

ROBERT J. SWAYZE

INTEGRITY COMMISSIONER

TELE: (519) 942-0070
FAX: (519) 942-1233
E-mail: robert.swayze@sympatico.ca

20736 Mississauga Road
CALEDON, ONTARIO
L7K 1M7

OFFICE OF THE INTEGRITY COMMISSIONER

OPEN SESSION REPORT

TO: Mayor Brian Bigger and Members of Greater Sudbury City Council

FROM: Robert Swayze, Integrity Commissioner

DATE: September 3, 2021

MEETING DATE: September 14, 2021

SUBJECT: Two Complaints against Councillor Robert Kirwan

Recommendation:

It is recommended that Council pass the following resolution:

That Councillor Robert Kirwan be reprimanded for allowing multiple posts to his *Valley East Facebook Page* containing political statements supporting him which he knew to be from his wife who disguised her identity as “Jessie Timmons: (a fictitious person), giving the false impression that such statements were the opinion of the community.

Background:

I received on July 28, 2021, a two-part complaint against Councillor Kirwan from a citizen who wishes to remain anonymous. The first part of the complaint alleges that the Councillor has an apparent conflict of interest because of his persistent support and voting for development applications made by companies owned by Mr. Dario Zulich in the Kingsway Entertainment District (the “KED”). There was an implication that Councillor Kirwan was receiving benefits from Mr. Zulich, but no evidence was provided.

The Valley East Facebook Page is a social media site operated jointly by the Councillor and his wife. It provides municipal and other information to residents of Sudbury and is very active in the community. The second part of the complaint alleged that he and/or his wife disguised their identity in posts on that site by using the fictitious name “Jessie Timmons”.

I sent Councillor Kirwan a draft affidavit to swear confirming that he received no benefits from Mr. Zulich and that he or his wife had never disguised their identity using the name “Jessie Timmons”. As part of his response, he swore a revised affidavit confirming that he received no benefits from Mr. Zulich and that he has never posted under the name “Jessie Timmons”. The affidavit went on to admit that his wife used the fictitious name “to post items and make comments to keep things operational with Facebook”.

The complainant has sent me 12 examples of posts by the fictitious name and advises that there are hundreds more. I attach only one example to this report made on June 30, 2021, which follows a post by Councillor Kirwan reporting on voting at Council on a motion favouring the KED by named members of Council. The fictitious person follows with a post, criticizing members of Council who voted against the KED matter.

Four of the examples I reviewed are beyond the sixty (60) day limit which I can consider under the Code, but I comment that they were during the last election and were attacks against Councillor Kirwan’s political rivals.

I served Councillor Kirwan with the complaint and he has responded to me with 3 E-mails arguing that he has never asked his wife: “to post anything. Everything she posts is on her own. She does not need my permission or suggestions when it comes to posting on social media.” He also advises that it is required to have a back-up in case she ever has difficulty with her main facebook account. He has not explained why it was necessary to disguise her identity in the back-up account.

As part of my investigation, I have consulted with an IT professional who advises as follows:

1. There is no operational reason to disguise the identity of an administrator in any Facebook back-up account and
2. It is contrary to the *Facebook Terms of Service* to post in a fictitious name.

The third E-mail response from Councillor Kirwan made a proposal of settlement where his wife would agree not to make any further political posts on the Valley East site under the name “Jessie Timmons” and I would withdraw my report. In this E-mail he stated that he was not “fully aware of all of my wife’s many posts” but he stated in his affidavit that he was aware that she was using the fictitious name and as an administrator of the page, he must have read them all or at least most of them.

Since serving the complaint on Councillor Kirwan alleging that he or his wife were posting on the Valley East Page disguising their identity as Jessie Timmons, a further post was made on Wednesday, September 1, 2021.

Code of Conduct:

The Code of Conduct for Members of Council and Local Boards (the “Code”) provides as follows:

“17. Every Member shall:

- (a) adhere to any and all City policies and guidelines, regarding social media use; and
- (b) always identify themselves without any attempt to cover, disguise or mislead as to their identity or status as an elected representative of the City when using social media.”

“4. (1) Every Member shall serve, and be seen to serve, the public in a conscientious and diligent manner.

(2) Every Member shall perform their functions with integrity, accountability and transparency and avoid the improper use of the influence of their office, and conflicts of interest, both apparent and real.

(3) Every Member shall perform their Official Duties in a manner that promotes public confidence.”

Analysis:

There is no evidence of Councillor Kirwan receiving any benefit from the developer in the KED and his constant support of his applications is in no way contrary to the Code.

I am also satisfied that Councillor Kirwan did not personally post under the fictitious name. However, he was fully aware of all his wife’s many posts since he is an administrator of his Facebook page. He should have realized that they lack transparency and give the impression that the posts are from the community. Also, it would be contrary to the Code if he did them. I have no jurisdiction over a spouse of a member of Council. However, by allowing the posts, he colluded with his wife to contravene section 17 of the Code. I also rely on Section 4 which requires a member to perform their functions with “integrity, accountability and transparency.” The lack of transparency is obvious.

Decision

I hereby dismiss the part of the complaint which alleges a conflict of interest since no benefits of any kind from the developer were received by Councillor Kirwan.

I find in the second part of the complaint, for the above reasons, that the Councillor did contravene the Code for allowing the “Jessie Timmons” posts and I recommend that Council reprimand him for contravening the Code and the lack of transparency in allowing these posts on his Facebook page.

Prepared by:

A handwritten signature in blue ink, appearing to be 'RS', written in a cursive style.

Robert Swayze
Integrity Commissioner

Attachment on Page 5: Screen Shot of a post on the Valley East Facebook page made by Councillor Kirwan in his name and his wife using the name of the fictitious person, “Jessie Timmons”.

Valley East
Public group · 11.8k members

Robert J. Swayze (shared) · 10h · 10 · 0

Decisions Made By Council Last Night Solidified The Path Forward For The KED

It became clear last night that individual City Councilors are not likely going to change their respective stances with respect to the Kingsway Entertainment District.

Two motions were brought forward by Councillor McCauley that would have resulted in further study of a reevaluation of the current arena. Both were defeated by a vote of 7 to 6, and this has solidified the path forward for the KED.

There are six Councilors (plus the Mayor, who are totally committed to the KED development). Both deputy motions are also in support. After all of the challenges during the past four years, and after seeing the latest PwC report, it is clear to this group of seven that the Kingsway location for the arena / event centre provides the highest long term economic benefits, for the lowest cost of the alternatives, with the least amount of risk. We are convinced that the decision to locate on the Kingsway is in the best long term interests of the "entire" city.

The seven members of Council who have supported the KED are:

- Mayor Brian Rigger
- Deputy Mayor Ward 13 Councillor Jocelyn Lacey-Adkins
- Deputy Mayor Ward 8 Councillor Al Sizer
- Ward 6 Councillor Robert Brown
- Ward 8 Councillor Rene Lapierre
- Ward 7 Councillor Mike Iudico
- Ward 11 Councillor Bill LeBar

The remaining members of Council have been opposing moving forward with the KED and have supported a reevaluation of the current arena, or cancelling the project altogether:

- Ward 1 Councillor Mark Signoretto
- Ward 4 Councillor Geoff McCauley
- Ward 10 Councillor Fern Connor
- Ward 2 Councillor Michael Angim
- Ward 3 Councillor Terry Montemayor
- Ward 9 Councillor Deb Alchinak

Staff are expected to report to Council in July with their recommended next steps. That resolution, once passed, will enable the following to take place with time lines that will allow for an opening of the KED some time in the summer of 2024.

- Retain a Visual Architect
- Issue the Design/Built Bill
- Site Development, including grading, road and intersection construction
- Develop Detailed Design Drawings
- Event Centre Construction

Now that City Council as a whole has made a decision to move forward, it is my sincere hope that everyone will accept the decision and work to make the transformational project come to life. <https://www.sudbury.com/council-qaq-vids-10/>

Council split: Vote for reports on Sudbury Arena reso narrowly defeated
Coun. Geoff McCauley accused council of trying to stall KED project after making two motions for fu...

26 Likes · 5 Comments

Steve Bernard · 10h · 1 · Reply
If it takes 12 months (12) it is not just a few councilors, this project should be rearing completion right about now... Shame on them for for delaying tactics.

Wade Tomason · 10h · 1 · Reply
Haha! Yeah! These 6 councilors should be ashamed of themselves for dragging this out. Every other city is growing and bringing progress to their residents, but Great Sudbury makes things so difficult that it turns Swayzean off. We should be thankful that the citizen people still want to build here with the attitude from those councilors especially the ones who originally voted for the land and then changed their minds. I have to wonder why they did and how they would have benefited from having the land left left out there in the ground. I mean Mr. Quirk I would have pulled the wheels out of Sudbury for sure. Between the reports and councilors they have cost the taxpayers a great deal of money and wasted time. Shame of them.

Ryan Weston · 10h · 1 · Reply
Why are they still wasting time on this? This city council is pathetic.

Dave Duffy · 10h · 1 · Reply
Part of the reason for things taking so long is that there is a significant split. When there is unanimous consensus, things move faster. When there isn't, things should move slower.

Lynn McO'Brien · 10h · 1 · Reply
I hope to a third vote, but the Sheraton vote on this issue too. See More

Albert J. Swayze · 10h · 1 · Reply
The delay was not caused by the split in Council. Even though there was a 7 to 6 vote, it results in a majority collective decision by City Council as a whole. The arena was chosen by the 12 appeals to CAS and the applications in the Superior Court of Justice. We couldn't do anything until those matters were finalized.