

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

Citation: Complaint re: Simcoe BIA Board of Management Chair, Brian Jones and Treasurer, Lyndsey Ross – DGB-Norfolk County ICI-2024-04

Date: July 11, 2024

REPORT ON COMPLAINT

Introduction

[1] This is a Report on a Complaint made by the Council of Norfolk County regarding the conduct of Brian Jones and Lyndsey Ross, the Chair and Treasurer, respectively, of the Downtown Simcoe BIA Board of Management (“the BIA Board”). The Complaint concerns the original execution of a contract between the Board and Shop our Town General Partnership, in which Mr. Jones is a partner, for the provision of social media services; the conduct of Ms. Ross and Mr. Jones in relation to the subsequent tender of that contract; and the alleged misappropriation by Ms. Ross and Mr. Jones of \$4,000.00 from the BIA to fund the retainer of legal counsel to defend Ms. Ross in relation to the second Complaint in this quartet of complaints, relating to a letter Ms. Ross sent to the Executive Director of the Norfolk County Fair in alleged breach of section 8.1 of Norfolk County Bylaw 2018-34, Code of Conduct for Members of Council and Local Boards (“the COC”)

[2] This is the fourth 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 and 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.

Complaint

[3] The Complaint was referred to me by Council pursuant to a resolution made in a closed session of Council on May 14, 2024. The Complaint alleges the following:

1. Contrary to the MCIA and ss. 9.1 (improper use of influence) and 14.3 (Use of County Property) of the Code of Conduct, Mr. Jones used his influence as a member of the Downtown Simcoe BIA Board of Management (and later its Chair) to induce it to enter into an unconscionable social media contract dated January 6, 2022 (“the Contract”) between his partnership, Shop Our Town General Partnership (“SOTGP”) and Downtown Simcoe BIA (“the BIA”), in particular, ss. 16 and 17 of the said agreement, which grants ownership of all intellectual property developed or produced by SOTGP to SOTGP rather than

the BIA, and to induce the BIA to enter into successive amending and extension agreements containing the same clause;

2. With respect to the tender for the social media contract by the BIA, in breach of the MCIA and ss. 9.1 and 14.1 of the Code of Conduct, Mr. Jones and Ms. Ross:
 - a. failed to reveal the contents of s. 16 of the Contract in the tender documents, which was a material misrepresentation that put other potential bidders at a competitive disadvantage;
 - b. colluded to ensure SOTGP was the successful bidder on the tendered social media contract and that Ms. Ross actively advocated for selection of SOTGP as the successful bidder despite the fact she was in a conflict of interest in doing so on account of being in a romantic relationship with Mr. Jones and was (or her company was) SOTGP's landlord.
3. In breach of s. 14.1 of the Code of Conduct, misappropriated the sum of \$4,000.00 from the bank account of the BIA to pay a retainer fee to Lerner's LLP for the representation of Ms. Ross in the defence of a previous Code of Conduct complaint against her and perhaps for other legal services by jointly signing a cheque in this regard without the authority of the Board despite the fact that said services were not for legitimate Board business or, at minimum, was a payment outside the usual course of business of the BIA such that Board approval was required.

Efforts to Resolve Matters Through Conciliation

[4] I engaged in confidential, without prejudice conciliation efforts with the parties prior to commencing my formal investigation as provided for in s. 11.1 of Bylaw 2018-33 as amended (the Integrity Commissioner Appointment and Complaints Process Bylaw) for the purpose of attempting to arrive at a settlement of the Complaint without the need for a formal investigation. Unfortunately, this process did not result in a mutually satisfactory resolution such that I was asked by the Complainant to proceed with my investigation.

Continuation of Complaint after Respondents' Resignation from the BIA Board

[5] On or about June 26th, while my investigation was ongoing, Mr. Jones and Ms. Ross tendered their resignations as officers and members of the BIA Board. I contacted the Complainant and advised that in light of this development, I needed its direction as to whether I should continue with the investigation or abandon it. On July 3rd, Council passed a motion directing me to proceed with my investigation and issue a report. There are no express provisions in the Code of Conduct dealing with the situation of whether to continue an investigation where a member resigns in the course of the investigation. I have determined that I have discretion whether to proceed with my investigation in such circumstances. In this case, I have decided to do so given that the allegations against the Respondents are serious and the public has a right to know about the conduct of the Respondents in their positions with the BIA that lead to the breakdown of the relationship between them and County Council.

Responses to Complaint from Mr. Jones and Ms. Ross

Response of Mr. Jones

[6] The following response was received from Mr. Jones:

1. Contrary to the MCIA and ss. 9.1 (improper use of influence) and 14.3 (Use of County Property) of the Code of Conduct, you used your influence as a member of the Downtown Simcoe BIA Board of Management (and later its Chair) to induce it to enter into an unconscionable social media contract ("the Contract") between your partnership, Shop Our Town General Partnership ("SOTGP") and Downtown Simcoe BIA ("the BIA"), in particular, s. 16 of the said agreement, which vests ownership of all intellectual property developed or produced by SOTGP to SOTGP rather than the BIA, and to induce the BIA to enter into successive amending and extension agreements containing the same clause;

Defense:

The BIA Executive requested a proposal from SOTGP in late 2021. I did not solicit this opportunity. I did not solicit or induce the board to approve the proposal presented, and declared my conflict whenever this contract was discussed, as referenced in the Memorandum of Defense filed in regard to the original Complaint referring to this contract. S. 16 has been amended and S. 17 removed, as requested, without protest.

2. With respect to the tender for the social media contract by the BIA, in breach of the MCIA and s. 14.1 of the Code of Conduct:
 1. You and Ms. Ross failed to reveal the contents of s. 16 of the Contract in the tender documents, which was a material misrepresentation that put other potential bidders at a competitive disadvantage;
 2. You and Ms. Ross colluded to ensure you were the successful bidder on the tendered social media contract and that Ms. Ross actively advocated for selection of SOTGP as the successful bidder despite the fact she was in a conflict of interest in doing so on account of being in a romantic relationship with you and was (or her company was) SOTGP's landlord.

Defense:

Aware of both my declared conflict and my known relationship with Ms. Ross, which was, and is, known to our Board, Ms. Ross and I did not discuss the RFP while it was being created. I had no input into the process. I had no input into the selection process.

I actively encouraged one company to submit a proposal- On or about Feb 26, I received a text from [name and company redacted] which resulted in a phone

conversation. He was looking for advice on whether he should submit a proposal- I urged and encouraged him to do so.

S. 16 offers no competitive advantage, and, in my opinion is immaterial in a social media context, at least, in this instance. The BIA's Meta accounts (Facebook and Instagram) are owned by the BIA, not me or SOTGP. Under Meta's Terms and Conditions, once an account posts content, that content is deemed theirs. So, once SOTGP posts the content created by SOTGP to the BIA's Facebook and/or Instagram accounts, the BIA owns it.

Nevertheless, as requested, s.16 has been revised in the current contract.

3. In breach of s. 14.1 of the Code of Conduct, you and Ms. Ross misappropriated the sum of \$4,000.00 from the bank account of the BIA to pay a retainer fee to Lerner LLP for the representation of Ms. Ross in the defence of a previous Code of Conduct complaint against her and perhaps for other legal services by jointly signing a cheque in this regard without the authority of the Board despite the fact that said services were not for legitimate Board business or, at minimum, was a payment outside the usual course of business of the BIA such that Board approval was required.

Defense:

After seeking advice from Mr. Anderson, it seemed reasonable to me for the BIA to fund the legal defense of an unpaid volunteer BIA board member whose livelihood may be jeopardized by an investigation, initiated by Council, into an email they wrote as a business owner/fair sponsor, to the General Manager of the Norfolk County Fair.

ANY board member.

My relationship with Ms. Ross did not influence my action, the ramifications of the situation did.

If Ms. Ross had not been on the board of the BIA, her actions would not have been investigated, therefore, since her unpaid service to the BIA Board had put her in potential jeopardy, it seemed fair and reasonable to me that the BIA fund a legal retainer.

I was shaken and worried at the time as I was also under investigation and admit to exercising poor judgment. I should have called an emergency meeting, but with a limited period of time to present a defense, I made the bad decision to be expedient, and present to the board retroactively at an upcoming board meeting. If our board didn't approve, then we would recoup the funds from the law firm, or from Ms. Ross. It is not a decision I would make again.

Additional Matters:

- [7] In response to specific inquiries I posed to him, Mr. Jones acknowledged:
1. He is and at all material times has been in a romantic relationship with Ms. Ross;
 2. SOTGP rents office space from Ms. Ross' holding company and has since June 2021.

Response of Ms. Ross

- [8] The following are Ms. Ross' responses to the various aspects of the complaint as against her:

1.a. You and Mr. Jones failed to reveal the contents of s. 16 of the existing Social Media Contract ("the Contract") between Downtown Simcoe BIA ("the BIA") and Shop our Town General Partnership ("SOTGP") in the tender documents for the new social media contract, which was a material misrepresentation that put other potential bidders at a competitive disadvantage;

Response:

She stated that she was not involved in drafting the RFP and that this was done by the BIA's employee, Mr. Anderson, then submitted for review by the County Purchasing Department, then reviewed and approved by the BIA Board. While she was aware of s. 16, she did not attribute any significance to it. She claimed that if any bidder had wanted to review the existing Contract, they could have simply asked the BIA to provide a copy.¹

1.b. You and Mr. Jones colluded to ensure that SOTGP was the successful bidder on the tendered social media contract and that you actively advocated for selection of SOTGP as the successful bidder despite the fact you were in a conflict of interest in doing so on account of being in a romantic relationship with Mr. Jones and you (or your company) was SOTGP's landlord.

Response:

Ms. Ross denied there was any collusion. She stated that the Communications Committee of the BIA, of which she is Chair, considered the 4 proposals to the RFP for the social media contract then held by SOTGP at its March 4, 2024 meeting. She noted that Mr. Jones was not at the meeting. She claimed the meeting was "confidential" (although I have found otherwise in my Report on the original complaint against Ms. Ross (the second of the four related Complaints)). She

¹ This is puzzling as when Cllr. Veri asked for a copy of the Contract after the April 4, 2024 meeting, he was told it was "confidential" and as such, he could not have one. I was also told the same and refused production of the Contract when I first asked, following which I pointed out my statutory powers of compelling production of records and threatened legal action. I was then, and only then, provided a copy of the Contract.

claimed that they reviewed each proposal against a checklist they had prepared to evaluate the proposals. She denied that she favoured or promoted any of the proposals. She claimed that everyone on the Committee was aware of her personal relationship with Mr. Jones.

She stated that the Committee concluded that of the 4 proposals submitted, 2 met all or almost all the requirements on their checklist and 2 did not. They discussed moving forward and reaching out to the references of the two proposals and it was agreed after receiving those, the Committee would decide about a time to invite each company to sit down with our committee. It was felt that because the Committee members were not overly familiar with one of the two “finalist” bidders, it would be beneficial to have a sit-down interview and discussion with that bidder’s representative so that the Committee could make the best decision. She stated that there was even a discussion that if the Committee was unable to make a clear choice between the two top candidates, it could discuss with them and the board the option of both companies working together or splitting the roles between the two top options.

She stated that Cllr. Veri was at the meeting but did not make any comments about any of the proposals despite being invited to provide his input (this is not surprising given he was not a member of the Committee and was only attending as an observer as was his right to do as a member of the BIA Board, such that he did not have a vote on the matter). His only question was “who drafted the RFP?”

She concluded that there was no recommendation to the BIA Board as to which proponent to recommend arising from that Committee meeting.

2. In breach of s. 14.1 of the Code of Conduct, you and Mr. Jones misappropriated the sum of \$4,000.00 from the bank account of the BIA to pay a retainer fee to Lerner LLP for the representation of you in the defence of a previous Code of Conduct complaint against you and perhaps for other legal services by jointly signing a cheque in this regard without the authority of the Board despite the fact that said services were not for legitimate Board business or, at minimum, was a payment outside the usual course of business of the BIA such that Board approval was required.

Response:

The BIA has a 2 of 3 signatures cheque policy, the 3 options are the Chair, the Treasurer and the Coordinator. When she received the initial complaint (the Second of the four Complaints in the series I am reporting on), she and Mr. Jones felt she was being accused of something she did as a private citizen and business owner, not as a BIA or County representative. She felt it was best that legal advice be obtained. She discussed with the BIA Coordinator whether this was something that fell under professional expense/liability/directors’ insurance. He reached out to the County CAO and Clerk for clarification and after finding out there was no coverage available to pay for a lawyer for her, “the Executive” (who she later explained

consisted of her, Mr. Jones, Tiana Moe and the BIA Coordinator, Mr. Anderson) discussed the matter. As there was an extremely short timeline for response and to retain consult legal counsel, the Executive made the decision, and the cheque was issued, without approval of the Board.

At the April 2024 board meeting the issue of ratification of the issuance of the cheque to pay her legal costs of defending the Complaint was brought forward in a closed session. She recused herself due to her pecuniary interest in the matter but also asked the two councillors on the BIA Board who were present to excuse themselves as they were actively involved the motion at council that started this investigation, which they refused to do. Despite this, she states that motion was passed to retroactively approve the payment of her legal fees to defend the Code of Conduct Complaint against her, although the Board noted that the issuance of the cheque should have been approved prior to the cheque being issued.

At the May 2024 board meeting, at which neither she nor Mr. Jones were present, Cllr. Veri moved to reconsider the payment of the legal retainer towards her initial IC investigation passed at the previous meeting. She alleges that various procedural rules were broken in connection with this motion such that it was invalid. In any event, a motion was passed rescinding the previous motion approving the payment and directing that the retainer funds be returned in full to the BIA. This retainer was returned in full to the BIA on or about May 24, 2024.

Additional Matters:

[9] In response to specific inquiries I posed to her, Ms. Ross acknowledged:

1. She and Mr. Jones have had a romantic relationship since the summer of 2021. She added that their relationship has never been withheld nor has anyone ever asked either of us about the status of our relationship or if that relationship was an issue for us or anyone else involved. Not one person ever asked either of us about it or to declare it or questioned it;
2. SOTGP has been a tenant of hers since June 2021. SOTGP has a lease and pays fair market rent for the space it occupies.

[10] Interspersed throughout her Response were numerous “jabs” at Norfolk County Council and the local councillor, suggesting that there was some nefarious reason for the close scrutiny of the activities of the Downtown Simcoe BIA, in contrast to how the Delhi BIA, for example, was treated. At the end of her submissions, she devoted a couple of paragraphs to complaining about the actions of two County councillors that are irrelevant to the subject-matter of the current Complaint. As there is no COC Complaint about these actions, I will not repeat her claims in these regards.

Responses to Follow Up Questions

[11] On June 28th, I sent Ms. Ross a follow up question, being whether at any time prior to co-signing the cheque on the BIA bank account to fund the retainer to pay for the defence of a COC

Complaint against her, she ever consulted any lawyer, City staff (such as the CAO, Clerk and/or Treasurer) or the Integrity Commissioner regarding the appropriateness or even legality of using public, BIA funds to pay for her defence of the COC Complaint. She responded on July 8th by indicating that Les Anderson contacted the County CAO who indicated he could not give him guidance on whether there was insurance to cover her defence or whether it was appropriate to use BIA funds to pay for her defence.

[12] On June 28th, I also sent two follow up questions to Mr. Jones. He responded to one of them, however, with respect to the other (“who prepared the draft of the social media contract originally entered into on January 6, 2022?”), he questioned why he was being asked to respond to this given that he had resigned from the BIA Board. He indicated that the contract had been reviewed by Joe Bottscheller, the BIA Treasurer at the time. I subsequently explained to him that until I was directed otherwise by the Complainant, I would continue to investigate the Complaint and prepare my Report. By email on July 2nd, Mr. Jones advised that he would not be responding to any more inquiries from me, including the last one he had not answered, as he had resigned and considered the matter over. Even though refusing to respond to an inquiry from the Integrity Commissioner is deemed to constitute the Code of Conduct offence of “Obstruction” pursuant to s. 16 of the COC, I will not pursue that matter further. I will, however, draw an adverse inference from Mr. Jones’ refusal to respond to my inquiry by assuming that his answer would not have been of assistance to his case, in that he could not refute the assertion that he supplied the form of the Contract that was entered into.

Investigation

Interview with Joe Bottscheller

[13] I spoke with Mr. Bottscheller via Zoom on June 20, 2024. He was the Treasurer of the Downtown Simcoe BIA Board from around the end of 2019 until 2023. The Chair of the BIA Board during that time frame was Cam Carter. He also noted that two County councillors were BIA Board members at the time, Ian Rabbits and Ryan Taylor. Neither of them are on Council any longer. Brian Jones was also a Board member during the 2019-2023 period. He only first met Mr. Jones when he joined the BIA Board in 2019 and since then, they only know each other to say “hi” when they run into each other at local events.

[14] Mr. Bottscheller explained that as of 2020, the BIA was not in good shape financially and had a negative balance in its reserve fund. To cut expenses, the Board decided to terminate all print and radio advertising. Also, Covid was in full swing and people were not attending downtown shops in person and were buying things online. The BIA Board felt the best bang for their buck they could get for promoting the businesses forming part of the BIA was to move into digital advertising.

[15] He does not know whether the BIA Board tendered the contract for digital marketing or if it was sole sourced from Shop Our Town. He recalled Jordan Louis of Shop our Town making a presentation to the Board in the latter part of 2021. At some point, Shop our Town presented a contract to the Board for consideration. The draft contract was reviewed and accepted by all members of the Board. None of the Board members had a legal or IT consulting background and the Board did not have the contract checked out by anyone outside the Board. He stressed that

Brian Jones declared a conflict and did not participate in any Board discussions about the digital services contract.

[16] No one raised an issue about the part of the Contract called “OWNERSHIP OF INTELLECTUAL PROPERTY” comprising sections 16 and 17 and no one raised an issue about the fact that these clauses vested all ownership and title in all work-product created by SOTGP in SOTGP, even though its development will have been paid for by the BIA. These sections were not specifically pointed out by Mr. Jones.

Interview with Cllr. Adam Veri

[17] Mr. Veri attended a meeting of the Communications Committee of the BIA Board, of which Ms. Ross was the Chair, on March 4, 2024. The purpose of the meeting was to consider what turned out to be the four submissions received in response to the Request for Proposals the BIA Board had put out for the contract for digital services, which was the contract that would replace the Contract then in place with SOTGP. SOTGP was one of the four bidders who had submitted proposals in response to the RFP. Cllr. Veri was not a member of the Communications Committee but as a member of the BIA Board, he attended to observe the proceedings as he was entitled to do. He took handwritten notes of the meeting on the typed agenda for the meeting which he provided to me (and which I provided to Ms. Ross). Mr. Jones was not present at the meeting. No one present, including Ms. Ross, declared a conflict of interest and there was no opportunity provided by Ms. Ross as Chair for anyone to declare a conflict as is required pursuant to the County’s Procedural Bylaw, which applies to the BIA Board and its committees. He also noted that no proper meeting procedures were followed and no one was apparently keeping formal minutes of the meeting, again all in breach of the Procedural Bylaw.

[18] He advised that Ms. Ross did most of the talking at the meeting and that the consistently strong theme of her statements was that the Board should award the new contract to SOTGP. He noted the following comments made by Ms. Ross in the course of that meeting:

- She noted that the RFP had called for proponents to list/describe examples of work done for the BIA which counted for points toward selection of SOTGP [Cllr. Veri noted that given that SOTGP had been the incumbent for the past 3 years, this heavily favoured SOTGP];
- Ms. Ross spent 10 minutes critiquing the other 3 submissions, pointing out shortcomings, and remarked that only SOTGP’s submission had been completed fully in accordance with the RFP;
- When reviewing videos that each of the proponents were required to submit, Ms. Ross was lukewarm in respect of one of the other three and critical of the other two. Regarding the video from SOTGP, she remarked as it was playing, “I can’t wait for summer,” “It makes me so proud of our downtown” and “I feel like I’m going to cry;”

- Regarding the past experience criterion, while acknowledging that one of the other proponents “probably” has experience, in relation to the SOTGP submission, she remarked “we know Shop our Town has it;”
- Ms. Ross noted that “Brian owns all the social media under the old contract,” and stated that if the BIA went with a different proponent, the BIA would have to use its reserve funds to recreate the social media content, meaning the other bids were effectively significantly more expensive than the SOTGP bid;
- She stated that she wants to stick with Brian [ie. the SOTGP proposal] and maybe “engage others here and there;”
- She ended by stating “in conclusion...we should stick with what we have [ie. SOTGP].”

[19] The Communications Committee did resolve to recommend to the BIA Board that SOTGP be awarded the new marketing and media contract; however, based on Cllr. Veri’s report to Council at its next meeting, Council directed the BIA Board not to decide on the award of the contract pending further notice. The contract has not been awarded to date and instead the existing Contract was extended by another 3 months.

[20] When Cllr. Veri requested a copy of the Contract following the March 4, 2024 meeting, he was told it was “confidential” and as such he could not have a copy.

Email Exchanges with Les Anderson

[21] Mr. Anderson is variously referred to in documentation I have seen as “Coordinator,” “Manager” and “Director” of the Downtown Simcoe BIA.

[22] He very helpful provided me with contact information for various individuals and documentation relevant to my investigation.

[23] After receiving the Respondents’ Responses, I asked him via email what his involvement was in the issuance of a retainer payment for Ms. Ross’ lawyer in connection with the defence of the Code of Conduct complaint against her. He categorically denied any involvement in issuing that cheque whatsoever. He indicated that the only advice he gave to Ms. Ross and Mr. Jones was that any payment would require prior Board approval. He also suggested to both Ms. Ross and Mr. Jones that they get an interpretation of the BIA’s operating bylaw, By-Law Number 2023-68, Section 8.2. He sent an email to Norfolk County’s CAO and the Clerk and requested their interpretation of this section, particularly the wording “all other costs”. The CAO replied that staff were not in a position to comment on this and suggested that they contact the Integrity Commissioner for his interpretation. He passed this on to Ms. Ross and Mr. Jones. He did not contact the Integrity Commissioner and he does not know if they did.

[24] With respect to the RFP for the social media contract, as per standard practice, he prepared the first draft of the RFP document. In doing so, he took into consideration the content that the board members had suggested, what we were receiving in the existing contract, as well as

considering similar position's job descriptions from other BIA's in the province. All of the "drafts" were circulated to all board members for their consideration and feedback. He believes it was the fourth draft that was approved by the board. All board members were invited to the Communications/Events Committee meetings where the terms of the RFP were being considered.

Telephone Discussion with Al Meneses

[25] I spoke with Mr. Meneses on July 8th regarding Ms. Ross' claim that Les Anderson had a conversation with Mr. Meneses about using BIA funds to pay for her defence. The only conversation he recalled having with Mr. Anderson was that they should look at the indemnification provisions of the BIA Board of Management Bylaw to determine if the issues qualified for reimbursement. He certainly did not indicate it was appropriate to use BIA funds up front to fund the defence and suggested that they contact the Integrity Commissioner for an opinion.

Attempts to Obtain Information from Tiana Moe

[26] I sent an email to Ms. Moe on July 2nd posing questions regarding the evidence of Ms. Ross that the BIA Executive, of which Ms. Moe was a member, approved the issuance of a BIA cheque to cover the legal expenses of Mr. Jones and Ms. Ross.. I followed up with her regarding these questions by email on July 8th. I did not receive any response to either of these emails.

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

[27] The following sections of the COC are alleged to have been breached:

6. CONFLICT OF INTEREST

6.1 Members shall be responsible for ensuring that they are familiar with the Municipal Conflict of interest Act...

...

9. IMPROPER USE OF INFLUENCE

9.1 No Member shall use his or her office to seek to influence any decision made or to be made by Council to the Member's private advantage or to the advantage of another person.

...

14. USE OF COUNTY PROPERTY

14.1 Members may only use County property, including land, facilities, equipment, supplies, services, staff or other resources (for example, County owned

materials, computers, networks, websites) for activities directly connected with the discharge of their official County duties or, as appropriate, local municipal duties.

...

14.3 No Member shall obtain financial gain from the use or sale of County-developed intellectual property including inventions, cultural materials, computer programs, technical innovations, or other items capable of being patented, or copyrighted, as all such property remains exclusively that of the County.

County Purchasing Policy

[28] Relevant provisions of the County's Purchasing Policy, being Policy CS-0 approved by Council pursuant to Resolution 26/By-Law No. 2022-104 dated October 5, 2022, are as follows:

22. CONFLICT OF INTEREST

22.2 Vendor Code of Conduct

The County requires its Vendors to act with integrity and conduct business in an ethical manner. The County may refuse to do business with any Vendor that has engaged in illegal or unethical bidding practices, has an actual or potential conflict of interest or an unfair advantage, or fails to adhere to ethical business practices. Vendors are responsible for ensuring that any employees, representatives, agents, or subcontractors acting on their behalf conduct themselves in accordance with this Vendor Code of Conduct. The County may require the immediate removal and replacement of any individual or entity acting on behalf of a Vendor that conducts themselves in a manner inconsistent with this Vendor Code of Conduct. The County may refuse to do business with any Vendor that is unwilling or unable to comply with such requirement

Municipal Conflict of Interest Act ("MCIA")

[29] The material provisions of the *Municipal Conflict of Interest Act*, R.S.O. 1990, Chapter M.50. are as follows:

5 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

...

5.2 (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter that is being considered by an officer or employee of the municipality or local board, or by a person or body to which the municipality or local board has delegated a power or duty, the member shall not use his or her office in any way to attempt to influence any decision or recommendation that results from consideration of the matter.

Findings

1. The Execution and Extensions of the Contract

[30] Mr. Jones was a BIA Board member at the time his company, SOTGP, contracted for the provision of social media management services with the BIA. According to the undisputed evidence, he furnished the form of contract that was entered into, and he did not deny doing so when given the opportunity to do so. The first contract was dated January 6, 2022 and has been extended several times, the latest being up to September 30, 2024, with no changes to any of the substantive content of the Contract.

[31] The provisions of the Contract relevant to the Complaint are as follows:

OWNERSHIP OF INTELLECTUAL PROPERTY

16. All intellectual property and related material (the "Intellectual Property") that is developed or produced under this Agreement, will be the property of the Contractor. The Client is granted a non-exclusive limited-use licence of this Intellectual Property.

17. Title, copyright, intellectual property rights and distribution rights of the Intellectual Property remain exclusively with the Contractor.

[32] The effect of these provisions in the Contract are that SOTGP retained ownership of and all copyright over all intellectual property and related material developed or produced pursuant to the Contract, with the BIA having the right to use such work product that it had paid for SOTGP to develop only so long as the Contract remained in effect. The practical result of these provisions is that should the BIA decide to switch social media management service providers away from SOTGP, the BIA would either have to purchase domain names, websites, etc. created by SOTGP at the expense of the BIA from SOTGP or the new service provider would have to obtain new domain names and create an entirely new website for the BIA at considerable additional expense to the BIA. From a practical standpoint, it would seem to make sense that the BIA would first

attempt to negotiate with SOTGP for the purchase of the intellectual property it developed for the BIA before having any new IT consultant reinvent the wheel by recreating what SOTGP had already created.

[33] Mr. Jones advises that he did not turn his mind to this specific provision when considering the form of contract to present to the BIA. He also stated that when the Board considered the Contract, he recused himself and neither voted on nor participated in the debate regarding the Contract. He states that he also recused himself and neither voted on nor participated in the debate regarding the various extensions of the Contract since 2022, including a number of 3-month extensions which took place after he became Chair of the BIA Board on October 13, 2023.

[34] According to Mr. Bottscheller, the BIA Board did not seek legal advice or even consult any other IT consultant to determine whether the contract, and in particular, clauses 16 and 17, were appropriate or “standard” in the circumstances.

[35] I am satisfied that Mr. Jones followed appropriate MCIA procedures in connection with the initial award of the Contract and subsequent renewals. I have found no evidence that Mr. Jones used his position as a BIA Board member to influence the awarding of the Contract or its subsequent renewals.

[36] Section 14.3 of the COC, which was in force at the time the Contract was originally entered into, provides that all “County-developed” intellectual property remains exclusively that of the County. Although this phrase or one comparable to it is commonly found in Codes of Conduct across the country, there is surprisingly no judicial authority that we were able to find that defined its scope. On first principles, I regard intellectual property developed by a third party contractor pursuant to a contract with and at the expense of the BIA – a local board of the County - to constitute County-developed property for the purpose of s. 14.3.

[37] The Contract presented by Mr. Jones is contrary to this term. He did not, however, attempt to profit from the sale of the “County-developed” intellectual property that I have been made aware of.

[38] Furthermore, notwithstanding that there may have been no breach of conflict of interest rules, proffering a contract that contained a significant benefit to his business and a significant detriment to the BIA while he was a sitting BIA Board member is improper based on other well-established legal principles. As a Board member, Mr. Jones owed a fiduciary duty to the BIA, which includes not to engage in self-dealing and not to take financial advantage of the organization to which he owed a fiduciary duty. I find that the terms of the Contract under scrutiny violated both provisions, whether intentionally or inadvertently on the part of Mr. Jones.

[39] I conclude that the offering of the draft of the Contract providing that intellectual property rights developed by SOTGP at the expense of the BIA/County was contrary to s. 14.3 of the Code of Conduct and that the conduct was also in breach of well-established legal principles related to fiduciary duties.

2. Conduct in Relation to the Tender of the Social Media Contract

a. Failure to Disclose in the Tender Documents for the new Marketing and Social Media Service Contract the Fact that SOTGP Retained Ownership of the intellectual Property Generated as a result of the performance of the Contract Between SOTGP and the BIA

[40] A BIA employee prepared the first draft of the tender documents. I have no evidence that Mr. Jones and Ms. Ross were involved in drafting the tender documents. I am satisfied that Mr. Jones recused himself from the process in which the tender documents were considered by the BIA Board. Although Ms. Ross would have reviewed them in her capacity as a BIA Board member, I have no reason to believe that she realized, *at that time*, the significance of the OWNERSHIP OF INTELLECTUAL PROPERTY provisions of the Contract (in fact, had she been, she may well have thought it would be helpful to include reference to these provisions given that it would have only served to deter others from bidding as they clearly favoured the SOTGP bid, which was not the case). Furthermore, I do not regard the BIA Board as having the sophistication in the field of purchasing to have appreciated the significance of these provisions to the bidding process. I therefore find no breach in relation to this aspect of the Complaint.

b. Collusion between Mr. Jones and Ms. Ross to ensure that SOTGP was the successful bidder on the tendered social media contract and Improper Use of Influence on the Part of Ms. Ross to Get SOTGP The BIA Social Media Contract

[41] Ms. Ross categorically denies that she said anything at the March 4, 2024 Communications Committee meeting where the social media contract RFP bids were considered and evaluated that favoured the SOTGP bid. Cllr. Veri, on the other hand, indicates that she did and he has notes he made contemporaneous with the discussion on the agenda for that meeting corroborating his recollection.

[42] I accept Cllr. Veri's version of what was said by Ms. Ross at the March 4th meeting and reject Ms. Ross' position as an after-the-fact, self-serving position which she came up with after being advised of the present Complaint in order to avoid a finding of misconduct against her. I therefore find that Ms. Ross said the following at the April 4th meeting for the purpose of attempting to influence the Committee to recommend the SOTGP bid to the BIA Board:

- Ms. Ross spent 10 minutes critiquing the other 3 submissions, pointing out shortcomings, and remarked that only SOTGP's submission had been completed fully in accordance with the RFP;
- When reviewing videos that each of the proponents were required to submit, Ms. Ross was lukewarm in respect of one of the other three and critical of the other two. Regarding the video from SOTGP, she remarked as it was playing, "I can't wait for summer," "it makes me so proud of our downtown" and "I feel like I'm going to cry;"
- Regarding the past experience criterion, while acknowledging that one of the other proponents "probably" has experience, in relation to the SOTGP submission, she remarked "we know Shop our Town has it;"

- Ms. Ross noted that “Brian owns all the social media under the old contract,” and stated that if the BIA went with a different proponent, the BIA would have to use its reserve funds to recreate the social media content, meaning the other bids were effectively significantly more expensive than the SOTGP bid;²
- She stated that she wants to “stick with Brian” [ie. the SOTGP proposal] and maybe “engage others here and there;”
- She stated “in conclusion...we should stick with what we have [ie. SOTGP].”

[43] I note that at the time she was actively lobbying her Communications Committee colleagues to recommend the SOTGP proposal to the Board, she was involved in a romantic relationship with a principal of SOTGP and she was SOTGP’s landlord.

[44] The most serious potential allegation arising out of these facts is that Ms. Ross acted in a conflict of interest in breach of the MCIA. Breach of the MCIA requires that the member have a personal pecuniary interest in the matter or that an immediate family member has such an interest. Ms. Ross and Mr. Jones were not family members as they were dating but not married or cohabitating at the material time. As landlord of Mr. Jones’ business, she might potentially have a pecuniary interest if she believed that, without the Downtown Simcoe BIA contract, SOTGP would not be able to afford to pay its rent. I do not know whether that is the case and, in light of the resignation of both Mr. Jones and Ms. Ross, I determined that the time and expense necessary to obtain the financial records in order to determine whether this was the case was not worthwhile. There is no doubt that Ms. Ross ought to have considered that she had a “moral” or “equitable” conflict in that no reasonable person who was told of the personal and business relationships between her and Mr. Jones would have found it ethical for her to vote on the contract award, let alone lobby her fellow committee members to recommend the proposal to the BIA Board.

[45] Ms. Ross without doubt breached s. 9.1 of the COC in that she “used ...her office to seek to influence any decision made or to be made by [the BIA Board]³ to the ...advantage of another person.” Specifically, she used her position as Chair of the Communications Committee to seek to convince her fellow Committee members to recommend the proposal of SOTGP over the other three proposals.

[46] Whether there was collusion between Ms. Ross and her boyfriend, Mr. Jones, to have the boyfriend’s business selected for the social media contract is less clear. One striking aspect of Ms. Ross’ submissions to the Communications Committee on March 4th (according to the statement of Cllr. Veri which I have already indicated I accept over that of Ms. Ross) was pointing out the impact of s. 16 of the Contract ie. that if a bidder other than SOTGP was selected, all of the work product created by SOTGP would need to be recreated or purchased from SOTGP at the BIA’s

² The fact that Ms. Ross stated this is further corroborated by the fact that soon after the meeting, Cllr. Veri sought to obtain a copy of the Contract so he could verify whether it contained the provisions Ms. Ross had asserted it contained granting SOTGP ownership over intellectual property it developed for the BIA.

³ The provision actually states “Council” but as the COC is applicable to both members of Council and local boards, the reference to “Council” must include reference to “local boards” such as the BIA Board.

expense, as it belonged to SOTGP, not the County. It is distressing that Ms. Ross would push this point when ss. 16 and 17 of the Contract should never have been included from the outset. It is even worse that she attempted to use the existence of these provisions to push for the continuation of SOTGP as the social media contractor by placing the other bidders in a highly disadvantaged state. I am surprised that Ms. Ross would be so familiar with the terms of the Contract to have even been able to come up with this argument and even moreso, without any experience in the IT field or the law of contracts, to be able to appreciate the unfair competitive advantage this gave SOTGP. While one might speculate that Mr. Jones may well have pointed out this advantage to Ms. Ross as another quiver in her arrow to advance his bid, I have no evidence of this and the evidence remains between the sheets so to speak. Based on that, and coupled with the fact the two have resigned such that the time and expense of getting to the bottom of this is less significant, I have not delved into the matter more closely I therefore make no finding in this regard.

3. Misappropriation of \$4,000 From the BIA Bank Account

[47] There is no dispute that Mr. Jones and Ms. Ross co-signed a cheque on the BIA bank account in the amount of \$4,000.00 payable to Lerner's LLP as a retainer for the provision of services to Ms. Ross personally in her defence of a COC Complaint made against her personally (which is the subject of my Report on Complaint re: Simcoe BIA Board of Management Treasurer, Lyndsey Ross – DGB-Norfolk County ICI-2024-02).⁴ I note here that, in my experience, even councillors who are subject to having their pay docked by up to 90 days for a COC violation usually do not retain lawyers to defend themselves, never mind local board members who receive no remuneration and are only subject to removal from the board in the event of a finding of a COC violation. There was no prior BIA Board approval of this taking. I note that *after* Mr. Jones and Ms. Ross were made aware by me during the conciliation process of the Council Complaint regarding their taking of these funds, the amount was repaid to the BIA in full.

[48] Section 14.1 of the COC provides that “Members may only use County property... for activities directly connected with the discharge of their official County duties or, as appropriate, local municipal duties.” Money in a bank account certainly constitutes “County property.” Retaining legal counsel to defend a Code of Conduct complaint made against the member personally is clearly not, in my opinion, “directly connected” to the discharge of one’s official duties as a BIA Board member. I therefore find that the taking of \$4,000.00 from the BIA bank account to fund the retainer of a lawyer to defend a personal claim violated s. 14.1 of the COC.

[49] The gist of the Respondents’ defence is that they regarded the COC Complaint against Ms. Ross to be made against her in her capacity as a BIA Board member and as such, they felt she was entitled to be defended against it at the expense of the Board; there was an acrimonious relationship between the BIA Board and County Council such that the COC Complaint against Ms. Ross initiated by Council was regarded by them as an attack on the BIA as a whole; and they consulted Mr. Anderson before taking the funds, which he approved of. They justified not seeking prior BIA Board approval based on the urgency of responding to the Complaint.

⁴ At the material time, according to the bank signing authority for the BIA account, any two of Mr. Jones (as BIA Board Chair), Ms. Ross (as BIA Board Treasurer) and Les Anderson (as the BIA Coordinator, the sole staff position at the BIA) could sign cheques on the BIA account. Since the events addressed herein, Council has amended Bylaw 2023-58 to require that the Treasurer be a signatory on all cheques issued on the BIA account.

[50] I categorically reject each of these defences. I find it ironic that Ms. Ross asserted in her defence to the Second Complaint in this series that she was *not* acting in her capacity as a BIA Board member when she wrote a highly inappropriate letter to the Director of the Norfolk County Fair, such that the position she now takes is contradictory. Furthermore, even if it had been, that would justify anyone facing a Code of Conduct complaint to be entitled to reimbursement from Council or the local board as the case may be. There was also no justification in taking this money based on idle speculation as to the motives of Council in lodging a Complaint against her. Seen objectively, the actions of Council have been borne out of a legitimate concern that Mr. Jones and Ms. Ross were apparently operating the BIA as their personal fiefdom, seemingly feeling unconstrained by any rules beyond those which they saw fit to impose on themselves, as this taking manifests. With respect to urgency, Ms. Ross could easily have requested and been granted an extension of the time given to her to respond to the Complaint against her by the Integrity Commissioner, which would have been routinely granted.

[51] Ms. Ross and Mr. Jones also claim that they consulted Les Anderson and he counselled them to use BIA funds to pay Ms. Ross retainer to defend her against the COC Complaint launched against her by County Council. This is denied by Mr. Anderson and I accept his evidence over that of Mr. Jones and Ms. Ross. For example, I find it curious that if Mr. Anderson was involved in the decision-making process and felt the transaction was above-board, why wasn't he one of the co-signers of the cheque, which would have served to demonstrate for Mr. Jones' and Ms. Ross' benefit that they had some sort of third-party approval for what they were doing? In any event, Mr. Anderson is an administrative employee of the BIA so he is hardly the person they should have gone to for ethics advice; rather, they had many options available to them if they had wished to legitimately seek ethical advice, including the most obvious one - obtaining confidential advice from the Integrity Commissioner, who they were, by that point, already in communication with respect to the First and Second Complaints in this series. Alternatively, they could have sought advice from the County CAO, Clerk and/or Treasurer. Or Ms. Ross could have taken advice on this issue from the lawyers she had hired to handle the Complaint against her. They took none of these steps to seek bona fide, objective advice and instead acted on their self-serving rationalizations.

[52] There are a number of red flags that should have alerted Ms. Ross and Mr. Jones to the fact that what they were doing was improper. For example, s. 8.3 of the Bylaw establishing the Downtown Simcoe BIA Board of Management (Bylaw # 2023-68), which members of the BIA Board and titled officers no less must be deemed to be aware of, states as follows:

Notwithstanding the above, ***no director or officer of the Board of Management shall be indemnified by the Board of Management in respect of any liability, costs, charges or expenses that he or she sustains or incurs in or about any action, suit or other proceeding as a result of which he or she is deemed to be in breach of any duty or responsibility imposed upon him or her under any act, unless in an action brought against him or her in his or her capacity as director or officer, he or she has achieved complete or substantial success as a defendant.***

[53] A COC Complaint is certainly a "proceeding" for the purpose of s. 8.3.

[54] Similarly, section 14 of the MCIA, which, pursuant to s. 6 of the COC, members of local boards like Mr. Jones and Ms. Ross were required to be familiar with, provides that with respect to proceedings under that Act, which are far more involved, expensive and potentially punitive compared to any discipline that can be meted out under the COC, members of council and local boards may not be reimbursed for expenses they incur in defending such proceedings until after the conclusion of the proceeding, and even then, only if they are found not to have been in an impermissible conflict of interest.

[55] In other words, all of the guidance was there to alert Ms. Ross and Mr. Jones that they could not take BIA funds at the outset of the COC Complaint process to fund the defence of that Complaint and could only be reimbursed at the conclusion of the case if the BIA Board saw fit to agree, and even then, only if Ms. Ross was successful in defending it, which ultimately, she was not.

[56] The expense involved here was clearly outside the ordinary course of the Board's business. As a matter of common sense, this was not a typical operating expense that one might assume could be paid without Board approval. It was a highly unusual expense in circumstances which even Mr. Jones and Ms. Ross must have realized, at minimum, was at the very least close to the line in terms of propriety, yet they co-signed the cheque together for Ms. Ross' benefit without seeking Board approval.

[57] BIA funds are public funds. There is a special duty on those entrusted with the stewardship of such funds to ensure they are used only for public, not personal or private, purposes. As Board members, and even worse, as two of the three titled officers of the BIA Board, Mr. Jones and Ms. Ross owed fiduciary duties to the BIA which required, at minimum, that they not engage in self-dealing and to act with utmost good faith. They both breached that duty in addition to breaching s. 14.1 of the COC.

Appropriate Penalty

[56] Following my involvement in attempts to broker an agreement between Council on the one hand and Mr. Jones and Ms. Ross on the other, the latter took the following steps:

1. Mr. Jones proposed the amendments to the OWNERSHIP OF INTELLECTUAL PROPERTY provisions of the Contract to change ownership of intellectual property SOTGP developed for the BIA from "the Contractor" to "the Client" (ie. the BIA and the County), which amendments were adopted at the June 2024 meeting of the BIA Board and an amendment agreement was subsequently executed;
2. Ms. Ross caused her lawyers to return the \$4,000.00 retainer to the BIA;
3. Both resigned as officers of the BIA and members of the BIA Board.

[57] In light of the foregoing steps, I do not recommend that any further action be taken against Mr. Jones or Ms. Ross.

[58] I have considered whether to recommend that SOTGP be disqualified from bidding on the Downtown Simcoe BIA pursuant to s. 22.2 of the County Purchasing Policy, which states that “the County may refuse to do business with any Vendor that has engaged in illegal or unethical bidding practices, has an actual or potential conflict of interest or an unfair advantage, or fails to adhere to ethical business practices.” I have decided that this is not warranted as the social media contract is being re-tendered and neither Mr. Jones or Ms. Ross are BIA Board members any longer, such that the issue of unfair advantage in the tendering process that previously existed no longer exists.

Conclusions Regarding the Complaint

[59] I have found that Ms. Ross breached s. 9.1 of the Code of Conduct in relation to her lobbying for the SOTGP proposal of her boyfriend and tenant at the March 2024 meeting of the Communications Committee of the BIA Board.

[60] I find that both Ms. Ross and Mr. Jones breached s. 14.1 of the COC in co-signing a cheque on the BIA bank account for what I have found was a personal expense of Ms. Ross.

[61] I have found that while the form of Contract Mr. Jones proposed for his social media services ran afoul of s. 14.3 of the COC in providing that his business would remain the owner of “County-developed” intellectual property, the section was not breached as Mr. Jones did not obtain financial gain from the use or sale that property, and these sections have now been amended to bring them into conformity with the COC.

[62] I have concluded that in the circumstances, no penalty be imposed on either Respondent.

[63] This concludes my investigation.

Respectfully Submitted,



David G. Boghosian,
Integrity Commissioner,
Norfolk County