

**NORFOLK COUNTY INTEGRITY COMMISSIONER,  
DAVID G. BOGHOSIAN**

**Citation:** Complaint re: Simcoe BIA Board of Management  
Chair, Brian Jones – DGB-Norfolk County ICI-2024-01

**Date:** May 10, 2024

**REPORT ON COMPLAINT**

**Introduction**

[1] This Report concerns the first of a series of Code of Conduct Complaints involving the same parties and overlapping factual circumstances, all made in close temporal proximity to one another. The parties involved in all four Complaints are the Simcoe BIA Board of Management, its Board members, the Chair, Brian Jones, and the Treasurer, Lyndsey Ross, on the one hand; and the Council of Norfolk County and Councillor Adam Veri, on the other hand.

[2] The first two Complaints, both initiated by Council for the County against Mr. Jones and Ms. Ross, respectively, were originally forwarded to the previous Integrity Commissioner (“IC”) on February 1, 2024. The previous IC had received a Response from Mr. Jones (which also included a response by him to the Complaint against Ms. Ross) but apparently not from Ms. Ross based on what the previous IC forwarded in terms of his file in this matter. He had not completed these investigations or issued a Report before I assumed the role of the County’s Integrity Commissioner effective April 3, 2024, so I took over the Inquiry into these. The third, undated Complaint, by Ms. Ross against Councillor Veri, was forwarded to me on April 15, 2024.

[3] The first Complaint, dealt with in this Report, was made by Council pursuant to a Resolution passed by Council in Committee at its December 12, 2023 meeting, the minutes of which were approved by Council at its December 19, 2023 Council meeting, against the Chairman of the Simcoe BIA Board of Management, Brian Jones. The alleged violation is that a draft email to the Mayor of the County which he circulated to members of the Board of the BIA breached sections 5.3, 5.4 and 11.3 of Norfolk County’s Code of Conduct for Members of Council and Local Boards (“the COC”).

**Complaint**

[4] The Complaint alleges that Mr. Jones violated the Code of Conduct by sending an email to four of the other members of the Simcoe BIA Board of Management and the BIA’s Director (its only paid staff member) at approximately 12:20 am on Saturday, October 14, 2023 with the re: line: “A (proposed) [sic] Letter to the Mayor from the New Chair of the Downtown Simcoe BIA”. The email was forwarded to a fifth BIA Board Member later the same day. The two BIA Board members who were Members of Council were not sent this email, for reasons that will soon become apparent. The Complaint alleges that ss. 5.3, 5.4 and 11.3 of the COC, all broadly relating

to the manner of dealings with fellow Members, was breached by the content and tone of the said email.

[5] The email asks the other Board Members to provide their thoughts regarding the draft letter “before I fire it off.” The content of the email of significance from the standpoint of this Complaint are as follows:

- Mr. Jones states repeatedly that the two Board Members appointed by Council (the two Ward 5 Councillors) were absent and late, respectively, from the previous day’s Board meeting at which the new BIA Board was elected, thereby both missing the Board elections (which were apparently held within the first ½ hour of the start of the meeting);
- He expresses disappointment and frustration with the lack of commitment of councillors to “our downtown;”
- He chastised Councillor Duthie for attempting to remove a BIA Board member for improper reasons;
- He proposes that these councillors’ pay be docked from their Council compensation in an amount equal to the BIA levy (5%) deducted and redirected to homeless solutions in our downtown core, and that their appointments to the BIA Board be struck.

[6] The email was brought to the attention of senior County administration and Council when one of the BIA Board members forwarded the email to the County out of concern about the inflammatory tone and content of Mr. Jones’ proposed letter to the Mayor. The “whistleblower” added that she was concerned that the Chair and perhaps also another Member of the Board’s Executive harboured ill-will against the County Councillors, not the entire BIA Board.

### **Response of Brian Jones**

[7] Mr. Jones submitted an unsigned, undated “Memorandum of Defense” to the former IC in response to the Council Complaint, which was passed on to me. The content of the Memorandum is as follows:

- A significant portion of the Memorandum contains a response to the complaint against his fellow Simcoe BIA Board Member, Lyndsey Ross, who is the subject of the second Council COC Complaint (third Complaint in the tetralogy). I will not set out the details of his defence of Ms. Ross;
- Mr. Jones devotes the bulk of the Defense to claiming that despite repeated contacts with County staff over the period from October 2023 to February 2024, he was never made aware of the subject matter of the Complaint against him until he received an email from the previous IC on February 16, 2024, when he claims he finally realized what the cause for concern was.

- In the only portion of the Memorandum that substantively responds to the Complaint, Mr. Jones states as follows:

Yes, I circulated an email draft that was unpleasant and the language in this rough draft was disproportionate, but it was factual, and the best defense against disparagement is truth. Neither councillor attended the election, Councillor Duthie was late and did express his displeasure at the outcome and then raised his voice to the newly elected Treasurer when she disagreed with him. Those are facts. I felt it was unnecessarily unpleasant and disrespectful to our board so I sent around a draft to poll our board and get their feedback- I had no intention of sending this rough, raw, typo-laden first draft, and after receiving feedback from the board members decided to shelve it. (See appendix D)

I never intended to send that email but it was sent anyway by Ms. Moe, and for the hurt and disrespect that caused, I apologize. My Letter of Apology is attached.

- Mr. Jones addresses an issue of conflict of interest in respect of the fact that he obtained a sole-source Social Media Management contract with the BIA while he was a Board member, which contract was renewed on several occasions while he remained a Board member. I do not see the first Council Complaint against him as raising conflict of interest issues so I do not address his response here. The issue is, however, relevant to the second Council Complaint against him (the fourth in the tetralogy) so I will address it in the Report dealing with that Complaint.

### **Interview with Councillor Duthie**

[8] I spoke with Councillor Duthie on May 3, 2024. I asked about the October 13, 2023 BIA Board meeting and why he had been late. He advised that emails advising of the meeting had indicated that it would start at 12:30 pm but when he arrived at that time, the meeting was already in progress and he learned it had started at 12:00 pm. He was not happy that the Board elections had already been held in his absence and expressed his unhappiness about this to the Chair, Mr. Jones. With respect to removing another BIA Board member for inappropriate reasons, he stated that he was deeply offended by how Mr. Jones misrepresented his position in the email. The individual in question had not attended a BIA Board meeting for over a year and he had not suggested removal, just that Mr. Jones have a conversation with the member to determine whether they wished to remain on the Board given the apparent lack of interest.

### **Applicable Legislation and By-laws**

#### **County By-Law 2018-34 - Code of Conduct for Members of Council and Local Boards of the Corporation of Norfolk County**

[9] The relevant provisions of the Code of Conduct are as follows:

##### **5. GENERAL DUTIES**

5.3 Members will conduct their dealings with each other in ways that maintain public confidence in the position to which they have been elected or appointed. Members will be open and honest, focus on issues rather than personalities, and avoid aggressive, offensive or abusive conduct.

5.4 Members shall refrain from making disparaging remarks about other Members, members of the public or about Council's decisions.

##### **8. INTERACTION WITH THE PUBLIC, OTHER MEMBERS & COUNTY STAFF**

8.1 Members have a duty to treat members of the public, each other and staff with respect and dignity and without abuse, bullying or intimidation;

##### **11. COMMUNICATIONS AND MEDIA RELATIONS**

11.3 Members shall refrain from making disparaging remarks about other Members, members of the public, Employees or Council's process and decisions.

### **Findings**

#### **Council Code of Conduct Complaint**

[10] As Mr. Jones admits in his Memorandum of Defense, the draft letter to the Mayor he emailed to other Members of the BIA Board was “unpleasant” and the language in the draft was “disproportionate.” It clearly and repeatedly denigrated the involvement and commitment of the two Council member-appointees to the BIA Board. I find that the draft letter emailed to 6 recipients violated s. 5.4 of the Code of Conduct in that it contained “disparaging remarks about other Members” of the BIA Board.

[11] On the mitigating side of the ledger, the email/draft letter was sent by him to a limited audience of 6, all internal to the BIA Board and its one staff member. I accept that Mr. Jones did not expect his email setting out the draft letter to be forwarded to others and he may well have believed he was “preaching to the converted” in terms of the recipients of the email (although, in hindsight, he was obviously mistaken). I also accept that the core allegation in the email – that two Councillor members of the BIA Board were absent for the vote on the new BIA Board, including Mr. Jones’ own appointment as Chair of the Board – is true, although I understand that the meeting started ½ an hour earlier than had been advertised, thus accounting for the lateness of one of the councillors. I have no doubt that Mr. Jones took strong personal umbrage at this perceived slight

and the draft letter, sent very early the next morning, was largely fueled by that resentment. Finally, Mr. Jones did write a letter of apology to the County and the Mayor and Members of Council which he delivered to one of the targets of his wrath, Cllr. Brunton, on or about February 6, 2024, by which time, I find, he was aware of the COC complaint against him.

[12] In all of the circumstances, I believe that a reprimand is an adequate remedy for the COC breach in the circumstances.

### **Breach of the “Open Meeting” Principle**

[13] The Council Complaint did not raise an issue about breach of the “open meeting” principle and it does not appear that Norfolk’s Code of Conduct includes such breaches as a grounds for a finding of misconduct, unlike some other Codes of Conduct across the province. I am nevertheless raising it here as an educational opportunity for members of Council and all local boards given the critical importance of that principle to open and accountable municipal government and the fact that Mr. Jones’ email clearly breaches that principle.

#### What is the “Open Meeting” Principle?

[14] The purpose of the “open meeting” principle is to allow the public to observe local government in process. The public has the right to be present for such decision-making.<sup>1</sup> Not only is this principle mandated by s. 239(1) of the *Municipal Act, 2001* (the “MA”) but the right of the public to attend and participate in open public Council meetings has been found to be of such importance to our democratic system that it is a protected right under s. 2(b) of the *Charter of Rights and Freedoms*.<sup>2</sup>

[15] Where a councillor or local board member uses e-mail to discuss issues before Council or a local board with other councillors or board members, such discussion will constitute a “meeting” pursuant to the MA if the e-mail(s) seek to exercise authority or make pre-determinations about matters before Council or the local board. These types of discussions do not constitute an “open meeting” because they are conducted in the absence of the public and are in breach of the MA. Where e-mails involve a potential quorum of councillors and further Council’s discussion of a proposed decision or issue, or lay further groundwork for Council’s position or a change in that position, they will constitute a meeting.<sup>3</sup>

[16] In my opinion, even if the subject-matter of emails between councillors or board members concerns a matter that could properly be heard in a closed session of Council, that does not render such discussions acceptable; in fact, it is even more problematic. In moving into a true closed session of a Council or board meeting, various formalities are required to be followed to ensure the public is informed of the nature of the matter to be considered and the confidentiality of the

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<sup>1</sup> *Leeds and the Thousand Islands (Township of) (Re)*, 2016 ONOMBUD 15 at para. 39 (CanLII).

<sup>2</sup> *Leeds* at para. 41.

<sup>3</sup> *Leeds* at paras. 32-33.

subject-matter discussed.<sup>4</sup> The same is far from true when deliberations are undertaken by email. Moreover, entire emails (as in this case) or excerpts therefrom containing confidential discussions can be cut and pasted and sent to third parties not bound by any duty of confidentiality. The content of emails can easily be shared with others without even forwarding the email itself or portions thereof, simply by allowing a third party to view, even photograph, the message on the councillor's or board member's smartphone, laptop or desktop computer. Lacking the formality of a closed session at a Council meeting at which a formal vote is held to go in camera, councillors engaged in such email debates may not even realize the subject-matter is confidential and not to be disclosed to others. Discussion via emails of business that could properly be heard in closed session equally violate the "open meeting" principle enshrined in s. 239(1) of the MA.

#### Was the Open Meeting Principle Breached by Mr. Jones' October 14, 2023 Email?

[17] In this case, Mr. Jones' email was sent to 5 Board members (albeit in two separate instalments), which, when including himself, the author, represents a potential quorum of the Downtown Simcoe BIA Board.<sup>5</sup> It clearly discussed a matter of Board business and according to Mr. Jones, elicited responses from the other Board members he had sent it to. Whether or not it was a matter that might have been appropriately discussed in closed session, it was a matter that should not have been discussed by email. The email constituted a violation of the "open meeting" principle.

#### Conclusions Regarding the Complaint

[18] I recommend that Brian Jones be reprimanded in his capacity as Chair and Member of the Board of Management of the Downtown Simcoe BIA.

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<sup>4</sup> S. 239(4) of the MA requires that before holding all or part of a meeting that is closed to the public, a municipality shall pass a resolution in the public, open session stating (1) the fact that it is holding a closed meeting; and (2) the general nature of the matters to be considered at the meeting or (3) the meeting is held for training purposes. In essence, before moving into an in camera portion of a meeting, a meeting must still be "public" for the time required to pass a resolution. The resolution has two purposes: (1) to disclose to the public that a closed meeting is being held, and (2) to disclose the general nature of the matter to be considered during the closed meeting. The information in the resolution must be public and properly describe the issue to be discussed in a way that maximizes the information available to the public while not undermining the purpose of the meeting being held in camera. The object of this obligation is to enhance transparency and ensure that decision makers are accountable when discussing issues without the public: see *Casselman (Municipality of) (Re)*, 2022 ONOMBUD 14 (CanLII) at [para 17](#).

<sup>5</sup> According to County Bylaw 2023-68 establishing the BIA Board of Management, there can be up to 11 Board Members (s. 4.1) and a quorum for a Board of Management meeting is half of the sitting members (not including vacancies) and can be constituted by as few as three members (s. 5.4).

[19] This concludes my investigation.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "D. Boghosian", with a long horizontal flourish extending to the right.

David G. Boghosian,  
Integrity Commissioner,  
Norfolk County