



Integrity and Ethics Office

## Interpretation Bulletin Regarding Use of Social Media By Members of Council

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*Interpretation bulletins are not binding legal interpretations. They are intended as guidance for compliance with the Code of Conduct for Elected Official Bylaw (26M2018). Interpretation Bulletins are an effort to summarize general principles that have emerged from court decisions, Integrity Commissioner investigations, and key concepts, to serve as helpful guidance to Members of Council, their staff, City staff and the public. These interpretations may be amended periodically to reflect evolving principles.*

### I. PURPOSE AND STRUCTURE

1. The purpose of the Interpretation Bulletin Regarding Use of Social Media By Members of Council (“Interpretation Bulletin”) is to provide guidance to *Members of Council* (“*Member*”) on the application of the *Code of Conduct for Elected Officials Bylaw* (26M2018) (“*Code of Conduct*”) to *Members* use of social media.
2. The *Code of Conduct* applies not only to conduct of *Members*, but to conduct undertaken on a *Member’s* behalf by a *Member’s* staff or a *City* employee (*Code of Conduct*, ss. 5, 77-78). *Members* are advised to periodically review the Interpretation Bulletin with their staff to ensure ongoing compliance.
3. The Interpretation Bulletin includes examples to assist *Members*, their staff and the public to understand how the *Code of Conduct* applies to social media use. A *Member* should seek fact-specific advice from the *Ethics Advisor*.

### II. DEFINITIONS

4. Defined terms in the *Code of Conduct* are used in this Interpretation Bulletin.
5. Social media refers to websites and applications that are used to create and share content and engage with other users, and includes audio, visual and written communications. Social media includes posts and interactions with the public at large as well as group messaging. There are many examples of social media, and the list will continue to change. Examples include Twitter, Facebook, Instagram and YouTube. Social media does not include email or websites hosted by the *City* or *Member*, although many of the principles in this Interpretation Bulletin provide guidance.

### III. GUIDING PRINCIPLES

6. Social media is a valuable and cost-effective tool for *Members* to engage with their constituents and build public confidence in the work of *Council* and the *City*. Through social media, *Members* can keep constituents informed, build credibility and trust, and create a dialogue. At its best, social media provides an avenue for direct engagement with constituents. And in turn, *Members* are more in-tune with the needs and concerns of their constituents. Social media is also an avenue for *Members* to enhance their personal profiles and is an important tool for any election campaign.
7. Social media, however, is not an adept tool to communicate complex or nuanced content and can be a tool for bullying, incitement to violence, hate propaganda and the dissemination of false information. Further, the structure of online platforms lends itself to virality, where content spreads far beyond the initial group, perpetuating narratives, true or false, and gains a permanence that cannot be undone. Increasingly, the purveyors of negative content are not human, but rather bots, which are internet robots designed to behave a certain way. Or the content is spread using anonymous or other fake accounts, created in place of a personal account to distribute negative content.
8. The right to freedom of expression of *Members* must be balanced with the ethical and legal duty of *Members* to act in the best interests of the *City* and inspire public trust. It is not the role of the *Integrity and Ethics Office* to weigh-in on political commentary and debate, but more narrowly to assess whether a *Member's* use of social media contravenes the *Code of Conduct*.
9. *Members* enjoy the right to freedom of expression online, which includes the right to express strong opinions and engage in vigorous debate. As Justice Binnie commented, “[w]e live in a free country where people have as much right to express outrageous and ridiculous opinions as moderate ones.”<sup>1</sup> Constituents expect their elected officials to speak about matters of public interest, often sensitive and complex in nature. However, *Members*, because of their position and power and the requirements of the *Code of Conduct*, have a heightened responsibility to be truthful and civil. In short, there must be a nexus between the facts and opinion expressed, and between civility and public trust.
10. *Members* are also vulnerable to abuse online. This is the case for all elected officials, but the risks are greater for traditionally marginalized and intersectional groups. *Members* can expect to be criticized online. However, *Members* can expect civility in their interactions with other social media users and may take steps to protect their safety and the safety of their accounts.
11. As of the date of this Interpretation Bulletin, there have been no Canadian judicial decisions on the extent to which politicians can block users on social media. Therefore, this Interpretation Bulletin may be revisited in the near future. The Interpretation

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<sup>1</sup> *WIC Radio Ltd v Simpson*, 2008 SCC 40 at para 3.

Bulletin's guidance to *Members* on the issue of blocking is based on the ethical principles that are the foundation of the *Code of Conduct* and general legal principles.

#### **IV. RELEVANT LEGISLATION AND POLICIES**

12. Use of social media potentially engages all provisions in Part 2 – Rules Governing Member Conduct in the *Code of Conduct*. *Members'* social media use must also comply with all obligations imposed on them by statute or other legal enactment, including the *Municipal Government Act*, RSA 2000, c M-26, *Local Authorities Election Act*, RSA 2000, c L-21, *Alberta Human Rights Act*, RSA 2000 c A-25.5 ("*Human Rights Act*"), *Criminal Code of Canada*, RSC 1985, c C-46, and the *City's* policies and procedures that apply to *Members*. A non-exhaustive list is provided in s. 18 of the *Code of Conduct*.

#### **V. WHEN SOCIAL MEDIA USE IS GOVERNED BY THE CODE OF CONDUCT**

13. The *Code of Conduct* applies to all communications a *Member* makes on social media in connection with the exercise of their duties of office. This includes communications about *Council*, their work and role as a *Member of Council*, other *Members of Council*, or the business of the *City*. If a *Member* uses a social media platform purely for personal use, using privacy settings to limit the audience to personal friends, the *Code of Conduct* will not normally apply. That said, *Members* should be aware that any of their conduct on social media, even private, has the potential to undermine confidence in *City* governance in certain circumstances. While scrutiny of personal accounts will be more limited, the line between personal and professional can be blurred.
  - *Example: A Member's personal Twitter account, which identifies them as a Member in the description or handle, and is used to engage with the public about both City and personal matters, is subject to the Code of Conduct.*
  - *Example: A Member used Twitter while a candidate for election and continues to use the same account to discuss City business after the election. A Member's use of this Twitter account since election is subject to the Code of Conduct.*
  - *Example: A Member posts in a private message group on Facebook using their personal account. The Code of Conduct may apply.*
14. *Members* are responsible for the content posted on their social media, even if the *Member* outsources their social media to staff.
15. To the extent that a *Member* creates pseudonymous accounts on social media in connection with the exercise of their duties of office, they must comply with the *Code of Conduct*. In short, pseudonymous accounts should not be created and used as an avenue to avoid compliance with the *Code of Conduct*, but the *Code of Conduct* does not apply to pseudonymous accounts created for personal use.

- *Example: A Member creates a pseudonymous Twitter account and posts content that would be abusive, bullying, intimidating, harassing or discriminatory about another Member, their staff, City staff or the public. This would be a Code of Conduct violation.*
16. Members should use a disclaimer that “All opinions are my own and not those of the City of Calgary” to make clear that they are expressing their own individual view, and not that of the *City*. Such disclaimers do not render the social media account personal when it is otherwise used for professional purposes.

## **VI. SOCIAL MEDIA AND THE CODE OF CONDUCT**

### ***General***

17. *Members* are the *City’s* representatives, and in this role must act in good faith, in the best interests of the *City* as a whole, and in a way that maintains public confidence in *City* governance. This is an overarching ethical obligation of *Members*. On social media, this translates to three key principles:
- a. *Be civil.* Civility requires that members are respectful of others. Members can express strong opinions but must take care that the way that they express their opinion does not abuse, bully, intimidate, harass or discriminate others.
  - b. *Be accurate.* *Members* must act in the best interests of the *City* and consider all issues consistently and fairly. Translated to social media, *Members* must be fair, honest and complete in their communications of *City* matters on social media to ensure that the public is accurately informed on *City* matters.
  - c. *Represent the City’s interests.* *Members* overarching obligation is to promote the welfare and interests of the *City*. This requires that *Members* consider this broad duty when they post on social media, including, but not limited to, obligations of confidentiality, any authorized spokesperson on particular *City* matters, respecting the decision-making process of *City* matters, respecting the work of *City* staff, any potential conflict of interest or undue influence.

### ***B - Communicating on Behalf of the City***

18. A *Member* is prohibited from communicating on social media on behalf of the *City* unless authorized to do so, and when authorized, must make reasonable efforts to communicate fairly and accurately.

### ***C – Respecting the Decision-Making Process***

19. A *Member* must respect the decision-making process of *Council*, and all of its boards, commissions and committees. On social media, this means that *Members* can voice disagreement with a decision, but should make reasonable efforts to be civil, accurate and

represent the City's interests. Freedom to voice disagreement may be limited by confidentiality or other provisions specific to a board, commission or committee on which a *Member* sits.

- *Example: A Member posts content about a controversial City matter and is critical of a City proposal. This is an acceptable use of social media. However, a Member should not target City staff or departments, calling them incompetent or calling their integrity into question.*
- *Example: A Member posts disagreement with a decision of Council and substantially misstates the content of the decision, such as only stating one aspect of the decision as being the whole of the decision. This may be a violation of the Code of Conduct.*
- *Example: A Member's post encourages non-compliance with a rule or restriction. This may be a violation of the Code of Conduct.*

#### ***E – Respectful Interactions with Members, Staff, the Public and Others***

20. A *Member* must communicate on social media respectfully, without abuse, bullying, intimidation, harassment or discrimination. Civility requires that *Members* treat others with dignity, understanding and respect. They must not post content that is discriminatory under the *Alberta Human Rights Act*,<sup>2</sup> or that promotes or incites hatred as defined in the *Criminal Code*.

Inflammatory posts that explicitly or implicitly encourage other users to post abusive posts may violate the *Code of Conduct*. *Members* should take care with any content they engage with on social media, including the third-party content they like or share.

- *Example: A Member is in a dispute with another Member and shares a meme posted by another user insulting that Member. This may be a violation of the Code of Conduct if it rises to the level of disrespectful, abusive, bullying, harassing or intimidating behaviour and/or undermines public confidence in City governance.*
- *Example: It is not permissible for a Member, who has a strong opinion on a matter about which staff will soon publish a report, to post on social media to intimidate or coerce staff decision-making.*
- *Example: When a Member is concerned about the behaviour of another Member, if the Member is comfortable handling the matter themselves, they should approach the other Member directly for discussion. If the Member is not comfortable handling the matter themselves, they should contact the Ethics Advisor.*

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<sup>2</sup> RSA 2000, c A-25.5.

## **F – Confidential Information**

21. A *Member* is prohibited from disclosing confidential information on social media and must take all reasonable and necessary measures to protect personal and confidential information.

- *Example: A Member should not post a photo revealing a confidential document even if a user would have to zoom in on the photo to see the nature of the confidential document.*
- *Example: A Member disagrees with a matter being heard in closed session. After the meeting, the Member posts on social media encouraging the public to ask certain questions about the matter that may lead to confidential information being revealed. Dropping hints may be a violation of the Code of Conduct.*
- *Example: A Member should ensure that reasonable security measures are used for social media, such as adequate passwords, multi-factor authentication and privacy settings, and documenting who has control of any accounts. Security measures should be checked regularly, including any time there is a change in staff.*

## **G. Conflicts of Interest – Gifts and Personal Benefits**

22. A *Member* is prohibited from accepting a gift or personal benefit in exchange for social media activity. Gifts or personal benefits may include tickets to events, free food or services, or discounts.

- *Example: A new restaurant opens in a Member’s Ward. It is acceptable for a Member to post unsolicited praise of the restaurant on social media. If the restaurant asks the Member to post about the restaurant opening, it would be acceptable for a Member to do so provided nothing is offered in exchange. A Member should not accept free food from the restaurant in exchange for a social media post.*

## **H – Conflict of Interest - Undue Influence**

23. *Members* must not misuse the influence of their office using social media. This means that when using social media in connection with their work as a *Member of Council*, *Members* are prohibited from posting content that promotes their private interests or that is not appropriate for the influence of their office.

- *Example: A Member should not tag an employer to complain about their employee on social media.*
- *Example: A Member should not promote their private consulting business using social media connected with their work as a Member.*

## ***I – Use of Municipal Assets and Services***

24. *Members* are only permitted to use *City* resources in the exercise of their official duties. In terms of social media, *City* resources include computing equipment and services, *City* logos, business cards and staff.
25. Part I, Election Activities, of the Bylaw is comprehensive in addressing *Member* responsibilities during *Election Campaigns*. The general rule is that a *Member* is prohibited from using an official account and *City* resources and property, including phones, tablets, computers and staff, for *Election Campaigns* or a *Fund Raising Activity*.
  - *Example: A Member’s social media is maintained by staff and the Member wants to use the same social media account for campaign activity. Staff is prohibited from continuing to maintain the account in the same capacity and during office hours.*
  - *Example: A Member wants to campaign for re-election using the same social media account that they use as a Councillor. Members should refrain from using their incumbent title in campaigning. Do not use “Re-elect Councillor [insert name]”. Rather, use “Re-elect [insert name] for Councillor”.*

## **VII. MEMBERS RIGHTS TO PROTECT THE SAFETY OF THEIR ACCOUNTS**

26. *Members* are regularly exposed to abuse on social media. Various safety measures are used to protect *Members* safety, ranging from muting (hiding a disruptive user from one’s feed without restricting that user’s access to your posts) to deleting comments to blocking (restricting a disruptive user from viewing your posts) or banning accounts. Complaints may also be made to a social media site for a breach of their terms of use, which may result in more severe sanctions such as account suspensions or termination.

The social media of public officials are also arguably public forums and *Members* should exercise caution in their use of blocking as it restricts access to information about *City* work. A Canadian court has not ruled on whether a public official can block members of the public, although the Southern District Court of New York held that President Trump infringed the First Amendment of the U.S. Constitution when he blocked accounts on Twitter.<sup>3</sup> The protections under the *Canadian Charter of Rights and Freedoms*<sup>4</sup> are sufficiently different to the First Amendment that the result of a court challenge may be different in Canada. Nonetheless, caution should be exercised.

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<sup>3</sup> *Knight First Amendment Inst at Columbia University v Trump*, No. 1:17-cv-5205 (SDNY), No. 18-1691 (2d Cir), No.

20-197 (Supreme Court).

<sup>4</sup> Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11, s. 8.

The *Human Rights Act* applies to the individual activities of *Members*. *Members* posts on social media communicate their services to the public. *Members* must ensure that any decision to block, remove or ban an individual does not deny them services on an enumerated ground.

There is no provision in the *Code of Conduct* that specifically addresses blocking or similar actions on social media. However, there are provisions in the *Code of Conduct* that might apply in certain circumstances, in particular Parts A (representing the City) and E (Respectful Interactions).

27. *Members* should follow these principles when assessing whether to delete comments or block a member of the public, other *Members* or City staff:
- a. *Members* should generally refrain from deleting comments or blocking members of the public, other *Members of Council* or City staff from following or interacting with them on social media. Blocking should be a last resort.
  - b. *Members* may mute a member of the public at any time (to the extent that the platforms permits muting).
  - c. *Members* should not delete comments that are critical, but may delete comments that use profanity, threats, or are otherwise abusive in nature.
  - d. In narrow circumstances, blocking, unfriending or similar tools used to restrict access of a member of the public, other *Members* or City staff, to posts made by the *Member*, are appropriate. The factors to consider include:
    - i. If the person is engaging in abusive, bullying, intimidating, harassing or discriminating conduct;
    - ii. If the person is posting demonstrably false information that could reasonably be viewed as having the potential to cause harm;
    - iii. If it is reasonably clear that the account primarily exists and is used to send repeated and persistent messages to the *Member* or their staff of an abusive nature; or
    - iv. If it is reasonably clear that the account is fake, whether a bot or other impersonation account.
- *Example: A Member should not block accounts in violation of protected grounds under the Human Rights Act.*
  - *Example: A Member who is concerned that a post about them, their staff or family may pose a threat to their safety should immediately contact Corporate Security at the City.*

## VIII. MEMBERS SOCIAL MEDIA POLICIES

28. *Members* may consider drafting a social media policy for their office, or themselves, which is made available to the public. The policy should identify:
- a. If City resources are used to support social media used by the *Member*;

- b. The type of information that will be posted by the *Member* on social media;
- c. Content moderation practices, including the circumstances when content or accounts will be blocked, removed or banned, and the duration;
- d. Contact information for user complaints concerning a *Member's* social media use.

Issue Date	March 2023
Version	1