

The Regional Municipality of York

Committee of the Whole
Finance and Administration
October 14, 2021

Report of the Commissioner of Corporate Services and Regional Clerk

Council Code of Conduct – Members Use of Social Media

1. Recommendation

Council receive this report for information.

2. Summary

This report responds to direction from Council at its [April 15, 2021](#) Special Council meeting, for staff to consider a social media policy for Members in response to recommendations from the Integrity Commissioner. This report provides an initial analysis of the issues and how these are managed elsewhere.

Key Points:

- Social media is an additional tool to help elected officials interact with the public.
- The current Code of Conduct for Members of Council provides an ethical framework by which all Members are measured when interacting with the public in any forum.
- Council directed staff to consider a social media policy for Members, starting with a Council Education Session on the matter in the fall of 2021.
- None of the local municipal codes of conduct nor the codes of the other regional municipalities contain specific guidance on the operational use of social media by Members of Council.
- The appropriate use of “blocking” on social media platforms is an emerging issue for elected officials

3. Background

All municipalities are required to have an Integrity Commissioner and a Code of Conduct

As of March 1, 2019, the *Municipal Act, 2001* made it mandatory for all municipalities to have a council code of conduct and to appoint an integrity commissioner who independently reports to council on the application of such a code. Prior to that, council codes of conduct

and integrity commissioners were optional tools available to municipalities. Principles Integrity is the Region's Integrity Commissioner and Council adopted its Code of Conduct on [April 18, 2019](#).

Council received an investigation report from the Integrity Commissioner in April 2021

Council considered a report of the Integrity Commissioner at a Special meeting on [April 15, 2021](#). The report responded to a complaint from a member of the public that they had been blocked from a Member's Twitter feed. The Integrity Commissioner concluded that arbitrary blocking of participation on an open social media account hosted by a Member of Council, through which the business of Council is discussed with constituents, is contrary to the Code. It was suggested that greater guidance should be provided for Members of Council regarding their use of social media.

Council directed staff to consider a social media policy for Members of Council

At the meeting, Council directed staff to consider a social media policy for Members, starting with a Council Education Session. This analysis is intended to provide an overview of how other integrity commissioners have dealt with Code of Conduct issues related to social media and relevant cases as well as the provisions in place in comparable municipalities.

4. Analysis

Complaints regarding councillors uses of social media generally relate to three areas: inappropriate use, discrimination/ harassment, and blocking

A jurisdictional scan revealed that complaints made to integrity commissioners regarding a Member's use of social media typically fall into one of the following three categories: inappropriate use, discrimination / harassment, and blocking. The following are recent examples outlining decisions and/or advice given by municipal integrity commissioners.

Inappropriate Use

[Cornwall, 2021](#)

A Member of Cornwall Council was found to have violated the Town's Code of Conduct when they used their social media account to publicly berate and injure the professional reputation of staff. The Integrity Commissioner concluded that while the Councillor was entitled to criticize staff, doing so publicly, as a Member of Council, constituted a breach of the Code of Conduct and the Council-Staff Relations Policy. Cornwall Council voted in favour of reprimanding the Councillor for their inappropriate use of social media.

Discrimination / Harassment

[St. Catharines, 2021](#)

A Councillor who was subjected to online harassment mistakenly believed she knew the identity of her harasser. The Councillor made several posts to social media regarding the

harassment, including identifying information about a person the Councillor mistakenly believed to be the person who was harassing her. The Integrity Commissioner found it an honest mistake but that the postings *“did not rise to the ethical standard...and what is expected of a public office holder.”*

Blocking

[Barrie, 2020](#)

In response to media reports related to a Councillor blocking people on social media, the City of Barrie Integrity Commissioner stated *“...if an individual Member of Council or staff feels in any way threatened, harassed or abused in this space – in this case, the virtual space – the same rules apply. There has to be an environment free of harassment and abuse.”*

[Guelph, 2020](#)

When presenting his annual report, the City of Guelph’s Integrity Commissioner acknowledged dismissing a complaint from someone who was blocked by a Member of Council on social media. Integrity Commissioner indicated that they *“came to the conclusion that if a Member of Council is required to accept malicious or even personally negative posts on his or her social media page, no such facility would be maintained by any Member of Council.”*

[Edmonton, 2020](#)

In April 2020, an Edmonton City Councillor published a post to Facebook which mocked a fellow Member of Council as well as blocking comments and accounts that objected to this action. In speaking to the complaint, the City’s Integrity Commissioner indicated that *“while I think this sort of blocking should be done sparingly and based on justifiable and defensible guidelines, there is nothing currently in the Code that prevents this...Council may choose to pass a social media policy to address this situation. In the interim, this is left to Members of Council to use their judgment.”*

In February 2021, Edmonton City Council unanimously rejected a proposed social media policy containing provisions to govern the blocking of residents. Edmonton Council decided it would be too difficult to police each instance under the policy, as to when it would be appropriate for a Councillor to block a constituent, and that it should be left up to their discretion.

Council’s Code of Conduct already contains provisions dealing with respectful dialogue and discrimination. Therefore, the remainder of this report considers the issue of blocking.

Social media guidance in codes of conduct for members of council are largely based on abiding by values and principles

Social media is a well-established platform that provides the means for elected officials to interact with constituents. To date, most municipal codes of conduct have managed social media interactions in the same way as any other interaction. They tend to largely rely on guiding values and principles to govern social media use by Members, rather than a detailed set of guidelines. These values and principles include respectful discourse, maintaining confidentiality and, in some cases, expectations of what will not be tolerated. In some cases,

elected officials are encouraged to approach their integrity commissioner for advice if they are unclear as to an appropriate course of action.

Some comparator municipalities have integrated high-level language regarding social media in their codes of conduct

Codes of conduct for Members of Council are in place for each of York Region's nine local municipalities. Five codes include a definition of the term social media and provide high-level guidance regarding its use. Language used is principles-based and is not specific to functions on social media platforms such as "tagging", "following" or "blocking".

None of the codes of conduct used by the five other Regional municipalities in Ontario contain a separate social media policy or detailed language specific to functions on social media platforms.

The City of Toronto's integrity commissioner issued specific guidance on the use of social media, but it did not cover blocking

In 2014, City of Toronto Council directed the Integrity Commissioner to provide recommendations for a general policy on social media use by Members of Council. In a [2016 report in response](#), the Integrity Commissioner concluded that, "*although clarification is necessary, a new policy framework is not required.*" It was indicated the existing Code of Conduct provides a principles-based set of standards that are adaptable to new and emerging situations.

To clarify the application of the Code of Conduct in relation to social media, the Integrity Commissioner issued an [Interpretation Bulletin](#) with commentary and guidance. The Bulletin contains examples of different scenarios a Member of Council might encounter when using social media, such as, if a Member is solicited by a business to post something on their social media account. The bulletin does not specifically address blocking.

The City of Ottawa's Interpretation Bulletin suggests that Members should treat their social media accounts as extensions of their offices and blocking should be a last resort

The Ottawa [Interpretation Bulletin](#) contends that as administrators of the accounts, Members should treat their public facing social media pages as extensions of their office. It suggests that Members should "*actively monitor their public pages for language that constitutes harassment and discrimination towards groups falling under the categories defined in the Ontario Human Rights Code.*" Members are encouraged to report any offending statements to the social media provider.

The Bulletin further suggests that to protect themselves and other users on their platforms, Members may need to modify a user's access to their content. It highlights where such actions are required, Members should opt to be minimally invasive, preserving as much access to information and expression as possible. It notes that prior to blocking anyone, Members are encouraged to consult with the Integrity Commissioner.

Michelle Rempel Garner, MP, has published a decision-making flow chart on how her office decides to block people

In 2015, a Toronto man was convicted of criminal harassment and uttering threats on Twitter against MP Rempel. In response, her Office developed a social media policy comprised of a flowchart showing scenarios that could lead to blocking a user. These include:

- *Have you blocked me?*
- *Does your tweet insult vs. engage / use misogynistic, foul or abusive language?*
- *Have you tweeted, retweeted or liked tweets which insult vs. engage / use misogynistic, foul or abusive language directed at me?*
- *Do you frequently subtweet me in a hateful or abusive manner?*
- *Have you tweeted at me in a manner that's designed to spam my notification feed?*
- *Does your avatar, profile pic or profile description largely contain content that is insulting / hateful / abusive / violent / misogynistic?*
- *Is your Twitter content feed largely comprised of content that is insulting / hateful / abusive / violent / misogynistic?*

Even with creating a process, such as the above flow chart, concerns can arise regarding its application. [In 2018](#), MP Rempel received criticism for blocking an Indigenous youth leader who disagreed with her and [in 2019](#), the hashtag #BlockedByRempel was trending across Canada given the number of people who have been blocked by the MP.

At present, there is no case law related to public figures blocking people on social media

[In 2018](#), the Mayor of Ottawa was sued by three people who claimed that by blocking them, the Mayor breached the Freedom of Expression Section of *Canadian Charter of Rights and Freedoms*. Initially, the Mayor indicated his Twitter account was personal and was entitled to block people he viewed as harassing him on a regular basis. The residents argued the Mayor used the account to communicate City news and that by being blocked they were denied the ability to engage in debate on municipal issues.

Prior to the case proceeding to court, the Mayor agreed to, not just unblock the three residents, but also everyone else he had previously blocked. The Mayor committed to maintaining a high level of public accessibility through social media and other means. Consequently, the court proceedings were dropped before any ruling.

The Region's Integrity Commissioner made some recommendations around blocking

In their report, the Integrity Commissioner recommended that Members would benefit from more detailed provisions on what they can and can't do on social media. The Integrity Commissioner provided suggestions and recommendations on what the provisions might say but there is currently no consistent municipal approach to this issue.

While acknowledging that members should have the discretion to remove inappropriate content or block people when appropriate, this should be a last resort. The Integrity

Commissioner also suggested members have a duty to provide a warning prior to blocking anyone and that the warning should include the reasons and the time limit for the block.

If Council wished to include more detail in the Code or to develop a separate social media policy, staff would need further guidance from Council on issues such as whether blocking is permitted, under what circumstances blocking is permitted, whether blocking would be time-limited and whether a warning system is required prior to blocking.

5. Financial

There are no financial implications directly related to this report. Consideration may need to be given to increasing the budget allocated to the Integrity Commissioner should Members of Council seek advice on a more regular basis.

6. Local Impact

There are no direct impacts to local municipalities as a result of this report. The current Code contains provisions on how jurisdictional matters are to be handled.

7. Conclusion

Social media is a commonly-used by elected officials to interact with residents. While conduct on social media is generally covered by the various provisions of Council's Code of Conduct, the Code does not contain specific provisions related to the operational management of social media accounts, particularly when it comes to blocking.

There is no consistent approach to guide Members when using social media and there is currently no case law on this issue. However, the Region's Integrity Commissioner has indicated that arbitrary blocking is a breach of the Code of Conduct and recommended that Council develop specific provisions around social media activity.

Should Council wish to pursue the Integrity Commissioner's recommendations, Council will need to consider how it wishes to manage blocking. Options could include a warning system prior to blocking, the circumstances under which people can be blocked and whether blocking will be temporary or permanent.

For more information on this report, please contact Christopher Raynor, Regional Clerk at 1-877-464-9675 ext. 71300. Accessible formats or communication supports are available upon request.



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