

## Recommendation Report

### City of Thunder Bay Integrity Commissioner's Complaint against Councillor Rajni Agarwal

March 7, 2024<sup>1</sup>

#### **Executive Summary:**

- [1] This report results from complaints against Councillor Agarwal for her conduct as a member of the Fort William Business Improvement Area (FWBIA) board alleging that she has been rude, abrasive and chronically late for meetings, resulting in significant disruptions and causing delays.
- [2] She authored grant applications to the Clean, Green, and Beautiful (CGB) Committee without bringing these back to the FWBIA for review and approval and participated in the CGB Committee decision to grant the funds, despite being a member of the FWBIA on whose behalf she was seeking the grant funds.
- [3] The allegations have all been substantiated following a thorough investigation.

#### **The Complaint:**

- [4] On October 16, 2023, we received Code of Conduct complaints against Councillor Agarwal for her conduct and behavior on the Fort Williams Business Improvement Area (FWBIA).
- [5] The particulars of the complaints against Councillor Agarwal are as follows:
  - That as a Council-appointed member of the Fort William Business District Business Improvement Area (FWBIA) Board of Directors, her conduct has been disruptive, argumentative, and problematic, and this behaviour caused multiple other members of the FWBIA to resign.
  - That she overstepped her role as a member of the FWBIA by unilaterally submitting funding grant applications to the Clean, Green, and Beautiful (CGB) Committee on behalf of the FWBIA without direction and without providing the applications to the FWBIA Board for review and approval before submitting them to the CGB Committee.

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<sup>1</sup> Paragraph 63 has been revised to reflect that resignations were tendered by the Chair, Treasurer and another member of the FWBIA, citing Councillor Agarwal's frequent disruptions and disrespectful behaviour.

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- [6] The complaints allege that Councillor Agarwal's conduct and behaviour have breached the Code of Conduct.

### **Process Followed for this Investigation:**

- [7] In conducting this investigation, Principles *Integrity* applied the tenets of procedural fairness, guided by the complaint process set out under the Code of Conduct.

- [8] This fair and balanced process includes the following elements:

- Reviewing the complaints to determine whether they are within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the complaints should be restated or narrowed, where this better reflects the public interest.
- Notifying the Respondent of the complaints against her and providing adequate information so that she could respond.
- Reviewing the Code of Conduct and relevant documentation.
- Conducting interviews as necessary of persons with relevant information.
- Providing the Respondent with the opportunity to review and provide submissions and respond to the Integrity Commissioner's preliminary Findings Report.
- Taking into consideration the Respondent's response and submissions prior to finalizing and issuing our Recommendation Report.

### **Note About Disciplinary Role of Council:**

- [9] The role of Council is not to reinvestigate the findings in this report. The role of the Integrity Commissioner is to undertake a thorough and impartial investigation, which has now been completed. The tenets of procedural fairness require us to provide reasons for our conclusions and recommendations, and we have done that. Procedural fairness also requires us to conduct a process where parties can participate in the review and resolution of a complaint.

- [10] Rather, the role of Council is to review the report and decide which sanctions, if any, are necessary. The Integrity Commissioner can recommend training and/or sanctions as they deem appropriate based on the circumstances of the complaint(s), but it is Council who is the final voice in determining what should be done.

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[11] Principles *Integrity* welcomes any questions Council may have regarding the process followed for the investigation as well as its findings.

[12] If any person is dissatisfied with the process of this investigation, they are welcome to reach out to the Office of the Ontario Ombudsman to discuss available options.

### **Background and Context:**

[13] Councillor Agarwal is a member of the FWBIA.

[14] The complainants are former members of the FWBIA who cite Councillor Agarwal's behaviour as their reason for resigning from the BIA.

[15] Councillor Agarwal was first elected to Thunder Bay's Council in October 2022 and as such is a relatively inexperienced member of Council.

[16] There are many boards and committees to which Council appoints citizens and members of Council. These appointments are typically made immediately following the municipal election and run for the term of council.

[17] The Terms of Reference for the FWBIA require that a member of Council be appointed to the Board.<sup>2</sup>

[18] The mandate of the FWBIA is advocate for, promote, and beautify the district of Fort William in downtown Thunder Bay.

[19] Councillor Agarwal was also appointed to the Clean, Green and Beautiful Committee.

[20] The Clean, Green and Beautiful Committee Terms of Reference provide for the appointment of 18 members drawn from the community, including the Mayor and another member of Council.

[21] The mandate of the Clean, Green and Beautiful Committee is to plan for, prioritize short- and long-term projects, and identify investments and resources to support the beautification of public spaces in Thunder Bay.

[22] Board Members advised us that Councillor Agarwal has engaged in disruptive behaviour since she was appointed to the FWBIA, and that these behaviours have caused significant stress to those participating.

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<sup>2</sup> Under the Municipal Act, Council must appoint the directors of the Board, but the Act does not require that a member of Council be one of those appointees.

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- [23] Councillor Agarwal frequently arrives 30 minutes to an hour late to meetings.
- [24] Her entrances were described to be distracting, and she would usually demand a summary of the events that had already been discussed. Councillor Agarwal would become very upset if her demands for a review were not met.
- [25] She has been abrasive and rude, and this behaviour is evident in the recorded meetings. She frequently interrupts other board members, talks over them, yells or speaks condescendingly, and refuses to move on to other issues if the issue has not been resolved to her satisfaction.
- [26] It is evident in the recorded meetings that there has been significant tension between Councillor Agarwal and several of the other board members, and that relations between Councillor Agarwal and these members have deteriorated significantly over time.
- [27] She frequently cites Roberts' Rules of Order in her attempts to reopen closed debates but does not respect staff or others when they attempt to invoke these same rules to maintain order in meetings.
- [28] At the May 16, 2023, meeting, Councillor Agarwal brought to the attention of the FWBIA a potential grant opportunity through the Clean, Green, and Beautiful (CGB) Committee. She offered to work on the submission of two funding applications – one for promotional banners and the other for the relocation and preservation of a decorative historic arch.
- [29] The motion was approved by the FWBIA board. However, Councillor Agarwal was asked to bring the grant applications back to the board for approval before submitting them.
- [30] The Minutes of the May 16, 2023, FWBIA meeting reflect the following:

### 5.2 BEAUTIFICATION – Rajni Agarwal

The arch needs to come down from Victoriaville.

Rajni suggests submitting an application to The Clean Green and Beautiful committee.

Quotes are requested:

1. Cost to dismantle the Arch – 5 Star Electric
2. Cost to refurbish it- PACE
3. Cost to set it up in Paterson Park- 5 Star Electric

Motion- 22- 2023

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Motion to submit an application to the Clean Green and Beautiful Committee for the removal repair and installation of the Arch above Victoriaville in Paterson Park.  
Carried

[31] The Minutes of the July 11, 2023, FWBIA meeting reflect the following:

- i. Make sure that all correspondence, applications and media releases sent out from The FWBIA must be pre- approved from the board before submission.
- ii. Ensure that all applications sent to Clean Green Beautiful are scanned and put in our records.

[32] Councillor Agarwal completed the applications with the assistance of the FWBIA coordinator.

[33] Councillor Agarwal proceeded to submit the two grant applications to the CGB Committee without coming back to the FWBIA.

[34] Requests were made to Councillor Agarwal for copies of the applications, however, the FWBIA did not receive copies of the submitted applications until several weeks after the applications were approved by the CGB Committee.

[35] FWBIA members were surprised when they were notified of the award of the grants (\$7,500 and \$5,000) by the CGB Committee; concerns were immediately raised by the FWBIA around the information compiled and submitted, in particular, whether appropriate consultation had occurred with the Indigenous community before referencing the inclusion of Indigenous art as a factor within the banner grant application, and around the sufficiency of the funds to relocate the arch and the feasibility of implementation of the work, in light of the existence of an engineering report raising concerns with the proposed work.

[36] Councillor Agarwal contends that she did speak to Indigenous people before submitting the applications to the CGB Committee but has not disclosed the names of these people or details of what was discussed to the FWBIA members.

[37] At the August 8, 2023, meeting, the FWBIA voted to decline to accept the grants from the CGB Committee.

[38] Councillor Agarwal was late to the August 8, 2023, FWBIA meeting and only arrived after the vote to return the funds had taken place.

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- [39] At this same August 8, 2023, meeting the July Financial Statement was presented for receipt and approval.
- [40] The FWBIA's Treasurer, one of the departing members, drew the Board's attention to some costs that had increased from the previous year.
- [41] When the Board was asked to receive and approve the July Financial Statement as accurate, Councillor Agarwal became very upset and argued with Board members about the finances.
- [42] Councillor Agarwal's concern was that there was not sufficient documentation or reconciliation provided.
- [43] It was explained to Councillor Agarwal that the July Financials were not up for debate, as the information is merely reports on costs already incurred and paid.
- [44] Councillor Agarwal became agitated that the Board, in her view, was not following 'proper procedure'.
- [45] The discussion between Councillor Agarwal and the Treasurer was very contentious on both sides.
- [46] Ultimately, the Board received and approved the July Financial Statement.
- [47] Councillor Agarwal became so upset during this discussion that she announced she was resigning from the FWBIA and left the meeting.
- [48] Councillor Agarwal contends that she said she would resign only after a replacement for her was found. This part of her announced resignation could not be corroborated and was not mentioned in subsequent emails about her resignation.
- [49] It was only after this meeting that Councillor Agarwal became aware of the Board's decision to return the CGB grant funds.
- [50] Councillor Agarwal was upset, as a member of the CGB Committee, that the FWBIA would decline the grants she had submitted.
- [51] Regarding the FWBIA board's concern about a lack of appropriate consultation with the Indigenous community, Councillor Agarwal insisted that she had "talked to people", and that no further consultation was warranted or necessary.
- [52] Regarding the FWBIA's concerns about the sufficiency of the grant to relocate to Patterson Park and refurbish the arch, she argued that rather than turning those funds

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(\$7,500) back to the CGB Committee, the funds be diverted to a department of the City to finance work to refurbish and relocate the arch.

[53] Some members of the FWBIA Board expressed concern about whether it would be proper for the FWBIA, having been granted the funds, to divert or re-direct these funds into the coffers of a City department to undertake the work.

[54] Some members also harboured concerns that Councillor Agarwal's role in submitting the unapproved applications on behalf of the FWBIA, to the CGB Committee on which she sits, raised the appearance of a conflict of interest – not that her own pecuniary position would be enriched, but that the optics created a perception of preferential treatment (by her) favouring the FWBIA applications for grants.

[55] The minutes for the CGB meeting where the applications were approved note that Councillor Agarwal declared an interest and did not vote on the grant applications.

[56] On September 6, 2023, Councillor Agarwal wrote to the FWBIA members, the Mayor, and the City Manager rescinding her resignation and advised that she was bringing people to the next FWBIA meeting:

“I will be attending the next meeting and will be bringing some members to the meeting as they are concerned on the way the board has conducted themselves in relation to the last meeting. I see from the minutes that you have decided to return the funds that we received from clean green. The members are appalled with the fact the board decided this without consulting me on how it was put together.

...

...Now you must explain to them on the same floor as per why you want to send it back. As the minutes have to be ratified I will attend that meeting with other members so you can have the opportunity to retract and reevaluate what is best for the membership.

[57] Councillor Agarwal was upset that the FWBIA Board returned the funds without consulting her on “how it was put together”.

[58] Councillor Agarwal's explanation for failing to bring the grant applications back for review and approval by the Board is that there was a deadline for grant submissions to the CGB Committee.

[59] At the time the idea was floated at the FWBIA, Councillor Agarwal made no mention of any deadline.

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[60] Even in light of circumstances where there might be no regularly scheduled meeting of the FWBIA before the impending CGB Committee grant deadline, there were any number of mechanisms available to Councillor Agarwal to ensure the Board's approval before submitting the applications: scheduling a Special Meeting of the FWBIA; setting up an impromptu meeting of the FWBIA Executive; or even just emailing the grant applications around to the FWBIA Board members for comment.

[61] It is apparent to us that Councillor Agarwal felt she did not require the approval of the FWBIA Board to submit the grant applications.

[62] It is also apparent that Councillor Agarwal misapprehends meeting procedure, whereby ratification of Minutes is merely an administrative step to confirm that the Minutes accurately record what was decided, not an opportunity to reconsider past business.

[63] On September 8, 2023, the Chair, Treasurer and another member of the FWBIA resigned, citing Councillor Agarwal's frequent disruptions and disrespectful behaviour.

### **Role of Councillors appointed to boards and committees (local boards):**

[64] Where a member of Council is appointed to a body such as the BIA or the CGB Committee, as with other local boards of the municipality, that member is in no different position than the other appointed members.

[65] The Council member's role is primarily as a liaison, to share information and bridge communications between the body and the municipality and its processes when required.

[66] On a BIA board, which exists to represent the particular interests of the businesses which operate within the area, the Council-appointed member is sometimes not even the owner/operator of a business within the BIA.

[67] Such is the case with Councillor Agarwal who, while an experienced realtor and land developer, has no particular business interest within the FWBIA.

[68] The elected official provides an advisory function to help the body to know when alignment exists (or does not exist) between Council's strategic direction and the body's desired objectives, and to understand what resources might be available from the municipality.

### **The Council Code of Conduct and the Applicable Law:**

[69] The provisions of the Thunder Bay Council Code of Conduct which are most applicable to the complaint are outlined below:



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### Rule No. 9

#### Member Conduct - Conduct at Council and Committee Meetings:

4. Members shall conduct themselves with appropriate decorum at all times.

#### Commentary

As leaders in the community, Members are held to a higher standard of behaviour and conduct, and accordingly their behaviour should be exemplary.

Members recognize the importance of cooperation and strive to create an atmosphere during Council and committee meetings that is conducive to solving the issues before Council, listening to various points of view and using respectful language and behaviour in relation to all of those in attendance.

### Rule No. 12

#### Respectful Workplace:

1. Members are governed by the City's Respectful Workplace Policy. All Members have a duty to treat members of the public, one another, and staff appropriately and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment.

### Analysis and Findings:

[70] In order to make a finding of fact, the test in an Integrity Commissioner's investigation is on a "balance of probabilities." This means is it more likely true than not that the alleged conduct occurred. This is a much lower threshold than the criminal standard of proof "beyond a reasonable doubt".

[71] Although we considered and determined whether the allegations were more likely true than not, in all of the instances the allegations were substantiated on the higher standard of "beyond a reasonable doubt."

[72] We find Councillor Agarwal's behaviour to be disruptive and problematic.

[73] Her behaviour has been described by others as rude, abrasive, bossy, and domineering. She is described as chronically late, frequently absent, and when she does show up, she often demands a summary of issues and tries to re-open matters already decided.

[74] She is described as disrespectful, argumentative, ego-driven, and incapable of compromising on a position. Essentially, she presents her ideas as full-blown, well-researched (*"I've talked to people"*) and unassailable.

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- [75] Members acknowledge that she often has good ideas, but that her demeanour, intransigence, and belligerence in how she presents them makes her unsuitable for the role as a member of the BIA which must work as a collective and arrive at decisions through consensus.
- [76] Councillor Agarwal contends that other members of the FWBIA were disruptive and rude to her. We have not been provided with any evidence of this.
- [77] Even if this is true, it does not excuse the Councillor's own behaviour, which is expected to reflect a high standard of behaviour and conduct..
- [78] It would appear that Councillor Agarwal misunderstands the role of a member appointed to a board or committee; that is, an elected official on such body has no greater power, authority or responsibility for decisions of that body or committee than any other citizen-member appointed to the body.
- [79] It is fair to observe that the role of the elected official, if any, is to act as a neutral liaison for the body when appropriate, to guide members of the body in understanding whether the body's objects generally align with the strategic direction of Council, and to assist in accessing municipal process and resources, where possible.
- [80] The role of the elected official is not to try to take charge and lead discussions or initiatives of the body; nor is it to inject themselves as the expert on process. There are staff available for guidance on procedural matters. Rather, it is the role of the elected official to advise board members.
- [81] We find that the Councillor overstepped her authority in submitting the grant applications without the express review and approval of the FWBIA, and in attempting to intimidate the then-Chair into re-consideration of the grant refusal decision – under the guise of ratifying the Minutes – under threat of summoning a group of BIA members to descend on the board meeting to protest the decision.
- [82] A Code of Conduct provides general and specific guidance to aid members in understanding and achieving the high standard of behaviour expected by the public.
- [83] Codes should be perceived as guides to proper ethical behaviour, and not simply as traps for elected officials. While a toenail over an ethical line would not draw the attention of an integrity commissioner, significant non-compliant behaviour cannot be excused.
- [84] Guidance exists in the provisions of the Code which speak to communication generally, conveying information on matters in an open and transparent manner, allowing the public to view the rationale for decisions, and to treating members of the public with respect and without abuse.

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[85] We find that the Councillor's conduct, including yelling and behaving belligerently towards other members of the FWBIA was certainly behaviour which crossed the line and breached the Code of Conduct. Councillor Agarwal's behaviour fell below the standards expected of elected officials.

[86] We also find that Councillor Agarwal overstepped her authority when she submitted the grant applications to the Clean, Green, and Beautiful Committee without the review and approval of the FWBIA.

### **Concluding Remarks:**

[87] An Integrity Commissioner's investigation report is not simply the conclusion of a technical exercise to determine whether there has been a breach of codified standards of behaviour. We see as our highest objective in concluding an investigation to be the making of recommendations that serve the public interest.

[88] Sometimes we are able to resolve complaints on the basis of course correction by the Member. Where the Member acknowledges inappropriate conduct and commits to meaningful change, a public report may not be necessary. In such cases, only the complainant and Respondent are made aware of the disposition of the matter.

[89] However, where a breach is substantiated, as it was in this case, and it is important to daylight the concern, the Integrity Commissioner, following procedural fairness, submits a public report.

[90] In the circumstances of this series of complaints, having concluded a full and fair investigation, it is our view that the FWBIA would be best served if Councillor Agarwal were no longer a member of the board.

[91] Therefore, if the Councillor does not resign before Council has this report before it for consideration, it would be our recommendation that she should be removed by Council.

### **Recommendation:**

[92] We therefore recommend that, in the event Councillor Agarwal has not resigned from the FWBIA by the date this report is before Council, that Council pass the following resolution:

That having been found in breach of the Code of Conduct, Councillor Agarwal should be removed from the Fort William Business Improvement Area (FWBIA) board by Council.

[93] We will be pleased to be in attendance when this report is considered by Council.

# Principles Integrity

## Overview of Integrity Commissioner:

*Principles Integrity is privileged to serve as Integrity Commissioner for the City of Thunder Bay and for a number of other Ontario municipalities and locally elected or appointed bodies. The operating philosophy which guides us in our work, and which appears in every formal communication with our clients to reinforce its importance to us, is this:*

*The perception that a community's elected representatives are operating with integrity is the glue which sustains local democracy. We live in a time when citizens are skeptical of their elected representatives at all levels. The overarching objective in appointing an integrity commissioner is to ensure the existence of robust and effective policies, procedures, and mechanisms that enhance the citizen's perception that their Council (and local boards) meet established ethical standards and where they do not, there exists a review mechanism that serves the public interest.*

*Our efforts in concert with our clients are therefore to help establish an ethical framework through which the public perception of Council is deservedly enhanced.*

*The City of Thunder Bay has as part of its ethical framework a Code of Conduct which is the policy touchstone underlying the assessments conducted in this report. It represents the standard of conduct against which all members of Council are to be measured when there is an allegation of breach of the ethical responsibilities established under the Code of Conduct. The review mechanism contemplated by the Code, one which is required in all Ontario municipalities, is an inquiry/complaints process administered by an integrity commissioner.*