



OFFICE OF THE INTEGRITY COMMISSIONER

INVESTIGATION REPORT REGARDING
THE CONDUCT OF
A FORMER MEMBER OF THE BOARD OF
MANAGEMENT OF A BUSINESS
IMPROVEMENT AREA

AND

A MEMBER OF COUNCIL

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Integrity Commissioner
August 10, 2015

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INTRODUCTION

Complainant 1 and Complainant 2 each filed complaints about the conduct of a member of the board of management (the "Respondent") of a Business Improvement Area and a Member of Council (the "Councillor"). The complaints arose because the following endorsement appeared in the Councillor's re-election campaign material:

I've seen first-hand, how hard [the Councillor] advocates for the residents and local businesses in the community on difficult concerns such as, childcare, education, libraries, community safety, park improvements, expansion of recreation programs, tenants' rights, and public health programs.

- [Respondent's full name], [...] Business Improvement Area – Board of Directors Member

The facts and issues in the complaints are intertwined and I have therefore decided to prepare one report to resolve all of the issues raised by the complaints.

The main concern raised by the complainants is that it was wrong and contrary to the *Code of Conduct for Members of Local Boards (Restricted Definition)* (the "*Board Members' Code of Conduct*") for the Respondent to offer an endorsement using the title, "[...] Business Improvement Area – Board of Directors Member."

The complainants were candidates in the municipal election. The reason Complainant 1 pursued this complaint is "to ensure that there is a clear and level playing field for subsequent elections and for all candidates."

Both complainants believed it was wrong for the Councillor to accept the endorsement but did not identify any possible Code of Conduct contravention. I sought further information and Complainant 2 suggested that the Councillor had exercised improper influence in contravention of the *Code of Conduct for Members of Council* in seeking and obtaining the endorsement as a *quid pro quo* for an eventual benefit that may flow to the Respondent's employer, a local not-for-profit.

SUMMARY OF FINDINGS

A board of management cannot endorse or support any candidate in an election. The BIA Board did not endorse any candidate.

The endorsement provided by the Respondent associated the BIA to the Councillor's campaign in a way that gave the impression that the BIA had endorsed the campaign and was concerning to members of the community. The BIA Board was called upon to

clarify that it had not endorsed any candidate and that the endorsement was not approved or condoned by the Board.

The Respondent's original intention was to provide the endorsement in the Respondent's capacity as a Ward resident. At the suggestion of the Campaign Manager for the Councillor's campaign the Respondent agreed to attach the Respondent's BIA title. Using the title in this manner was improper and contrary to Article VIII (Improper Influence) of the *Board Members' Code of Conduct*. However, the investigation has shown that the Respondent acted in good faith and in reasonable reliance that the Campaign Manager would not have asked the Respondent to do something improper. When the Respondent became aware of the problem, the Respondent took steps to correct it and apologized.

The Respondent is no longer on the Board so the issue of remedial measures or penalty is moot. Had it been necessary to recommend a penalty, I would have declined to do so because the contravention occurred due to an error of judgement made in good faith.

Turning to the Councillor's conduct, I find that the endorsement was freely given. There was no *quid pro quo* offered or expected in relation to the endorsement in general. There was nothing inappropriate or contrary to the *Code of Conduct for Members of Council* about the manner in which the endorsement was sought.

INQUIRY STEPS

Complaints were filed in accordance with the Code of Conduct Complaint Protocols¹. Both complainants named the Board, the Councillor and the Respondent. As required by the applicable Complaint Protocols, I reviewed the complaints to determine whether they raised issues that were within the jurisdiction of this Office.

The Board, as an entity, cannot contravene the *Board Members' Code of Conduct*. I therefore considered only the allegations about the Respondent and the Councillor. I advised the complainants, the Respondent and the Councillor that I intended to investigate part of the allegations. Responses and replies were exchanged.

I reviewed the complaints, responses and replies provided. I consulted with the Office of the City Solicitor and the Office of the City Manager. I interviewed members of the Board of Management for the BIA, the Councillor's campaign staff and staff in the City of Toronto Business Improvement Area Office.

¹ Code of Conduct Complaint Protocol for Members of Local Boards (Restricted Definition) including Adjudicative Boards and Code of Conduct Complaint Protocol for Members of Council

FACTS

Boards of Management for Business Improvement Areas

It is first necessary to understand how boards of management for Business Improvement Areas (BIAs) fit into the overall organizational structure at the City of Toronto.

At present, there are 81 Business Improvement Areas in the City of Toronto. BIAs exist pursuant to provincial legislation and in accordance with Chapter 19 of the Toronto Municipal Code. Section 19-14 sets out the limitations on the activities of a BIA. Relevant to this complaint, it states:

19-14. Limitations.

A board shall not:

...

- D. Offer or provide support to political candidates or political parties;
- E. Advertise or pay for advertisements in any political publication; ...

Each BIA is managed by a board of management which is comprised of individuals from among the BIA membership and appointed by City Council and local members of Council. Although a board of management has some degree of independence from the City, it must carry out all of its work within the confines of Chapter 19 of the Toronto Municipal Code, provincial legislation and other relevant policies and by-laws.

City Council has the ultimate responsibility for boards of management because they are "local boards" and agents of the City.² The *City of Toronto Act, 2006* allows Council to dissolve or change them.³

The main source of support and advice for boards of management is the "BIA Office", a part of the City of Toronto's Economic Development Department. The BIA Office provides ongoing support to assist BIAs across the City to fulfill their mandates in accordance with Chapter 19, provincial legislation and other relevant policies. When possible, staff from the BIA office (employees from the Toronto Public Service) attend board meetings and provide guidance and advice to help the board.

Every BIA has at least one member of Toronto City Council on its board of management. The role of a member of council is distinct from the role played by the

² City of Toronto Municipal Code, revised by-law Chapter 19, Business Improvement Areas s 19-13(B)

³ *City of Toronto Act, 2006*, S.O. 2006, c. 11, s 145(1)

BIA Office. However, a member of council can provide assistance or advocacy for the interests of the BIA when interacting with City programs.

The Endorsement

The Respondent agreed to be a part of the Councillor's re-election campaign. The Respondent informed the Chair of the BIA Board of the Respondent's intention to participate in the campaign.

The Campaign Manager for the Councillor's campaign emailed the Respondent, along with several other people, to request that the Respondent provide an endorsement to be used in campaign materials. The Respondent wrote a statement and sent it to the Campaign Manager. The statement identified the Respondent as follows:

"[Respondent's name], Ward [...] Resident."

The Campaign Manager responded, "thanks [...]. Can we identify you as a member of the [BIA] board or [the Respondent's employer]." The Respondent refused to name the employer but agreed to be identified as a Board member. Both Respondent and the Campaign Manager understood that the Respondent could not speak for the Board. The wording chosen was carefully selected to attempt to make it clear that it was the Respondent – not the Board – that had endorsed the Councillor's campaign.

The endorsement appeared on the website of the Councillor's campaign and in printed material. All of the activities related to gathering and publishing endorsements were handled by the Campaign Manager. The Councillor was not involved with obtaining the endorsement, nor with reviewing the endorsement before its publication.

Members of the BIA Board began hearing from residents about the endorsement. In some cases, residents were quite upset about the endorsement. One member of the Board raised concerns about the endorsement with the Board Chair.

The Board Chair received an email from Complainant 1 expressing concern about the endorsement. Complainant 1 said, "I am also dismayed that a member of your board would use [the member's] position to influence voters in this ward."

The next day, the Board Chair replied to Complainant 1 to inform Complainant 1 that the Board was unaware of the endorsement. The Chair apologized and assured Complainant 1 that the Board was neutral. The Chair told Complainant 1 that the Chair would bring the matter to the next Board meeting.

The Chair notified the Respondent of the complaint. The Respondent called the Councillor's campaign office to ask that the endorsement be changed to state that the Respondent was a resident. The endorsement remained unchanged.

The issue of the endorsement was raised by Complainant 1 at the AGM of the BIA.

On the same day as the AGM, the Respondent discussed the issue with the Campaign Manager. The Campaign Manager remained confident that the endorsement was permitted. At this point, the Campaign Manager was not sure whether the concern about the endorsement was because the complainant was a competing candidate in the election. The Campaign Manager stated that the Campaign Manager worked hard to follow all the rules applicable to the campaign and the Campaign Manager was not aware of a rule that prohibited this kind of endorsement.

In response to this complaint, the Councillor took the position that it was not contrary to any rule or Code of Conduct provision for the Respondent to provide the endorsement in the manner that the Respondent did. The Councillor understood that it would have been wrong for the Respondent to give the impression that the Respondent spoke on behalf of the Board. That is why the wording was chosen to indicate the Respondent's personal status, not as a representative of the Board.

The Chair wrote to the Respondent to formally request that the endorsement be removed. The reference to the BIA was removed from the endorsement on the campaign website.

The Respondent wrote to the Chair to state:

Dear [Chair],

This email is to inform you that immediately upon you bring [sic] this matter to my attention I contacted [the Campaign Manager] in [the Councillor's] campaign office and asked that the endorsement be changed to reflect [the Respondent's name] resident of Ward [...].

It was not my intent for this endorsement to be understood as an endorsement from the [...] BIA but as an endorsement from me.

I am sorry to the [BIA] BOM and to the several people including [Complainant 1] if I offended them in any way.

Sincerely,

[the Respondent]

The apology was discussed at the board meeting. The Board decided to impose the following sanctions on the Respondent: to remove the Respondent's name from the website; and, to remove the Respondent from committees until a new board was in place. Although the draft minutes do not reflect this, the intention of the Board was to

impose sanctions until such time as a new Board was in place which was to occur shortly after the municipal election.

The proposed sanctions must be viewed in context. The sanctions were a way for the Board to demonstrate that it took the misconduct seriously and was committed to being non-partisan.

At the next Board meeting, concerns were raised about the severity of the penalties imposed on the Respondent and the procedure that was followed. The Board was also made aware that Complainant 1 intended to file a complaint with the Integrity Commissioner. City staff from the BIA Office advised that the Board should wait to impose penalties until such time as the Integrity Commissioner could review the matter.

Complainant 2 wrote a letter of complaint to the Chair. As with Complainant 1's complaint, the Chair responded promptly to apologize to the new complainant (also a candidate) and to advise of the events that had taken place.

The complaints were filed with the City Clerk in accordance with the complaint protocol. Both complainants delayed filing the complaints due to the fact that there was a blackout period for receiving complaints prior to the election.⁴

Although the Respondent was re-appointed to the Board, the Respondent tendered a resignation. In response to this complaint the Respondent has remained apologetic and regretful of the Respondent's actions.

ANALYSIS

The following issues require consideration:

1. Did the Respondent make a public statement endorsing a candidate for municipal election in the manner alleged?
2. If so, was it contrary to Articles VII, VIII or XV of the *Board Members' Code of Conduct* for the Respondent to use the Respondent's BIA title in a public statement to endorse a candidate in an election?
3. Did the Councillor exercise improper influence in relation to the endorsement?
4. Was it within the Board's jurisdiction to impose the sanctions that it did?

I will consider each of the issues set out above in turn.

⁴ The blackout period applies only to Councillors so it was possible to file the complaint regarding the Board Member prior to December 1.

1. Did the Respondent make a public statement endorsing a candidate for municipal election in the manner alleged?

The Respondent made the endorsement as alleged.

2. If so, was it contrary to Articles VII, VIII or XV of the Board Members' Code of Conduct for the Respondent to use her BIA title in a public statement to endorse a candidate in an election?

I will first deal with Articles VII (Election Campaign Work) and XV (Failure to Adhere to Council or Local Board Policies and Procedures) and then turn to a more lengthy consideration of Article VIII (Improper Use of Influence).

Article XV requires all Board members to comply with City Council or Local Board policies and procedures. At present there are no election-time policies in place for Local Boards. There is therefore no contravention of Article XV.

Article VII (Election Campaign Work) stipulates that Board members shall not use the "facilities, equipment, supplies, services or other resources" of the BIA for campaign-related activities. There is no suggestion or any evidence that the Respondent acted contrary to Article VII.

I will now turn to Article VIII, which states:

VIII. IMPROPER USE OF INFLUENCE

No member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties as a member of the local board.

Examples of prohibited conduct are: the use of one's status as a member of a local board to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of others (similar to constituents of a Member of Council) as part of their official duties as a member of the local board. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within the local board or at the City, in return for present actions or inaction.

For the purposes of this provision, "private advantage" does not include a matter:

- a. that is of general application;

- b. that affects a member, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
- c. that concerns the remuneration or benefits of a member.

Article VIII is a broad provision and it requires members of boards to reserve the authority and influence of their office exclusively for the purpose of carrying out their duties on the board. For example, it would be improper for any member of a board of management to use board letterhead to interfere or intervene in matters that were unrelated to board business.

The Article itself provides examples of improper influence at the extreme end of the spectrum to clarify that it is improper for a member of a board to use their position to advance one's own or another's private advantage. There is no suggestion that the Respondent's conduct falls into that extreme category of improper influence.

At the other end of the spectrum, Article VIII states that when a person is appointed to a board position they must not use "the influence of their office" to exert influence over matters that are not within the board's mandate. Influence of office can be exerted through the use of the incidents of office such as one's title or letterhead.

It can never be part of board duties for a member to support a political candidate. This is because the Toronto Municipal Code provides clear guidance about the permissible scope of work for BIAs and it contains a clear restriction against political activity. Section 19-14 states that a Board of Management cannot "offer or provide support to political candidates or political parties; [or] advertise or pay for advertisements in any political publication."

I will now turn to the facts in this case.

The Respondent decided to volunteer for the Councillor's campaign. The Respondent responsibly notified the Chair of the Board. It was acceptable for the Respondent to be involved in the re-election campaign in the Respondent's personal capacity.

The Respondent agreed to provide an endorsement that could be used in campaign materials. The Respondent's intention was to make the endorsement as a Ward resident. The Respondent was asked by staff in the Councillor's campaign to attach the Board title. Trusting that the Campaign Manager would know the rules – because the Campaign Manager was also an employee of the Councillor – the Respondent agreed.

Members of the Board received complaints about the endorsement from the community. When the concerns were brought to the Respondent's attention, the Respondent took steps to address it by informing the Campaign Manager and asking that the wording be

changed on the website. The Respondent did not have control over the campaign website and was therefore in the hands of the Councillor's campaign.

There was a delay in removing the endorsement because the Campaign Manager remained of the mistaken view that the endorsement was permissible and that the complaints were without merit and politically motivated.

The Respondent's first instincts were correct. The Respondent intended to endorse the Councillor as a Ward resident. But at the request of a staff member for the campaign The Respondent agreed to attach the BIA title. It was entirely reasonable for the Respondent to trust that the Campaign Manager would not ask the Respondent to do something that was not permitted.

The endorsement was improper and contrary to the *Board Members' Code of Conduct*. When the Respondent realized that the endorsement was improper, the Respondent apologized unreservedly. The Respondent has maintained remorse throughout this complaint process.

Although the Campaign Manager and the Respondent were mistaken about the permissibility of the endorsement, one can observe that the rules could have been clearer. As described above, there is no specific policy about endorsements. Chapter 19 of the Municipal Code deals with the obligations of the Board as a whole, not a member's individual conduct.

The restriction against using one's title in an endorsement arises because of the application of Article VIII of the *Board Members' Code of Conduct*. The Code of Conduct is a principles-based document. The grey areas are to be filled in through policies, interpretation bulletins or through direct advice from the Integrity Commissioner. Through this complaint, the issue of endorsements has been clarified.

It is my view that it would be of value for there to be specific guidance available for BIA board members across the City on the issue of political activity and conduct during an election period. As a direct result of this investigation, I intend to work with the BIA Office to develop such a resource for use by other BIAs as a part of the Education and Outreach mandate of this Office.

3. Did the Councillor exercise improper influence in relation to the endorsement?

Turning to the Councillor's conduct, I find that the Respondent's endorsement was freely given. There was no *quid pro quo* offered or expected in relation to the endorsement in general. There was nothing inappropriate about the manner in which the endorsement was sought.

4. Was it within the Board's jurisdiction to impose the sanctions that it did?

The Board imposed two sanctions on the Respondent. Concerns were raised that the actions were too severe. There was some concern that one of the sanctions (removal from the website) had the effect of removing the Respondent from the Board. At no time did the Board consider or think it was possible for it to remove the Respondent from the Board.

The issue of penalty has become moot because the Respondent resigned from the Board. However, this case is an opportunity to provide clarity for the future.

The issue is this: Does a Board of Management have jurisdiction to impose a penalty for a breach of the Code of Conduct without first receiving a report from the Integrity Commissioner or does the Integrity Commissioner have exclusive jurisdiction to determine breaches and recommend penalties? This issue requires consideration of Article XVIII of the Board Members' Code which states,

Subsection 160(5) of the *City of Toronto Act, 2006*, authorizes Council as well as local boards to impose either of two penalties on a member following a report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the Code of Conduct....

I sought the views of the Office of the City Manager and the City Solicitor on this point.

It is my view that nothing in the statutory framework prevents the Board from taking actions to stop obvious, ongoing breaches of the Code of Conduct or other conduct that would interfere with the work of the Board. For example, if a board member was engaging in abusive or intimidating conduct, the Board could ask the member to stop and to apologize.

In this case, it was appropriate for the Board Chair to unilaterally request for the endorsement to be removed. The endorsement was interfering with board business because of the concern it caused in the community and the risk that it gave the impression that the board was acting in a partisan manner.

Asking a member to stop doing something is focused on protecting or avoiding further harm to the work or the reputation of the board as a collective and not penalizing the member. It is necessary that the Board be free to address ongoing immediate concerns in a quick and expedient manner.

Penalizing one's colleagues is an entirely different matter. It is my view that if the Board wished to impose personal consequences on the member for an alleged breach of the Code of Conduct, then the board should request the Integrity Commissioner to review

the facts and report. This allows the Board and the responding member to benefit from the full procedural protections set out in the Complaint Protocol. It also allows for an independent and neutral review of the facts to assist the Board.

In my respectful view, the Board's actions in this case blurred the lines between protecting its own reputation and punishing a member of its board for misconduct. I understand that the actions taken by the board were done in good faith to resolve the matter and to show the community that it was serious about addressing the matter. The Board was under significant pressure to demonstrate its neutrality. However, the sanction also had an element of personal consequences that ought to have been reserved for further consideration by this Office.

With the benefit of hindsight, therefore, the optimum sequence of events should have been:

1. Complaint received by the Board or the Board Chair.
2. Chair takes prompt action to stop the conduct.
3. Board considers the action and response and determines whether any additional steps are required to address outstanding reputational risks. In this case, the Board might have wished to make a public statement to clarify that it had endorsed no candidate.
4. Before taking any steps to penalize a member because of an alleged Code of Conduct breach, request the Integrity Commissioner to review and report.

CONCLUSION

For the reasons set out above, I find that the Respondent contravened Article VIII of the *Board Member's Code of Conduct*. The Respondent is no longer a member of the Board so the issue of remedial measures or penalty is moot. Had it been necessary to recommend a penalty, I would have declined to do so on the basis of section 7 of the *Complaint Protocol for Members of Local Boards (Restricted Definition)*, which provides that I shall recommend that no penalty be imposed if "the member took all reasonable measures to prevent [the contravention], or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith."

I also find there was nothing inappropriate about the manner in which the endorsement was obtained. The Councillor exerted no improper influence and therefore did not contravene the *Code of Conduct for Members of Council*.

In order to bring greater clarity to this area across the BIA sector – and as a direct result of this complaint – I will work with the BIA Office at the City of Toronto to consider developing guidelines or template policies for BIAs across the City relating to political activity and conduct of board members during an election period.

Through my work on this case and learning more about the good work of the BIA, I have been reminded of the benefit of attracting qualified and well-intentioned people to *volunteer* for organizations like this. We encourage well-intentioned and qualified people to volunteer when we support them and provide resources to help them comply with the high ethical standards expected of them as public office holders. We also recognize that penalties carry personal consequence and we do not rush to judgement.

None of the members of the Board that I interviewed in this case were aware that the Office of the Integrity Commissioner is available to them as a resource to assist with obtaining advice about compliance with the Code of Conduct. I make this observation not as a criticism but because it confirms my view that more can be done to improve awareness of the Code of Conduct among local boards.

Recently, the BIA Office launched a comprehensive online orientation training program⁵ which will go a long way to improve awareness of this issue. More can be done and part of this responsibility falls to my Office.

In addition to these efforts, the BIA can also demonstrate its commitment to the Code of Conduct by ensuring that training about Code of Conduct compliance be permanently included on its annual agenda in the future.

Therefore, I recommend that the BIA Board of Management:

1. Adopt a finding that the Respondent contravened Article VIII of the Code of Conduct for Members of Local Boards (Restricted Definition).
2. Ensure that training about Code of Conduct compliance be included on its annual calendar of events in the future.

Valerie Jepson
Integrity Commissioner
August 10, 2015

⁵ The training module can be found on the front page of the website of the BIA Office:
<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=673032d0b6d1e310VqnVCM10000071d60f89R CRD>