

# Principles *Integrity*

## Region of York Code of Conduct Complaint Against Councillor Perrelli Recommendation Report March 30, 2021

### Introductory Comments

- [1] Principles *Integrity* was appointed the Integrity Commissioner for the Regional Municipality of York effective January 1, 2019. We are also privileged to serve as Integrity Commissioner for a number of Ontario municipalities. The operating philosophy which guides us in our work with all of our client municipalities is this:

*The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.*

- [2] Principles Integrity serves as the integrity commissioner for the Regional Municipality of York and for three of the municipalities within York Region (Aurora, East Gwillimbury and Whitchurch-Stouffville). There are other integrity commissioners serving the other 6 municipalities within York Region, including Richmond Hill.
- [3] York Region has as part of its ethical framework a Council Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct.
- [4] Integrity commissioners carry out a range of functions for municipalities (and their local boards). They assist in the development of the ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for members of council and outreach for members of the community. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the municipality's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions, that council for the municipality may consider imposing in giving consideration to that report.

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- [5] It is important that this broad range of functions be mentioned at the outset of this investigation report. Our goal, as stated in our operating philosophy, is to help members of the York Region community, indeed the broader municipal sector and the public, to appreciate that elected and appointed representatives generally carry out their functions with integrity. In cases where they do not, there is a proper process in place to fairly assess the facts and, if necessary, recommend appropriate sanctions. In every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made.
- [6] Our role differs from other ‘adjudicators’ whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault. While that is a necessary component when allegations are made, it is not the only component.
- [7] Our operating philosophy dictates the format of this report. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that.
- [8] We are also guided by the Statement of Principles adopted by the Municipal Integrity Commissioners of Ontario (MICO), which includes the following provisions relevant to the complaint which is the subject of this report:

We [carry out our role] by exercising our authority in a manner that promotes good governance, and effective and equitable solutions.

...

We [carry out our role] by exercising restraint and a solution-oriented perspective, favouring teaching opportunities over sanctions.

### The Complaint

- [9] On January 8, 2021 we received a complaint against Regional Councillor Carmine Perrelli under the York Region Council Code of Conduct.
- [10] The complainant alleged that Regional Councillor Perrelli inappropriately blocked him from a social media account (on Twitter) because he was critical of the Regional Councillor’s position opposing the Province’s COVID-19 lock-down measures proposed in York Region.

### Why Is Blocking A Constituent On Twitter A Relevant Consideration?

- [11] In traditional terms, social media can be perceived in many respects as an electronic version of the ‘town square’. It is a place where opinions and ideas are shared, contentious matters are addressed, and where people come together just to come together. In its best light, social media represents a democratization of communications between citizens and their elected officials. Regrettably social

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media is not always a platform for healthy discussion. At times it attracts unconstructive negativism, and even hate.

[12] The potential for unconstructive and even offensive communication over social media has resulted in the development of certain tools through which participants can control their accounts. One of the tools available on Twitter is the ability to 'block' another registered Twitter user from interacting with the user.

[13] The complainant in this matter is, in essence, concerned that the Councillor's treatment of him prevents him from listening to, and responding to, comments made about public interest issues in the 'town square' by:

- The Councillor
- The Councillor's followers who 'like', 'reply', or 'retweet' the Councillors' posts
- Other direct communications like direct messaging

since he has been 'blocked' by the Councillor.

[14] If blocked, a person does not learn that they have been blocked unless they visit the Twitter user's account page. Without checking, they would be unaware of the fact that they cannot participate in the conversations facilitated directly through the Councillor's Twitter account.

[15] If they are aware of the blocking, the complainant can log out of their account and visit the 'town square' but will not be able to join the conversation on the matter under discussion unless they create a new account.

[16] For open accounts (where anyone can visit without asking for permission to 'follow' the account), anyone can follow the account unless they are prevented by blocking. Accounts which are not 'open' (ones which require permission to follow the account) are by their very nature unlike the 'town square' because they do not provide unrestricted access.

[17] The effect of blocking a person on Twitter from accessing an open account is to deny the person the ability to see the user's tweets unless they log out from their own account, effectively denying them the ability to participate in a discussion in the Town Square. This denial, which is not visible to other users, is asserted by the complainant to be a form of censorship.

[18] Our investigation examined whether the complainant was blocked from a public interest discussion hosted through the Councillor's Twitter account, and if so, whether the blocking was a contravention of the Code of Conduct.

[19] Because the use of social media is ubiquitous, and because the issue of elected officials' conduct and oversight on social media is arising more frequently as the

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subject-matter of complaints to integrity commissioners across municipalities, this report provides an opportunity to address the subject.

### Summary of Outcome

[20] We conclude that while the arbitrary blocking of criticism on an open Twitter account hosted by a member of Council, through which the business of Council is discussed with constituents, is contrary to the Code of Conduct, the Code provides little guidance in that respect and so in the circumstances of this matter no sanction is being recommended.

[21] Accordingly we recommend that Council for the Region of York develop a policy framework for when and how Members of Regional Council may block constituents from their social media accounts, including Twitter.

### Process Followed for the Investigation

[22] In conducting this investigation, Principles *Integrity* applied the principles of procedural fairness. This fair and balanced process includes the following elements:

- Reviewing the Complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the Complaint should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent of the Complaint and seeking his response
- Reviewing the Council Code of Conduct for York Region, relevant legislation, caselaw and integrity commissioner reports, and other relevant documents
- Reviewing the means by which various jurisdictions have responded to situations similar to the one addressed in this report
- Interviewing relevant witnesses
- Providing the Respondent with an opportunity to review and provide comments regarding our draft findings
- Reviewing and considering the extensive comments and submissions received from the Respondent's lawyer in finalizing our Recommendation Report.

### Background:

[23] The Respondent is a Member of York Regional Council and Deputy Mayor of Richmond Hill.

[24] As Ontario struggled to control the spread of COVID-19 in the winter of 2021, the Province moved a number of GTHA municipalities from a 'Red' zone into 'Grey-Lockdown' zone.

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[25] Councillor Perrelli maintains an active Twitter account, which identifies him as “Deputy Mayor, Regional and Local Councillor for the City of Richmond Hill, Ontario”.

[26] On January 7, 2021, Councillor Perrelli posted a CP-24 headline on his Twitter:



[27] At the same time, he posted a link to the following press release announcing that he would bring a motion to the York Region Committee of the Whole meeting on January 14, 2021 requesting that the Provincial Government not extend the Grey-Lockdown zone to York Region: [see following page]

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FOR IMMEDIATE RELEASE  
January 07, 2021

We all agree that the accepted COVID-19 safety protocols of physical distancing, wearing a mask, washing your hands and contact tracing are necessary and is why York Region has already targeted these measures for heavy enforcement.

“Protecting Public Health is our job; closing down businesses, negatively impacting people’s livelihood which contributes to a wide-range of health issues, the extent of which will not be fully known for many years to come, is not, said Richmond Hill Deputy Mayor Carmine Perrelli”.

Our own Medical Officer of Health, Dr. Kurji, has said that we are not seeing any outbreaks traced to retail establishments and that a lockdown wouldn’t make much of a difference. SCARSIN, the consultants hired by York Region have also said the same thing.

One of Dr. Kurji’s exact quotes, “What we are not seeing are any outbreaks traced to retail establishments. We are not seeing any outbreaks traced to restaurants, or gyms and we haven’t been seeing outbreaks from places of worship in York Region either”, sums it up best.

We all know that many businesses have already closed permanently and that extending the Grey – Lockdown zone period will only lead to many more businesses facing the same fate, through no fault of their own.

“Our voice and opinion does matter. The Province does take seriously and place value in what York Region has to say. I believe it is important that York Region Council send them a clear message and make our 1.2 million residents voices heard, said Richmond Hill Deputy Mayor Perrelli.

“Therefore, I will be bringing forward a motion at the York Region Committee of the Whole Meeting on Thursday January 14 requesting the Premier to not extend the Grey - Lockdown zone period and return York Region to the Red – Control zone as modified in my motion”. concluded Richmond Hill Deputy Mayor Carmine Perrelli.

[28] The complainant re-tweeted the CP-24 tweet with the following comment:

As the number of COVID 19 deaths and infections increases exponentially, Richmond Hill Regional Councillor Carmine Perrelli is trying to stop public health measures in York Region. #yorkregion #RichmondHill #COVID19Ontario #COVIDIOT

[29] The complainant alleged that within 24 hours of him posting the retweet Councillor Perrelli blocked the complainant on Councillor Perrelli’s Twitter.

[30] Being blocked prevents the complainant from reading other tweets unless logged out of his own Twitter account, blocks him from engaging with Councillor Perrelli on Twitter, prevents him from commenting directly on posts, retweeting posts, or making comments which can be seen by others who read Councillor Perrelli’s Tweets.

[31] The issue is whether ‘blocking’ a member of the public on an elected official’s social media account may constitute a contravention of the Code of Conduct.

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[32] In the course of responding to this complaint, the Councillor and his legal counsel raised a number of issues including preliminary and jurisdictional questions:

- That the matter is properly within the jurisdiction of the Richmond Hill integrity commissioner; alternatively, it falls within both jurisdictions and we must work with the Richmond Hill integrity commissioner to report the findings;
- That the Councillor sought the Richmond Hill integrity commissioner's advice, and that advice is binding upon us;
- That the Councillor uses his twitter account as a broadcast media to disseminate information and not as a discussion forum, and having a twitter account "does not entail having the obligation to provide a forum for criticism";
- That American jurisprudence, which the complainant referenced, does not reflect Canadian law;
- That the Councillor has the right to curate all messages on his personal Twitter account, including by deleting contradictory or opposing views;
- That the term COVIDIOT was an insulting and defamatory term which justified the blocking by the Respondent.

### Relevant provisions of the York Region Council Code of Conduct

[33] In April 2019 Regional Council adopted a Code of Conduct.

[34] Recognizing that the lower-tier municipality to which the member is also elected may have a different integrity commissioner and a different Code of Conduct, the Region's Code provides guidance as to determining which integrity commissioner has jurisdiction to investigate a complaint against members of Regional Council.

#### B.1 Application of the Code:

This Code of Conduct applies to all Members of Regional Council acting in their 'Official Capacity'. This includes, but is not limited to, the conduct of Members in the following circumstances:

- While on Regional property
- When interacting with another Member of Regional Council, York Regional staff and/or agent
- In relation to matters immediately before and/or solely within the purview of York Regional Council
- In relation to services provided by York Region
- During a York Regional event and/or function
- While serving on any Board, Committee or other body to which the Member was appointed by Regional Council

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In this context, 'Official Capacity' as a Member of Regional Council expressly does not relate to the Regional Council Member's conduct in the following situations:

- While executing their duties as a member of council for a local municipality
- In relation to business that is before the local council and/or within the purview of a local municipality
- When representing the council of a municipality other than York Region

### B.2 Managing Jurisdictional Issues

Should an issue arise where it may be unclear whether a complaint falls within the mandate of the Region or the local municipality, both the Regional and local Integrity Commissioners will work together to develop a process to resolve the matter and report the findings to the appropriate council(s). In such instances, consideration should be given to the following:

- The municipality in which the complaint was filed
- The municipality in which the expense/mileage claim was submitted for the event or function
- The reasonableness for that municipality's Integrity Commissioner to undertake the investigation

### B.3 Acting on Advice of Integrity Commissioner

Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent consideration of the conduct of the Member in the same matter, as long as all the relevant facts were disclosed to the Integrity Commissioner, and the Member adhered to the advice given.

[35] The Code provisions most relevant to this alleged contravention in this complaint are the following:

## D. Guiding Principles

The following principles will guide Members and assist with the interpretation of the Code of Conduct:

- Members shall serve the public in a conscientious and diligent manner that promotes public confidence and will bear public scrutiny

### D.1 Member Conduct

Members shall endeavour to conduct and convey Council business and all their duties in an open and transparent manner (other than for those decisions which by virtue of legislation are authorized to be dealt with in a confidential manner in closed session), and in so doing, allow the public to view the process and rationale which was used to reach decisions and the reasons for taking certain actions.

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### D.6 Respectful Workplace

All Members have a duty to treat members of the public, one another and staff with respect and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination, harassment and violence.

#### Analysis:

##### Jurisdiction of Regional Integrity Commissioner

[36] The subject-matter of the Councillor's Twitter post relates specifically to an expression of opposition to the Province's extension of the lock down into York Region, and the Councillor's proposed motion at Regional Council in this regard:

*"I believe it is important that York Region Council send [the Province] a clear message and make our 1.2 million residents voices heard".*

[37] The Councillor advised that because his Twitter account is operated under the auspices of the City of Richmond Hill and the complainant is a resident of Richmond Hill, the complaint is beyond the jurisdiction of the York Region Integrity Commissioner.

[38] The Regional Code of Conduct, in setting our guidance for determining jurisdictional issues, includes the following considerations:

- In relation to matters immediately before and/or solely within the purview of York Regional Council
- In relation to services provided by York Region

[39] There are areas of overlapping or shared jurisdiction, such as matters relating to planning and transportation.

[40] Public health is a matter which falls within the purview of York Regional Council.

[41] Recognizing this role exercised by upper-tier public health units, including York Region Public Health, the Province's legislation regarding lockdowns and other restrictions to confront the spread of COVID 19 have been implemented on a region-by-region basis, through regulations under the *Reopening Ontario Act*.

[42] The social media posts of the Councillor express his position as a member of Regional Council in relation to York Region's position regarding the extension of the lock down to York Region.

[43] We are unable to agree with the Councillor's position that the twitter account is operated under the auspices of the Town of Richmond Hill. The publicly available

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account data for @CarminePerrelli, the Councillor's twitter account, indicates the following:

Screen name	Twitter ID	Name	Biography	Account created date
<a href="#">@CarminePerrelli</a>	719681677841203200	Carmine Perrelli	Deputy Mayor, Regional and Local Councillor for the City of Richmond Hill, Ontario. 🇨🇦 #CarminePerrelli	Tue Apr 12 00:20:57 +0000 2016
Location	URL	Time zone	Geo enabled	Language
Richmond Hill, Ontario	<a href="http://www.carmineperrelli.ca">http://www.carmineperrelli.ca</a>	not set	not set	not set
Verified	Tweets	Followers	Friends	Protected
not verified	250	225	164	not protected

- [44] While the Councillor's role at the City of Richmond Hill is mentioned (as is his role at the Region), there is nothing to indicate that the account is in any way managed by the City of Richmond Hill. For example, while the URL which is linked to the site is oriented to the Councillor's role as an elected official, it is nevertheless clearly a site owned by him, and for which he claims copyright ("© Copyright 2019 Carmine Perrelli").
- [45] Setting aside the issues of whether the site is operated under the auspices of Richmond Hill, and the residency of the complainant, we are satisfied that the message expressed relates clearly to York Region, and the Councillor's position on behalf of and in his capacity as a Regional Councillor.
- [46] If we had found that the subject-matter of the complaint related to a matter where it was unclear whether it fell within the purview of the Region or the local municipality, under the Regional Code there is an obligation on the Regional Integrity Commissioner to work with the local Integrity Commissioner to develop a process to resolve the matter and report the findings to the appropriate council.
- [47] Although a similar provision does not exist in the Richmond Hill Council Code of Conduct, in the context of this complaint, there was no need for us to work with the Richmond Hill integrity commissioner.
- [48] In any event, we have been provided with the written opinion of the Richmond Hill integrity commissioner which we have taken into account in reviewing this matter. For reasons which follow, we do not find that opinion determinative.

Seeking and relying on written advice of the Integrity Commissioner

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[49] The Regional Code provides that a member may seek and may rely on the written advice of the integrity commissioner. That provision provides:

Any written advice given by the Integrity Commissioner to a Member binds the Integrity Commissioner in any subsequent consideration of the conduct of the Member in the same matter, as long as all the relevant facts were disclosed to the Integrity Commissioner, and the Member adhered to the advice given. [emphasis added]

[50] This provision, which encourages members to seek the guidance and advice of the integrity commissioner when encountering areas of ethical ambiguity or other 'grey' areas, ensures that the member may rely with confidence on the written advice, which is binding in the event of a subsequent complaint.

[51] However, there are necessary conditions precedent:

- that all relevant facts were disclosed to the integrity commissioner,
- that the advice be sought prior to a complaint being filed as it is binding only in subsequent consideration of the conduct.

[52] It is important to recognize that once a complaint is filed against the member relating to a matter, it is no longer possible for the member to obtain the integrity commissioner's advice in that regard. The integrity of the complaint review mechanism precludes members, after the fact, from seeking advice to support actions already taken and conduct already subject to complaint.

[53] In addition, such an approach would be to enable 'opinion shopping' by members of two-tier municipal councils.

[54] Following our initiation of the complaint with the Councillor, we were provided with a letter from the Richmond Hill Integrity Commissioner dated a few days *after* the complaint initiation date.

[55] The Richmond Hill Integrity Commissioner, in response to the question "if I choose to block someone from my social media, would this action violate our Code of Conduct?", provides the opinion that "...provided that the blocking is not done for a reason or in a way that would constitute a violation of the Respect in the Workplace Policy or the Human Rights Code, the act of blocking on its own would not constitute a violation of the Code of Conduct."

[56] The Richmond Hill Region Integrity Commissioner did not address the provisions of the York Region Code of Conduct. It should also be noted that the Richmond Hill Integrity Commissioner did not attempt consultation with the York Region Integrity Commissioner. We are not aware whether the Richmond Hill Integrity Commissioner had been made aware of the complaint.

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[57] While the opinion of the Richmond Hill Integrity Commissioner, sought after a complaint was already filed, is information which can be taken into account, it cannot be considered binding on the integrity commissioner of another jurisdiction.

### Whether 'Blocking' on Twitter constitutes a contravention of the Code of Conduct

[58] The Councillor does not deny 'blocking' the complainant from his Twitter account, preventing the complainant from continuing to engage in public discussion on the forum.

[59] Blocking is a means of preventing a participant from adding or otherwise providing input to the Twitter post. 'Blocking' removes the ability of the participant to see the Twitter account, whereas another Twitter tool, 'muting' allows viewing but prevents the muted person's posts from showing on the account holder's timeline (the posts would however appear on the muted person's own timeline).

[60] The complainant alleges that the Councillor blocked him on Twitter because the complainant criticized the position expressed by the Councillor.

[61] We understand, from the Councillor's response to us, that he blocked the complainant on his Twitter site because the complainant criticized the Councillor.

[62] There is no obligation on elected officials to utilize social media, however, there is a growing number of politicians who are active on social media as a means of keeping their constituents and the public informed. Social media also enables elected officials to 'take the temperature' of the communities they serve.

[63] Social media provides an almost instantaneous and unfiltered means of communicating with constituents and the public. Many members of councils use open social media accounts to inform their constituents of their position on issues before government and under consideration.

[64] In this regard, open social media provides a vehicle for freely sharing and exchanging views on issues of interest. In this respect, there is a 'public town square' aspect to social media which differs from one-way communications vehicles such as newsletters.

[65] In examining the issues before us we draw a distinction between open Twitter accounts, which permit any Twitter user the ability to follow the account, and Twitter accounts which require that permission be given before another Twitter user can follow the account.

[66] The complainant referred us to American case law which found that social media, facilitated by an elected official, could be characterized as a 'public forum', and that

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removal or constraint on participation in that public forum could constitute an unreasonable constraint on free speech rights.

- [67] In that 2019 decision<sup>1</sup>, which involved a lengthy analysis of law, it was generally determined that when an elected official uses social media to communicate with constituents, and invites comment, the social media page takes on the attributes of a public forum; banning participants from that public discourse arbitrarily, or merely because their comments represent an unwelcome perspective, may constitute an infringement of their constitutional free speech rights (amounting to ‘viewpoint discrimination’).
- [68] It is not necessary to look to the U.S. for guidance on the question of whether blocking a constituent expressing criticism that does not contain objectively abusive or objectional content on social media may be contrary to the standards expected of members of council under a Code of Conduct.
- [69] Municipal codes of conduct are policy documents adopted by municipal councils to guide the conduct and behaviour of their members.
- [70] Codes of conduct are not statutes like the Criminal Code or *Highway Traffic Act*, which require the application of strict and narrow legal interpretation before the commission of an offence can be found. Rather, a code of conduct is a policy document, and is to be given broad, liberal interpretation in much the same manner as an official plan or other municipal policy.
- [71] The York Region Code of Conduct does not contain a specific provision regarding blocking on Twitter or other social media. Nor does it contain specific provisions regarding communicating with constituents at ‘town halls’, via telephone or virtual electronic means.
- [72] A specific codified reference is not required for a complaint to be sustained. It merits note that codes of conduct do not typically contain specific prohibitions against lying, swearing, shouting, or other abusive behaviour toward constituents, or proscriptions against attending virtual meetings shirtless, drunk and dishevelled. Yet, it would be unreasonable to argue that these behaviours would not be open to examination as breaches of the typical behavioural standards found in a code of conduct.
- [73] A code of conduct provides general and specific guidance to aid members in understanding and achieving the high standard of behaviour expected by the public.

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<sup>1</sup> Davison v. Randall, No. 17-2002 (4th Cir. 2019)

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- [74] Codes should be perceived as guides to proper ethical behaviour, and not simply as traps for elected officials. While a toenail over an ethical line would not draw the attention of an integrity commissioner, neither should significant non-compliant behaviour be excused merely because of the absence of codified text in the nature of a statutory offence provision such as those found in the *Criminal Code* or the *Highway Traffic Act*.
- [75] Guidance exists in the provisions of the Code which speak to communication generally, conveying information on matters in an open and transparent manner, allowing the public to view the rationale for decisions, and to treating members of the public with respect and without abuse.
- [76] In our view Council should provide a policy framework which clearly articulates that members of council who utilize open social media platforms for communicating with their constituents should not *unreasonably* or *arbitrarily* block participants. Blocking constituents because they express an alternate or opposing perspective on an issue, or who are constructively critical of a position taken by an elected official, is not appropriate.
- [77] Blocking has the effect of unilaterally silencing dissenting voices, and presents the curated and potentially inaccurate altered view of universal support for one point of view - the view expressed by the Councillor - on what may be portrayed by the Councillor as a transparent, open discussion.
- [78] It is acknowledged that members have an onus to exercise diligence to remove any abusive, hateful, racist or otherwise offensive posts from the social media they control. However, members who invite the public to comment and participate should be prepared to accept, without artificially silencing, whatever input and feedback is provided that is not offensive or abusive.
- [79] We find that the complainant's comments criticizing the Councillor, set out below, were not offensive or abusive:
- As the number of COVID 19 deaths and infections increases exponentially, Richmond Hill Regional Councillor Carmine Perrelli is trying to stop public health measures in York Region. #yorkregion #RichmondHill #COVID19Ontario #COVIDIOT
- [80] While we find that the complainant's retweet was critical of the Councillor's position (opposing extension of the provincial lockdown into York Region), it would not be considered by a reasonable person to be offensive or abusive.
- [81] Though we find that the use of the hashtag "#COVIDIOT" to be mildly dismissive, we do not find it to be particularly offensive or defamatory. In the context of social

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media such a 'hashtag' is recognized as a device used to connect viewers to a topic so that it is easier to find content of the same type across social media platforms.

- [82] In the context of the above post, the hashtag is intended to mean “a person who annoys other people by refusing to obey the social distancing rules designed to prevent the spread of COVID-19” (*oxfordlearnersdictionaries.com*) or “someone who ignores the warnings regarding public health or safety” or “a person who hoards goods, denying them from their neighbors” (*ubandictionary.com*).
- [83] Used in this way, we do not find the single hashtag to be offensive or abusive behaviour which would warrant removal and blocking from a social media site.
- [84] We are of the view that blocking to silence disagreement does not reflect the standards expected of members of York Region Council as articulated in their Code of Conduct.
- [85] We find that the Councillor’s action in blocking the complainant on his social media account constitutes conduct which undermines the apparent transparent and open public discourse and debate on a matter of significant public interest.
- [86] For these reasons, we find that the Councillor’s action in blocking the complainant was contrary to the Code of Conduct.

### Summary of Findings:

- [87] We find that effect of the Councillor blocking the complainant was to silence criticism of the Councillor on his Twitter account. To do that outside of a framework within which offensive postings can be adjudged, and proportional remedies applied as required, necessarily makes the decision-making around blocking to be arbitrary.
- [88] In any event we find that the action was not justified, as the complainant’s comment was not offensive or abusive.
- [89] We find that arbitrary blocking on an open Twitter account contravenes the Code of Conduct principle that “Members shall serve the public in a conscientious and diligent manner that promotes public confidence and will bear public scrutiny”.
- [90] Though we find the action taken by the Councillor to breach the Code of Conduct, we believe it would be unfair to effect punishment, given the absence of guidance available in this relatively new area. Therefore, we are not recommending the imposition of any sanction.

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[91] In making our findings we recognize that given the recent and rapid evolution of social media as a means of communicating with constituents, codes of conduct have not kept pace in providing appropriate guidance for elected officials.

[92] Although we find that arbitrary blocking of criticism on open social media is contrary to the Code of Conduct, we also recognize that there is an absence of guidance provided to members of councils, including York Region Council, within a Code of Conduct. On that basis we do not believe these to be circumstances in which a sanction ought to be imposed on the Respondent. As noted above, we believe that “in every case, including this one, the highest objective is to make recommendations that serve the public interest, if there are recommendations to be made”. The imposition of a sanction is not in the public interest in every case.

[93] Nevertheless, in following MICO’s Statement of Principles, this report has provided an opportunity to provide education and promote good governance.

### Recommendations:

[94] It is recommended that this Report be received for information, and that no sanction be imposed on the Respondent.

[95] We also recommend that a policy framework be developed to include some general guidance for members, recognizing that circumstances certainly exist when a member would be well within their rights to block (or take other steps not addressed in this report, such as muting) a person on social media.

[96] Such policy guidance should include the provision of notice, the reasons for taking the action of blocking, and a specific time period for when the blocking would be in effect (which creates the space for remediation and more appropriate discourse).

[97] We will be pleased to be in attendance when this report is considered to answer any questions Council may have relating to its contents.