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OFFICE OF THE INTEGRITY COMMISSIONER

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

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**Valerie Jepson  
Integrity Commissioner  
May 24, 2016**

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## **INTRODUCTION**

The former coordinator (the "Complainant") for the board of management (the "Board") of a Business Improvement Area (the "BIA") filed a formal complaint about a member of the Board (the "Respondent"), alleging a contravention of Articles XII (Conduct Respecting Staff) and XIV (Discreditable Conduct) of the *Code of Conduct for Members of Local Boards (Restricted Definition)* (the "Code of Conduct" or the "Code"). The complaint alleges that the Respondent's conduct contravened the Code when the Respondent sent two emails to the Complainant, other Board members, and a Board contractor, accusing the Complainant of not properly carrying out the Complainant's duties, injuring the Complainant's professional and ethical reputation, and engaging in threats. The Respondent is no longer a member of the Board.

## **THE INTEGRITY COMMISSIONER'S JURISDICTION**

The Integrity Commissioner has jurisdiction to investigate complaints against members of the City's Local Boards (Restricted Definition). While the Respondent is no longer a Board member, the complaint was filed while the Respondent was a Board member, and the conduct at issue took place during the Respondent's tenure on the Board and was related to the Respondent's position on the Board. Accordingly, this Office maintains jurisdiction to conclude an investigation, make findings of fact, and in the event of a finding that a member's conduct contravenes the Code, to make a report to the Board or City Council.

## **SCOPE OF THE INVESTIGATION**

By letter, the Respondent was informed that I would investigate whether it was contrary to Articles XII (Conduct Respecting Staff) and XIV (Discreditable Conduct) of the Code of Conduct for the Respondent to have sent the emails.

During the course of this inquiry, the Respondent aired various concerns and complaints that the Respondent had about the way in which the Complainant carried out the Complainant's job as a coordinator. The Respondent's concerns and complaints about the Complainant are not the subject of this investigation.

## **INQUIRY STEPS**

The exchange of the complaint, response, and replies was completed. All materials provided by the Complainant and Respondent were reviewed and the Complainant was interviewed under oath.

The Respondent was not interviewed because there was no dispute about the core facts underlying the complaint; however, the Respondent had an opportunity to review the proposed findings and provide this Office with extensive written submissions.

## **FINDINGS**

The circumstances alleged in the complaint are straightforward.

The Respondent emailed the Complainant, stating that the Complainant had changed the passwords to the Board website, asking why, and asking whether any other passwords had been changed.

The same day, the Complainant replied that the Complainant had not changed the passwords and did not know why the passwords did not work. At 1:00 pm that afternoon, the Respondent replied, explaining that the Respondent had asked others to try the passwords as well. The Respondent also alleged that the Complainant had previously refused to provide the Respondent and the Board Chair with passwords when asked, stating that the Complainant's monthly reports were not adequate, that the Complainant had refused to post the Complainant's invoices to Dropbox (an online file sharing service), that the Complainant was playing "political head games", that the Complainant had responded to inquiries on the BIA website without authorization, and that the Complainant's expense claims did not include sufficient documentation. The reply also stated, "you are skating on very thin ice. I'm not asking, I'm telling you to fix the problem. Otherwise, you'll see my bad side."

The email chain was also sent to other members of the Board and a Board contractor, a programmer who had been hired to work on the Board's website.

The parties have provided the following context for the email exchange.

The Respondent was a member of the Board for approximately one year. The Complainant was the coordinator for the Board. The Complainant and Respondent only know each other through the Board.

During their time with the Board, there appears to have been some dispute as to the allocation of duties between the Respondent and the Complainant. It is clear that the parties have different views of their roles with the Board.

The Board has a website. The Board had discussed some changes to its website and provided passwords to a new web developer to start viewing and working on the site. In addition, the Board uses some other tools that require passwords (such as Dropbox).

Although this investigation is not an investigation into the various concerns and complaints the Respondent had about how the Complainant carried out the

Complainant's job, one of the Respondent's allegations – that the Complainant had sabotaged the Board by changing certain passwords – was so inflammatory that it required brief consideration. Testifying under oath, the Complainant denied changing the password for the Board's website. I accept the testimony that the Complainant did not change the passwords as alleged by the Respondent.

Turning back to the reply email, the Respondent provided the following explanation for the choice of words:

I had closed my final email with a warning that [the Complainant] should not provoke my bad side. My intent at the time was to proceed with a complaint against [the Complainant] before a Justice of the Peace for theft of cyber property. In the alternative, I would have considered a civil claim in Small Claims Court on the same matter.

That was my thinking at the time but I didn't elaborate in that email until I had run it by the Board.

In other words, the Respondent admitted sending the emails and that the purpose of the language in the email was to persuade the Complainant to comply with the Respondent's requests for the passwords, or face a criminal charge or civil action.

In reply, the Complainant explained that following the email exchange, the Complainant called the webhosting service for the BIA site. The Complainant also logged on to the site, but found it was blank and was unable to get it to work. Over the next few days, the Complainant was in contact with the Board Chair about not being able to get the website to work and about ensuring the Board had all of its files before the Complainant's resignation became effective. There is no evidence that the Complainant and Respondent had further contact.

The Complainant testified that shortly after receiving the email the Complainant contacted the police because the Complainant was concerned about the language the Respondent used in the email, "you are skating on very thin ice. I'm not asking, I'm telling you to fix the problem. Otherwise, you'll see my bad side."

The Complainant filed the complaint with this Office shortly after the New Year. The Complainant testified that the Complainant would like to see the Board implement an anti-harassment and anti-discrimination code and a human resources code. The Complainant testified that the Complainant was not concerned about the Complainant's professional reputation or the ability to work for boards of management of other BIAs.

The Respondent ceased being a member of the Board after the complaint was filed.

# ANALYSIS

## **Issue 1: Did the Respondent's Conduct Contravene Article XIV (Discreditable Conduct)?**

Article XIV of the Code of Conduct states:

### **XIV. DISCREDITABLE CONDUCT**

All members of local boards have a duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The *Ontario Human Rights Code* applies and if applicable, the *City's Human Rights and Anti-harassment Policy* and the *Hate Activity Policy*.

Article XIV requires consideration because it prohibits members from bullying, abusing, or intimidating staff. It imposes a duty on Board members to treat staff appropriately. The *City's Human Rights and Anti-Harassment/Discrimination Policy* (as amended July 7, 2015) which is expressly incorporated into Article XIV of the Code of Conduct, which applies to all City volunteers, and to which Citizen advisory committees/bodies doing business with the City are expected to adhere, distinguishes between workplace harassment and other comments or behaviors (Section 2 sets out the policy's application). Specifically, section 4.10 of the policy states that workplace harassment does not include "a disagreement or misunderstanding"; "a single comment or action unless it is serious and has a lasting harmful effect"; "rudeness unless it is extreme and repetitive"; or "conditions in the workplace that generate stress (technological change, impending layoff, a new boss, friction with other employees, workload, etc.)."<sup>1</sup>

#### *Application to the facts in this case*

In this case, the Respondent's email contained a threat to the Complainant, a Board staff member, which on its face is a prohibited form of bullying or intimidation. The Respondent has not attempted to justify the language used as mere "rudeness" or perhaps an unintentional, momentary loss of composure.

Article XIV creates a basic standard for members' conduct: it is never appropriate for elected and appointed City officials to threaten or intimidate each other, members of the public, or staff. In this case, as it is undisputed that the Respondent expressly chose language to threaten the Complainant and coerce the Complainant to comply with the

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<sup>1</sup> A copy of the policy is available at

<https://wx.toronto.ca/intra/hr/policies.nsf/a8170e9c63677876852577d7004f8/c8c007fd9cd24c6585257d4e00653676?OpenDocument>.

Respondent's request, I find that the Respondent's email contravenes the prohibition against intimidation and bullying contained in Article XIV of the Code of Conduct.

**Issue 2: Did the Respondent's Conduct Contravene Article XII (Conduct Respecting Staff)?**

Article XII of the Code of Conduct states:

**XII. CONDUCT RESPECTING STAFF**

Members shall be respectful of the role of staff of the local board and, if applicable, staff of the City, to provide advice based on political neutrality and objectivity, and without undue influence from any individual member or faction of the local board. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of staff.

No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

Article XII requires members to refrain from injuring staff's professional and ethical reputation and prohibits members from interfering with staff's duties.

The Integrity Commissioner has made previous rulings about the application of Article XII to statements about staff conduct in the context of members of Council.<sup>2</sup> The Commissioner determined that the following factors require consideration when assessing whether statements or actions by elected officials contravene Article XII:

- whether the statement made was public, such as comments made in the press or on a radio broadcast;
- whether the statement made was repeated;

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<sup>2</sup> Integrity Commissioner Report to Council, July 8, 2013: Councillor Mike Layton, available at <http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-60181.pdf>; Integrity Commissioner Report to Council, July 8, 2013: Councillor Adam Vaughan, available at <http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-60183.pdf>; Integrity Commissioner Report to Council, October 23, 2012: Mayor Rob Ford, available at <http://www.toronto.ca/legdocs/mmis/2013/cc/bgrd/backgroundfile-56213.pdf>.

- whether staff's actions were within the scope of their employment (such as actions they had been directed to take/issues they had been directed to address); and,
- whether staff adhered to professional practices and principles (for example, normal actions taken in the course of their work or the ethical obligations of a profession).

The above factors can usefully inform an analysis about whether a board member's statements or actions harm a staff member's professional reputation, although members of Council – in general – have a higher public profile than members of local boards.

Local board members must be free to ask reasonable questions about staff's work. A mere negative statement about staff or an assertive question about performance of duties will not contravene Article XII. Article XII will only be contravened if the statements or actions reasonably risk harm to the reputation of staff.

#### *Application to the facts in this Case*

The Respondent's comments in the email were not public statements and were restricted to a single email exchange to a limited email distribution list. The Complainant does not perceive that the Complainant's reputation was harmed by the email in relation to the Complainant's ongoing work for other BIAs.

There is no question that the Respondent should have raised concerns about the Complainant in another way. However, in light of the limited distribution of the statement I find that the Respondent did not contravene Article XII of the Code of Conduct when the Respondent sent the emails.

## **CONCLUSION AND REMEDIAL ACTIONS**

For the reasons set out above, I find that the Respondent contravened Article XIV (Discreditable Conduct) of the Code of Conduct.

The Code of Conduct and the *City of Toronto Act, 2006* contemplate that contraventions may require remedial actions or sanctions. In this case, however, the Respondent is no longer a member of the Board and the issue of penalty or remedial action is therefore moot.

I therefore recommend that the Business Improvement Area Board of Management adopt a finding that the Respondent contravened Article XIV (Discreditable Conduct) of the Code of Conduct.



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Valerie Jepson  
Integrity Commissioner  
May 24, 2016