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INTEGRITY COMMISSIONER REPORT ON CODE OF CONDUCT COMPLAINT 2025-01

THE CORPORATION OF THE CITY OF GUELPH

Aird & Berlis LLP

Laura Dean

July 11, 2025

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INTEGRITY COMMISSIONER REPORT CODE OF CONDUCT COMPLAINT 2025-01 RE COUNCILLOR ERIN CATON

A. INTRODUCTION

1. Aird & Berlis LLP is the appointed Integrity Commissioner for the City of Guelph (the “City”).
2. On May 29, 2025, our office received a complaint (the “**Complaint**”) alleging that Ward 1 Councillor Erin Caton (the “**Member**”) contravened the Code of Conduct for Members of Council and Local Boards (the “**Code**”) while acting in their capacity as a member of City Council.
3. We were appointed as Integrity Commissioner in accordance with section 223.3 of the *Municipal Act, 2001* to exercise all of the functions set out therein. As Integrity Commissioner, we are responsible for performing, in an independent manner, the functions assigned by the City with respect to the application of the Code, policies, procedures or rules relating to ethical behaviour and the *Municipal Conflict of Interest Act*.
4. The Code was first approved in February 2013 and has been amended since its original adoption, with the most recent amendment, regarding members’ use of social media, occurring in May 2025.
5. An assigned function of the Integrity Commissioner is to conduct investigations, where warranted, in response to complaints alleging that a member has contravened the Code. This report (the “**Report**”) sets out the findings of our investigation of the Complaint made in accordance with Section 8 the Integrity Commissioner Complaint Protocol (Appendix 1 of the Code).
6. The principles of procedural fairness require us to provide reasons for our conclusions and recommendations, which we have done in this Report. Our investigation was conducted in accordance with the Code and with a process that was fair to all parties. We have assessed the evidence in an independent and neutral manner.
7. As part of our investigation, we provided the Member with the Complaint and offered them an opportunity to respond to the allegations. The Member provided a response which we have considered in preparing this Report. The Member was also provided with the opportunity to review and comment on a final draft of this Report. No substantive changes were made to the final draft of this Report as a result.
8. For the reasons below, we have found that, on the balance of probabilities, the Member has not contravened the Code.

B. REVIEW OF MATERIALS AND INVESTIGATION

9. In order to undertake our investigation and prepare this Report, we reviewed and considered the following:

- (a) the Complaint and supporting materials;
- (b) the Response; and
- (c) information obtained in our interview with the Member.

C. THE COMPLAINT

10. The Complaint relates to a post made by the Member in the public Facebook group “Overheard at Guelph” on May 28, 2025. The post, reproduced below, was to inform users about the newly adopted Code provisions relating to elected officials’ use of social media.

X



Erin Caton
 28 May · 🌐

⋮

Thought folks would be interested in the new social media code of conduct that just passed for City Council. So anyone who runs an online forum (or just posts about city issues), if elected to council, would be subject to these rules. The last paragraph was crafted by me. This is in addition to not being allowed to post hateful content on any of our social media, related to our duties or not.

Where a member has chosen to enable public participation and comments on a social media account with content specific to their role as a member, the social media account will be considered a municipal public forum. Once a member establishes their social media as a municipal public forum, they cannot selectively exclude members of the public from that forum because they are critical of the member or express objectionable/contrary views.

A member is not required to enable public participation and comments on their social media. Where a member has enabled public participation and comments on social media with content specific to their role as member, they should exercise due restraint prior to blocking individual members of the public from viewing or commenting on their social media. A member may be justified in blocking users where necessary to protect the member’s social media account by preventing it from being overrun by spam, bots, or from disseminating abusive, hateful and inciteful communication.

Members who have created a municipal public forum have a duty to moderate abusive, bigoted and hateful comments towards community members and groups when made aware of such comments. Moderation options vary from platform to platform and may include deleting or hiding user comments or posting with comments disabled.


 41

38 comments

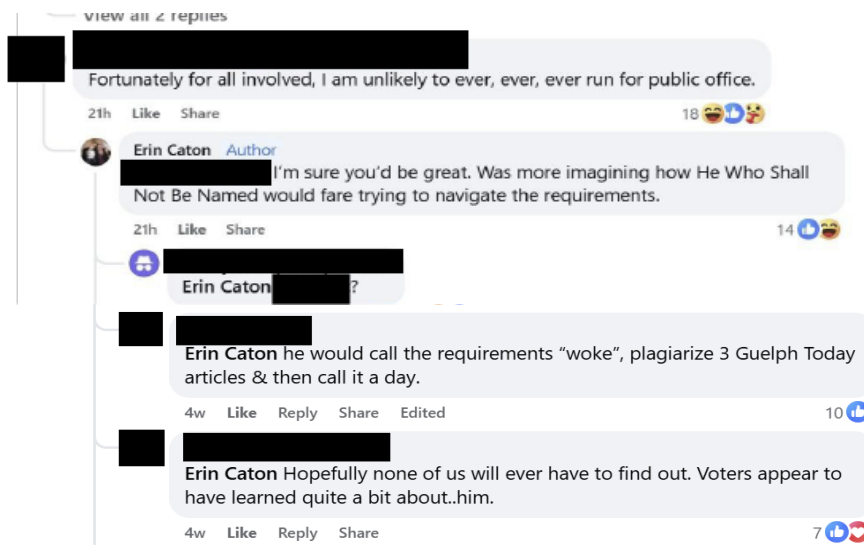
 Like

 Comment

 Send

 Share

11. The post elicited a number of comments including the following:



12. In response to the Member's post, a user wrote, "Fortunately for all involved, I am unlikely to ever, ever, ever fun for public office." The Member responded to that user stating, "I'm sure you'd be great. Was more imaging how He Who Shall Not Be Named would fare trying to navigate the requirements".

13. The Member's comment prompted three reply posts. In the first reply, the user posted a variation of the Complainant's first and last name. Any person familiar with the Complainant would have been able to identify the Complainant from this post. The other two posts are reproduced above.

14. The Complaint alleges the Member facilitated the mocking commentary by remaining silent and by making no effort to deny the reference to the Complainant or to prevent other users from identifying the Complainant. The Complainant has been blocked from viewing and posting in the Overheard at Guelph Facebook group.

D. RELEVANT SECTIONS OF THE CODE

15. The Complaint alleges the Member's conduct contravened sections Sections 8, 11 and 13 of the Code which are reproduced below.

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 enable public participation and comments on a social media account with content specific to their role as a member, the social media account will be considered a municipal public forum. Once a member establishes their social media as a municipal public forum, they cannot selectively exclude members of the public from that forum because they are critical of the member or express objectionable/contrary views.

A member is not required to enable public participation and comments on their social media. Where a member has enabled public participation and comments on social media with content specific to their role as member, they should exercise due restraint prior to blocking individual members of the public from viewing or commenting on their social media. A member may be justified in blocking users where necessary to protect the member's social media account by preventing it from being overrun by spam, bots, or from disseminating abusive, hateful and inciteful communication.

Members who have created a municipal public forum have a duty to moderate abusive, bigoted and hateful comments towards community members and groups when made aware of such comments. Moderation options vary from platform to platform and may include deleting or hiding user comments or posting with comments disabled.

...

11. Conduct

As a representative of the City, every member has the duty and responsibility to treat members of the public, one another, and staff appropriately and without abuse, bullying, or intimidation, and to ensure that the municipal work environment is free from discrimination and harassment. A member shall not use indecent, abusive, or insulting words or expressions toward any other member, a member of staff, or a member of the public. A member shall not speak in a manner that is discriminatory to any individual based on that person's race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability.

...

13. Improper Use of Influence

No member shall use the influence of their office for any purpose other than for the exercise of their official duties.

Examples of prohibited conduct are the use of one's status as a member to improperly influence the decision of another person to the private advantage of oneself, or one's relatives, staff members, and associates, businesses or otherwise. This includes attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's influence within Council in return for present actions or inaction.

For the purposes of this provision:

“private advantage” does not include a matter:

1. that is of general application;
2. that affects a member, their relatives, staff members, and associates, businesses or otherwise as one of a broad class of persons; or
3. that concerns the remuneration or benefits of a member.

Members should not advocate on behalf of any person at a hearing of an adjudicative board (as listed on the City’s website) and should not contact any member of such a board regarding any application before it.

E. MEMBER’S RESPONSE

16. As part of this investigation, the Member was provided with an opportunity to review and provide us with a written response to the Complaint. The Member cited a history of negative online interactions with the Complainant who has, according to the Member, caused them significant emotional distress in the past. When questioned, the Member agreed that they were referring to the Complainant when they wrote “He Who Shall Not Be Named”. The Member also advised that they do not receive alerts regarding responses to their Facebook posts. The Member also noted that they do not administer the “Overheard at Guelph” Facebook group and therefore they have no ability to delete posts by other users.

F. DETERMINATION

17. We have determined, on the civil standard of a balance of probabilities, that the Member has not contravened Section 8, 11 or 13 of the Code. Set out below is a summary of our analysis with respect to each alleged violation.

Section 8 of the Code

18. Section 8 of the Code provides in part that, *“Members who have created a municipal public forum have a duty to moderate abusive, bigoted and hateful comments towards community members and groups when made aware of such comments. Moderation options vary from platform to platform and may include deleting or hiding user comments or posting with comments disabled.”*

19. We find that the Member created a “municipal public forum” when they posted in a public Facebook group about a matter directly tied to their role as a Member of Council. When interviewed, the Member noted that they do not have the ability to delete or hide user comments in a Facebook group that they do not administer. In our opinion, once the Member was made aware of the replies to their comment, specifically discussing the Complainant, the Member could have made efforts to contact the group’s administrator to have the comments removed. The Member did not make any efforts, that we were made aware of, to have the comments removed from the “Overheard at Guelph” group.

20. Although we find the Member may not have exercised good judgment when they unnecessarily referenced the Complainant in a Facebook group that the Complainant does not have access to, we ultimately conclude that the nature of the Member’s post

and the comments made in reply, while perhaps mocking in tone, did not rise to the level of “abusive, bigoted or hateful”. Accordingly, we find the Member did not contravene Section 8 of the Code.

Section 11 of the Code

21. We find the Member exercised questionable judgment when they referenced the Complainant in their post. We conclude, however, that the content of the post did not rise to the level of abuse, bullying or intimidation. We also find the Member’s post did not use indecent, abusive or insulting words or expressions towards the Complainant.

22. Furthermore, we find the Member’s post was not discriminatory to the Complainant based on the Complainant’s race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or disability. Accordingly, we find the Member did not contravene Section 11 of the Code.

Section 13 of the Code

23. We find that the Member’s post does not cross the threshold into a contravention of Section 13 of the Code. While the Member unquestionably yields influence as a member of Council, we find the post was not an attempt to secure preferential treatment for themselves or to influence the decision of another person to the Member’s own private advantage within the scope of Section 13 of the Code. Accordingly, we find the Member’s actions did not contravene Section 13.

G. CONCLUSION

24. For all of the reasons noted above, it is our conclusion that the Member’s conduct did not contravene the Code.

25. We note that this is the first time the new provisions of Section 8 of the Code concerning a member’s use of social media have been considered. Although we have found no contravention, we urge all members to exercise due restraint before making social media posts which single out individual members of the public. Such posts are generally unnecessary and may give rise to Code complaints impacting the City’s resources.

26. Based on our finding that the Member did not contravene the Code, we have no reason to recommend a penalty. Given our findings, Council has no statutory authority to impose a penalty on the Mayor pursuant to subsection 223.4(5) of the *Municipal Act, 2001*:

Penalties

223.4 (5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.

2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days.

27. Accordingly, Council is receiving this Report for information purposes only and shall make it available to the public.

Respectfully submitted,

AIRD & BERLIS LLP



Laura Dean

Integrity Commissioner for The Corporation of the City of Guelph

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