



OFFICE OF THE INTEGRITY COMMISSIONER

**INVESTIGATION REPORT
REGARDING CONDUCT OF MAYOR
JOHN TORY**

**Valerie Jepson
Integrity Commissioner
January 28, 2016**

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INTRODUCTION

On June 1, 2015, a member of the public (the "Complainant") filed a formal complaint that Mayor John Tory contravened Articles VIII (Improper Use of Influence), IX (Business Relations) and X (Conduct Regarding Current and Prospective Employment) of the *Code of Conduct for Members of Council* (the "Code of Conduct") for allegedly improperly preferring and supporting the ride-sharing service, commonly known as "Uber"¹, through public statements and by moving a motion at the May 5, 2015 meeting of Toronto City Council to defer consideration of a staff report regarding amendments to standard taxicab regulations. The complaint asserts a number of grounds as to why Mr. Tory's actions were improper, including that members of his former campaign staff² were consultants for Uber.

I reviewed the complaint in accordance with the *Complaint Protocol for Members of Council* (the "Complaint Protocol") and determined that I would investigate some, but not all, of the complaint allegations. Specifically, whether Mr. Tory improperly used the influence of his office to benefit two former members of his campaign team by moving the May 5, 2015 deferral motion in contravention of Article VIII of the Code of Conduct.

In order for Mayor Tory to have contravened Article VIII in this case, he would have to have used the influence of his office for a purpose other than the exercise of his duties; here with the intention to benefit a former campaign staffer as a reward or out of a sense of personal obligation. It must be observed from the outset that the Mayor, like all members of Council, will undoubtedly be involved in and have influence over decisions that will benefit any number of stakeholders within the community, some of whom will have supported him in his campaign. His involvement and influence are only improper if his decision was taken, or his influence was exercised, for the purpose of preferring or benefitting himself or another person.

I have concluded that the May 5, 2015 motion was the result of a number of considerations unrelated to the former campaign staff's involvement, including the desirability of dealing comprehensively with regulation of ground transportation services and the fact that Council was awaiting the outcome of a pending court proceeding with respect to the applicability of the current regulatory scheme to Uber. Further, I have concluded that Mayor Tory's actions in relation to the motion were unrelated to the interests of his former campaign staff and were not a contravention of Article VIII of the Code of Conduct.

¹ The complaint refers to the "Uber group of companies".

² I refer to campaign 'staff' broadly to include volunteer positions. I acknowledge that many campaigns for elected office in Toronto rely on volunteers, rather than paid personnel.

Although there was no contravention of the Code of Conduct in this case, the circumstances that led to the complaint are based on a reasonable concern that an elected official might pay special attention, or provide preferential treatment, to former campaign staff, particularly those who aided the official in winning an election. I therefore take this opportunity to offer some guidance about the interaction between elected officials and those individuals who assist in their campaigns and subsequently lobby the elected official. The guidance is included at the end of this report.

Part B, s. 6(3) of the Complaint Protocol gives the Integrity Commissioner discretion to make a report to Council about a dismissed complaint in exceptional circumstances. I conducted a confidential investigation, but the fact of this complaint has been made public. In my view, it is important and appropriate to bring the fact of the investigation, the findings, and the guidance, to the attention of Council. I am, therefore, filing this report with Council for its information.

INVESTIGATION STEPS

The complaint alleges that it was improper for Mayor Tory to have moved a motion supportive of Uber and that his actions were contrary to the Code of Conduct for two reasons: Mr. Tory's interest in relation to a promotion offered to Rogers wireless customers related to Uber; and the fact that members of Mayor Tory's campaign team were acting as consultants for Uber.

I reviewed and classified³ the complaint under the Complaint Protocol and concluded that the complaint with respect to the Rogers promotion did not on its face give rise to any possible issues under the Code of Conduct, but that the allegations with respect to the members of Mayor Tory's campaign team could fall within the scope of the Code of Conduct. On July 2, 2015, I notified the Complainant of the outcome of my review and that I would commence an inquiry to examine certain specific issues with respect to the members of Mayor Tory's campaign staff.

On July 22, 2015, I notified Mayor Tory of the complaint. Mayor Tory responded to the complaint on August 4, 2015. He confirmed that all of his actions had been consistent with Article VIII of the Code of Conduct, that the named members of his former campaign team played no role in relation to the motion, and that the reason he brought the motion was to allow for a more informed debate on the issue of taxi and ground transportation regulation.

³ The Complaint Protocol requires the Integrity Commissioner to review each complaint to confirm that the matters in the complaint are matters related to compliance with the Code of Conduct and that there are sufficient grounds to require an investigation.

After an exchange of correspondence, the Complainant confirmed on September 24, 2015 that he did not have any specific reply to Mayor Tory's response. However, the Complainant made a number of other submissions throughout with respect to the scope of the investigation.

On September 24, 2015, I commenced the investigation into the issues I had identified in my letter of July 2, 2015.

Interviews Conducted as Part of this Investigation

As part of the investigation, I summonsed three individuals to give evidence under oath, pursuant to my powers under the *Public Inquiries Act, 2009*⁴: two members of the Mayor's staff and one of the former campaign aides.

Christopher Eby is the Mayor's Chief of Staff and was also a member of Mr. Tory's campaign team. Luke Robertson is a Senior Advisor, Council & Stakeholder Relations, in the Mayor's Office. He is a liaison to other Members of Council and takes the lead on policy matters, including certain council agenda items, assigned to him in the Mayor's Office. Within the Mayor's Office, he has carriage of issues involving Uber and taxis.

To corroborate the evidence of Messrs. Robertson and Eby and to further understand the role that he played with respect to the motion, if any, John Duffy was interviewed as part of this investigation.

ISSUES UNDER INVESTIGATION

I investigated allegations that Mayor Tory moved the May 5th deferral motion to benefit Uber and advance the interests of two individuals who played senior roles in his election campaign, Nick Kouvalis and John Duffy.

The complaint raises issues under Article VIII of the Code (Improper Use of Influence), which states (with emphasis added):

VIII. IMPROPER USE OF INFLUENCE

No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

Examples of prohibited conduct are the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff

⁴ S.O. 2009, c. 33, Sched. 6. Section 160(2) of the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A, authorizes me to exercise summons powers under sections 33 and 34 of the *Public Inquiries Act, 2009*.

members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within Council in return for present actions or inaction.

For the purposes of this provision, "private advantage" does not include a matter:

- a. that is of general application;
- b. that affects a member of Council, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or
- c. that concerns the remuneration or benefits of a member of Council.

For the Mayor's conduct to contravene Article VIII (Improper Use of Influence), it must be established that he used the influence of his office *improperly* to the private advantage of himself or an associate. Article VIII recognizes that members of Council will exercise influence over many decisions that will coincidentally be beneficial to stakeholders, including family members, friends and associates but it is only those instances where the exercise of influence was intended or designed to benefit the private advantage of oneself or another that Article VIII will be triggered.

In the context of the allegations in this case, Article VIII prohibits the Mayor from using the influence of his office to reward or thank any person for contributions made to his campaign. This obligation extends to all members of Council.

FINDINGS AND ANALYSIS

Given that the core of the complaint was that the deferral motion was motivated by the Mayor's desire to prefer the interests of former campaign staff, I explored what considerations were behind the Mayor's decision to bring forward a deferral motion and whether there was any evidence of an intervention by former campaign staff. As explained below, I conclude that the considerations leading to the motion were related to several factors, none of which involved the members of the Mayor's campaign team. This conclusion is based on testimony provided by staff members in the Mayor's Office and of one of the named former campaign team members, John Duffy, who lobbied the Mayor's Office on behalf of Uber.

Background to the May 5, 2015 Deferral Motion

Chapter 545 of the Toronto Municipal Code regulates taxicabs and limousine services. In 2014, on the basis of the Final Report of the Toronto Taxicab Industry Review, City Council adopted a number of significant reforms to its taxi licensing structure.⁵ One of the reforms was to eliminate or phase out different categories of taxicab licenses.

The May 5, 2015 City Council agenda included two items that related to regulation of taxicabs and limousine services, LS 3.3⁶ and LS 3.5⁷. Both items related to possible amendments to Chapter 545 of the Municipal Code. Only LS 3.5, which dealt with a proposal to reinstate a category of taxicab license that existed prior to the July 2014 reforms, is of relevance to this complaint.

In October 2014, the City of Toronto filed an application before the Ontario Superior Court of Justice for injunctive relief against Uber Canada and a number of related companies.⁸ The City sought an order to declare Uber a taxicab brokerage or a limousine service within the meaning of Chapter 545 of the Toronto Municipal Code and to require Uber to apply for a license and all associated regulatory obligations. At the time of the May 2015 meeting, the City's application had not yet been heard.

Advice Received by the Mayor prior to the Council Meeting

Mr. Eby, the Mayor's Chief of Staff, testified that prior to the Council meeting, the Mayor received briefings from senior City staff and his own staff about the upcoming agenda items. The Mayor received policy advice from his staff that the changes proposed in LS 3.5 were one piece of the overall regulatory framework and that depending on the outcome of the injunction application, changes may be necessary to the overall framework to bring Uber, and other ride-sharing services, into the regulatory fold. Staff advised that it would be better to deal with amendments to the taxi regulations and regulation of other ground transportation at the same time. The Mayor's policy advisor on this issue testified that whether LS 3.5 passed or not had no impact on Uber because Uber was operating outside of both the pre- and post-2014 regulatory schemes.

⁵ A history of the item is available at <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.LS26.1>.

⁶ Permitting Nonconforming Replacement Taxicabs (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.LS3.3>).

⁷ Chapter 545, Licensing, Article VIII, Owners and Drivers of Taxicabs - Information on Amendments to Standard Taxicab Regulations (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.LS3.5>).

⁸ City of Toronto v. Uber Canada, Inc., et al. 126 OR (3d) 401 (SCJ); 2015 ONSC 3572.

The Mayor's staff testified that the Mayor's preference was to consider the City's regulation of the ground transportation industry comprehensively and as a whole, not in a piecemeal fashion.

Consistent with this evidence, during the Council debate, the Mayor articulated the desire to consider regulating the entire ground transportation industry and also mentioned the pending litigation involving Uber as reasons for his deferral motion.⁹

The evidence is that based on the policy advice, the Mayor moved to defer consideration of LS3.5. The motion was recorded as a vote to defer the matter "until such time as City Council considers a report from the City Solicitor with respect to the Court decision on Uber."¹⁰

Conclusions about the Motivation for the Deferral Motion

Without commenting on the policy implications of either outcome, the evidence that the Mayor moved to defer consideration of LS 3.5 on the understanding that significant changes to the very same bylaw would be presented to Council in the near future is credible. It is also credible that the outcome of the court application – the timing of which was clearly outside the control of Council – was also relevant, and that the Mayor would wish to await the outcome of this decision before making significant changes to the regulatory framework governing ground transportation.

From the outset of this investigation, it was not obvious why the decision to defer item LS 3.5 would be beneficial to Uber. As I understand the Complainant's point of view, any decision that considered the possibility that Uber or services like it would be specifically contemplated in the City's regulatory regime is of benefit to Uber. In consideration of the testimony, a review of the staff report on item LS 3.5 and the decision of the court, albeit issued after the fact, I have concluded that the decision to defer consideration of item LS 3.5 did not impact Uber. Policy issues related to regulation of ride-sharing services, including Uber, would exist regardless of any Council decision on item LS 3.5.

Involvement of Members of the Mayor's Campaign Team

Although I conclude that the deferral motion did not impact on Uber, I was concerned about the Complainant's reasonable perception that individuals who had assisted Mayor Tory with his successful mayoral campaign were acting on behalf of Uber and possibly

⁹ Video of the Council debate is available at <http://www.rogerstv.com/page.aspx?lid=237&rid=16&sid=1030&gid=233332>.

¹⁰ Minutes from the May 5, 2015 City Council Meeting, available at <http://app.toronto.ca/tmmis/viewPublishedReport.do?function=getCouncilMinutesReport&meetingId=9691>

gaining preferential or preferred treatment for that reason. I therefore sought to gather sufficient evidence to understand the role, if any, that Mr. Duffy or Mr. Kouvalis played. Mr. Duffy was the Head of Policy for Mayor Tory's election campaign and Mr. Kouvalis was the Pollster and Chief Strategist. He also served on Mr. Tory's transition team.

The Toronto Lobbyist Registry indicates that Mr. Duffy lobbied Mr. Eby in the days prior to the May 5, 2015 Council meeting. Mr. Kouvalis does not appear on the Toronto Lobbyist Registry.

Consistent with the information on the Registry, Mr. Duffy testified that he was retained by Uber in March 2015 and contacted Mr. Eby on behalf of Uber in early May, prior to the May 5th Council meeting. He testified that his discussions with Mr. Eby were about the upcoming Council agenda and the longer term lobbying objectives of Uber. He recalled that he had a general awareness of the possibility of a motion to defer the item, but his discussions were focused on a strategy to build support across City Council to advance Uber's interest in discussions about a regulatory framework to govern its business.

Mr. Eby's evidence was that he was involved in discussions with Mr. Duffy in the days before the May Council meeting. Mr. Eby testified that Mr. Duffy's communications were not specifically about the taxi items on the agenda and were a follow-up to a recent meeting between Mr. Eby and representatives of Uber.

The Toronto Lobbyist Registry confirms a number of meetings directly between Uber officials and members of the Mayor's Office, including the Mayor. The Toronto Lobbyist Registry reflects that officials from Uber, as well as another lobbying firm, have lobbied members of Council since 2013.

Mr. Duffy testified that on June 5, 2015, he decided to stop lobbying the Mayor's Office completely, on behalf of all of his clients. He also testified that he has never lobbied the Mayor directly on behalf of any client.

I conclude that while Mr. Eby and Mr. Duffy discussed the taxi-related items on the Council agenda, including the possibility of a deferral motion, Mr. Duffy urged no particular outcome with respect to item LS 3.5 or the deferral motion and that the reason for the deferral was unrelated to any interventions by Mr. Duffy. I therefore conclude that Mr. Duffy played no role in relation to the motion.

Mr. Eby testified that he was aware that Mr. Kouvalis' firm was engaged by Uber but that Mr. Kouvalis had not contacted him on behalf of Uber or any other client. Like Mr. Eby, Mr. Robertson testified that he had not been contacted by Mr. Kouvalis about Uber.

Based on the evidence gathered from the Mayor's office, I was satisfied that while there was a general awareness that Mr. Kouvalis was working for Uber as a consultant, he made no requests or interventions on behalf of Uber with the Mayor's Office, particularly with respect to the motion. There was simply no basis therefore to pursue further the allegation relating to Mr. Kouvalis.

CONCLUSION

The motion to defer item LS 3.5 was the result of a number of considerations including the Mayor's wish that Council deal comprehensively with the ground transportation industry and be able to consider the outcome of the outstanding litigation in those decisions, reasons unrelated to Mr. Duffy's lobbying efforts.

There is no evidence that the Mayor's motion benefited Uber (and thus Messrs. Duffy and Kouvalis) or that the Mayor and his staff intended to benefit Uber (and thus Messrs. Duffy and Kouvalis) when the Mayor brought the motion.

In conclusion, there is no evidence that the Mayor was using his office for an improper purpose and I therefore find that there was no contravention of the Code of Conduct.

GUIDANCE

Although I have concluded that there was no contravention of the Code of Conduct in this case, the circumstances that led to the complaint were based on a reasonable perception that an elected official might pay special attention, or provide preferential treatment, to those who aided the official in winning an election.

Such perceptions may arise any time a former campaign aide lobbies an elected member of Council whom the aide supported. These perceptions can be harmful to the public's trust in government, regardless of whether the elected official actually favours or prefers the interests of a former campaign aide (or intends to do so). The concern is that a lobbyist may be able to trade on a prior association with an elected official or be rewarded by the elected official for contributions made to a campaign.

The City of Toronto has controls in place to avoid actual or apparent improper influence. For instance, election finance rules place limits on who can make donations and for how much.¹¹ In addition, lobbyists are bound by a specific Code of Conduct that requires that they do not place public office holders in an actual or apparent conflict of interest.¹²

¹¹ *Municipal Elections Act*, 1996, S.O. 1996, c. 32, Sched., ss. 70.1(5), 71(1), 71(2).

¹² Chapter 140 of the City of Toronto Municipal Code, ss. 140-38 – 140-45 (Lobbyists' Code of Conduct); ss. 140-144 (defining conflict of interest).

In a recent interpretation bulletin issued by the Lobbyist Registrar, campaign activities and fundraising are noted as examples of circumstances that can give rise to a conflict of interest.¹³ The Lobbyist Registrar, in conjunction with this Office, has advised that lobbyists should not be involved in fundraising for candidates if their intention is to lobby a candidate once elected.¹⁴

The framework in place at the City of Toronto¹⁵ places most of the regulatory burden on lobbyists. The emphasis is on the conduct of lobbyists because, to some degree, members of Council cannot control who will attempt to communicate with them in furtherance of a lobbying objective. Lobbyists, not the public office holder, are required to register communications.¹⁶

In consideration of the regulatory burden on lobbyists, the question is whether there are parallel obligations on members of Council to minimize or reduce the risk of improper influence.

The practices of members of Council generally are guided by the preamble to the Code of Conduct. The preamble appropriately sets the bar high and requires that members of Council "should be committed to performing their functions with integrity and to avoiding the improper use of influence of their office, and conflicts of interest both apparent and real."¹⁷ In addition, members must "perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny" (emphasis added).¹⁸ The Code of Conduct is therefore clear that members of Council have a role to play to promote trust and confidence in City government.

As explored in this report, Article VIII (Improper Influence) prohibits members of Council from using the influence of their offices to benefit, reward, or repay campaign contributions. Article XIII (Conduct Respecting Lobbyists), imposes on members of Council a duty to be mindful of the Lobbying Bylaw¹⁹ and encourage compliance or, when appropriate, report possible breaches to the Lobbyist Registrar.

¹³ Office of the Lobbyist Registrar, Interpretation Bulletin, "Improper Influence: Avoiding Impropriety, Conflict of Interest and Improper Benefits," November 26, 2015, available at www.toronto.ca/lobbying.

¹⁴ Office of the Integrity Commissioner and Office of the Lobbyist Registrar, Joint Interpretation Bulletin, "Lobbying and Municipal Elections at the City of Toronto," January 10, 2014, available at www.toronto.ca/lobbying.

¹⁵ Chapter 140 of the City of Toronto Municipal Code.

¹⁶ *Ibid.* at s. 140-10.

¹⁷ Code of Conduct for Members of Council, City of Toronto, available at <http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=c0f738379bac0410VgnVCM10000071d60f89RCRD&vgnextchannel=0ded1a3a11f19410VgnVCM10000071d60f89RCRD>.

¹⁸ *Ibid.*

¹⁹ Note 15, *supra*.

Other jurisdictions have guidelines about steps elected officials can take to avoid the perception of improper influence that could arise due to campaign activities. For example, recently re-issued guidelines from the Prime Minister's Office for Federal Cabinet Ministers²⁰ provide specific guidance designed to "ensure that there is no differential treatment or appearance of differential treatment for individuals, corporations or organizations because of their financial support of politicians or political parties, Ministers and Parliamentary Secretaries." With specific respect to lobbying, the guidelines urge elected officials to be cautious "in meeting with consultant lobbyists, and should give particular consideration to whether it is appropriate to meet a consultant lobbyists in the absence of the lobbyist's client."²¹

In the field of public sector ethics, it has long been established that avoiding the appearance of impropriety can be as important as avoiding the actual impropriety itself. The most-often cited source for this principle is found in the 1987 *Report of the Commission of Inquiry into the Facts and Allegations of Conflict of Interest Concerning the Honourable Sinclair Stevens*.²² With respect to the appearance of a conflict of interest, the Honourable Justice Parker wrote:

The concern about appearance of conflict as an important ethical postulate of modern government is one that is well founded. The reasons are obvious. Trust and confidence in government can be maintained and enhanced only if the occasions for apparent conflict are kept to a minimum. Public perception is important. Indeed the perception that government business is being conducted in an impartial and even-handed manner goes a long way to enhancing public confidence in the overall integrity of government.

The objectives that can be achieved by minimizing the appearance of conflict, as described by Justice Parker, are applicable to the avoidance of appearance of improper influence and are expressly contemplated by the Code of Conduct in place for members of City Council.

²⁰ Open and Accountable Government, 2015, Privy Council Office and online at www.pco-bcp.gc.ca, Annex B Fundraising and Dealing with Lobbyists: Best Practices for Ministers and Parliamentary Secretaries, <http://pm.gc.ca/eng/news/2015/11/27/open-and-accountable-government#Lobbyists>.

²¹ Ibid.

²² Although the findings of the report into the Sinclair Stevens matter were overturned on judicial review, the definitions fashioned by Justice Parker with respect to apparent and real conflicts of interest are repeatedly and authoritatively cited: e.g. Toronto Lobbyist Registrar, Report to Council on an Inquiry into Placing Members of Council in an Apparent Conflict of Interest (March 23, 2015) at p. 10: <http://www.toronto.ca/legdocs/mmis/2015/cc/bgrd/backgroundfile-78187.pdf>, as cited therein; *Report of the Commission of Inquiry into Certain Allegations respecting Business and Financial Dealings between Karlheinz Schreiber and The Right Honourable Brian Mulroney* (2010); Report of the Mississauga Judicial Inquiry (October 2011) at p. 148 (http://www.mississaugainquiry.ca/report/pdf/MJI_Report.pdf).

In my view, members of Council could advance their obligation to improve trust and confidence in Toronto City Council by adopting parallel obligations to those already imposed on lobbyists, as follows:

- acting with particular caution and attention to the Lobbying By-law when they or their office are lobbied by former campaign staff; and/or
- establishing criteria for when and if it is appropriate to meet with a third party being paid to lobby for the interests of a client stakeholder (known as a consultant lobbyist), including deciding not to receive communications in the nature of lobbying from former campaign staff when the former staff is working as a consultant lobbyist.

Acting with caution, and in certain cases, refusing to be lobbied by former campaign aides would reduce or eliminate the risk that a reasonable observer might conclude that official actions or decisions were based on a member of Council's sense of obligation to a former campaign aide rather than the merits of an issue.

I am available to members of Council to provide specific, confidential advice about how this guidance can be applied. I remind Council that members may rely on such written advice, in the face of a subsequent complaint, as long as they fully inform the Commissioner and circumstances do not change after they receive the advice.²³

Valerie Jepson
Integrity Commissioner
January 28, 2015

²³ Code of Conduct for Members of Council, Article XVII (Acting on Advice of Integrity Commissioner).