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SEP 07 2021
DISTRICT OF LANTZVILLE

ADDITIONAL INFORMATION
September 8, 2021 regular Council meeting
Agenda Item 10. a)
Proposed Revisons to District Social Meida Policy

September 7, 2021

Open Letter to Lantzville Council

I am writing to express my concern over the proposal to adopt modifications to Lantzville's Social Media policy (3000-10). These proposals would greatly curtail freedom of speech in our municipal district in a manner that is not only problematic, but also potentially unlawful.

As a fundamental tenet of our democracy, freedom of speech is guaranteed in the Canadian Charter of Rights and Freedoms. As a municipal district, whose existence and powers are granted by provincial and federal legislation, Lantzville is beholden to the Charter. I therefore draw Council's attention to Section 2(b) which guarantees "freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." Such rights are not easily dispensed with. Indeed, the bar for curtailing such freedom of expression is extremely high. Have you received legal advice about enacting this proposal? If not, I would recommend seeking such advice prior to passing these policies.

I'm not a lawyer, but I know that similar actions by municipal governments have already been tested in our judicial system and, to put it succinctly, the courts do not look favourably on infringement on such freedoms. In Montague (Township) v. Page (2006) the judge wrote:

> *In a free and democratic system, every citizen must be guaranteed the right to freedom of expression about issues relating to government as an absolute privilege, without threat of a civil action for defamation being initiated against them by that government. It is the very essence of a democracy to engage many voices in the process, not just those who are positive and supportive.*

Perhaps most relevant, in 2009 the city of Powell River attempted to curtail free speech by threatening defamation suits against those who spoke poorly of Council and the municipality. A judge not only ruled against Powell River, but also wrote in Dixon v. Powell River (City), 2009 BCSC 406:

> *The Defendant City of Powell River, its Mayor, Council, servants and agents, be and the same are hereby restrained from making threats that the City of Powell River will bring action and sue any person for defamation,* ***or bring any other proceeding of similar purpose or effect****, on any grounds similar to that set out in the Defamation Suit Threat Letters.* (emphasis added)

In that case the British Columbia Civil Liberties Association intervened to protect the rights of the citizens and the city of Powell River was admonished by the court, with it being made clear that any proceeding that could curtail free speech was in violation of the rights of citizens. The court was particularly concerned that city council was not permitted to do things "to chill" public discussion, including criticism of city council. As highlighted above, this did not just include threats of defamation suits, but also *any proceeding* that could have a similar purpose or effect.

Therefore, for the sake of protecting the democratic freedoms enjoyed by all Lantzvillagers, I urge you not to pass these proposed social media policies. They are profoundly undemocratic and interfere with both citizens' and council members' duties to engage in public debate about the actions of council. Please focus on policies that will bring us together as a community, not divide us apart.

Thank you.

Sincerely,

Jonathan Lerner
[redacted]
8354 Bayview Park Drive, Lantzville, BC V0R2H0