

ROBERT J. SWAYZE

BARRISTER & SOLICITOR

CERTIFIED BY THE LAW SOCIETY OF ONTARIO AS A SPECIALIST IN
MUNICIPAL LAW - LOCAL GOVERNMENT/LAND USE PLANNING AND DEVELOPMENT

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, 2019

MEETING DATE: September 24, 2019

SUBJECT: Code of Conduct Complaints against Councillor Robert Kirwan

Recommendation:

It is recommended:

That Councillor Robert Kirwan be reprimanded by Council for contravening Sections 12 and 15 of the Code of Conduct for Council and Local Boards as well as the prior Code of Ethics under the headings, "Relationships to Council Members and/or Administration" and "Fair Treatment", in that he repeatedly abused and harassed members of the public as found by the Integrity Commissioner.

Background:

I was appointed Integrity Commissioner for the City of Greater Sudbury by agreement effective on July 23, 2018. A Code of Ethics was then in force until the Code of Conduct for Council and Local Boards (the "Code") was adopted on February 19, 2019. It was agreed between me and the City Solicitor, that I had jurisdiction under the Code of Ethics from and after the date of my appointment until the adoption of the Code.

This report is written concerning 9 separate Code complaints received by me between January 24, 2019 and the time of writing this report, against Councillor Robert Kirwan filed by different complainants throughout the community, many of whom wish to

remain anonymous. One of the complaints was from Downtown Sudbury Business Improvement Area, (the “BIA”) which is operated by a board of directors filled by volunteers representing the downtown area. The Code requires me to accept complaints from identifiable individuals only and two officers of the BIA provided their names as complainants to comply with the Code. Most of the complaints have several grounds and many overlap. I have decided that I will describe generally the substance of the 9 complaints and it is not necessary in this report and not in the public interest, to identify any of the complainants.

The Complaints:

Many of the complaints were related to the operation for profit, of a Facebook Group by Councillor Kirwan called the Valley East Facebook Page where much of its content is municipal information that the Councillor acquired through his office. He writes advertisements which are posted on the page and charges local businesses for the service. The complainants argue that he is, in effect, selling municipal information which he should provide for free as part of his function as a member of Council. I have dismissed all of the complaints filed on this ground, because the role as Councillor is a part time activity and operating a business does not offend the Code. I found that the Facebook Group was not funded by the City and that it is not a municipal operation. In my opinion, he is entitled to operate a business even if his knowledge acquired as a Councillor assists in that task.

The dispute in the community which is dominant in most of the complaints, is a controversial proposal for a casino and other development outside of the downtown, in an area called the Kingsway Entertainment District. There is ongoing planning and legal proceedings in the community related to this development. Councillor Kirwan is a strong supporter of the proposal and some of the complaints have suggested that he has received benefits from the developer which I have also dismissed for lack of evidence.

Other complaints accused Councillor Kirwan of issuing false statements and speaking on behalf of Council without authority. I extend considerable latitude to members of Council when they are arguing for positions that they hold or vigorously debating with other members of Council. I regard this as an essential part of the democratic process and dismissed several of the early complaints on this ground as well.

Complaint number 7 was from a volunteer who attended a meeting regarding the Kingsway Casino proposal and argued in favor of locating it in the downtown. Councillor Kirwan was in attendance and responded to her arguments by telling her to “grow up”.

One common thread through most of the complaints is the allegation that Councillor Kirwan abuses and harasses members of the community if they disagree with him, which is contrary to the Code. Many examples of his reaction to criticism of his ideas on issues were provided.

Code of Conduct for Members of Council and Local Boards and Code of Ethics:

The Code in force since February 19, 2019, provides as follows:

“Discreditable Conduct

15 (1). Every Member shall:

- (a) treat other Members, City officers and employees, and members of the public, appropriately, and without abuse, intimidation, harassment or violence;

12 (1) Every Member shall conduct themselves with decorum in the course of their performance, or required performance, of their responsibilities as a Member, and at meetings of Council, Committees of Council or meetings of the Local Board as the case may be, and other meetings, and in the case of Members of Council, in accordance with the provisions of the City's Procedure By-law, and other By-laws of the City, where applicable.”

The prior Code of Ethics contains the following:

“Each Council member shall ensure that their behaviour prior to, during, or following a meeting or public hearing, towards other Council members, members of the administration, and representatives of the public is at all times:

- courteous, professional, fair and unbiased; . . .
- avoids sarcasm, derogatory comments, or questions or comments designed to embarrass;”

“Each member has a responsibility to ensure that all persons are: . . .

- dealt with in good faith;
- dealt with without bias and in an even-handed temper;”

Analysis:

I cannot excuse the behaviour of Councillor Kirwan towards members of the community as vigorous debate or acceptable political rhetoric. He has more than crossed the line drawn by the above provisions in the Code and the Code of Ethics. He appears too often to be unable to enter into professional debate with anyone who disagrees with him, but

rather prefers personal attacks. From the complaints I have received, I find his approach to such members of the community, many of whom volunteer their time in support of the downtown, is arrogant and peremptory.

The following are three personal attacks on residents which he made as posts to his Facebook page which I downloaded at the date of writing this report. These continuing statements were part of more than 20 such quotes contained in one of the 9 complaints:

- "What an utter waste of time to have to respond to this drivel. Surely to God this man doesn't have the audacity to think that I am going to allow a washed out dinosaur of an entitled professor like Dr. (name removed) attack my credibility from his ivory tower at Laurentian University. He clearly demonstrates all of the entitlement characteristics of a university professor who has never had to work a day in his life."
- "While it is true that everyone who knows him will agree that it is typical for (name removed) to be against everything - he was adamantly opposed to the Maley Drive project, the ferrochrome smelter, any form of tax increase, and is even being critical of the KED and/or casino project procedure - this letter is even a bit much to expect. I know that no matter what Council wants to do, (name removed) will come up with a large convoluted presentation to show how wrong we are, but he never comes up with any practical alternative solutions. He just likes shooting down Councillors. Anyway, that is who he is and what he does and he certainly has a right to do so."
- "You have got to be kidding, (name removed) You of all people should know that any candidate will have to learn to deal with this kind of nonsense. Just look at the mob activity that you and your friends on the Sudbury Politics page engage in when you start attacking my integrity like a bunch of piranha on the scent of blood. As for harrassment, you have been witness to the obsessive aggressiveness displayed by the people that have been banned from my sites. They just don't know when to quit, as evidenced today. There is only one person copping out in this exchange and that person is you. I have no idea what I ever did to you to completely discard the friendship we had as colleagues and fellow professionals. But don't for one minute try preaching to the members of this group and don't try preaching to me."

As required by the Complaint Protocol which is part of the Code, I served Councillor Kirwan with several of the complaints including the BIA complaint and requested a response. His response referred to the complainants' intent to "publicly humiliate him" and damage his reputation. He said: "I have become the public lightning rod for

complaints and everything I say is being attacked by the same group of people.” I was troubled by his further statement that “Unfortunately, I am sure that you will receive a continuous stream of complaints over the next several years as long as I am a member of City Council.” It was obvious to me that he does not intend to change his aggressive behaviour and remains unable to politely accept contrary points of view.

Decision

It is not my role as Integrity Commissioner to in any way muzzle members of Council. I will always encourage vigorous debate and representations by all members in support of their views. I believe that fervent activity by any member cannot be characterized as discreditable conduct within the meaning of the Code or the Code of Ethics.

However, I believe that Councillor Kirwan’s penchant for personal attacks against members of the community is contrary to the Code and the Code of Ethics. It constitutes discreditable conduct under the Code and unfair treatment under the Code of Ethics. In my correspondence with Councillor Kirwan, I advised him that I have come to the conclusion that his aggressive and unprofessional behaviour has become a disruptive influence in the community. He responded with a promise to “exercise more restraint in the future.” In my opinion, that is not enough. He continues to believe that a conspiracy exists among certain members of the community who he calls his enemies. His combative tactics must stop. I find that he has contravened Sections 12 and 15 of the Code of Conduct for Council and Local Boards as well as the prior Code of Ethics under the headings, “Relationships to Council Members and/or Administration” and “Fair Treatment”, in that he repeatedly abused and harassed members of the public.

Prepared by:

A handwritten signature in blue ink, appearing to be 'RS', with a long horizontal stroke extending to the right.

Robert Swayze
Integrity Commissioner

Attachment(s): none