
ADVISORY BULLETIN (REVISED)

REGARDING THE USE OF SOCIAL MEDIA

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31 July 2019; Revised 15 January 2021

PURPOSE OF THE BULLETIN

- [1] This Bulletin is intended to assist Council Members (“Members”) in understanding their obligations regarding the use of social media under the recently adopted **Code of Conduct – Council, Committees and Local Boards (2020)** (hereinafter “**Code of Conduct**”).
- [2] The Integrity Commissioner is a confidential resource available for clarification and advice on the use of social media. Pursuant to sections **6.2.2** and **6.2.3** of the **Code of Conduct**, the Integrity Commissioner may provide oral and written advice to Members concerning the interpretation of, and compliance with, the **Code of Conduct** and the *Municipal Conflict of Interest Act* as well as other ethical questions facing Members.

RELEVANT LEGISLATION & POLICIES

- [3] In addition to the **Code of Conduct** and the Town’s **Procedural By-law**, Members are governed by the *Municipal Act*, the *Municipal Conflict of Interest Act*, the *Municipal Elections Act*, the *Municipal Freedom of Information and Protection of Privacy Act*, and the *Criminal Code of Canada*. By extension, the conduct of Members on social media is also governed by these statutory provisions.

THE BENEFITS OF SOCIAL MEDIA USE

- [4] Members can use social media as an effective and powerful tool. Social media includes platforms such as Facebook, Twitter, Instagram, and Snapchat, among many others. These platforms create open and instant access to the Member’s constituents and the general population. Authentic and engaging social media use allows Members to communicate Council (as well as Committee and Local Board) actions to their constituents in plain language and invites direct interactions from the community, making one’s constituents a “part of the conversation.”

- [5] Further, Council Members can use social media to build and/or enhance their personal profiles through the content they share online. This can increase the Member's influence online and in the community. Members can also gain valuable insight through online interactions with their constituents and this can, in turn, inform debate at Meetings and assist in the development of better policies for the Town of Amherstburg.
- [6] When used in compliance with the **Code of Conduct** and the **Procedural By-law**, social media enables Members to showcase the quality of their service and can be utilized to build goodwill among citizens and Members of Council, Committees and Local Boards.

THE POTENTIAL DIFFICULTIES WITH SOCIAL MEDIA USE

- [7] However, social media can be an extremely limiting platform, with very little room for nuance and context. Members have an obligation to ensure their "posts" are accurate. Members must be mindful that they are still Members of Council (or Committees or Local Boards, as the case may be) even when using their "personal" accounts. Even in this context, Members represent the Town of Amherstburg. This is especially important if the account is linked to the Member's title (e.g. @CouncillorJaneDoe) or if the communication is directed to, or emanates from, the Member in his or her capacity and status as a Member, or if the post becomes a matter of, or is directed at, public policy.
- [8] The basic rule is as follows: ***A Member's interaction with other users on social media should be treated as if it were a face-to-face communication.***
- [9] The content posted by the Member is the individual Member's own responsibility. Content often cannot be removed or deleted completely once posted because of the public nature of social media. Using a disclaimer such as "All opinions are my own and not those of the Town of Amherstburg" or "retweets and likes are not endorsements" do not absolve Members from their obligations under the **Code of Conduct**.
- [10] Using a Member's title on social media (e.g. @CouncillorJaneDoe) is similar to the use of the Member's official letterhead – conveying legitimacy and authority. Members should be mindful to use rigorous judgement before they post and should consult this Advisory Bulletin when determining what content is appropriate for posting.

- [11] When Members articulate their opposition to Town policies or decisions from Council, it is crucial that they explicitly acknowledge they are expressing their own individual opinion.
- [12] **Note:** By signing up for social media platforms, the Member enters into a binding contract with a **for-profit** company. This means that, generally, the social media companies have complete control over the terms of use and take no responsibility for any content that is posted on the platform nor for interactions between and among users.

THE PROCEDURAL BY-LAW

- [13] Members should note that Section 8.1 of the **Procedural By-law** requires Members to refrain from using indecent, offensive words or insulting expressions at any time towards other Members of Council, Administrations, delegations, or members of the public. It also stipulates that Members must not criticize decisions of Council or decisions of the Chair. These prohibitions apply to social media use as they would in any other situation. Failure to comply with the **Procedural By-law** constitutes a violation of the **Code of Conduct** as well.

THE CODE OF CONDUCT

- [14] While there are some provisions in the **Code of Conduct** that have direct application to the use of social media, it should be recognized that **virtually any provision in the Code can be breached through the improper use of social media.**
- [15] For example, the inherently informal nature of social media can lower a Member's vigilance regarding the information they share. **Disclosure of any information deemed "confidential" is strictly prohibited!** Any use of social media that discloses confidential matters would be considered a violation of Section 7.6 of the **Code of Conduct.**
- [16] Some provisions in the **Code of Conduct** have a more direct application to social media. Section 7.3 of the **Code of Conduct** sets out the "Media and Communications Protocols" for Members of Council and section 7.4 explains the Members' obligations regarding "Electronic Communications and Social Media". Under section 7.3.1, the Mayor is the official spokesperson for Council and shall be responsible for communicating the Town's position on all municipal matters including decisions of Council.

- [17] Section 7.3.3 provides: “Members of Council are welcome to speak to traditional media outlets and to use social media to engage and communicate with residents. Members of Council are free to speak their conscience and advocate on behalf of their constituents. Members of Council shall accurately communicate the decisions of Town Council, even if they disagree with the majority decision of Council, and by so doing affirm the respect for and integrity in the decision-making process of Council.” Members should be especially mindful of the latter part of this section, when using social media.
- [18] Section 7.4.1 provides that “Members must recognize their professional boundaries and responsibilities in the appropriate use of electronic communications and social media”. Section 7.4.2 directs Members, when communicating with the Administration, to respect “privacy rights of citizens and employees alike” and “refrain from posting or forwarding links or comments that might be considered offensive, discriminatory or inconsistent with the **Code of Conduct** or the laws of Ontario and Canada.” Finally, section 7.4.3 requires that communications to Administration “should be constructed with professionalism and decorum while providing information that is timely and accurate”.
- [19] Other sections of the **Code of Conduct** may be engaged in the use of social media. Members should pay attention to section 7.2 – “Conduct of Members”. Many of the provisions in section 7.2 can arise in the context of the use of social media. For example, section 7.2.2 concerns “Conduct Respecting Staff” and section 7.2.2.2 states that “Members shall show respect for staff, and for their professional capacities and responsibilities” and section 7.2.2.3 provides that “Members shall not maliciously or falsely injure or impugn the professional or ethical reputation of any member of staff”. Inappropriate use of social media may result in violations of these provisions.
- [20] Similarly, section 7.2.3 is titled “Respecting Others”. Section 7.2.3.1 indicates that every Member has “the duty and responsibility to treat members of the public, one another, and staff appropriately and without abuse, bullying, or intimidation.” Further, section 7.2.3.2 prohibits Members from using “indecent, abusive, or insulting words or expressions toward any other Member, any staff, or the public”. Finally, section 7.2.3.3 directs Members to “communicate in a manner that is respectful to any individual, regardless of race, ancestry, place of origin, creed, gender, sexual orientation, age, colour, marital status or mental or physical disability.” These provisions clearly apply to the use of social media as well as in-person conduct.

- [21] Discrimination and Harassment are prohibited under section 6.4. “No form of harassment will be tolerated, whether it involves a Member, staff or the public” (section 6.4.1). Further, “all Members have a duty to treat the public, other Members and staff with respect” (section 6.4.2). A duty to report is found in section 6.4.3 which provides that “Any Member confronted with, or aware of discrimination or harassment of any nature, will immediately report said behaviour to the Mayor, CAO and/or Clerk.”
- [22] “Discrimination” is defined in section 4.9 of the **Code of Conduct**, while “Harassment” is defined in section 4.12 and “Intimidation” is defined in section 4.16. All can occur during the use of social media. The definition of “Bullying” is even more specific to social media. Section 4.2 of the **Code** defines “Bullying” as “unwanted, aggressive behavior that involves a real or perceived power imbalance. The behavior is repeated or has the potential to be repeated over time. Bullying includes actions such as making threats, spreading rumors, attacking someone physically or verbally, and excluding someone from a group on purpose. **This includes physical, verbal, social/relational and cyber bullying.** (Emphasis added.) It is well known, and well documented, that cyberbullying often takes place on social media platforms.
- [23] As noted in Paragraph [14], other sections can potentially be engaged through a Member’s conduct on social media. For example, accepting a gift, fee, or personal benefit in exchange for social media activity or interaction (e.g. accepting tickets to an event in exchange for a retweet or Facebook share) is an unacceptable use of social media and may violate section 7.1 of the **Code of Conduct**.
- [24] When posting on social media is conducted through an account affiliated with the Town or an account that uses publicly funded resources, more stringent requirements apply to that social media use. If the social media account is affiliated with the Town, Members cannot use or permit the use of Town property for any activity other than the business of the Corporation. Nor can Town property be used to obtain direct or indirect financial gain. Any social media use from a Member’s account, or from an account that uses publicly funded resources, that is outside of a Member’s representative or official duties, is inconsistent with Section 7.7 of the **Code of Conduct**. This includes content that promotes, or appears to promote, any third-party interest, including events, products, services, or goods.

- [25] Members cannot use any Town-affiliated account (i.e. @CouncillorJaneDoe) or any Town resources (i.e. Town-provided iPhone) to promote, or appear to promote, a political party or candidate for any level of elected office, including in a party leadership campaign.
- [26] Members must follow the provisions of the *Municipal Elections Act* and the **Code of Conduct** during Election periods (see Section 7.2.4). This means taking affirmative steps to clearly distinguish the use of social media for personal or Election purposes and the use of social media in one's capacity as a Town official. Members must either remove any and all affiliation with Town Council from their account, such as the use of "Councillor" in the account name, or the use of their Town email as the point of contact and must create an entirely separate account for the purposes of the Election that does not constitute an official account or use Town resources.

BLOCKING OR UNFRIENDING MEMBERS OF THE PUBLIC

- [25] Sometimes, Members will have challenging interactions with the public on social media. The natural instinct of some Members is to "block" or "unfriend" these individuals, but this is not always an appropriate response.
- [26] Where a member of the public's conduct is violent, derogatory, or in violation of the platform's terms of use, "blocking" or "unfriending" may be the appropriate action. However, as a general rule, Members should avoid blocking or unfriending members of the public from social media platforms. **Blocking or unfriending a member of the public because of disagreements or dissenting opinions is not appropriate.**
- [27] Different social media platforms have varying degrees of privacy. For public pages, such as the Member's unrestricted Twitter account or public Facebook page, it would be appropriate for the Member to block/unfriend a constituent if the constituents conduct was violent, promoted violence, violated the laws of Canada or the laws of Ontario, was personally derogatory or abusive, or was in violation of the site's terms of use. As mentioned above, accounts in which Members hold themselves out as Members of Council are held to this higher standard.
- [28] Members' personal or restricted profiles and accounts will be held to a more lenient standard when determining whether blocking/unfriending is appropriate. Members have much greater control over who may see these accounts due to the personal nature of the information shared.

- [29] There may be times where members of the public repeatedly and intentionally are rude and disrespectful on social media accounts. This consistently abusive behaviour is known as “trolling”, and these users act in bad faith to harass other users on the platform. If a Member comes across a troll, it is recommended that the Member not engage with the user and block the user if they exhibit a pattern of trolling. **Members must remain mindful that a mere disagreement is not trolling and is not a reason to block an individual.**
- [30] There is no provision in the **Code of Conduct** that deals directly with blocking or unfriending on social media. However, Members should be mindful of the definition of “Bullying” noted earlier in Paragraph [21]. This definition, which is found in section 4.2 of the **Code** explains “Bullying”, in part, as “unwanted, aggressive behavior that involves a real or perceived power imbalance. The behavior is repeated or has the potential to be repeated over time. Bullying includes actions such as . . . **excluding** someone from a group on purpose”. (Emphasis added.) The definition goes on to state: “This includes physical, verbal, social/relational and cyber bullying”. An argument could be made that blocking or unfriending is the “repeated exclusion of someone over time” and, therefore, constitutes cyberbullying. Consequently, blocking or unfriending a member of the public, in certain cases, would be inconsistent with the provisions of the **Code of Conduct** and could result in a complaint of misconduct.
- [31] Undoubtedly, given the issues raised above, the best practice is to avoid blocking and unfriending altogether.

FURTHER INFORMATION

This Advisory Bulletin is intended to provide general information. To rely on the advice of the Integrity Commissioner with respect to specific situations, Members of Council must seek written advice consistent with the provisions of Section 6.2.2 of the **Code of Conduct**.

If you have any questions or wish to seek written advice on this matter, please contact:

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