 – Interpretation Bulletin on the Use of Social Media – 2020 Annual Report of the Integrity Commissioner for the City of Ottawa
[6] Suzanne Craig, Complaint Investigation Report Under the City of Barrie Council and Committee Member Code of Conduct Concerning Councillor Keenan Aylwin, May 22, 2019 at p. 5 ("Aylwin Report")

For example, a Member cannot escape their obligations under the Code simply by naming their account "John Smith" rather than "Councillor John Smith" if they are using the account to issue communications about Council; their work and role as a Council Member; other Members of Council; or the business of the City.

III. SOCIAL MEDIA AND THE *CODE OF CONDUCT*

Definitions used in this section are the same as those which are used in the *Code*.

When a Member's use of social media is subject to the *Code*, the following advice applies to the rules which may be engaged most frequently on social media:

Confidential Information (Rule 1)

A Member should never disclose confidential information through the use of social media. Confidential information is defined in the *Code* as:

> "information which is otherwise not available to the general public, including information contained in the agenda for or discussed at an *in camera* meeting held pursuant to the City's *In Camera By-law*, and information in the possession of or received in confidence by the City that the City is either prohibited from disclosing, is required to refuse to disclose, or may refuse to disclose pursuant to the provisions of the *Freedom of Information and Protection of Privacy Act*. "

Conflict of Interest (Rule 2)

When they use social media in connection with their role or work as a Council Member, Members must not post content that promotes or advances their private interest. They are also reminded that their obligation not to influence or engage in a discussion about a matter in which they have a private interest, applies to their communications on social media.

Fundraising (Rule 3)

Members must not use social media to solicit funds or donations from any person or organization if doing so would constitute an improper use of the influence of their office.

> *Example: Members should avoid making a specific targeted request for donations to a business or person because doing so may be perceived by the recipient as a way to gain an advantage by making a donation or as putting them at a disadvantage if they decline to make a donation.*

Gifts and Benefits (Rule 4)

Members must not accept a gift, fee or personal benefit in exchange for social media activity.

Example: accepting a free meal from a new local business in exchange for an Instagram post is prohibited because this may create the appearance that the business is seeking to influence the Member or otherwise gain their favour.

Use of Influence (Rule 5)

- Members must not misuse the influence of their office through the use of social media.

  Example: a Member should not tag a person's employer in response to a negative interaction with that person. Doing this would exceed the scope of what is considered an acceptable use of the Member's influence.

- However, aside from obvious conflict of interest situations such as where the Member has a private interest at stake, Members may share content which is designed to raise awareness of and publicize their attendance at local events or businesses, so long as such actions are voluntary, unsolicited, and not done in exchange for anything.

  Example: a new restaurant is opening in a Member's ward and asks the Member to tweet an announcement about the opening. This is an acceptable use of social media, provided that the Member has not been offered anything in exchange.

- When unsure as to the risk of the perception of undue influence, Members should contact the Integrity Commissioner for advice before posting promotions.

Election-Related Activity (Rule 7):

- Members' obligation not to use City resources in connection with an election campaign during the campaign period extends to their use of social media.

  Example: Members should not use the services of staff to manage their election-related social media activity during the hours in which staff are in the paid employ of the City; nor should Members use a device which was purchased with City resources.

- The campaign period for City elections is defined in the Code as follows:

  (a) in a general election,

  (i) in the case of a candidate for Mayor, beginning on May 1 in the year of the election and ending on the day following the election; and

  (ii) in the case of other candidates, beginning on June 30 in the year of the election and ending on the day following the election; and

  (b) in a by-election, beginning on the day when the returning officer receives the direction from the city clerk to hold the election and ending on the day following the election.

- During the campaign period, Members should refrain from using their incumbent position as their title in an "election communication", on social media as that term is defined in *The City of Winnipeg Charter*.

  Example: A candidate should not say

  - *"Re-elect Mayor [candidate's name]"*
  - *"Re-elect Councillor [candidate's name]"*

  A candidate can say

  - *"Re-elect [candidate's name] for Mayor"*
  - *"Re-elect [candidate's name] for Councillor*"

Conduct Concerning Staff (Rule 8)

- Members should not use social media to intimidate, coerce, or influence staff with the intent of interfering with staff's duties, or to maliciously or falsely impugn or injure the professional or ethical reputation or the prospects or practice of staff and should at all times show respect for staff's professional capacities.

  Example: It is not permissible for a Member who is concerned that a staff member may issue a report which will be contrary to their position on an issue, to post a series of tweets directed at the staff member which are intended to intimidate and coerce the staff member to come to a favourable conclusion.

- Members are also not permitted to directly or indirectly request, induce, encourage, aid, or permit staff to use social media in a manner which, if done by the Member, would be a breach of the *Code*.

  Example: a Member cannot encourage or permit staff to use social media to harass another person.

Respectful Conduct (Rule 9)

Members are required to act with the decorum expected of their office and when using social media must adhere to the same requirements described in the *Code* as they would for any other form of communication including treating members of the public, one another and staff with respect and without abuse, harassment or intimidation.

This includes an obligation not to post material that is discriminatory under the provisions of *The Human Rights Code* of Manitoba or that promotes or incites hatred against an identifiable group as defined under the *Criminal Code* of Canada.

IV. MEMBERS' ABILITY TO PROTECT THE SAFETY OF THEIR ACCOUNTS

For the purposes of this Bulletin, the following definitions apply:

"**mute**" means the act of hiding a user's shared content from a Member's social media timeline without restricting that user's access to the Member's account;

"**block**" means an action intended to prohibit or restrict a specific user from viewing a Member's social media account and/or any content shared in that account;

"**spam**" includes unwanted and/or unsolicited, electronic communications including, but not limited to, bulk and/or unsolicited electronic communications that are sent out autonomously;

"**bots**" are autonomous social media accounts that artificially interact with other users and/or generate content.

In my discussions with Members of Council, I repeatedly heard them express concerns about being subjected to harassment and abuse in their social media communications and to having the utility of those communications compromised from time to time by spam or bots.

They also acknowledged that as politicians they will receive communications which reflect diverse perspectives which may well be at odds with their own points of view.

This has been captured eloquently by the Knight First Amendment Institute – an institute which was established in 2016 at Columbia University to safeguard free expression in the digital age. In its *Quick Guide on Social Media for Public Officials*, the Institute reminded politicians that:

> As a public official you may be subjected to speech that is pointed, disparaging, critical, mocking, unfair, cheap, dishonest, false, abusive, outrageous, and offensive. You can of course call out this speech and respond to it. As a general matter, though, you can't suppress it.[7]

However, it went on to acknowledge that:

> … there's no question that some kinds of speech can be disruptive, discourage civic participation that's important to our democracy, and make a public forum less useful than it might otherwise be. On social media, abuse and harassment are significant problems, especially for women and minorities.[8]

I think there is general consensus that more needs to be done to encourage diverse and inclusive representation in public office and it is desirable that people not be discouraged from running for office for fear of being subjected to abusive conduct on social media.

There is also no question that in Canada that some kinds of speech are considered illegal and are, therefore, not protected by the *Canadian Charter of Rights and Freedoms* - for example, content which promotes or incites hatred against an "identifiable group" as defined by the *Criminal Code*

[7] Knight First Amendment Institute at Columbia University: *Quick Guide: Social Media for Public Officials 101*, p.4

[8] Knight First Amendment Institute at Columbia University: *Quick Guide: Social Media for Public Officials 101*, p.4

of Canada. An "identifiable group" includes any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or physical or mental disability.

I stress, however, that while Members' desire to protect themselves and other users from being the subject of abuse or harassment on social media is understandable, because Canadian courts have not had an opportunity to address the issue, it is not known how a court would rule if a Member's action to block a user were challenged in a legal action.

Therefore, if a Member feels it is necessary to protect themselves and other users on their platforms by modifying a user's access to their content. I encourage them to be minimally restrictive and to mute rather than block since muting, while it prevents the Member from having to see content, does not prevent the user from having access to the Member's communications.

In particular, I encourage Members not to restrict a user's access to their social media platform simply because the user expresses a difference of opinion.

Members should always consider whether less severe restrictions such as muting users or hiding replies, both of which are possible using Twitter, for example, would achieve what they want to accomplish.

I also encourage Members to monitor their public pages for language that constitutes harassment and discrimination towards groups who fall under the categories of identifiable groups listed in the *Criminal Code*. When such language is found, Members should, where possible, report the offending statements to the respective social media provider and where necessary to the police.

Each social media platform is governed by its own terms of use. I recommend that Members familiarize themselves with the terms of use of each profile that they use.

See, for example, Twitter's "Hateful Conduct Policy": https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy and Facebook's Community Standards Policy: https://www.facebook.com/communitystandards

Members are also reminded that everyone in Manitoba is required by law to report posts or content shared by a user that constitutes child pornography, to the Canadian Centre for Child Protection Inc.[9]

If a Member decides to post rules and limits on what followers can post on their social media accounts, those limits should be reasonable, viewpoint neutral in the sense that they are not based on whether a user disagrees with something they have said, and be enforced consistently. In that regard, Members need to consider whether they have the time and resources to enforce any rules that they establish.

[9] see *The Child and Family Services Act*, C.C.S.M. c. C80, section 18(1.0.1)

And again remember that because Canadian courts have not yet ruled on an elected official's ability to block a user on social media, Members should think carefully about any limits or rules that they decide to impose on their social media accounts.

Members may also indicate on their accounts that a decision to follow a social media account does not imply endorsement by the Member, and that the appearance of another user as a follower of the Member does not imply that the Member endorses that user.

V. THE INTEGRITY COMMISSIONER'S JURISDICTION

A Member's decision to mute or block a user or to delete or hide content is not governed by the rules of the *Code* unless the manner in which they take such action otherwise engages the *Code,* for example, in a way that constitutes harassment as defined in the *Code.*

Accordingly, the Integrity Commissioner will not accept complaints about a Member's decision to take mute or block a user on their social media accounts.

VI. VOLUNTARY LOBBYIST REGISTRY

Members of Council and the public are reminded that interactions over social media may still be captured by the requirements of the City's Voluntary Lobbyist Registry.

VII. EMAIL ACCOUNTS

Email accounts are generally not considered to be included in the colloquial definition of "social media".

The notion of social media as a "public square" for the purpose of free expression is in its infancy and has not been extended to email communications to date.

Compared to social media platforms, there are relatively limited options available to eliminate unwanted email interactions.

Generally, this is limited to simply deleting unwanted emails, or flagging those emails as "spam" with the email provider, as opposed to being able to block a sender entirely.

A Member's decision to delete emails or flag emails from other persons as "spam" or "junk" will generally be considered a political rather than an ethical consideration and therefore not one which the Integrity Commissioner will regulate.

VIII. CONCLUSION

The technology of social media is new and evolving and I anticipate that my guidance on this topic both with respect to compliance with the *Code* and other considerations will be amended as the legal, political and social landscapes relating to social media, evolve.

IX. AUTHORITIES

- *Code of Conduct for Members of Council*
- *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s 91(24)
- *Criminal Code*, R.S.C. 1985, c. C-46
- *The City of Winnipeg Charter*, S.M. 2002, c. 39
- *The Human Rights Code*, C.C.S.M. c. H175
- *The Freedom of Information and Protection of Privacy Act*, C.C.S.M. c. F175
- *The Municipal Councils and School Boards Elections Act*, C.C.S.M. c. M257
- *The Child and Family Services Act*, C.C.S.M. c. C80
- Policies, by-laws and procedures of the City of Winnipeg

Date: July 14, 2021