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Date: September 9, 2021
From: Councillor Robert Kirwan, Ward 5
Re: Guest Column
Betrayed by the Integrity Commissioner

I don't think I have ever felt as betrayed by anyone during my entire life as I have been by the Integrity Commissioner, Mr. Robert Swayze, who has accused me of violating the Code of Conduct for protocols that my wife and I follow as administrators of the Valley East Community Facebook group.

We are the two managers of the 18,000 member site that we founded on January 15, 2010. My wife decided that in order for her to best perform her admin functions, she needed a second account under a different name. There are a number of advantages for an admin having two accounts and this is one of the management tools that we have found beneficial to maintain standards in our group.

Never in a million years would I have ever imagined that by the simple act of her posting under her second account the Integrity Commissioner would accuse me of colluding with my wife to have her post information supporting me on Facebook. Never would I have imagined that the Integrity Commissioner would accuse me of disguising my identity through my wife on our Facebook group. The whole idea makes absolutely no sense. You need conclusive evidence to prove collusion in any situation, and in this case there is no evidence.

The Report that is being presented to City Council on September 14, 2021, is absurd, especially since the Integrity Commissioner himself helped develop the language of the Code of Conduct as a guide for what we would consider "acceptable conduct in the individual conduct of our Official Duties".

The Official Duties of a Councillor are clearly spelled out as the "public duties or responsibilities of a Member of Council, including functions performed by Councillors necessary to demonstrate responsible and accountable government with respect to matters within the City's jurisdiction and which are done for the purpose of providing good government with respect to those matters".

To be clear, my Official Duties as a Councillor do not include managing the Valley East Facebook Group.

Mr. Swayze is claiming that I have violated the Code of Conduct, in particular with respect to Section 4, which states that "Councillors shall perform their functions with integrity, accountability and transparency." He claims that by the mere fact my wife has commented on some of my posts as well as many other posts on the Valley East group under another name; and because I knew that she used that other name on the site; and because as an "administrator" of the site I should have been fully aware of all of her comments; and because I should have known that her comments lacked transparency; the fact that I "allowed" her comments to remain on the site is conclusive proof that I "colluded with my wife" to contravene Section 17 of the Code. Section 17 of the Code requires a Councillor to "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". I didn't disguise myself. My wife used a different identity in a second Facebook account. She cannot be held accountable to the Code and I cannot be held accountable for her actions. Again, this whole idea is preposterous!

What Mr. Swayze is saying is that because my wife used a second account with a different identity in a comment that she made on one or more of my posts, I should be found guilty of violating Section 17 of the Code, despite the fact that the Code of Conduct only applies to Councillors in the performance of their Official Duties. When I am functioning as an administrator of the Valley East group, I am not acting in an official capacity as a Councillor. He is well aware of this since he has already identified in a previous report he issued in September of 2019 that the Valley East Facebook group is a for profit group operated as a business by my wife and I. He has stated in his own words that the Valley East Facebook Group is "not funded by the City and that it is not a municipal operation". Mr. Swayze stated also that I am "entitled to operate a business even if my knowledge acquired as a Councillor assists in that task."

So, clearly, anything that I do with my wife in the administration of the Valley East Facebook group is not a municipal operation and cannot be classified as one of my Official Duties. My wife and I operate a for-profit business through that site, and so I felt that as long as I was posting on the Valley East site under my own name, I was not in danger of violating any provision of the Code of Conduct. I have a

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separate site under the name, Councillor Robert Kirwan. It is unreasonable for anyone, let alone a former lawyer acting as an Integrity Commissioner, to conclude that my wife choosing to have a second account under a name different from hers could be sufficient grounds to find me guilty of disguising my own identity. Yet, that is what Mr. Swayze is saying in his Report where he recommends that Council reprimand me for this action.

The mere presence of a comment on a post that contains multiple comments is not a compelling objective basis for accusing me of colluding with my wife to influence the subject matter of her comment. Otherwise, the same conclusion could be applied with respect to anyone who posts a supporting comment on one of my posts. I could be accused of colluding with everyone if convincing evidence is not required. The only evidence that could be relied upon would be an admission by my wife and/or I to the collusion. And this has been absolutely denied. We are the only people who could provide any evidence of collusion and since there was no collusion on our part, there is no evidence.

Mr. Swayze may be entitled to his personal opinion, but in his role as an Integrity Commissioner, he needs to rely upon more than just his opinion. He needs compelling objective evidence to support such a serious accusation. Even if I was aware that the comment was on my post, there is no obligation on my part as administrator of the group to remove the post and Mr. Swayze cannot assume that I colluded with my wife to influence the content simply because of the presence of her comment. All he knows is that my wife is commenting with her second account under a different name.

The use of a second Facebook account under a different name is something that is governed by the terms and conditions of Facebook, not the Code of Conduct for the City of Greater Sudbury. Mr. Swayze has committed a gross miscarriage of justice with his allegations against my wife and I. During the Council meeting I will provide proof of multiple false and misleading facts and statements being presented by Mr. Swayze in his Report. He has caused irreparable damage to the reputation of my wife, myself and the Valley East Facebook Group. Most importantly, he has caused my wife to suffer serious health issues as a result of the negative public reaction to his Report. He has violated her right to privacy by improperly releasing personal information in the Report and he has himself committed multiple violations of the Code of Conduct Complaint Protocol. All of this will be proven at the Council meeting.

In conclusion, I feel that the only honourable and ethical thing for Mr. Swayze to do is retract the Report to Council, issue a public apology to my wife, and resign from his position as Integrity Commissioner for the City of Greater Sudbury.