



**INTEGRITY  
COMMISSIONER REPORT  
ACTION REQUIRED**

**Report on Complaint against Exhibition Place Board of  
Governors former Member, Mr. Rocco Maragna**

<b>Date:</b>	November 23, 2009
<b>To:</b>	City Council
<b>From:</b>	Integrity Commissioner
<b>Wards:</b>	All
<b>Reference Number:</b>	

**SUMMARY**

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A complaint of conflict of interest was received under Part B of the *Code of Conduct Complaint Protocol for Members of Local Boards* against a former Board member of the Exhibition Place Board of Governors. I dismissed the complaint for three reasons:

1. The Integrity Commissioner does not have jurisdiction under the applicable *Code of Conduct*, or the *City of Toronto Act, 2006*, to investigate a former member of a Board (restricted definition).
2. The part of the complaint which identifies a concern over conflict of interest falls outside the jurisdiction of the Integrity Commissioner because it is with respect to the *Municipal Conflict of Interest Act*: in such a case, the complainant is advised to review the matter with legal counsel.
3. If the complaint had been within the jurisdiction of the Integrity Commissioner, there were insufficient grounds to warrant conducting an investigation.

Although a dismissal is not normally reported to Council, in this case, the complaint became public at a meeting of the Executive Committee. I concluded that these were 'exceptional circumstances' under the *Complaint Protocol* that justified a report to Council.

**RECOMMENDATION**

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That Council receive this report for information.

## **Financial Impact**

This report will have no financial impact.

## **DECISION HISTORY**

On November 2, 2009, the Executive Committee passed a motion requesting an investigation into the involvement of a former member of the Board of Governors of Exhibition Place (“The Board”), Mr. Rocco Maragna.

On November 3, 2009, a complaint sworn by Mayor David Miller was filed in the Office of the City Clerk, under the *Code of Conduct Complaint Protocol for Members of Local Boards* (restricted definition) (“*The Complaint Protocol*”). The complaint referred to the motion from the Executive Committee and requested an investigation into an “inference” of conflict of interest, and whether there had been any violation of the *Code of Conduct for Members of Local Boards* (restricted definition) and *Adjudicative Boards* (“*Code of Conduct*”).

On November 20, 2009, I concluded there were two jurisdictional barriers to an investigation, related to the subject matter and the member’s status as a former Board member and further, that there were insufficient grounds to conduct an investigation. On November 23, 2009, these findings were reported to the complainant and the former Member through the City Clerk.

## **ISSUE BACKGROUND**

In the process of classifying this complaint, background information was received from Mr. Maragna. Additional information was received from the Corporate Secretary of the Board of Governors of Exhibition Place attached at Appendix 1 to this report. For the purposes of this report, the key features are as follows:

Rocco Maragna was a member of the Board of Governors for Exhibition Place from September 2004 until September 22, 2009. As a Board member and a member of the Business Development Committee (a standing Committee of the Board) he was involved in decision making and approval of a selection process for candidates to build and operate a hotel on the Exhibition grounds. In March 2007, HK Hotels was selected as one of two parties to submit a Request for Proposal. The Board met on September 20, 2007 to consider the proposals. On September 24, 2007, the Board approved HK Hotels as the successful proponent.

From September 24, 2007 until February 25, 2009, the Board and Business Development Committee received a number of reports and updates on the negotiations with HK Hotels. The events which led to Mr. Maragna’s retainer by HK Hotels were described as follows:

In December of 2008, the CEO of Exhibition Place arranged a trip to New York to enable Board members to make a visit to HK Hotels and to ensure confidence in their ability to develop and operate the proposed hotel. The CEO, Board Chair and two Board members, one of whom was Mr. Maragna, were scheduled to attend. The

other Board member cancelled at the last minute for personal reasons. In New York, the CEO, Chair and Mr. Maragna viewed a number of hotels owned by HK Hotels. They met with the CEO of HK Hotels and discussed a number of issues including site context, scheduling and archaeological issues.

In February or March, 2009, a Toronto-based enterprise with which HK Hotels had worked, ceased to be a source of local knowledge or contacts. This left HK Hotels with few connections in the City of Toronto.

In early April, the CEO from HK Hotels came to Toronto in order to make arrangements for obtaining a preliminary conceptual architectural design that was required under the LOI by mid-May, 2009. On April 2, 2009 the CEO for HK Hotels had an appointment with an architectural firm and asked Mr. Maragna to accompany him in his capacity as a member of the Board. Mr. Maragna cleared this action with the Chair of the Board and attended this meeting.

On April 3, 2009 a luncheon was sponsored at Exhibition Place at which Mr. Maragna was present. The CEO for HK Hotels attended the luncheon and asked Mr. Maragna if he would assist with the conceptual design in order to meet the deadline in May. Mr. Maragna pointed out that he could not consider this request without clearing it first with the Board. The CEO of HK Hotels told him that he had already spoken with the Chair and the CEO who were of the view that this would be acceptable so long as a conflict of interest was declared at the Board level after accepting the retainer. This was the first discussion of Mr. Maragna being retained by HK Hotels. Mr. Maragna reports he was taken by surprise by this suggestion. During this conversation, Mr. Maragna explained that he would not be able to single-handedly carry out the project without another architectural firm being involved. The CEO agreed with this arrangement and said that he wished to retain Mr. Maragna because of his years of experience, his familiarity with the project site and his affinity for European influenced design. Shortly thereafter, as detailed in Appendix 1, Mr. Maragna wrote to the Corporate Secretary of the Board to advise them of his retainer and his interest which meant he could not longer receive confidential information, discuss or vote on further aspects of the Board oversight of the project. On September 22, 2009, Mr. Maragna resigned from the Board.

## **ANALYSIS**

I first considered whether there is jurisdiction to investigate a former member of a Board (restricted definition) under the existing *Code of Conduct Complaint Protocol* and COTA. None of these instruments defines a member of a Board to include a former member, nor is there any explicit authority in these instruments to extend *Code of Conduct* jurisdiction to former members. The Integrity Commissioner has previously look at jurisdiction in a case of a complaint against a former Member of Council. The Integrity Commissioner reported to Council in August of 2009 that “the reach of the *Code of Conduct*, as currently drafted, does not extend to former members of Council and so the complaint was dismissed.”

These considerations apply equally to Members of Local Boards. Mr. Maragna is no longer a member of the Board of Governors of Exhibition Place. I conclude that there is no jurisdiction to investigate under the *Code of Conduct* as it is currently drafted. That is not to say that other policies and bylaws do not play a role. For example, section 140-10 of the Toronto Municipal Code prohibits former senior public office holders from lobbying current public office holders for a period of twelve months after the date they hold office.

I next considered the issue of conflict of interest which was referred to in the complaint. In accordance with the *Complaint Protocol*, complaints of conflict of interest are dealt with under the provisions of the *Municipal Conflict of Interest Act*. I concluded that I do not have jurisdiction to investigate allegations of conflict of interest against Mr. Maragna.

Finally, although two jurisdictional barriers are identified, I considered the grounds for investigation. The complaint and the material provided to me made no specific allegations of improper use of influence (Article VIII) or whether prospective employment detrimentally affected the performance of Mr. Maragna's duties to a Local Board (Article X). Mr. Maragna was retained by HK Hotels eighteen months after the Board approved HK Hotels as a successful proponent. This approval was based on staff recommendations and an RFP process for identifying a suitable candidate. There is no information or allegations that Mr. Maranga was involved in prior discussions with HK Hotels concerning a retainer, or that he attempted to use improper influence to have staff select HK Hotels as the proponent in the anticipation of personal gain. The chronology of events establishes that Mr. Maranga participated as a Board member from 2004 until 2009 as part of a lengthy process of approvals and steps undertaken for the purpose of seeking a proposal for the hotel development.

Once Mr. Maragna was retained by HK Hotels, he remained on the Board but declared an interest after his retainer. The nature of his interest was put in writing to his fellow Board members on two occasions in April of 2009. Mr. Maragna did not participate in discussions, he did not vote, and he asked that he receive no confidential material relating to the hotel project on these occasions.

Based on the information provided at this stage I conclude that there is no evidence of wrongdoing under the relevant provisions of the *Code of Conduct* which requires a formal investigation.

## **COMMENTS**

A decision of this type is not routinely reported to Council. Under section 2(4) of the *Complaint Protocol*, where the Integrity Commissioner declines jurisdiction in a specific case, this "may" be reported to Council. Where a decision is made not to investigate because of insufficient grounds, section 3(2) of the *Complaint Protocol* provides for reporting to Council where there are "exceptional circumstances" or as part of an annual or other periodic report.

In this case, the request for investigation that was moved in the Executive Committee made the matter public. The media reported that an investigation had been commenced

and the matter would be reported to Council. The former Board member agreed the resolution of the matter should be made in a public forum. In light of the publicity surrounding the early events that led to the making of a formal complaint, I concluded “exceptional circumstances” existed and that Council ought to receive this report.

## **CONTACT**

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## **SIGNATURE**

## **ATTACHMENTS**

- Appendix 1: Chronology of Events
- Appendix 2: Relevant Provisions of the *Code of Conduct and Complaint Protocol*