

Report on an Alleged Conflict of Interest in Mayor Olivia Chow's Office

**Jonathan Batty
Integrity Commissioner**

July 17, 2024



A. Introduction

1. This report describes my investigation of a complaint that Mayor Olivia Chow breached the Code of Conduct for Members of Council (the “Code of Conduct”). I received this complaint on October 30, 2023.
2. The complaint alleged that Mayor Chow failed to identify and resolve a conflict of interest that a member of her staff, the Director of Policy Development and Community Outreach (the “Policy Director”), had in connection with an agenda item that was considered by Council on October 11 and 12, 2023. The agenda item was EC6.6 - Transitioning the Vehicle-for-Hire Industry to Net Zero Emissions by 2030 (“Item EC6.6”).
3. I determined this complaint was within my jurisdiction and that there were sufficient grounds to investigate. Having investigated, I have concluded that appropriate safeguards were observed. The Policy Director was not in a conflict of interest when he worked in Mayor Chow’s Office and there was no issue that needed to be addressed by Mayor Chow.

The Allegations of Misconduct, Intake Review, and Mayor Chow’s Response

The Allegations of Misconduct

4. The complaint alleged Mayor Chow violated Article 8 (Conflicts of Interest & Use of Influence) of the Code of Conduct.
5. The complaint alleged the Policy Director had been a registered lobbyist for RideFairTO and continued to work for, and be paid by, that organization when he was employed in the Mayor’s Office.
6. Specifically, the complaint alleged the Policy Director was:
 - a) “[L]isted as a RideFairTO in-house lobbyist” when he was working in the Mayor’s Office.
 - b) “[A]ctively involved in the sudden introduction of a policy to cap the number of rideshare driver licences, introduced and passed on October 11, 2023.”
 - c) “[D]uring the Council meeting on October 11, 2023, the Policy Director could be seen speaking directly with Mayor Chow and other councillors, and then shuttling

back and forth to the gallery to speak with representatives of the taxi industry. After the vote, [the Policy Director] could be seen shaking their hands in a congratulatory manner. Again, this was at the same time that he was a listed lobbyist and co-founder of a taxi-funded advocacy organization.”

7. The complaint also alleged Mayor Chow breached the rules in the Code of Conduct against acting in a conflict of interest because:
 - a) She did not ensure “[the Policy Director] was walled off from any involvement in the shaping of policy for which he has been advocating as a paid and registered lobbyist.”
 - b) She “lobbied [other members of Council] against rideshare companies Uber and Lyft while in office.”

Intake Review

8. If I decide in Intake Review that all or part of a complaint warrants investigation, the complainant is advised and the member of Council is given the complaint and asked to respond.
9. There were sufficient grounds to investigate the complaint for two reasons:
 - a) The details of how and when the Policy Director was removed from the Toronto Lobbyist Registry needed to be confirmed.
 - b) Registered lobbyists for RideFairTO (the principals of the consulting firm Metstrat) reported in the Toronto Lobbyist Registry they communicated in writing with the Policy Director after he was hired by the Mayor’s Office, but the precise details of those communications are not reported in the registry.
10. Following Council’s consideration of Item EC6.6, Uber Canada Inc. and Uber Rasier Canada Inc. (“Uber”) initiated legal proceedings challenging the temporary moratorium on issuing ride hailing vehicle licenses that Council had adopted in a motion that amended this item. City staff returned to Council on December 13, 14 and 15, 2023 to obtain instructions on the litigation and, at that time, Council voted to rescind the temporary moratorium¹.

¹ CC13.7 - Uber Litigation Regarding Limit on Number of Private Transportation Company Driver Licences.

11. As the subject matter of this complaint related to potential or actual litigation and was still under consideration by Council in its December meeting, I waited until Monday, December 18, 2023 to begin my investigation. On that date, I advised the complainant and Mayor Chow I would investigate whether Article 8 (Conflicts of Interest & Use of Influence) of the Code of Conduct had been broken.

Mayor Chow's Response

12. In response to the complaint, legal counsel representing Mayor Chow advised me on January 12, 2024 that the Policy Director removed himself as an "in-house" lobbyist for RideFairTO prior to beginning his employment with the Mayor's Office and received official confirmation from the Lobbyist Registrar that he did so. Legal counsel provided my Office with the documents confirming these details.
13. Legal counsel for Mayor Chow also advised "persons representing RideFairTO have had communications with the Mayor and Mayor's office staff, including with [the Policy Director], since [the Policy Director] joined the Mayor's staff. We assume that, where appropriate, such communications have been disclosed by RideFairTO." However, legal counsel did not provide my Office any documents or details about the communications between the Policy Director, or anyone else in the Mayor's Office, and RideFairTO.
14. Accordingly, my Office needed to investigate these details.

B. Law and Policy

The Law

15. Under s. 157(1) of the *City of Toronto Act, 2006*, City Council is required to adopt a code of conduct governing its members. Council has adopted Article 8 (Conflicts of Interest & Use of Influence) that contains these rules:

A member must not:

- a) be involved in their capacity as a member in any activity where they have a real or apparent conflict of interest;
- b) use the influence of their office for any purpose other than for the exercise of their official duties;

- c) use their official status to improperly influence the decision of another person to the private advantage of themselves, or their parents, children or spouse, staff members, friends, or associates, business or otherwise; or,
 - d) try to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties.
16. The Commentary for Article 8 defines real and apparent conflicts of interest as follows:

8.3 A real conflict of interest exists when what a member does, or does not do, something in carrying out their official duties that is for their actual private advantage. An apparent conflict of interest exists when, even if it is not evident that a member has done or not done something for an actual private advantage, an objective person informed of the circumstances would reasonably conclude that a member would not be able to separate their private interest from how they carry out their official duties. An apparent conflict of interest is the same as a potential conflict of interest.

C. City Employment Policies governing the Mayor's Office

17. The people who work in the Mayor's Office support the implementation of her policy agenda. In the course of their work, they deal with the public, communities, media, other Members of Council and their staff, senior City officials, businesses, institutions and other governments.
18. The Mayor's Office staff are influential in City government and are perceived as speaking with the authority of the Mayor. In political terms, their careers are tied to the Mayor. Typically, they are young and have prior political and/or professional expertise and connections.
19. People are hired to work in the Mayor's Office because their knowledge, experience and contacts are considered useful to implement the Mayor's policy agenda. The policy priorities of a new Mayor may differ from the policy priorities of their predecessor. This is reflected in the people they hire to work in their office. The same is true with political staff at all levels of government in Canada.
20. Administratively, people working in the Mayor's Office are employees of the City of Toronto. However, they are contract staff, not permanent employees or members of the public service. Their employment contracts are signed by the City Clerk because their employment contract is with the City of Toronto, not the person who holds the office of

Mayor. As the Human Resources Management and Ethical Framework for Members' Staff (the "Ethical Framework for Members' Staff")² explains:

- a. Members' staff are not members of the public service. Rather, they are political staff and a unique subgroup of City of Toronto non-union employees. The City, as the employer, has certain statutory requirements and corporate responsibilities as do the Members as the immediate managers of staff working in their offices.
- b. While they are City employees, Members' staff are distinct from members of the Toronto Public Service and are governed by this Human Resources Management and Ethical Framework for Members' Staff and not the Toronto Public Service By-law.
- c. The unique nature of Members' staff requires that a separate Human Resources Management and Ethical Framework for Members' Staff be developed in order to ensure a common understanding of roles, responsibilities and authorities amongst Members, Members' Staff, City staff and to strengthen the separation between the administrative and political components of Toronto's government.

21. The Ethical Framework for Members' Staff was adopted by Council in August 2014. Its purpose is to:

- a. Provide clear guidelines for Members' with respect to the human resources management of their staff.
- b. Set out the key ethical framework for Members' staff working in their offices to guide their day to day activities in support of the Member.
- c. Delineate the roles and responsibilities amongst Members, Members' staff, the City Clerk's Office and the City as the employer of record.

22. The obligations of Members of Council, and in particular the Mayor, are described in these terms (emphasis added):

While Members' staff are City of Toronto employees, they are not members of the public service and therefore are not subject to the Toronto Public Service By-law. However, being government employees, they have similar ethical and employment requirements albeit with necessary modifications to reflect their unique status as Members' staff. **Consequently, Members have responsibilities for managing these staff and are required to enforce human resource and ethical policies to ensure both they and the City are meeting their legislative obligations and responsibilities. The Human Resources**

² EX44.2 -- Human Resources Management and Ethical Framework for Members' Staff (Adopted by City Council on August 25, 26, 27 and 28, 2014), <https://secure.toronto.ca/council/agenda-item.do?item=2014.EX44.2>

Management and Ethical Framework applies to all individuals employed in Councillors' Offices and the Mayor's Office.

23. The Ethical Framework for Members' Staff states: "Members are accountable for the management of their staff in compliance with applicable legislation and City policies." Members are obliged to manage their office and staff in accordance with the City's statutory obligations, the Ethical Framework for Members' Staff, the Code of Conduct for Members of Council and applicable City employment related policies and guidelines.
24. The Ethical Framework for Members' Staff also sets out the conflict of interest obligations that political staff must follow. It also states: "Members' staff will act responsibly, disclosing all actual or potential conflict of interest situations to the Member and behave in a manner that would not create the perception that the Member deliberately or inadvertently breached the Code of Conduct."
25. The Ethical Framework advises that a staff person may have a real or apparent conflict of interest:
- a) When they have private interests that could compete with or that may be perceived to compete with their duties and responsibilities as a Member's staff.
 - b) Where they use their position for private gain or expectation of private gain, non-monetary or otherwise.
 - c) When the private interest benefits the staff's family, friends or organizations in which the staff or his or her family or friends have a financial interest.
26. Recognizing these requirements, the contracts of employment for political staff incorporate the terms and conditions of the Ethical Framework and specifically require staff to be familiar with and comply with the Code of Conduct and conflict of interest policies³. To address the possibility of conflicts of interest arising from outside employment, those contracts provide (as did the Policy Director's) an exclusive service provision that the staff person is obligated:

[To] devote the whole of your working time and attention to your assigned duties and shall not, without the written permission of the Member of Council obtained in advance and subject to the City's policies in effect from time to time, engage directly or indirectly in any other business, occupation or profit-making venture or undertaking,

³ See Appendix A for full text of Section 3: Conflict of Interest

whether of a permanent, temporary or part-time nature, and whether or not you receive compensation.

D. Investigation

Investigation Process

27. Pursuant to s. 160 (3) and (4) of the City of Toronto Act, 2006, we obtained copies of the Policy Director's employment contract from the Clerk's Office and verified it contained the required conflict of interest provisions.
28. We also asked for and received help from the Office of the Chief Information Security Officer (CISO) to locate and provide all emails from August 1, 2023 to December 15, 2023 (inclusive):
 - a) Between the principals of Metstrat and any account using the "@toronto.ca" domain.
 - b) Sent from, or received by, the Policy Director's City of Toronto email account targeting specific and relevant search terms.
29. We reviewed the audio-visual recording on the City of Toronto's YouTube channel of the October 2023 Council Meeting where Item EC6.6 was considered.
30. We separately interviewed Mayor Chow and her Chief of Staff. They fully cooperated with the investigation and both agreed to voluntarily provide information to my Office.
31. We interviewed the Policy Director. As we needed to ask him to provide private records, and the inquiry touched on how he performed his duties, I believed it appropriate to issue a summons and interview him under oath. He fully cooperated with the investigation by my Office.
32. We also asked for further detail from the complainant about some of the allegations they made in their complaint.

The Policy Director's employment prior to joining the Mayor's Office

33. Prior to joining the Mayor's Office, the Policy Director was a communications consultant. He was the sole employee of his unincorporated one-person business and had a website for it, which our investigation found remained live after he joined the Mayor's Office.

34. At one point, the Policy Director had been a paid and registered lobbyist for the Amalgamated Transit Union, Local 113 (“ATU 113”)⁴. He testified he was involved with RideFairTO before joining the Mayor’s Office, that he was one of the founders of the organization, but was not paid for his work by them. He told us that initial funding for RideFairTO was provided by ATU 113.
35. The Policy Director told us that he had, prior to joining the Mayor’s Office, been paid for work he did with Metstrat, another consulting firm. Metstrat, which has two principals (who will be referred to as “Lobbyist A” and “Lobbyist B”), helped establish RideFairTO and registered themselves together with him in the Toronto Lobbyist Registry on March 17, 2021⁵.

The Policy Director’s employment in the Mayor’s Office

36. The Policy Director’s employment records show he was on temporary contract with the Mayor’s Office between July 31, 2023 and March 1, 2024. He left that employment when the term of his contract expired. Mayor Chow advised this was an interim position in her office.
37. The Policy Director’s terms and conditions of employment contain the conflict of interest and exclusive employment provisions described in paragraph 26, above.
38. In order to comply with these employment requirements, the Policy Director testified that he ended his private communications consulting work. For this reason, he contacted the Toronto Lobbyist Registrar on July 29, 2023 to advise he had just accepted a job at the City of Toronto and asked to be removed from the registration as an in-house lobbyist for RideFairTO and to have his inactive consultant lobbyist registration for ATU 113 closed. Consequently, his two registrations were closed but the fact that they had once existed could not be removed from the registry. For open subject matter registrations, the Toronto Lobbyist Registry does not publicly note particular lobbyists who have deregistered; they continue to be listed along with currently registered lobbyists.
39. This conclusively shows that the Policy Director was not, as the complaint alleges, an active lobbyist for RideFairTO when he was working in the Mayor’s Office. With this

⁴ Consultant Lobbyist Subject Matter Registration SM31962

⁵ In-house Lobbyist Subject Matter Registration SM31418

question answered, the remaining question was whether he was acting in a real or apparent conflict of interest, which ought to have been addressed by Mayor Chow but was not.

The Policy Director's prior association with Mayor Chow

40. Before becoming a communications consultant, the Policy Director had worked at City Hall for a member of Council, and later, a Mayor of Toronto. When Mayor Chow previously served as a member of Council, the Policy Director said he worked with her as would be typical for political staff to work with another member of Council. Mayor Chow confirmed this.
41. The Policy Director testified that he knew Mayor Chow from working on various election and leadership campaigns of Mayor Chow, and her husband, for over 20 years. Mayor Chow could not pinpoint when he had done so but confirmed this could well have been the case as her campaigns included many volunteers.
42. Prior to being elected, Mayor Chow served as the executive director of an organization that teaches advocacy, lobbying and community organization skills. Our investigation found the Policy Director had previously taught communications skills courses offered by the organization, which both the Policy Director and Mayor Chow confirmed.
43. For her 2023 mayoral by-election, Mayor Chow advised that the Policy Director had advised her campaign on public transit /TTC policy.
44. After the mayoral by-election, the Policy Director also testified that he advised members of Mayor Chow's transition team about mayoral office operations. Mayor Chow said he was not a member of her formal transition team housed at City Hall.
45. The Policy Director testified that he was recruited to work in Mayor Chow's office because he had previous experience in working in a mayor's office, which others hired did not have. He was also hired to provide policy advice and deal with stakeholders.
46. Mayor Chow advised that, for the position of Director of Policy Development and Community Outreach and many other positions, the recruitment and selection was delegated to her Principal Secretary (who was another person hired on a temporary basis to assist with the transition and set up of the Mayor's Office following the election).

The Policy Director's role in the Mayor's Office

47. Mayor Chow explained that the role of the Director of Policy Development and Community Outreach position in her office was designed, in the days following her assumption of office, to support the creation of the new policies she wished to pursue in her term. She advised this was a temporary role that would end once her first budget was adopted. She also advised that the implementation of her policy agenda was assigned to the Director of Legislative Affairs and Implementation (the "Director of Legislative Affairs") and that position's supporting team, sometimes referred to as the "Council Team". The Policy Director and the Director of Legislative Affairs reported to the Chief of Staff who, as Mayor Chow described and as the Chief of Staff confirmed, manages the Mayor's Office.
48. Very early in Mayor Chow's term she gave specific direction to the Policy Director about her priorities concerning the licensing of ride-hail vehicles by the City of Toronto. On August 7, 2023, Mayor Chow sent the following email to the Policy Director:

Dear [Redacted],

I long held the belief that the city should put a cap (moratorium) on giving out Uber licenses.

I asked the staff to report, and [here it is](#) from Carleton Grant Municipal Licensing and Standards - Policy and Strategic Support. On Thursday, I dictated a note via [Redacted] to the council team to follow up - and I doubted she had time to do so.

Since then, I saw this article: [link to: "Once you get an EV with Uber, you'll be stuck": Driver says program to reduce emissions keeps drivers on the road longer for less pay," Toronto Star, August 7, 2023] And found out that you are behind the High Emission and Low Pay report.

I want to bring a motion to the September 6 Council asking for a temporary moratorium to the granting of uber licenses until the staff 2024 comprehensive report, based on three reasons:

1. Lessen congestions. PTC accounts for 8-14% in some downtown neighborhoods (e.g., Bay Street Corridor and Kensington-Chinatown).
2. More people will use transit: UTTRI research found that 49% of surveyed PTC users would have taken transit in the absence of PTCs for their last PTC trip.
3. Better livelihood for both uber and taxi drivers.

There will be a fall report regarding "Transitioning the Vehicle-For-Hire Sector to Net Zero by 2030". Perhaps we can exempt hybrid or electric vehicles licenses in this [moratorium].

Let's discuss what steps we need to take to win this cap.

49. The newspaper article linked in Mayor Chow's email referred to a RideFairTO report, which commented that most ride-hail vehicles are circulating without passengers and "Uber has an incentive to provide large numbers of idle drivers: idle drivers provide low wait times and drive demand⁶."

50. In reply to Mayor Chow's email the next day (August 8, 2023), the Policy Director wrote:

Hi Olivia,

Thanks for this. Obviously I'm hugely supportive. We can get both taxi and uber drivers behind it and the policy rationale is very strong. It's a winnable vote that will make a meaningful difference, immediately, in the lives of tens of thousands of workers.

If you want a quick briefing on the impact of uber on transit have a look at my deputation to TTC here.⁷

They have not addressed any of the issues I raise. There's (sic) new research. They are still using flawed travel time congestion data that doesn't measure pre-Uber baseline, and they don't look at driver utilization rate as proxy for demand. Also the different city comparisons didn't look at the number of drivers per capita or number of trips per driver. They cherry-picked the number that works best for Uber.

Talk soon,

[Redacted]

51. At the TTC Board meeting on February 28, 2023, which is linked in his reply to Mayor Chow, the Policy Director and Lobbyist B on behalf of RideFairTO deputed that the pre-pandemic reduction in TTC ridership correlated with the introduction of ride-hail vehicles in Toronto.

52. Once Mayor Chow advised the Policy Director of her policy priority and its underlying rationale, he began compiling supporting evidence for the direction he was given. In the weeks leading up to Item EC6.6 being considered at Council, he called Lobbyist A and/or Lobbyist B to ask them to provide the Mayor's Office this information. In reply, they would email him the information that he requested.

53. On September 13, 2023, Lobbyist B emailed the Policy Director a research memo concerning the pricing of ride-hail trips that described that low-priced trips are made possible by having a large fleet of vehicles available to accept trip requests on short

⁶ "High Emissions and Low Pay: Uber is Still Taking Regulators for a Ride," A report for RideFairTO, January 2023.

⁷ YouTube link to TTC Board meeting, February 28, 2023, Presentation on behalf of RideFairTO entitled "2023 Service Alignment: Ridership Demand."

notice, but this means that some cars may be idle for long periods of time. At the time, this email was reported to the Toronto Lobbyist Registrar by Lobbyist B.

54. On September 28, 2023, Lobbyist B emailed the Policy Director two emails:
- a) A copy of RideFairTO's September 2023 newsletter. It discussed the challenge of reaching net-zero emissions targets for taxis and ride-hail vehicles and what financial incentives were needed to help purchase zero emission cars.
 - b) A spreadsheet showing the number of licences the City of Toronto held by drivers of personal transportation companies between 2018 and 2022.

These emails were also reported by Lobbyist B to the Toronto Lobbyist Registrar.

55. On October 4, 2023, Lobbyist B emailed the Policy Director a research memo about the experience that New York City recently had limiting ride-hail licences and other measures that it adopted to improve the compensation paid to taxi and ride-hail vehicle drivers. This email was also reported by Lobbyist B to the Toronto Lobbyist Registrar.
56. On October 6, 2023, Lobbyist B emailed the Policy Director a spreadsheet comparing the announced decarbonization plans for the TTC, the fleet of vehicles owned or controlled by the City of Toronto, vehicles for hire regulated by the City of Toronto, and private transportation companies that use city infrastructure. This email was also reported by Lobbyist B to the Toronto Lobbyist Registrar.
57. On October 14, 2023, Lobbyist A emailed the Policy Director a copy of a message that Lobbyist A emailed the Mayor and all members of Council, on behalf of RideFairTO, thanking them for "standing up for drivers and working to make transportation more sustainable." It also complained about communications that Uber was alleged to be sending out after the October 2023 Council meeting. This email was also reported by Lobbyist A to the Toronto Lobbyist Registrar.
58. However, there were two emails in this time period that the Policy Director received that do not appear to be reported to the Toronto Lobbyist Registrar:
- a) An email dated August 11, 2023 from someone involved with RideFairTO who emailed Lobbyist A and Lobbyist B, and copied the Policy Director, including a spreadsheet describing how many taxi licences are actually assigned to a vehicle in Toronto.

- b) An email dated October 11, 2023 (just after 6:00 p.m.) from Lobbyist A to the Policy Director including a media release from RideFairTO, issued by Lobbyist A, commenting on Council's adoption of Item EC6.6 that afternoon.
59. Before Item EC6.6 was considered by Council, RideFairTO also emailed people in the Mayor's Office other than the Policy Director. On September 11, 2023, Lobbyist B emailed the Director of Legislative Affairs requesting a meeting with Mayor Chow to discuss Item EC6.6. This email was not sent to the Policy Director and is reported in the Toronto Lobbyist Registry.
60. While the emails that Mayor Chow and the Policy Director exchanged on August 7 and 8, 2023 dealt with City of Toronto business, they were sent and received on private email accounts. One of these addresses the Policy Director sometimes used was the email address for his private communications business. Similarly, the emails described in paragraphs 53 and 58 which concerned official matters were sent to his private business email address. While these emails and their attachments were initially sent to his private email address, in the autumn of 2023 (pre-dating the start of this inquiry) the Policy Director sent them to his official City of Toronto email address as they were official communications.
61. We asked the Policy Director about why he was using a private email address for official business. For the August 2023 emails, he testified there was a delay in the setting up of his City of Toronto email address. For the later emails, he testified that prior to joining the Mayor's Office he communicated from his private email address with Lobbyist A and Lobbyist B using a free and open-source webmail solution that helps manage emails and that it was convenient for him to continue communicating with them in this manner despite the fact his role had changed and these were official communications.
62. Consistent with Mayor Chow's policy priority stated on August 7, 2023, Council adopted a temporary moratorium on ride-hail licences on October 11, 2023 in its consideration of Item EC6.6. A motion from Deputy Mayor Colle implemented this policy. As Mayor Chow described in her interview with my Office, her Council Team worked with Deputy Mayor Colle to introduce this motion.
63. Mayor Chow also spoke on Item EC6.6. Her speech in favour of the temporary moratorium reflected the same views she expressed to the Policy Director in early August. When asked, Mayor Chow said she conducted most of the policy research behind her

remarks. She did not rely, for example, on background information from the Policy Director about New York City's recent experience as she had independently consulted people from New York City who were directly involved in managing this issue.

64. We also reviewed the audio-visual recording of the Council proceedings on the City of Toronto's YouTube channel. Prior to the debate on Item EC6.6, the Policy Director can be seen sitting and conversing with others who work in the Mayor's Office and another member of Council and their Chief of Staff.
65. The complainant was not present when Council considered Item EC6.6. Their allegations about how the Policy Director interacted with others in the Council Chamber is based on what other people told them and included pictures, which they sent to us, that someone else took of the Policy Director sitting with Lobbyist A and Lobbyist B at some point in the day on October 11, 2023. The complainant also says the audio-visual recording shows that after the vote on Item EC6.6, the Policy Director can be seen:
 - a) "chatting with" and arranging for a photo of Mayor Chow with someone believed to be involved with RideFairTO; and,
 - b) "heading towards the exit from the same direction and at the same time as individuals who [the complainant believes] are likely representatives from the taxi industry."
66. As the complainant describes, these observations were not the main motivators behind their complaint. The complainant said their chief concerns were that:
 - a) the Policy Director was listed as an active lobbyist in the Toronto Lobbyist Registry while working in the Mayor's Office,
 - b) his LinkedIn profile shows that he was a co-founder of RideFairTO; and,
 - c) emails will show the Policy Director was acting inappropriately.

After the October 11, 2023 Council meeting

67. As described at paragraphs 10 and 11 above, Council's October 11, 2023 decision on Item EC6.6 (as amended) gave rise to litigation and further public debate. When Council revisited this matter, as reflected in the December 2023 debate at Council, Mayor Chow changed her policy preference of imposing a temporary moratorium on ride-hail licences.
68. From interviewing the Policy Director, it is clear that he did not prefer the change of policy direction. In the weeks that followed the October 2023 Council meeting, he testified that when this subject matter was being discussed at meetings in the Mayor's Office, it would be placed at the end of the agenda and he would be asked to leave the meeting. When asked about this, Mayor Chow said she was not aware of this taking place and that we should ask her Chief of Staff about this as she would be managing such matters.
69. We asked the Chief of Staff whether what the Policy Director described was accurate. Her description was more nuanced. She advised that as the change of policy direction was being managed by the Council Team, the input of the Policy Director was not required. On this and other matters, it became less necessary to consult him as the office's initial "policy development" phase was drawing to a close and these were "policy implementation" matters. The Chief of Staff also remembered there were specific matters that the Policy Director was screened from as they dealt with topics a close family member of his had an interest in.
70. From interviewing the Policy Director, Mayor Chow, and the Chief of Staff, I infer that, if there was disagreement about the change in policy direction, it observed professional norms. The Policy Director testified he left on good personal terms at the end of his temporary employment contract, which both Mayor Chow and the Chief of Staff confirmed.
71. When specifically asked, both Mayor Chow and the Chief of Staff were aware the political staff needed to avoid real and apparent conflicts of interest and staff needed to maintain confidentiality. They both said the Policy Director respected these requirements.
72. The Policy Director also testified he was careful to respect confidentiality and avoid real and apparent conflicts of interest in the Mayor's Office. As he said in his interview, he did not believe it fair to be accused of inappropriately lobbying or influencing Mayor Chow for his own private gain when from the outset of his employment in the Mayor's Office he had

been given specific direction from Mayor Chow to help develop a policy that she had already decided to pursue.

73. Finally, it is important to note that while the policy issues arising from Council's adoption of Item EC6.6 (as amended) were primarily being managed by the Council Team, Lobbyist A and Lobbyist B continued to communicate with Mayor's Office staff other than the Policy Director.
74. On October 16, 2023, Lobbyist B sent Mayor Chow a copy of a message she sent to the Director of Municipal Licensing and Standards complaining about alleged communications from Uber with their "customers and drivers" after the October 2023 Council meeting. This email is reported in the Toronto Lobbyist Registry.
75. On November 13, 2023, Lobbyist B emailed the Director of Legislative Affairs requesting to "check in" with her about "immediate next steps" on this the issues relating to Item EC6.6 (as amended). This email does not appear to be reported in the Toronto Lobbyist Registry.
76. On November 22, 2023, as reported in the Toronto Lobbyist Registry, Lobbyist A called and spoke with the Special Advisor on Issues and Research (the "Special Advisor"), who reports to the Director of Legislative Affairs.
77. On November 29, 2023, the Special Advisor emailed Lobbyist B and asked: "Could you send me any information you have on MLS's implementation of council's PTC license cap decision?" Later that day Lobbyist B replied with a detailed two-page analysis of the "operationalization of the pause" by the City of Toronto's Municipal Licensing and Standards division. The Special Advisor emailed the information he received to others in the Mayor's Office, including the Policy Director. The email exchange between the Special Advisor and Lobbyist B does not appear to be reported in the Toronto Lobbyist Registry.

E. Analysis

78. In determining whether a member of Council has breached a provision in the Code of Conduct, I apply the “balance of probabilities” test. Proving something on a balance of probabilities means proving that something is more likely than not to have occurred. In applying this standard, I have also considered the evidence from the perspective of an objective observer, apprised of the circumstances, and the reasonable conclusions that they would make.
79. Although the “balance of probabilities” standard is lower than the criminal standard of proof (“beyond a reasonable doubt”), it requires more than mere speculation to be met. It requires that findings must be made on evidence that is “clear, convincing and cogent.”⁸
80. My Office’s inquiry into this matter concerns Article 8 (Conflicts of Interest & Use of Influence), which prohibits someone being involved in something where they have a real or apparent conflict of interest. Article 8 also prohibits someone using their official status to improperly influence the decision of another person for the personal advantage of themselves or someone close to them.
81. Conflicts of interest arise when the private interest of someone conflicts with their official duties. A real conflict of interest exists when someone does, or does not do, something in carrying out their official duties that is for their actual private advantage. An apparent conflict of interest exists when, even if it is not evident that someone has done or not done something for an actual private advantage, an objective person informed of the circumstances would reasonably conclude that the person would not be able to separate their private interest from how they carry out their official duties.
82. This matter concerns whether Mayor Chow appropriately managed the alleged conflict of interest of her Policy Director.
83. In considering this matter, I have followed the guidance provided by my predecessor, Commissioner Jepson, when she investigated a related question about how a mayor needs to approach matters where there is an allegation that their closest political advisors

⁸ Report Responding to City Council’s Request for an Investigation into the Conduct of the Board Members of the Toronto Parking Authority and the Emery Village Business Improvement Area, (June 10, 2019) see: <https://www.toronto.ca/legdocs/mmis/2019/cc/bgrd/backgroundfile-134432.pdf> at 20.

have a divided loyalty⁹. As Commissioner Jepson noted, to find a mayor violated Article 8, they would have to have used the influence of their office for a purpose other than the exercise of their duties. A mayor, like all members of Council, will have influence over decisions that will benefit any number of people, including some whom are their political supporters or allies. Involvement in a matter, or the exercise of influence, is only improper if it is for the purpose of the mayor's personal gain, or the personal gain of someone close to them.

84. As described above at paragraph 26 the employment contract that was signed by the City Clerk's Office with the Policy Director included comprehensive conflict of interest provisions.
85. It is clear the Policy Director took those requirements seriously.
86. As the evidence shows, and as the Policy Director testified, he clearly understood that he could not continue working for RideFairTO (and Lobbyist A and Lobbyist B) while in the Mayor's Office. He closed his registrations with the Toronto Lobbyist Registrar and stated at the time why he needed to do so.
87. In our investigation, we noted the Policy Director's business webpage was still online while he worked in the Mayor's Office. This was addressed by the evidence gathered in the investigation. When asked about his website, the Policy Director acknowledged this was true and explained that it was outdated and not monitored. While as a best practice he should have taken greater care in archiving it, it is not reasonable to conclude from its mere existence that he was working for RideFairTO on a paid or unpaid basis when he was employed by the Mayor's Office.
88. I disagree with the complainant's assertion that the record of former registrations in the Toronto Lobbyist Registry, or the social media profile that we were referred to, is sufficient to prove that the Policy Director was acting in a conflict of interest.

⁹ CC12.4 Report Regarding the Conduct of Mayor John Tory (January 28, 2016).

89. The Policy Director's use of his private business email during his employment in the Mayor's Office while inadvisable, was very limited. As a best practice, he should have set up an automatic reply to his private business email address that it was not being monitored or replied to. It is clear from the evidence that private email was not being used to circumvent the transparency and accountability requirements fulfilled by using his official City of Toronto email account to do work in the Mayor's Office. Well before my Office's investigation began, the Policy Director sent the emails dealing with these matters from his private email addresses to his City of Toronto email account and stopped using his private email account for official business.
90. Those emails, and others obtained through the forensic IT search, show that the Policy Director was working at the direction of Mayor Chow and no one else.
91. I agree with the complainant that the sightings of who the Policy Director sat or interacted with at the October 2023 Council meeting is not proof of any conflict of interest. These allegations did not lead to any useful line of investigation. It was abundantly clear that the Policy Director knew many of the stakeholders interested in Item EC6.6. His background working at City Hall and his connections in this community were valuable to have in the Mayor's Office for the policy priorities Mayor Chow wished to pursue.
92. It is clear the Mayor's Office hired the Policy Director because of his knowledge and familiarity with this and other public policy issues. When hired, the Policy Director's policy preferences aligned with those of Mayor Chow. He was hired to advance her policy objectives.
93. When the allegations made by the complainant were initially reviewed by my Office, there was a sufficient basis to investigate this matter. As the complainant and Mayor Chow were advised at the outset, the fact that a complaint warrants investigation should not be misinterpreted as meaning there has been any finding of misconduct.
94. Looking at the evidence obtained in connection with the different allegations in the complaint, it is not reasonable to conclude on a balance of probabilities that the Policy Director had a real or apparent conflict of interest in carrying out his duties. There is not clear and convincing evidence this was the case.

95. It is also clearly evident Mayor Chow's office was alive to concerns that political staff can have real or apparent conflicts of interest. There were formal contractual requirements in place that addressed this and, when the possibility arose on other files in the Mayor's Office where the Policy Director might have a conflict because of a family relationship, he was screened from working on such matters.
96. For the reasons set out above, I am dismissing this complaint.

F. Conclusion

97. While I have dismissed this complaint, I am exercising my discretion to report on the outcome of my investigation to Council to note a few matters.
98. I did not interview or investigate the conduct of either Lobbyist A or Lobbyist B as my Office does not have jurisdiction over lobbyists. Any specific questions about the compliance requirements that lobbyists at the City of Toronto must observe should be directed to the Toronto Lobbyist Registrar.
99. The complainant's general allegation that in Council's consideration of Item EC6.6 Mayor Chow was not permitted to "lobby" other members of Council to adopt her preferred policy is not accurate. In connection with this agenda item, she declared no pecuniary interest under the *Municipal Conflict of Interest Act* and had no real or apparent conflict of interest (nor as the evidence shows did her Policy Director).
100. Mayor Chow was elected in a by-election in 2023. Her predecessor and other members of Council had been elected nine months previously. After all other members of Council had been elected, the candidates in the mayoral by-election faced evolving issues and new policy challenges. As noted previously, the policy priorities of a new mayor may differ from those of their predecessors. Except for Code of Conduct or statutory prohibitions, a member of Council is always permitted to try to persuade other members to adopt a new policy. The substantive merits of a new policy is not something that can be assessed by an integrity commissioner.

101. Finally, it is important to reinforce that people who are hired to work in the offices of members of Council exercise great influence within city government. For that reason, they are held to a very high standard of conduct as it directly reflects on the elected official for whom they work. When there are questions about whether they are adhering to the rules governing their work, their actions may become the subject of a complaint and investigation if they have not followed best practices.

Respectfully submitted,

Jonathan Batty
Integrity Commissioner

Appendix A

HUMAN RESOURCES MANAGEMENT AND ETHICAL FRAMEWORK FOR MEMBERS' STAFF

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3. Conflict of Interest

Members' staff must not place themselves or their Member of Council in a direct or perceived conflict of interest.

Members' staff should always consult with the Member if they are unsure if there is a conflict or potential conflict with a specific situation.

A conflict of interest refers, but is not limited to a situation in which a Member's staff has private interests that could compete with or that may be perceived to compete with their duties and responsibilities as a Member's staff.

A conflict of interest can be a situation where the Member's staff use their position for private gain or expectation of private gain, non-monetary or otherwise. A conflict may also occur when the private interest benefits the staff's family, friends or organizations in which the staff or his or her family or friends have a financial interest.

Private (or personal) interest means a relationship, obligation, duty, responsibility or benefit unique to the Members' staff or a person related to the Members' staff.

Conflict of interest may include, but is not limited to the following situations.

a. *Preferential treatment*

Members' staff must not use their positions to give any one preferential treatment that would advance their own interest or that of any party where such advance is contrary to the interest of City.

b. *Gifts*

Members' staff must not accept, arrange to accept or request to be given a reward, gift, advantage or benefit of any kind from any person or entity that influences or could be perceived to influence the performance of his or her duties.

Members' staff may accept a gift of nominal value given as an expression of courtesy or hospitality, provided this does not influence, or be perceived to influence, the performance of the their duties.

A Member may decide that no gifts may be accepted under any circumstances. A Member's staff, who receives a gift in the performance of their duties, will immediately notify the Member.

c. *Employment of relatives*

Members' staff will abide by the City's Employment of Relatives Policy as one of the City's Human Resources Policies attached to their employment contract.

In cases where relatives of a Member staff are employed in the same office of the Member of Council, there must not be any work direction provided or any supervisory responsibility of one relative over another.

d. *Use of City property*

Members' staff must not use, or permit the use of any City property, including facilities, equipment, supplies, technology or other resources, for activities not associated with the performance of their duties. Any exception must be approved by the Member in advance.

e. *Use or disclosure of confidential information*

Members' staff may not, during the term of his or her employment or any time thereafter, directly or indirectly use or disclose any confidential information obtained during their employment with the Member, unless they are required by law or authorized by the Member in writing and in advance. The obligation to maintain confidentiality continues after the ceasing of employment.

Confidential information includes, but is not limited to, privileged information, draft by-laws or staff reports, third party information, personal information, technical, financial or scientific information and any other information collected, obtained or derived for or from any records that a Members' staff may come into contact with while employed in the office of the Member.

f. *Disclosure of financial interests*

Members' staff who have a financial interest or are involved in a decision-making process related to a City contract, sale or business transaction, or has family members, friends or business associates with such interest, must disclose their interest to the Member and remove themselves from any decision-making process. The Members' staff must sign a declaration that the staff will not engage in any activity related to the City contract, sale or business transaction.

g. *Appearing before City committees*

Members' staff may not appear before a City committee on behalf of a private citizen or third party, other than for themselves or a family member. Members' staff must identify themselves as such if they are making a deputation to a City or Agency committee, unless they appear as a private citizen on matters that do not relate to their employment.

h. *Engaging in outside work or business activities*

Members' staff may not engage in any outside work or business activity that conflicts with his or her duties in the Members' Office; or could benefit from confidential information obtained during the course of his or her employment.

Members' staff who engage in any other work or business activities must disclose these activities to the Member in advance.