

January 13, 2025

File No. 159100

Mr. Dylan McMahon
Acting General Manager/City Clerk
The City of Guelph
Guelph, ON N1H 3A1

Dear Mr. McMahon:

Re: *Review of Code of Conduct for Members of Council and Local Boards and Use of Corporate Resources During an Election Policy re Members' Use of Social Media*

BACKGROUND

Aird & Berlis LLP is the appointed Integrity Commissioner for the City of Guelph (the “City”).

At its meeting on April 16, 2024, Council adopted the following motions:

1. *That the City Clerk be directed, in collaboration with the Integrity Commissioner to review the Code of Conduct for Council as it relates to the use of personal versus corporate social media accounts and administered groups and report back as part of the 2025 Governance Review.*
2. *That the City Clerk be directed, in collaboration with the Integrity Commissioner to review the Use of Corporate Resources During an Election Policy as it relates to the use of corporate social media accounts and administered groups and report back as part of the 2025 Governance Review.*

As directed, we have reviewed the City’s [Code of Conduct for Council and Local Boards](#) (the “Code”) and the [Use of Corporate Resources During an Election Policy](#) (the “Policy”) in relation to Council members’ use of social media, including administered groups (e.g. Facebook/Meta groups).

Below is our report on these matters, arising from our review of the Code, Policy and relevant guidance in the form of other municipal policies, guidelines, Integrity Commissioner reports and case law.

This report is provided in the context of recently introduced Bill 241 – the proposed Municipal Accountability Act, 2024. If passed, this legislation would enable the Minister of Municipal Affairs and Housing to create a new standardized municipal code of conduct for all Ontario municipalities. If Bill 241 is enacted, the new code of conduct framework is proposed to come into effect in November 2026, for the new term of Council following the next regular municipal election. Given the prospect of a province-wide, uniform code of conduct, we have limited our review of the Code to the matters identified in the above motions and have not suggested further changes.

REPORT ON REVIEW OF CODE AND POLICY

1. General Observations

The Code does not contain any provisions related to the use of social media by members of Council (or local boards). This is consistent with other municipal codes of conduct which generally do not contain stand-alone provisions relating to the use of social media.

A notable exception, is the City of Mississauga which has incorporated detailed provisions for social media use directly into its code of conduct. These provisions include restrictions on the use of social media during an election campaign.¹

As an alternative to embedding provisions directly into a code of conduct, a number of municipalities have attached or incorporated by reference, social media policies to their codes of conduct.² These policies include provisions addressing members' use of social media during an election. These policies are capable of enforcement by the Integrity Commissioner through complaints filed under the Code.

The City has not adopted a formal social media policy but has issued [Social Media Guidelines for Elected Officials](#) (the "**Guidelines**"). These high-level guidelines are referenced in the Code and contain general guidance regarding members' use of social media. The Guidelines do not specifically address the use of social media during election periods.

The previously mentioned Policy contains provisions regarding members' use of the City's technology assets during an election but does not provide specific guidance regarding a members' use of social media.

In our opinion, as outlined below, updates to the Code should be made to ensure there is clear guidance for members regarding their use of social media both in general and during an election period. Provisions which are specific to social media use during an election are intended prevent sitting members from using their positions to gain an advantage over non-member candidates.

2. Personal versus Public Social Media Accounts

(a) General

We understand the City does not administer corporate social media accounts on behalf of the members of Council. Some members have opted to administer their own social media accounts which explicitly identify them as members of Council. We assume, although we have not confirmed, that some members administer social media accounts which do not explicitly identify themselves as members of Council.

¹ City of Mississauga, [Mississauga Code of Conduct for Members of Council \(January 2024\)](#).

² See for example:

- Town of Caledon, [Code of Conduct for Members of Council and Designated Boards](#)
- City of Greater Sudbury, [Code of Conduct for Members of Council and Local Boards and Complaint Protocol](#).

Our office has consistently taken the position that a code of conduct applies to members at any time when they may be reasonably perceived as acting in their official capacity or where their conduct is unbecoming of a locally-elected representative. This extends to a member's use of any form of social media, even where the member alleges they are using a "personal" or "private" social media account.

In our opinion, if a Member's use of social media appears to contravene the Code, the Integrity Commissioner is empowered to consider that conduct for the purpose of an investigation under subsection 223.4(1) of the *Municipal Act, 2001*. A member's online conduct is subject to the Code regardless of whether the member pays for the social media account and regardless of whether the member considers the account to be a "personal" or "private" social media account.

For the purpose of the Code, we have taken the position that a member's social media account, which is not administered by the City, is not the property of the City. Despite this position, however, and as described below, members must be restricted in their use of social media during election periods to ensure fairness and transparency.

(b) Blocking Members of the Public from a Member's Social Media Account(s) or Administered Groups

In Canada, there is no legal authority that explicitly addresses whether public representatives are permitted to block users on social media.³ Once an official decides to establish their social media as a public forum, however, blocking a user could be found to be a violation of that user's freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms*.

A member cannot selectively exclude members of the public from a public forum merely because they are critical of the member, or express objectionable views. Section 10 of the Code currently requires members to "treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation...". In our opinion, members should exercise restraint in blocking members of the public from their social media to the extent possible, but are not prohibited from doing so, in certain circumstances.

Members may be justified in blocking users where necessary to protect the member or other users from harassment or abuse, or to preserve the utility of the member's social media by preventing it from being overrun by spam, bots or from disseminating abusive, hateful and inciteful communication.⁴

However, when a member blocks a user with legitimate concerns from engaging with the member's social media, the member runs a very real risk of alienating that user and others and

³ In 2018, a group of residents brought a court application against the then Mayor of Ottawa alleging that his decision to block them on the social media platform Twitter (now X) violated their right to freedom of expression under section 2(b) of the *Canadian Charter of Rights and Freedoms*. The mayor agreed to unblock the applicants and the case was resolved before reaching a hearing. Consequently, no legal precedent was established, and Canadian courts have yet to consider the issue of whether elected officials can block or restrict access to their public social media accounts.

⁴ Integrity Commissioner for the City of Ottawa, [2020 Annual Report of the Integrity Commissioner](#); Integrity Commissioner for the City of Edmonton, [2020 Annual Report Office of Integrity Commissioner](#).

may be acting contrary to the Code. Members thus should seek guidance from the Integrity Commissioner on a case-by-case basis where there is any uncertainty.

(i) Blocking Users From Official/Public Social Media Accounts

Members should refrain from blocking members of the public from their official/public social media accounts and administered groups except in serious cases involving matters such as bullying harassment, intimidation and the propagation of hate. Members' public/official social media serve as essential communication channels for public matters and should remain open and accessible to ensure the community can stay informed and engage with its elected representatives.

(ii) Blocking Users From Personal Social Media Accounts

Members may maintain personal social media accounts and block individuals at their discretion, provided these accounts are strictly reserved for private and personal content.

In our view, a court would be likely to find that a member's social media account is "public" if the member uses the account in their capacity as a public official and in furtherance of their duties (for example, by providing the public with information about Council activities, disseminating official statements or providing views on matters that are typically within the realm of municipal business or decision-making).

Once a personal account is used to discuss or comment on municipal affairs, in our opinion, it effectively becomes a public platform, and a member who seeks to block users raises concerns about transparency and accountability.⁵ As noted above, if a member's social media account resembles a public forum, they cannot selectively exclude members of the public from that forum merely because they are critical of the member, or express objectionable views. To avoid this, any content involving City business should be published exclusively through official accounts, which ought to remain accessible to the public except where conduct is abusive or harassing.

(c) Muting as an Alternative

Some social media platforms provide the option to "mute" users as an alternative to blocking. Muting typically allows the owner of the social media account to avoid seeing content posted by muted users, without limiting the users' access to information or ability engage with the account. This approach is less restrictive than blocking while still enabling a member to maintain a respectful online environment. Additionally, muting can help preserve public trust by reducing the potential for criticism that might arise from blocking.

Recommendation: In our opinion, the City should consider updating the Code by defining "social media" in Section 4 (Definitions) and by including a new section titled *Use of Social Media*. We have provided suggested language below which modifies provisions of the [City of Toronto's Interpretation Bulletin: Use of Social Media by Members of Council](#).

⁵ *Knight First Amendment Inst. at Columbia Univ. v. Trump* (F.3d 226, 231, 236 (2d Cir. 2019)) and *Davison v. Randall* (912 F.3d 666 (4th Cir. 2019)).

We suggest the following be added to the Code:

4. Definitions

“member’s social media” means a member’s social medial account or administered group that:

- a) uses any guelph.ca email address as a point of contact for registration purposes;*
- b) contains sufficient information to enable a reasonable person to identify the member as a current member of Guelph City Council (e.g. by a reference in the handle name, the user name, the profile description or through content posted by the member);*
- c) is publicized on the member’s constituency website or the City of Guelph’s contact page for members of Council;*
- d) is publicized on business cards, newsletters or other publications eligible to be paid for by the City;*
- e) uses the logo or any other proprietary mark of the City of Guelph;*
- f) contains contact information for the member at City Hall, a ward constituency office or any other official contact information;*
- g) is managed using City of Guelph resources including computers, smart phones, or tablets; or*
- h) is managed or maintained by City staff, the member’s staff or volunteers, or using services eligible to be paid for out of the City’s budget.*

...

“social media” means freely accessible, third-party hosted, interactive Internet technologies used to produce, post and interact through text, images, video, and audio to inform, share, promote, collaborate or network. Social media includes administered groups and other forums which permit the sharing of information and are overseen and managed by a user(s).

8. Use of Social Media

I General

A member’s conduct on social media is subject to the Code regardless of whether the member pays for the social media account and regardless of whether the member considers the account to be a “personal” or “private” social media account.

Where a member has chosen to allow public participation and comment on a members' social media, the member has chosen to allow public participation and comment. Once a member decides to establish their social media as a public forum, they cannot selectively exclude members of the public from that forum because they are critical of the member, or express objectionable views.

Members are expected to exercise due restraint prior to blocking members of the public from viewing or otherwise interacting with their social media. Members may be justified in blocking users where necessary to protect the Member or other users from harassment or abuse, or to preserve the utility of the Member's social media page by preventing it from being overrun by spam, bots or from disseminating abusive, hateful and inciteful communication. Members are encouraged to request advice from the Integrity Commissioner prior blocking a user from a member's social media.

Subject to the considerations below, a member must not post the following content using any social media that, at the time of posting, may be recognized as the member's social media, as defined in the Code:

- a) content that promotes or appears to promote any third-party interest including events, products, services, or goods; or*
- b) content that promotes or appears to promote any candidate or political party in any election at the municipal, federal or provincial level, including leadership campaigns.*

Despite the above, a member is permitted to post the following content on social media as long as it is occasional, voluntary, unsolicited and otherwise in accordance with the Code of Conduct:

- a) content that raises awareness of local events and activities;*
- b) content that raises awareness of federal and provincial government programs;*
- c) content that publicizes the member's attendance at a ceremony, event or activity that is otherwise permissible under the Code of Conduct; or,*
- d) content that publicizes the member's interactions with constituents, including local businesses.*

3. Use of Social Media Accounts and Administered Groups During an Election

Both the Code and the Policy are silent regarding the use of social media accounts and administered social media groups during an election period. In our opinion, updates to the Code should be made to ensure that a member does not have an unfair advantage over other candidates during a municipal election as a result of their position as an elected official.

Recommendation: Further to the recommendation in #2 above, the City should update the Code to include a new provision within the proposed section on *Use of Social Media*, containing the following:

II Use of Social Media During an Election Campaign

A member's title is not to be used in a member's social media for election campaign purposes.

The use of City logos, staff, volunteers assisting with council office work, computers, smart phones, services and email accounts are City resources and shall not be used for election campaign purposes.

Members must take affirmative steps to clearly distinguish between use of social media for election purposes on the one hand, and use of social media in their capacity as a City official on the other. To take such affirmative steps, members must adopt one of the following two approaches:

a) Maintaining Separate Election Accounts and Administered Groups

A member may establish separate and distinct social media for re-election purposes that are clearly labelled as election accounts or administered groups and that are not identified as a "member's social media" within the meaning of the Code.

A member who establishes separate and distinct social media for re-election purposes may continue to use the member's social media throughout the "election campaign period" as defined in s. 88.24 of the Municipal Elections Act, 1996.

b) Maintaining a Single Account and Administered Group Subject to Restricted Use

Members who choose not to maintain separate and distinct election social media and who intend to use a social media that has previously been identified as a "member's social media" within the meaning of the Code, for any purpose relating to their re-election must (as applicable):

- i) on May 1 of the election year until the end of the "election campaign period" defined in s. 88.24 of the Municipal Elections Act, 1996, cease producing and distributing any publication, including business cards, that includes account information (i.e. user names, handle names) for the social media;*
- ii) for the duration of the "election campaign period" as defined in s. 88.24 of the Municipal Elections Act, 1996:*
 - 1) remove any reference to the City of Guelph, City logos or images proprietary to the City of Guelph, and reference to the member's title from the account handle name, the user name, or the profile description;*

- 2) *ensure that the account's registration information does not include any guelph.ca email addresses or City of Guelph phone numbers;*
- 3) *remove all reference to the member's social media from the member's website or the City of Guelph website, with the exception of any election website established by the City;*
- 4) *formally inform staff and volunteers who previously had a role with respect to managing a member's social media that no City resources whatsoever, including computers, devices and staff, may be used to maintain the social media and proactively monitor staff and volunteers to ensure that no such actions are taken, and,*
- 5) *expressly notify followers or friends on the social media platform that the member's social media will be used for purposes related to re-election, provide an alternative source of information for followers interested in constituency services, and label the social media appropriately.*

During an election campaign, a Member may only participate in administered social media groups using a social media account that has been established in accordance with one of the above approaches.

CONCLUSIONS

For the purpose of ensuring the proposed changes above can be easily referenced by members, we prefer that they be added to the Code instead of the Policy, which is currently a stand-alone document.

Given the possibility that a standardized, provincially-imposed code of conduct could replace the Code sometime in late 2026, we suggest that it would not be in the City's interest to spend additional resources and time to modify the Policy when the relevant guidance can be included directly in the Code.

In our opinion, if the above changes are incorporated within the Code, no corresponding revisions would be required to the Policy. In our further opinion, the proposed revisions above reflect best practices in terms of regulating the use of social media by members in general and during an election period.

Yours truly,

AIRD & BERLIS LLP



Laura Dean
Partner

LD/JM

Accessible Format Available Upon Request.