

Anonymized Report Regarding the Conduct of a Member of a Business Improvement Area (BIA) Board

**Jonathan Batty
Integrity Commissioner**

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ICT

OFFICE OF THE
**INTEGRITY
COMMISSIONER**
TORONTO

A. Introduction

I have investigated a complaint that a member (the “Respondent”) of a Business Improvement Area Board (the “Board”), breached the *Code of Conduct for Members of Local Boards (Restricted Definition)* (the “Code of Conduct”).

I investigated nine allegations of misconduct. While I have dismissed the majority of the allegations, I find that the Respondent improperly used their influence to help their family member obtain a contract with the Business Improvement Area (the “BIA”).

My detailed findings and recommendations for the Board are set out below.

B. The Allegations of Misconduct and the Respondent’s Reply

The Allegations of Misconduct

The person who filed the complaint (the “Complainant”) is a member of the Board and filed a formal complaint. The Complainant alleged that the Respondent violated the following provisions of the Code of Conduct:

- Article VI (Use of Board and City Property, Services and Other Resources)
- Article VIII (Improper Use of Influence)
- Article XV (Failure to Adhere to Council or Local Board Policies and Procedures)

The Complaint alleged the Respondent:

1. Failed to disclose the organization the Respondent represents at the BIA (as a potential contravention of Article VIII).
2. Improperly used the services of a videographer on contract to the BIA (as a potential contravention of Articles VI and VIII).
3. Improperly hired a family member to provide services to the BIA (as a potential contravention of Articles VI, VIII, and XV).
4. Failed to maintain accounting records and issue T4As to staff (as a potential contravention of Article XV).
5. Improperly billed the BIA for services provided by the Respondent’s organization (as a potential contravention of Articles VIII and XV).

I reviewed the complaint, determined I had jurisdiction over it, and concluded there were sufficient grounds to investigate.

I sent the complaint to the Respondent and invited their response. I advised that additional allegations could be raised in the investigation and explained the Respondent would have an opportunity to respond to them, too.

The Complainant added further allegations in the investigation that the Respondent had:

6. Improperly obtained funding for the Respondent's community activities since 2013 and failed to declare a conflict of interest in respect of this.
7. Exerted undue influence in the BIA's 2012 purchase of (and the continuing misuse of) a notice board.
8. Exerted undue influence in 2013 in the purchasing of goods benefitting the Respondent's organization.

When I interviewed the Complainant under oath, the Complainant made a final allegation that the Respondent had:

9. Exerted undue influence, and misused resources, in respect of a proposal to power 'swash and/or sandblast the Respondent's property; in October 2016.

I treated allegations 6 through 9 as potential contraventions of Article VI (Use of Board and City Property, Services and Other Resources) and Article VIII (Improper Use of Influence) as they were cited as further examples of a pattern of misuse of BIA resources and the exercise of undue influence.

Respondent's Reply

When I received any new allegations, my Office provided them to the Respondent and gave them an opportunity to respond in writing.

The Respondent hired a lawyer to assist. This is not a requirement of this process, but respondents are entitled to do so. I summonsed the Respondent and conducted two interviews, with the Respondent's lawyer present. I also asked for a reply to a few questions in writing at the end of the investigation. The Respondent provided the answers to my questions under oath. The Respondent was a forthright and cooperative witness and explained their position in detail.

The Respondent submits that the complaint is without merit, is an attempt to impugn their character, and that they have complied with all the City of Toronto protocols and procedures.

The Respondent told me that they have kept up to date with the Code of Conduct. As an example, the Respondent cited the February 2018 adoption of Article IX (Business Relations)

and my Office's interpretation bulletin¹. Based on this guidance the Respondent stopped charging the BIA for services. Prior to that, the Respondent's organization had annually charged the BIA an annual fee for services.

The Respondent explained to me that they have a community-minded philosophy that they apply to their role on the Board. The Respondent believes the activities the BIA contributed to, benefit both the community and its local businesses. The Respondent also noted that in addition to their many years on the Board, the Respondent has volunteered substantial time and effort to support local merchants, ensure a safe and attractive streetscape and to facilitate the success of BIA events.

Before this report was issued, the Respondent was provided the opportunity to respond to my proposed findings and recommendations. The Respondent did so, and I have taken them into account.

C. Summary of Findings and Recommendations

I find that the Respondent's actions regarding the hiring of their family member to provide services to the BIA was:

- A breach of Article VIII (Improper Use of Influence).
- Not a breach of Article VI (Use of Board and City Property, Services and Other Resources) or Article XV (Failure to Adhere to Council or Local Board Policies and Procedures).

I find that, in respect of all other allegations, the Respondent has not breached the Code of Conduct.

While only one contravention was found, it is serious. The Respondent's family has personally benefitted from it, continues to do so, and the Respondent has not acknowledged they were in error. I, therefore, recommend that the Respondent be reprimanded and that, among other things, their family member's contract with the BIA be terminated.

D. Findings

When making the findings below, I applied the test that integrity commissioners use to decide if someone has breached the Code of Conduct. The test is the "balance of probabilities." Proving

¹ Both the Article and the bulletin specifically advise Respondents when and how to consult the Integrity Commissioner for advice. During the Respondent's interview, the Respondent volunteered they were familiar with these materials; however, in the response to my findings, the Respondent said they were unaware that they could consult my Office.

something on a balance of probabilities means proving that it is more likely than not to have happened. In applying this standard, I have also objectively considered the evidence. In doing so, I reviewed it, applying the test of how an objective observer, apprised of the circumstances, would draw reasonable conclusions.

1. Failed to Disclose the Organization the Respondent Represents at the BIA

The Respondent's organization is prominent in the neighborhood but is not eligible to be a member of the BIA. Even though the Respondent is not part of any business in the community they are eligible to be elected and serve as a Board member if a business names them as its representative.

The Respondent has longstanding ties with the community and its businesses and was recruited to join the Board many years ago in recognition of the value they could provide. The Respondent has served on the Board for several terms. In their current term, the Respondent is the designated representative for a local business. My Office's investigation confirmed with the City of Toronto BIA Office that the Respondent filed the required documentation and met the necessary requirements to serve on the Board. The Board's minutes note that the Respondent is the delegate for the local business and is not serving in their capacity as head of an organization.

However, the Complainant noted in their complaint that the BIA website incorrectly listed the Respondent as representing the organization on the Board. The Respondent was not aware of the error and had the BIA correct it when it was drawn to their attention.

Article VIII (Improper Use of Influence) states: "No Respondent 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 Respondent of the local board." I am satisfied that the Respondent has not misrepresented their status on the Board and the website error is not proof of any misuse of office. In this instance, the Respondent did not breach this rule in the Code of Conduct.

2. Improperly Used the Services of a Videographer on Contract to the BIA

The Board hired a videographer to make videos featuring businesses that were to be posted on the BIA's YouTube channel.

The Board member leading the project asked the Respondent if their organization would participate. The Respondent provided my Office with a copy of an email the Respondent sent in response to that person and the BIA coordinator. They stated that while the organization would be pleased to be included, the Respondent was fine not to if it would "cause problems with certain Respondents."

At the subsequent Board meeting, the BIA asked for advice from the City of Toronto BIA Office on what organizations could participate in this BIA-funded project as the Complainant was

concerned about including a video of the organization, which is not a member of the BIA. The BIA Office, in turn, sought advice from the City of Toronto's Legal Services Division. In the end, the BIA Office told the Board that the organization could participate but would have to pay for the cost of producing its particular video. No video was ever made for the organization.

Having reviewed the relevant documents and having heard from relevant witnesses, I find that the Respondent's conduct did not breach either Article VI (Use of Board and City Property, Services and Other Resources) or Article VIII (Improper Use of Influence). No video of the organization, using BIA or its own resources, was ever completed. The Respondent was simply asked by another Board member if their organization would like to participate. There is no evidence the Respondent exercised undue influence over anyone to attempt to obtain any improper benefit.

3. Improperly Hired a Family Member to Provide Social Media Services to the BIA

The Board decided to build the BIA's social media profile of its businesses through its Facebook and Instagram accounts, which the BIA coordinator had created. While a social media contractor was initially hired per month, that person stopped providing services by the end of that summer. The Board obtained an estimate for services from another contractor who said they could not provide the services for less than \$300 per month, which was more than the \$250 per month the BIA had offered.

From my investigation, I found there was no necessity to immediately select someone to do this work without a fair and open competition.

Before the next Board meeting, the Respondent discussed with their family the need for the BIA to find someone to do its social media promotion; the Respondent did not discuss this with anyone at the BIA. Other persons who were present at this Board meeting confirm that it was the Respondent who suggested their family members be hired. The minutes note that two members of the Respondent's family members were proposed as replacements, at a rate of \$100 per month—the rate the previous contractor had been paid. Neither family member has training, formal qualifications, or professional experience in social media or marketing. One took a course in high school some years before.

Ultimately, the Board adopted the Respondent's suggestion that their family members be hired by the Board. The minutes for the meeting do not show other names being considered or that any arm's length selection process be considered moving forward. Having advocated for both family members to be hired, the Respondent recused themselves from the voting process. Other Board members moved and seconded that they the family member be hired for four months for the same amount as the person originally hired to perform that work. The Board approved a four-month term on a temporary basis.

No contract was ever signed. No job description or performance plan was established.

Only one family member ever did work and was paid for it. At a meeting, with a new Board in place, the Board decided to extend the Respondent's family member's contract at the same rate. The Respondent recused themselves from the vote on the matter.

The Respondent's family member continues to be paid \$100 per month and, in addition, is paid an additional \$100 per event where there is a major event which needs additional social media coverage. There is no record in the minutes of how this additional amount was approved. The reporting relationship for this position is unclear. While the Respondent explained that the family reports to the BIA coordinator, the coordinator said that they do not direct or supervise this person and noted that, on occasion, it is the Respondent who presents their family member monthly invoices for payment.

In light of the facts above, I find that the Respondent violated Article VIII (Improper Use of Influence). I do not find that the Respondent violated either Article VI (Use of Board and City Property, Services and Other Resources) or Article XV (Failure to Adhere to Council or Local Board Policies and Procedures). My reasons are set out below.

When interpreting the Code of Conduct, the following statement of principles from its preamble is to be heeded:

Members of local boards should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;

Members of local boards are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny;

The Respondent did not take sufficient care to avoid placing themselves in a conflict of interest. The Respondent could not absolve this conflict by simply abstaining from a vote. The Respondent promoted their family receiving a benefit. Those actions undermine public confidence and do not withstand close public scrutiny. While the Respondent described to me that they pay family members to work at their organization, a local board of the City of Toronto is a public entity. The Respondent's role as Board member had different expectations.

Article VIII (Improper Use of Influence) specifically notes that it is prohibited to use a board position to improperly influence the decision of others for the private advantage of oneself, one's family member, or spouse. My investigation shows that the Respondent violated this rule.

According to the testimony of others who were present, the Respondent was the person who introduced and promoted the idea to the Board that members of their family be hired. The Respondent disputes this but provides no other plausible explanation as to how the

Respondent's family's skills and availabilities were promoted. From an objective standpoint, it is clear the Respondent did encourage the Board to hire their spouse and family member.

While the Respondent may have hoped an abstention at the last minute would be sufficient to remedy the conflict of interest, the Respondent failed to consider two relevant things. First, because of the Respondent's service on the Board others on the Board would be especially influenced by the Respondent's views. Second, it put the part-time coordinator in the unenviable position of having to oversee the activity of a service provider who is a close family member of the person to whom they reported. The coordinator was effectively sandwiched between the two. The Respondent submits, in response, that as unfortunate as that is, all that matters is their family member's good work in increasing the number of social media followers. In doing so, the Respondent ignores the problem with nepotism and shows why the Respondent is not in a position to objectively assess their family member's work.

While there appears to be general agreement that the family member was doing an acceptable job, there was no objective way to have assessed that as there was no job description or performance measures put in place. The fact that the number of social media followers increased may correlate with someone doing this work for the first time. Indeed, someone else with these skills would likely have enjoyed the same success and a more qualified or experienced person might have produced better results.

While the Respondent says that there was a job description, none was produced by the BIA when requested during my investigation.

The Respondent explained to me that they fully understood the requirements of the Code of Conduct and did not need to seek advice from anyone about this situation. Even if their primary motivation for securing this work for their family member was to ensure that social media marketing for the BIA was being provided, the Respondent is deemed to be receiving an improper private financial benefit for purposes of Article VIII (Improper Use of Influence) as the payment for these services was being directed to a family member.

The Respondent has suggested their family member was paid an insignificant amount in comparison to the size of the BIA budget and the salary paid to the only other regular employee of the Board (the latter fact also highlights the inappropriateness of the arrangement). These are public funds for which the Respondent as Board member is publicly accountable. The amount is not small by any objective standard. Such arrangements are not consistent the high standards of conduct Board members are required to meet.

When the matter of the renewal of the Respondent's family member's contract came to the Board, the family member was present with the Respondent. I note from the minutes that the family member rarely, if ever, attended Board meetings. While the Respondent and their family member excused themselves from the discussion, the Respondent's support of the work of their family member was understood, and to terminate their family member's contract would have

been awkward for members of the Board. No other candidates were proposed, nor was the job put out for open competition. Contract extensions with service providers need to be considered objectively and free from pressure. The Board was subject to subtle pressure at the meeting to maintain the status quo. This is the inherent problem of hiring family members. The Respondent suggests that momentarily stepping out of the room was adequate to counteract that influence or the appearance of a conflict of interest. The Respondent is not in a position to impartially assess that. Objectively, there is no doubt the Respondent actively supported the hiring of their family member.

The BIA's continued payment of the Respondent's family member perpetuates the Respondent's receipt of an improper private financial benefit.

However, the Respondent has not breached Article VI (Use of Board and City Property, Services and Other Resources), which prohibits Respondents from using, or permitting to be used, a board's resources for activities other than the business of the local board. In this case, the social media services were provided to the BIA (as opposed to the Respondent's organization or the Respondent's family).

The Respondent has not breached Article XV (Failure to Adhere to Council or Local Board Policies and Procedures). This requirement requires members "to observe the terms of all policies and procedures established by the local board and any Council policies and procedures that apply to the local board or its members." In this case, there did not appear to be any policies in place, other than the Code of Conduct, prohibiting the Board from sole-sourcing work to a family member. There also did not appear to be policies in place prescribing when and how to run a competitive selection process.

The Respondent submitted in response to my proposed findings that because the Board had no specific anti-nepotism policy in place that the Respondent did nothing wrong and should be excused from all findings of misconduct in connection with the hiring of their family member. This narrow view of the obligations imposed by the Code of Conduct fails to acknowledge there is a general requirement that Respondents not exercise undue influence for their own gain.

4. Failed to Maintain Accounting Records and Issue T4As to Staff

The Complainant complained that the Respondent was responsible for the BIA failing to maintain appropriate ledgers and issue T4A tax forms to staff. Recently, the BIA has received advice that it should be issuing these forms.

These are important administrative issues, but it is not evident to me that they are the sole and personal responsibility of the Respondent. At all relevant times, there was a Treasurer for the BIA, and it was annually audited and received financial statements. If there was a failure to complete such forms, the Respondent was not solely responsible.

This is an administrative and financial matter for the City's BIA Office to consider and address with the BIA. At this time, I do not see that this is a matter within my jurisdiction under the Code of Conduct.

5. Improperly Billed the BIA for Services Provided by the Respondent's Organization

In the summer of 2019, the Board retained the services of a contractor to clear the sidewalk in the neighbourhood from weeds. The Respondent provided the contractor with their organization's weed trimmer.

In the summer of 2019, the weed trimmer broke while the BIA's contractor was using it, and the Board then engaged in an email discussion about whether to reimburse the Respondent's organization for breaking its weed trimmer.

As the BIA wished this work to continue, it identified options moving forward that ranged from hiring a contractor with equipment, to renting the equipment themselves, to offering the Respondent's organization payment at the same rate as the equipment rental company but without a time limit. The email exchange that followed illustrated the basis for this allegation.

The Complainant wrote to the Board stating that "any requests from a Board Member for payment for services or use of equipment is a conflict of interest."

The Respondent wrote that they would be recusing themselves from the vote. However, while the Respondent did not cast a vote, they actively engaged in debate on the matter. The Respondent wrote:

I have recused myself from the weedwacker discussion, since it affects [my organization's] weedwacker. The Board can decide on this matter in whatever way it chooses, and I will not vote on any motion regarding this now or in the future.

However, it is with sadness that I feel the need to write this email on behalf of the church, in order to clarify what you want me to tell [my organization's] board and members about the weedwacker.

The issue seems simple:

- 1) The BIA asked to borrow the weedwacker. [My organization] kindly agreed.
- 2) the weedwacker broke while in the possession of the BIA.

Is the response from the BIA you want me to tell our Board and members is "nothing"? Nothing is being done until the BIA meets in September, and perhaps nothing then? Is the message that the [organization] has to therefore go without a weedwacker for the next 8 weeks of summer, or buy a new one on their own?

It saddens me to have to point out that there is a widespread expectation that if you borrow something and it breaks or gets damaged while in your possession, you fix it or replace it.

Sincerely, [Respondent's name]

The Board majority voted to reimburse the Respondent's organization for its weed trimmer, based on the replacement cost quoted by the Respondent, and issued a cheque for \$57 to the Respondent's organization. Prior to this, it was the Board's collective decision to clear the neighborhood sidewalks.

Based on this, while I think the Respondent failed to appreciate they should not have been participating in the Board's debate on this issue, I do not think that on the balance of probabilities that the Respondent has breached Article VIII (Improper Use of Influence) as the preponderance of the evidence does not lead me to that conclusion.

Article VIII (Improper Use of Influence) prohibits members from using their position to improperly influence a decision for their private advantage. Thus, a finding of non-compliance incorporates a two-step test. First, there must be improper influence. Second, there must be an advantage sought or obtained for oneself or someone with whom the member is closely associated. To seek or receive an advantage on behalf of oneself or another, one must seek or receive a benefit, profit, or be placed in a better position.

As the above email notes, the Respondent appears to have advocated for the interests of their organization over those of the BIA. There is no evidence that any condition was put on the weed trimmer's use by the organization. The Respondent may have implicitly assumed it was not a problem to be reimbursed if it broke. This was a mistake on the Respondent's part and another example of how conflicts of interest arise.

While the Respondent was involved in the decision when they should not have been, I do not think the reimbursement rises to the threshold of being a violation of the Code of Conduct. A modestly priced piece of garden equipment was not being replaced by a substantially better model. The BIA had enjoyed the use of the equipment for free, and it was damaged when it was being used by the BIA. No advantage was obtained by the Respondent. Thus, the Respondent has not breached Article VIII (Improper Use of Influence).

I also find that the Respondent has not breached Article XV (Failure to Adhere to Council or Local Board Policies and Procedures), which requires members "to observe the terms of all policies and procedures established by the local board and any Council policies and procedures that apply to the local board or its members." The occasional use of the weed trimmer, for free, was not prohibited by the BIA's policies or the Code of Conduct.

6. Improperly Obtained Funding for the Respondent's Community Activities Since 2013 and Failure to Declare a Conflict of Interest in Respect of this in January 2018

The Respondent, along with another organization leads a non-profit organization, an informal organization the Respondent founded with others in 2006, providing outreach services to youth in the community. The activities include sports leagues, for which the organization provides uniforms, equipment, space, referees, awards and a banquet. The BIA provides annual donations of \$275 for these activities and one serving seniors. The testimony I heard advised that it is in practice within the discretion of BIAs to contribute to community activities so long as a BIA believes it supports the mission to enhance its community profile and foster local business development.

The Respondent explained that they first approached the BIA about sponsorship in January 2013 but declared a conflict on the matter and did not participate in the vote. This is reflected in the minutes from January 2013 onwards, other than one incident in 2018 in which the minutes do not note a declaration of a conflict by the Respondent. The Respondent told my Office that they regretted this oversight.

In reviewing the relevant documents and hearing from relevant witnesses in respect of this matter, I find that the Respondent's conduct has not breached Article VI (Use of Board and City Property, Services and Other Resources). This project was endorsed by the Board, and there is no evidence the Respondent exercised undue influence over other Board Respondents to solicit or obtain any improper advantage or benefit.

In respect of the alleged breach of Article VIII (Improper Use of Influence), there is no private advantage gained where the benefit is of generally enjoyed by the community. While the community activity is associated with the Respondent's organization, its activities and contributions in the community contribute a general benefit to the wider community. The sponsoring of youth sports is a recognised way for local business to contribute, build goodwill, and receive recognition in a community. The Respondent's activity does not amount to misconduct as the BIA's contribution is a general benefit to the community.

For similar reasons, the Respondent has not breached Article VI (Use of Board and City Property, Services and Other Resources), which prohibits Respondents from using, or permitting to be used, a board's resources for activities other than the business of the local board.

7. Exerted Undue Influence in the BIA's 2012 Purchase of (and the Continuing Misuse of) a Notice Board

At a Board meeting, the Respondent proposed a community notice board be put up on the wall of their organization. At that time, the Board did not observe formal rules of order and operated on consensus, so there is no record of moving and voting on a motion—only that the Board

agreed to move forward with this. The materials for the notice board cost \$936.37 and were paid by the BIA. It was installed by the Respondent, at no cost to the BIA, and since its installation in 2012, the BIA has not been charged by the organization for its location.

The notice board bears the title “[Community Name] News.” It is divided into three sections: the centre section is devoted to BIA information and events, the right section to the Respondent’s organization’s matters, and the left section to community events of a general nature, such as flu-shot clinics. It is jointly managed by the BIA and the Respondent’s organization. It is located in a visible and public position in the community.

While the installation of the notice board took place eight years ago, the Complainant alleges this is as an example of a continuing pattern of behavior and shows that the Respondent used their role on the Board of the BIA to benefit non-BIA member organizations.

The current arrangement, while unique, provides equal benefit to the local community, the BIA, and the Respondent’s organization. No party is unduly preferred, or disadvantaged, by this arrangement in light of their joint contributions to the project.

The Respondent’s conduct has not breached Article VI (Use of Board and City Property, Services and Other Resources) or Article VIII (Improper Use of Influence). This project was endorsed by the Board, and there is no evidence the Respondent exercised undue influence over other Board members to obtain any improper benefit as the notice board provides a general benefit to the community and the presence of a section relating to the organization is a reasonable exchange for not being charged for the location.

8. Exerted Undue Influence in the BIA’s Decision to Decorate the Respondent’s Organization with Lights in 2013

At a November 2013 Board meeting, a former (and now-deceased) Board member moved to have the BIA pay to have decorative lighting installed on the Respondent’s organization’s building for the winter holiday season. The motion carried. That Respondent was not part of the organization’ so appears to have made the recommendation independently from it. The Respondent declared a conflict, did not vote on the matter, and reports that they did not engage in discussion on that item.

My investigation found that the organization occupies an important place in the community and is seen as a convenient meeting place, landmark and community hub. It is frequently used for community events and meetings. The BIA’s decision to light the organization could be understood as a project to improve the general streetscape during the holiday season in the neighborhood. I am satisfied that it was a decision made without undue influence from the Respondent. I also note that this decision dates from seven years ago.

I find that the Respondent's conduct has not breached Article VI (Use of Board and City Property, Services and Other Resources) or Article VIII (Improper Use of Influence). The idea to light the building was raised by another Board member, and there is no evidence the Respondent exercised undue influence over others to obtain a benefit.

9. Exerted Undue Influence, and Misused Resources, in respect of a Proposal to Power-Wash and/or Sandblast the Respondent's Organization in October 2016

The Board meeting minutes from October 2016 included a section "report from the coordinator" noting that the BIA "will get a [organization] for sandblasting" and also "price a power-washer for the BIA." The Respondent was not present at that meeting, and, therefore, was not involved in the discussion.

The Complainant (who was not on the Board at that time but who heard about the agenda item from another member) sent an email to the BIA on November 3, 2016, raising concerns about the BIA paying for the sandblasting of the Respondent's organization.

The Respondent provided my Office with a copy of an October 19, 2016 email they sent to the BIA coordinator, following their review of the October meeting minutes. It asked her what the sandblasting item referred to, "just a quick question...in the minutes under your report it says "We will get a [my organization's building] for sandblasting" ... is this a misprint, or if not, what does it mean???!!" The Respondent did not receive a reply.

The witnesses we interviewed confirm that no sandblasting or power-washing was provided to the Respondent's organization, or any other property, at any time and those who were at the October 2016 meeting do not recall the item or discussion around it.

I find that the Respondent has not breached Article VI (Use of Board and City Property, Services and Other Resources) or Article VIII (Improper Use of Influence). There is no evidence that the Respondent's organization's building was either sandblasted or power-washed using BIA resources. There is no evidence that the Respondent advocated that BIA resources be used in this manner. In fact, the contrary is true, as they were surprised this was suggested.

E. Recommended Penalty and Remedial Actions

A BIA is a public board, not a private entity, and hiring family members to provide services raises an immediate concern. BIAs are financed using public funds, and it does not bear close public scrutiny for Board members to facilitate the hiring of their family.

Having served on the Board for a decade, this is one instance where the Respondent did not adequately separate their public responsibility from their private interests.

It was not a business necessity to hire the Respondent's family member. It was not appropriate for the Respondent to promote the hiring of their family member in the way that was done. It was not sufficient to avoid the conflict of interest by simply removing themselves from the vote when the family member was first hired.

The Respondent is deemed to be enjoying a personal financial benefit when their family member is paid for performing services for the BIA.

This arrangement is also problematic because it places staff and other Board members in the unenviable position of overseeing a family member of a long-time Board member who had been in a leadership role. It makes effective review and evaluation problematic. The problem of having no job description and evaluation framework was aggravated when the Respondent made their views known to others that they believed their family member performed well and when they sometimes served as the go-between in submitting the family member's invoices to the BIA. It appears to me that the Respondent can be reasonably seen to have encouraged her continuing employment.

The BIA is a small organization and has a part-time coordinator who only works the equivalent of five days each month. The ongoing expenditure on the Respondent's family member's services is comparatively significant.

The Respondent advised that they are fully aware of the Code of Conduct and that they did not need to consult anyone regarding how to address a conflict of interest involving their family. My investigation shows that the Respondent advocated that members of their family be hired, when other equally qualified persons unrelated to the Respondent could have been recruited to do this work. There was no urgent need to secure the services of a member of the Respondent's family – or to continue to have the Respondent's family member perform this work. It was convenient for the Respondent to have someone from their family do this work and nice to have them derive a financial benefit from it.

This situation would not have arisen had the Respondent reflected on their public responsibilities as a Board member and sought advice (as the Respondent knew they could) from my Office. The Respondent knew this was a conflict of interest and did not take all reasonable measures to prevent it. To date (assuming the adult family member has continued to be paid since September 2018), the Respondent's family member will have received \$2600 or more from the BIA. This is not a trivial amount.

The Respondent's mistake was not inadvertent, or an error of judgement made in good faith. The Respondent has expressed no regret about their decisions.

Given the breach is continuing to provide an improper benefit, the Respondent's failure to acknowledge the mistake and voluntarily take any remedial action, I recommend a penalty be imposed. In accordance with Article XVIII (Compliance with the Code of Conduct) and

subsection 160(5) of the *City of Toronto Act, 2006*, I recommend the Board vote to reprimand the Respondent. This is the only penalty which is available for me to recommend in these circumstances. My recommendation does not mean that the Respondent must leave the Board, but it would signal to the Respondent and other Board members that their conduct is not acceptable.

The Board should be aware that hiring family members is not acceptable and that it needs to take action to address the problem.

Therefore, I recommend:

1. The Board end its business arrangement with the Respondent's family member. This arrangement is not properly documented or managed. The Respondent is deemed to be enjoying a personal financial benefit when the Respondent's family member is paid for performing services for the BIA.
2. In addition to scheduling a time to receive a report from my Office, that the Board review the Code of Conduct and invite the Integrity Commissioner to, again, review its requirements and those of the *Municipal Conflict of Interest Act* with them. The Integrity Commissioner last did so in autumn 2019 but, in light of the many allegations made in the report, it would be wise to do so again.
3. The Board review with the City's BIA Office its administrative, financial, procurement, and recruiting policies to ensure they are up to date and compliant with City of Toronto policies and procedures.

My proposed recommendations for remedial actions are also informed by the following observations.

Relations at the Board have been strained for some time. It was for this reason, as I mention above, that my predecessor attended a Board meeting in autumn 2019.

It also appears, separate from Code of Conduct matters, there have been problems with the administration of the BIA (for example, the Board's failure to issue T4As).

There has been disagreement in the membership of the BIA about what things it should and should not be doing. This is reflected in the allegations submitted to me; a number of which concern policy matters rather than Code of Conduct issues. While it has been submitted the allegations reflect a pattern of misconduct, I did not find this to be the case. Some allegations concern decisions and actions dating back eight years, which has hampered my investigation.

I have also been advised that the communications between Board members, and some of the communications directed at staff, have lacked appropriate decorum. The current Chair and the

Councillor who sits on the Board have had to comment on this issue at Board meetings. The lack of civility is not attributable to any one person or any one “side.”

There have also been five resignations from the Board over the last year.

Everyone we spoke with expressed concern about the climate of the Board’s meetings and how it functions.

My recommendations are a good place to start to address these challenges. The City’s BIA Office, and the Board itself, may have recommendations, too. Unless these issues are addressed, I am concerned about the effective governance of this Board.

Respectfully submitted,

Jonathan Batty
Integrity Commissioner

December 21, 2020