

Report on Mayor John Tory, the Toronto Blue Jays and ActiveTO

**Jonathan Batty
Integrity Commissioner**

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ICT

OFFICE OF THE
**INTEGRITY
COMMISSIONER**
TORONTO

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A. INTRODUCTION

1. This report is about my investigation of Mayor John Tory under the *Municipal Conflict of Interest Act* (the “MCIA”) and his role in Council’s recent consideration of ActiveTO.
2. The ActiveTO program was created by City staff in 2020 after the COVID-19 pandemic struck Toronto. To provide respite from the closures and restrictions that had to be ordered, ActiveTO sometimes closed roads to traffic so people could use them to walk, run or bike to get fresh air and exercise.
3. This past summer, with the lifting of most closures and restrictions, ActiveTO became a topic of public debate. Mayor Tory joined that debate. Mark Shapiro, who is the President and Chief Executive Officer of the Toronto Blue Jays, also joined that debate. He wrote to Mayor Tory and asked him to vote against ActiveTO road closures.
4. Some questioned if it was appropriate for Mayor Tory to be involved because the Blue Jays are owned by Rogers, the business founded by Ted Rogers for whom Mayor Tory once worked. Mayor Tory is close to the Rogers family and is involved in their business affairs. Mayor Tory also has personal investments in their companies. This relationship has been known for years. Mayor Tory proactively disclosed it when he was first elected to Council in 2014.
5. In July 2022, Adam Chaleff applied to my Office to investigate if Mayor Tory’s participation in the debate about ActiveTO, before and at Council, was a contravention of the *MCIA*. I decided to investigate and have now completed my inquiry.
6. Once my Office completes an inquiry under the *MCIA*, I have to decide whether to take the matter to court. Only a judge can determine if the requirements of the *MCIA* have been broken and impose a penalty, if that is the case.
7. Having completed my inquiry, the evidence does not show that Mayor Tory violated the *MCIA*. I will not be applying to a judge to request such a determination or impose any

penalty. I have reached my decision based on this evidence, my analysis of how the law applies to these circumstances and the submissions I received from Mr. Chaleff and Mayor Tory. My reasons are set out below. If Mr. Chaleff disagrees with my conclusion, he is able to apply to a judge to request this determination himself.

B. EXECUTIVE SUMMARY

8. On July 22, 2022, I received an application from Mr. Chaleff alleging that Mayor Tory contravened the *MCIA* in connection with City Council’s consideration of IE30.19 “Revisiting ActiveTO Interventions on Lake Shore Boulevard West” at its June 15, 2022 meeting.
9. Mr. Chaleff noted that prior to Council meeting, Mark Shapiro, the President and CEO of the Toronto Blue Jays, had written to Mayor Tory on June 6, 2022 asking him to vote against continuing road closures as a part of the ActiveTO program, as it was adversely affecting people getting to games at the Rogers Centre. Prior to then, the franchise had expressed no concern about ActiveTO impacting its business.
10. The Blue Jays are owned by Rogers Communications Incorporated (RCI). Mr. Chaleff alleged Mayor Tory’s involvement with this issue was a breach of the *MCIA* because of Mayor Tory’s roles in RCI and the Rogers Control Trust (RCT).
11. I found there were sufficient grounds to investigate the matter. Due to the municipal election on October 24, 2022, I had to terminate my investigation on August 19, 2022. I resumed my investigation on October 28, 2022, once Mr. Chaleff asked me to do so.
12. My investigation found that Councillor Mark Grimes ghost-wrote Mr. Shapiro’s letter as part of the Councillor’s strategy to end ActiveTO road closures. When the letter was published in advance of the June 15, 2022 Council meeting, it fuelled the public controversy about these road closures. In advance of that meeting, Mayor Tory

personally defended Mr. Shapiro's right to make his views about the business impacts on the Blue Jays known, which added to the questions about whether he had a conflict.

13. Of note, Mayor Tory's screening template for identifying pecuniary interests includes the "Blue Jays." In this case, he thought he did not need to declare an interest because it was a traffic matter affecting many people.
14. My investigation found that ActiveTO road closures on Lake Shore Boulevard had only been scheduled on eight days coinciding with Blue Jays games between July and September 2021. Since September 2021 and for the future, City staff were not planning any such closures. For the closures that had occurred, there was no impact on attendance at games.
15. Once I finished collecting the evidence, I needed to consider four issues and how they applied to what I found. These are the issues and what the evidence showed.

Issue 1: Were ActiveTO road closures on Lake Shore Boulevard West the matter that was the subject of consideration in agenda item IE30.19 before Council on June 15, 2022?

16. Yes, the subject matter under consideration in agenda item IE30.19 was ActiveTO road closures on Lake Shore Boulevard West. It was not simply about a motion brought by Councillor Gord Perks on the Western Waterfront Master Plan, which would be a narrow interpretation of the *MCI*A that would not be consistent with caselaw.

Issue 2: Did Mayor Tory have a pecuniary interest, direct or indirect, with respect a matter that was before Council?

17. In answering this, I looked at two questions as required by caselaw:
 - a) whether Mayor Tory has a pecuniary interest in the Blue Jays; and,
 - b) if the Blue Jays had a pecuniary interest in IE30.19.

18. In answer to the first question, because he is a director of a corporation that controls the Blue Jays' parent company, the evidence shows that Mayor Tory has an indirect pecuniary interest in the Blue Jays for purposes of the *MCIA*.
19. In answer to the second question, I noted among other things that Mr. Shapiro:
 - a) wrote to Mayor Tory about the adverse impact ActiveTO was having on fans being able to attend home games;
 - b) asked Mayor Tory to vote against ActiveTO road closures; and,
 - c) said in an interview ActiveTO was not "fan friendly or business friendly" for the Blue Jays.
20. Together, I believe this evidence showed Mayor Tory did have an indirect pecuniary interest with respect to IE30.19, which was a matter before Council. It showed he has an indirect pecuniary interest in the Blue Jays and the Blue Jays had a pecuniary interest in IE30.19.
21. I then needed to consider if any exceptions in the *MCIA* applied to relieve Mayor Tory from having to declare an interest.

Issue 3: Do any of the exceptions in section 4 of the *MCIA* apply?

22. Mayor Tory submitted that he met the exception in section 4(j) of the *MCIA* as he had "a pecuniary interest which is an interest in common with electors generally." I disagree.
23. While Mayor Tory submitted ActiveTO road closures were a traffic issue that affected everyone alike and he needed to become involved as a matter of public interest, this exception only applies to a class or group where Mayor Tory's pecuniary interests are in common with those electors. Mayor Tory's indirect pecuniary interest as a director in the Rogers family ownership structure is not one that all electors would share.

24. Mayor Tory submitted that he also met the exception in section 4(k) of the *MCIA* as his interest was “so remote or insignificant in its nature” that it could not reasonably be regarded as likely to influence him. I agree this exception applies in this case.
25. The analysis is highly contextual and different factors will be relevant depending on the circumstances. In this case, amongst other things, there is no evidence Mayor Tory’s vote on IE30.19 resulted in any financial benefit or loss to him or the Blue Jays.
26. In short, the evidence shows the exception in s.4(k) of the *MCIA* relieved Mayor Tory from being required to declare an interest in this matter at Council.

Issue 4: Should the Integrity Commissioner apply to the court for a determination that Mayor Tory has contravened the *MCIA*?

27. Section 160.1(15) of the *City of Toronto Act, 2006* provides that upon completion of an inquiry under the *MCIA*, I may, if I consider it appropriate, apply to a judge for a determination as to whether a member of Council has contravened section 5, 5.1, 5.2 or 5.3 of the *MCIA*.
28. The evidence shows that the interest Mayor Tory had in the matter was “so remote or insignificant in its nature” that it could not reasonably be regarded as likely to influence him.
29. My conclusion could have been different if the evidence demonstrated the Blue Jays’ business operations had been materially affected by ActiveTO as Mr. Shapiro’s ghostwritten letter had initially suggested.
30. For these reasons, I will not be applying to a judge to request a determination that Mayor Tory has breached the *MCIA* or to impose any penalty. Mr. Chaleff has the right to do so, if he wishes.

C. THE MUNICIPAL CONFLICT OF INTEREST ACT

Background

31. In its eighteen-year history, this is the first inquiry under the *MCIA* that the Office of the Integrity Commissioner for the City of Toronto has conducted. Municipal integrity commissioners have only had jurisdiction over these matters since 2019. For that reason, it is important to provide some context about the *MCIA* before going in to the details of my inquiry.
32. The *MCIA* was first enacted in 1972. It permitted members of Council the ability to stay in office if they had a conflict of interest, so long as they disclosed the interest and abstained from voting on it. At its introduction, the law was described as “a new code to govern the entire field relating to conflict of interest as it may arise in relation to members of municipal councils and local boards.”
33. Since March 1, 2019, section 1.1 of the *MCIA* has specifically endorsed the following principles in connection with how members of councils and local boards perform their duties:
 - a) The importance of integrity, independence and accountability in local government decision-making.
 - b) The importance of certainty in reconciling the public duties and pecuniary interests of members.
 - c) Members are expected to perform their duties of office with integrity and impartiality in a manner that will bear the closest scrutiny.
 - d) There is a benefit to municipalities and local boards when members have a broad range of knowledge and continue to be active in their own communities, whether in business, in the practice of a profession, in community associations, and otherwise.

34. The ethical rules for the Mayor and Councillors on Toronto City Council are set out in two different places: the *MCIA* and the Code of Conduct for Members of Council (the “Code of Conduct”).
35. The *MCIA*, as provincial legislation, creates province-wide requirements that apply to all elected officials for Ontario’s 444 municipalities. It is focussed on their “pecuniary interests.” If there is an allegation the law has been breached, that determination may only be made in a legal proceeding before a judge under section 8 of the *MCIA*, who may ultimately order that someone be removed from office. Council has no role in deciding these matters.
36. In contrast, the Code of Conduct is unique to Toronto. Section 157(1) of the *City of Toronto Act, 2006*, which is also provincial legislation, requires Toronto City Council to adopt a code of conduct for itself that includes rules about: gifts, benefits and hospitality; respectful conduct towards City officers and employees; confidential information; and, use of City property.
37. As the Preamble to the Code of Conduct which Council adopted describes, its rules require the Mayor and Councillors on Toronto City Council to “avoid real and apparent conflicts of interest and the improper use of their influence.” This is a broader focus than the scope of “pecuniary interests” in the *MCIA*. Also different from the *MCIA*, determinations about alleged Code of Conduct violations are made by the Integrity Commissioner who reports to Council, which votes on whether or not to impose a reprimand or a pay suspension of up to 90 days if such a determination is made.
38. As Justice Cunningham noted in his 2011 “Report of the Mississauga Judicial Inquiry: Updating the Ethical Framework,”¹ municipal codes of conduct can help to regulate the conflicts of interest of members of council in a “more targeted and flexible manner” than can a provincial law such as the *MCIA*. The *MCIA* does not occupy the entire legislative field of conflict of interest, or even that concerning pecuniary interests. Municipal codes

¹ Associate Chief Justice Douglas Cunningham, Commissioner, Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure, November 11, 2009.

of conduct can go significantly further than the *MCIA* and be tailored to the types of relationships and circumstances that reflect the needs of the municipality. Until 2019, however, the code of conduct framework (including oversight by a municipal integrity commissioner) existed along-side but separate from the *MCIA* (where municipal integrity commissioners had no role).

39. Justice Cunningham recommended the two frameworks be integrated and that municipal integrity commissioners be afforded the mandate to investigate and to report on matters covered by the *MCIA*. Accordingly, the *MCIA* and *City of Toronto Act, 2006* were amended and since March 1, 2019 my Office has had jurisdiction to investigate alleged contraventions of the *MCIA* if an elector, or person demonstrably acting in the public interest, applies in writing for such an inquiry.
40. In February 2019, the Office of the Integrity Commissioner issued an interpretation bulletin to the members of Council and members of local boards advising of the new requirements to identify and disclose pecuniary interests and to seek advice when they had questions about doing so.

Comparative Context

41. MPPs are subject to proactive, annual and comprehensive financial disclosure requirements. Members of Council are not. Ontario's Premier and Cabinet Ministers must establish blind trusts to administer their investments and businesses; they are even prohibited from buying real property as an investment while they are in office. Mayors are not.
42. Under the *MCIA*, mayors and councillors are permitted to continue to be active in their businesses and professions and it is deemed by the *MCIA* to be beneficial if they do so. They need only to publicly disclose an interest if there is a meeting agenda item that affects a pecuniary interest and leave a closed meeting if one is being discussed.
43. As Justice Cunningham noted, under the *MCIA* members of council are not required to disclose "apparent conflicts of interest" or simply "private interests." Given that removal

from office by a judge is a potential penalty for breaching the *MCI/A*, he felt the adoption of such a standard would be too punitive. It is also important to remember that unlike members of Council, MPPs are not subject to removal from office by a judge for breach of conflict of interest laws.

44. I note these differences because I believe they are not widely understood by the public. Members of Council should be held to account according to the conflict of interest regimes that apply to them. Whether the rules governing members of Council should be more like those for MPPs is a topic for another forum but it is important to note that Justice Marrocco recommended this in 2020 in his report “Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry.”²

D. PROCEDURE

Introduction

45. My Office’s main function is to bring transparency and consistency to the oversight of members of Council and members of local boards under the City of Toronto’s accountability framework. Recognizing this, Council provides funding to the Office of the Integrity Commissioner to hire staff and external legal and investigative resources. This ensures that, in addition to the appointment of a full-time Integrity Commissioner, the Office has the expertise and administrative support it needs to serve the public.
46. In serving the public, we ensure our procedures are accessible. No fee is charged to submit a complaint under the Code of Conduct or an application under the *MCI/A*. Our forms are accessible, use plain language and are available online. We frequently explain, assist and accommodate people in submitting complaints and applications. A person does not need to hire a lawyer to submit something to us – or to respond to a complaint or application. However, if an applicant/complainant or respondent believes it important they have independent legal representation in an inquiry, my Office respects

² Associate Chief Justice Frank Marrocco, Commissioner, Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry, 2020.

that choice. In navigating the *MCIA*, for example, I believe it may be beneficial that people have independent legal advice with respect to the rights they have independent from anything involving my Office.

Intake Review and Notice of Inquiry

47. On Friday, July 22, 2022, my Office received an application from Mr. Chaleff, through his legal counsel, alleging that Mayor Tory contravened the *MCIA*.
48. Mr Chaleff asked me to investigate whether Mayor Tory contravened sections 5, 5.1 and 5.2 of the *MCIA* and to apply to a judge pursuant to section 8 to sanction Mayor Tory pursuant to section 9.
49. I acknowledged receipt of his application on Monday, July 25, 2022. In acknowledging receipt, I advised I would proceed with an intake review of Mr. Chaleff's application and its supporting materials, and his application would be considered in accordance with my Office's Complaint and Application Procedures.
50. At the intake review stage, I assess if my Office has jurisdiction and whether there are sufficient grounds to investigate a possible contravention of the *MCIA*. This is not a superficial exercise.
51. In reviewing an application, as part of the jurisdictional review, I need to assess whether the application accords with the technical requirements of section 8 of the *MCIA*, namely:
 - a) the applicant identifies as an elector in the City of Toronto or someone who is demonstrably acting in the public interest; and,
 - b) the application has been submitted within six weeks of becoming aware of the alleged contravention.
52. Mr. Chaleff's application included comprehensive legal submissions and supporting evidence that included these grounds:
 - a) In May 2022, City Council was asked to consider a proposal to revisit road closures along Lake Shore Boulevard West as part of the ActiveTO program.

- b) On June 6, 2022, Mark Shapiro, President and CEO of the Toronto Blue Jays wrote to Mayor Tory, Barbara Gray and the City Clerk's Office to ask that Mayor Tory not vote in favour of the extension of ActiveTO on Lake Shore Boulevard West.
 - c) Mr. Shapiro complained that the road closures caused by ActiveTO impacted sport fans' ability to come into and out of the city to attend Blue Jays' games at the Rogers Centre.
 - d) Mayor Tory commented publicly on the issue in the media and at City Council and proceeded to cast a vote on the issue on June 15, 2022.
53. In light of these grounds, Mr. Chaleff alleged that Mayor Tory violated the *MCIA*, based on his pecuniary interest in RCI, the owner of the Toronto Blue Jays and the Rogers Centre, and his involvement with the RCT Advisory Committee, which exercises control over the RCI shares held by the Rogers family.
54. On July 27, 2022, my Notice of Inquiry advised Mr. Chaleff that as a result of my intake review, I found his application was within my jurisdiction and that he provided me sufficient grounds to inquire into whether Mayor Tory violated sections 5, 5.1 and/or 5.2 of the *MCIA*. I cautioned at that stage I had not found Mayor Tory to have breached the *MCIA* nor had I decided that an application to the court was appropriate; I had only decided there were sufficient grounds to begin an inquiry.
55. I sent Mayor Tory my Notice of Inquiry on July 27, 2022, as well.

Media Attention

56. This application was made public by Mr. Chaleff before I had sent my Notice of Inquiry to him and Mayor Tory. I do not encourage this, but have no power to prevent this, so I am going to explain how I deal with these situations.
57. My Office typically treats matters in a confidential manner. In the intake and investigation stages, this offers protection to the reputation of the people involved. It also helps protect the integrity of an inquiry, should an investigation be warranted. In cases where a matter

- is dismissed at the outset for lack of jurisdiction or insufficient grounds to investigate, the fact of the complaint or application and its result is typically not shared with the respondent and the matter remains confidential. There is an important public policy reason for this. It may be intimidating to make a formal application about someone in power and this offers some level of protection to a person who may fear reprisal. My Office's Complaints and Application Procedures have been designed with this in mind.
58. Our procedures also give me discretion to vary this process where I feel it is appropriate. In the interests of fairness, when someone releases their application to the media, I release it to the respondent. In such cases, if I dismiss a matter at intake review, I also share the dismissal letter with the respondent.
59. In the intake and investigation stages, as I know the reputations of both an applicant and a respondent are at issue, my normal practice is not to confirm to the media that I have either received an application or will be investigating it. That said, I also have a duty to serve the public and promote an understanding of the City of Toronto's accountability framework, of which my Office's inquiry process is a key part.
60. Where an application is released to the media, it is in the public interest for me to acknowledge its receipt. However, I will only confirm with the media that I have received a complaint or application once I have advised the respondent or the applicant and am sure they are aware of it. The media may be left puzzled why, for example, I do not confirm to them I have received an application, even if they have a copy in hand. Again, I wait to do so in the interest of fairness.
61. Whenever I decide to investigate a complaint, both the applicant and respondent are advised in writing at the same time. In some instances, I have found that my Notice of Inquiry has been shared with others even when I have asked that it not be to preserve the integrity of my investigation. In these cases I may confirm I am investigating the matter but provide no further detail.

62. In this case, once Mr. Chaleff went public with his application, I provided it to Mayor Tory before I had decided whether to investigate. I confirmed with the media that I had received Mr. Chaleff's application only after advising Mayor Tory of the application.

The Investigation

63. As described below, this inquiry posed some challenges given the application was submitted in late July of a municipal election year.
64. Subject to an exception I will note below, under section 160.1(14) of the *City of Toronto Act, 2006*, I have 180 days after receiving an application to complete an inquiry. This is significant for applicants to my Office. The *MClA* limits them from beginning their own legal proceeding regarding an alleged contravention more than six weeks after making an application to my Office. Those limits are set out in section 8(3) paragraphs 1 and 2 of the *MClA*. After six weeks from my Office receiving an application, an applicant cannot bring their own application until I complete my inquiry and advise the applicant I will not be applying to the court myself – or 180 days has elapsed and I have not completed my inquiry.
65. The requirements described above are subject to special exceptions in a municipal election year. In an election year, section 160.1(12) of the *City of Toronto Act, 2006* requires that an inquiry must be terminated on nomination day in the election, whether or not I have completed the inquiry. In 2022, section 5 of the *Municipal Elections Act, 1996* prescribed that nomination day was August 19, 2022 and Voting Day was October 24, 2022.
66. Once my inquiry terminates on nomination day, section 8(3) paragraph 2(iii) of the *MClA* permits an applicant to apply to a judge alleging that a member of Council has violated the *MClA* more than six weeks after they learned of the alleged violation. In this case Mr. Chaleff, could have but chose not to apply to a judge as he might have done after August 19, 2022.

67. Once an application is terminated, I am not permitted to investigate any further. Mr. Chaleff asked that I complete my inquiry by August 19, 2022. The Notice of Inquiry I sent him stated as follows:
- You have requested that I expedite my inquiry and complete it before August 19, 2022. I intend to commence my inquiry right away, however I cannot guarantee a completion date to the parties until I have an opportunity to review the evidence. To best serve the public interest, my inquiry must be fair and diligent as it may result in either me dismissing the application or commencing legal proceedings.
68. Mr. Chaleff learned of the alleged violation of the *MCI/A* on June 15, 2022 which I confirmed with his legal counsel. Mr. Chaleff's legal counsel sent me his client's application on July 22, 2022, which was more than five weeks after the fact.
69. While Mr. Chaleff was within his right to wait this long to submit his application, the length of time he took to do so gave me only 19 business days to complete my inquiry, as he requested, before the mandatory August 19, 2022 termination date.
70. I began my investigation immediately, as I advised I would. Investigations require planning. Witnesses need to be identified and interviewed. Documents need to be obtained and reviewed. This cycle is repeated as new witnesses and documents are identified as relevant. A respondent must also be provided an opportunity to reply and rebut the allegations against them. Investigations must be open-minded and carefully executed. Rushed investigations are prone to mistakes.
71. The timing of Mr. Chaleff's application posed two specific challenges. First, the time in which I was asked to complete my inquiry in was about a tenth of the time the law provides. The second challenge concerned what can happen after an inquiry is terminated because of an election.
72. When an application is terminated because of an election, section 160.1(13) of the *City of Toronto Act, 2006* provides I may decide an inquiry be resumed after October 24, 2022 (Voting Day) if either the applicant or respondent request in writing that I do so.

73. In light of this provision, I knew I might be asked to resume my inquiry. I needed to prepare for that possibility prior to August 19, 2022.
74. The recall of witnesses does not improve with the passage of time. Pausing an inquiry midstream for any amount of time is detrimental. Pausing an inquiry for 66 days in the middle of an election, when some of the primary witnesses are elected officials (and their staff) seeking re-election, is not optimal. For that reason, in the period of time before August 19, 2022, I adopted an aggressive interview schedule to ensure I obtained evidence from people while their memories were fresh, and they could most easily access documents I might require. I interviewed witnesses right up to August 16, 2022.
75. On Wednesday, August 17, 2022, I wrote to Mr. Chaleff and said:
- As I advised I would, I began my inquiry right away but I will not be able to complete it by August 19, 2022. It will terminate on that date. Over the past three weeks I have diligently collected documents and interviewed witnesses in order to obtain and preserve a contemporaneous understanding of the relevant facts and events. However, in the interest of being fair and diligent, it is simply not feasible to collect all the necessary evidence, complete the required analysis, formulate my findings and report to the parties before August 19, 2022.
- At this point, I have made no determination one way or the other whether a contravention of the *MCIA* has occurred. The fact that I will not be completing my inquiry by Friday must not be interpreted otherwise.
- Following the mandatory termination of my inquiry this Friday, I will be prohibited from collecting any further evidence or relevant information, making any determinations or issuing any reasons concerning it.
- Pursuant to section 160.1(13) of the *City of Toronto Act, 2006*, after Voting Day, I may resume this inquiry if you or Mayor Tory request me to do so within six weeks of that day. Consequently, if you wish me to continue my inquiry into your application after the 2022 municipal election, please submit your request to me in writing after October 24, 2022 and no later than December 5, 2022.
76. On October 25, 2022, I wrote to Mr. Chaleff and Mayor Tory and advised each that if they wished me to recommence this inquiry, they needed to write me before December 5, 2022, as required by the *City of Toronto Act, 2006*. I also advised them the decision to recommence an inquiry is at my discretion and that I would advise them of my decision.

77. On October 28, 2022, Mr. Chaleff requested in writing that I recommence this inquiry. I considered his request and replied the same day that I would. I also advised Mayor Tory that day that Mr. Chaleff had requested I recommence this inquiry and that I had decided to do so.
78. I resumed my inquiry and promptly completed the remaining witness interviews, review of documents and research. Following this, I analysed the evidence in accordance with the requirements of the *MCIA*, which is set out in detail in my report.
79. This was a significant inquiry that raised important questions. I believed it was in the public interest to have them investigated and answered thoroughly, impartially and promptly. My Office started its inquiry on July 25, 2022 and completed it with delivery of this report on December 20, 2022. Excluding the 70-day period from August 19, 2022 to October 28, 2022 when it was terminated, we have completed it within 81 days.

Evidence Obtained

80. In Section E: Evidence, my report describes the relevant evidence in this inquiry: who I spoke with; what they told me; what documents I obtained from them and what information I independently obtained. I have recounted this in a chronological narrative as I believe it best explains what occurred.
81. In the course of my inquiry, it was not necessary to interview or obtain additional submissions from Mr. Chaleff. He had no personal involvement in the events at issue and provided detailed information and helpful submissions on the substantive issues raised in his application.
82. Mayor Tory, in response to the complaint, provided written submissions as he was entitled to do in accordance with our procedures. I also interviewed Mayor Tory and two members of his staff who had personal involvement in the events at issue. I would like to thank Mayor Tory and his staff for their full and timely cooperation throughout my inquiry.

83. I received full cooperation from other witnesses. For one of these interviews, I did issue a summons to ensure I received the evidence in a timely way.
84. In Section F: Analysis, my report assesses the evidence in accordance with the requirements in the *MCI*A.

Conclusion of Inquiry

85. Section 160.1(15) of the *City of Toronto Act, 2006* provides that upon completion of an inquiry under the *MCI*A, I may, if I consider it appropriate, apply to a judge for a determination as to whether a member of Council has contravened section 5, 5.1, 5.2 or 5.3 of the *MCI*A.
86. In Section F: Analysis, I also explain why I have concluded that I will not be applying to a judge with respect to the allegations made by Mr. Chaleff about Mayor Tory. As I note in that section, if Mr. Chaleff disagrees with my conclusion, he is able to apply to a judge to request this determination himself.

Publication of Report

87. My Office's Complaints and Applications Procedures require me, once I have completed my inquiry, to report to the applicant and respondent. I have done so by giving Mr. Chaleff and Mayor Tory a copy of this report. I will also be posting it to my [Office's website](#) and CanLII to comply with the requirement in 160.1(17) of the *City of Toronto Act, 2006* that I publish written reasons for the decision I have made.

E. EVIDENCE

Mayor Tory's Rogers Interests

88. As noted in Section C: The *Municipal Conflict of Interest Act*, there is no mandatory financial divestment or annual disclosure regime for members of Council.

89. The *MCIA*'s current declaration of interest requirements did not come into effect until 2019. Nevertheless, Mayor Tory voluntarily and publicly disclosed the following to the Office of the Integrity Commissioner in November 2014:

With respect to Rogers, as you may know, I stated during the election campaign that I intend to resign from the Board of Directors of Rogers Communications Inc. ("RCI") to devote the time involved in that role to my job as Mayor.

In addition to the directorship in RCI which I intend to resign, I am also a trustee (and in certain circumstances could also become a beneficiary) of various Rogers family-related trusts, a member of the Advisory Committee for the Rogers Control Trust, and a member of the board of certain companies within the Rogers family structure. I do not intend to resign from these positions because of the personal commitment I made and the moral obligation I have to the late Ted Rogers and the Rogers family.

Accordingly, I will declare an interest generally in any consideration by Council or a local board of matters involving a Rogers-controlled company, whether or not I am required to do so under the Act. I also intend to establish a framework for monitoring and proactively addressing any potential issues that could arise with the assistance of my staff, information on their activities from Rogers and ongoing advice from external counsel.

90. Mayor Tory has declared interests at Council in connection with Rogers on many occasions. In 2019, in the context of potential land redevelopment around the Rogers Centre, Mayor Tory also established a screen within his office. Specifically, he refrained from involvement in discussions about the possible redevelopment of the Rogers Centre and affected lands, informed his staff that they could not receive or handle inquiries related to the same, and that they should instead refer inquiries to the local Councillor.
91. Mayor Tory wrote to members of Council, senior members of the public service and the accountability officers to advise them that he should not be briefed or consulted on the topic. He prepared to declare an interest in the case that any matter came before Council or a board or committee on which he sits. He also disclosed advice he had been given from the Office of the Integrity Commissioner in a letter dated August 8, 2019 about how to establish this screen.

92. Because Mr. Chaleff's application makes allegations about Mayor Tory's pecuniary interest in Rogers, it was relevant for me to obtain further details about the positions Mayor Tory holds and that he disclosed at a high level in 2014. Mayor Tory provided me the following information. He is:
- a) a trustee of the Rogers Control Trust;
 - b) a member of the Advisory Committee for the Rogers Control Trust;
 - c) a director of E.S.R. Limited;
 - d) a director of Rogers Telecommunications Limited;
 - e) a director of Rogers Voting Shares Holdings Incorporated; and,
 - f) a trustee for the Rogers 2008 Future Generations Trust and four other Rogers family-related trusts that are part of the Rogers-family ownership structure.
93. Mayor Tory receives compensation from some, but not all, of these positions. Where he does receive compensation, it includes a flat fee that is not tied to the performance of RCI or its subsidiaries. He sometimes receives monetary compensation that is calculated based on RCI share prices.
94. Mayor Tory owns shares, in his own right, in RCI. In a separate investment vehicle, he and some of his family together hold shares in RCI, which they have done for many years prior to his assuming office in 2014. These shareholdings, either separately or together, do not constitute a "controlling interest" in RCI as defined by section 1 of the *MCIA*. These shareholdings provide dividend income. At no time relevant to the events alleged in this application was there a sale or purchase of shares.
95. Mayor Tory, as a former executive of RCI, also receives a very modest monthly discount in his telephone bill from Rogers. This is the only other benefit that Mayor Tory advises he receives from the Rogers family of companies. For greater certainty in response to our questions concerning the Blue Jays, he advised he does not receive free or discounted tickets, special tickets, or access to a box at the Rogers Centre.
96. The *MCIA* does not disqualify Mayor Tory from receiving these benefits, being an investor in RCI, holding these positions or receiving this compensation. The *MCIA*

recognizes and encourages members of Council to have such interests. Instead, the *MCIA* requires that in some situations he must declare an interest in a matter where: it could affect his personal finances (a direct pecuniary interest); he is a director of a corporation affected by the decision (an indirect pecuniary interest); or, it could similarly affect his immediate family (a deemed pecuniary interest).

The Rogers Corporate Structure

97. In his application, Mr. Chaleff submits Mayor Tory has an indirect pecuniary interest in the Blue Jays due to his involvement with the Rogers family trusts. For purposes of this inquiry, Mayor Tory's trusteeships and corporate directorships are precisely the type of roles that may be captured within the *MCIA*'s definition of an indirect pecuniary interest.
98. Mr. Chaleff submitted a document from Innovation, Science and Economic Development Canada, published in 2015, that describes the relationship between the RCT and RCI. I investigated this relationship in more detail.
99. Mayor Tory has been on the RCT, and its Advisory Committee, for many years and his involvement pre-dates his election to office in 2014.
100. The purpose of the RCT is to keep the Rogers family apprised of the affairs of the Rogers companies, encourage their employment and involvement in their family business and consult them on significant transactions (i.e. major acquisitions or things that might imperil their control). The key role of the Advisory Committee, in some circumstances, is to appoint more than one Control Trust Chair or select someone who is not a family member to be Control Trust Chair.
101. When asked about the RCT, and its Advisory Committee, Mayor Tory submitted that since Ted Roger's death they have had little role in considering significant transactions, with one exception. The RCI merger with Shaw has been discussed at the Advisory Committee. As Mayor Tory described, the Advisory Committee's role has recently been confined to family governance. It appears this has been a significant matter for the Rogers family as the independent information we obtained about the mandate and

function of the RCT, and its Advisory Committee, is drawn from publicly available court documents filed in a British Columbia legal dispute between Rogers family members.

102. Mayor Tory also submitted that ActiveTO road closures potentially affecting the Blue Jays, have not been, and would not be, matters discussed at the RCT or its Advisory Committee. I accept this is the case given their mandate, the more significant business issues the Rogers family was facing, and the fact, as described below, that Edward Rogers is regularly and closely apprised of actual business issues facing the Blue Jays by Mr. Shapiro.
103. That said, whether the RCT or its Advisory Committee considered ActiveTO road closures is not determinative of the issue of whether Mayor Tory had an indirect pecuniary interest in the Council agenda item. It is something that is relevant to the later question of whether some exception applies to Mayor Tory having to declare an interest. For that reason, we did investigate the exact connection between the Rogers family business and the Blue Jays.
104. The Rogers family business has a multilayered corporate structure. As a Canadian broadcasting and telecommunications company, it must report annually on its control and ownership structure to the Canadian Radio-television and Telecommunications Commission (CRTC). Information from those filings is posted on the CRTC website and shows how the Blue Jays fit into the Rogers corporate structure (see Appendix 1).
105. The Blue Jays is a franchise of Major League Baseball, a professional sport organization. RCI first purchased a large share of the franchise in September 2000 and then later acquired the remaining shares. The franchise is wholly owned by RCI. As shown in an RCI filing with the Ontario Securities Commission, it holds the franchise through a holding company called Blue Jays Holdco Incorporated. While the Blue Jays' revenue may amount to only about 1.76 percent of RCI's annual revenues, the franchise has appreciated over the last twenty years and may be valued at more than one billion dollars. RCI's ownership of the franchise is also used for promotional purposes. The franchise is a valuable business asset for RCI.

106. For purposes of section 2 of the *MClA*, RCI is a corporation that “offers its securities to the public” because its shares are traded on the TSE and the NYSE. However, RCI has a dual share structure. Its Class A shares have voting rights but its Class B shares do not. Thus, effective control of RCI rests with the holders of its Class A shares. As shown in the Rogers’ CRTC filing, a holding company called Rogers Enterprises (2015) Incorporated controls just over 97 percent of the voting rights controlling RCI (including two other holding companies nested under it). Rogers Enterprises (2015) Incorporated is itself wholly owned by two entities: Rogers Voting Shares Holdings Incorporated and Rogers 2008 Future Generations Trust.
107. As noted above, Mayor Tory advised me he is a director of Rogers Voting Shares Holdings Incorporated and a trustee of Rogers 2008 Future Generations Trust. Publicly available documents verify he is one of ten active directors in Rogers Voting Shares Holdings Incorporated (including four Rogers family members). The B.C. court documents confirm Mayor Tory was one of eight trustees appointed (including three Rogers family members), when it was first created in 2008.
108. As Mayor Tory’s legal counsel has submitted, the trusts and holding companies in which Mayor Tory is named as trustee or director are part of the Rogers family ownership structure. They do not carry on business, offer services, or transact business with RCI. That is the nature of trusts and holding companies. It is also true that when someone acts as a trustee, they assume a fiduciary responsibility to the beneficiaries of that trust. Similarly, directors of corporations owe a duty of care toward the corporation and its shareholders. Mayor Tory has a close relationship with members of the Rogers family.

Screening for Pecuniary Interests

109. To decide if Mayor Tory must declare an interest in a matter at Council or committee, his office employs a screening process.
110. Mayor Tory and a prior chief of staff developed a screening template setting out Mayor Tory’s pecuniary interests. Prior to each Council and committee meeting Mayor Tory will attend, a staff person in the Mayor’s Office uses the template to screen the agenda for

items that might involve the matters listed. If the staff person believes there is such an item, they initial beside it. The agenda, regardless of whether any items are initialled, is appended to the template and given to the chief of staff. The chief of staff then completes a similar review and may initial an item not initialled by the staff person. If the chief of staff disagrees with the staff person having initialled an item, the initials are struck through, but remain visible for later review.

111. The screening template and attached agenda are given to Mayor Tory. Any initialled items, struck-off initials or items where there are questions are discussed by Mayor Tory and his chief of staff. It is Mayor Tory who ultimately decides whether to declare an interest in these agenda items.
112. There is currently no screening process in Mayor Tory's office for phone calls, correspondence, meeting requests, emails/correspondence from RCI and its subsidiaries, or communications/complaints from the public or other external stakeholders about such matters.
113. Mayor Tory provided me with the screening template that is used for Council and committee meeting agendas. It captures Mayor Tory's direct and indirect pecuniary interests. It clearly sets out the pecuniary interests in real property of his mother, spouse and children, which the *MCI/A* deems to be Mayor Tory's pecuniary interests. It is also reviewed and updated when there is a change. It is a good screening tool – with two exceptions:
 - a) it does not appear to be used as a checklist. In other words, if an agenda item is flagged, it is not evident which of the Mayor's pecuniary interests engaged by a specific agenda item is flagged; and,
 - b) most importantly, if a pecuniary interest is flagged, it does not include a list of the exceptions/criteria that may apply and exempt Mayor Tory from having to declare an interest in a specific agenda item.

114. Of relevance to my inquiry, the screening template lists the following as some of Mayor Tory's pecuniary interests:
- "Anything with 'Rogers' in the name ..."
 - The "Blue Jays"
115. Let us now consider how ActiveTO came before Council in June 2022.

ActiveTO and IE30.19 "Revisiting ActiveTO Interventions on Lake Shore Boulevard West"

116. In the summer of 2022, the City of Toronto website described ActiveTO as:
- [A] suite of programs, major road closures, cycling network expansion, and quiet streets that contribute to the health and wellbeing of Toronto residents by providing the space to be physically active."
117. It went on to describe that ActiveTO major road closures:
- [A]re recurring short-term closures of major streets adjacent to highly utilized trails that aim to provide more space for walking and cycling. These closures provide space for thousands of people to be active, contributing to the overall wellbeing of residents. ActiveTO major road closures are typically held on weekends and public holidays. They are open to pedestrians and people cycling and closed to vehicles."
118. One of the major roads closed from time to time as part of ActiveTO was Lake Shore Boulevard.
119. To understand ActiveTO and how it affected Lake Shore Boulevard, I interviewed Barbara Gray, the General Manager of Transportation Services. She advised in the early days of the pandemic it involved "large closure" of a 6 kilometre stretch along Lake Shore Boulevard from Windermere Avenue to Stadium Road. In the later period, it involved some "shorter closures" of only 2.5 kilometres from British Columbia Drive to Stadium Road. Ms. Gray also gave me the complete list of dates for ActiveTO road closures along Lake Shore Boulevard.
120. ActiveTO is a product of the pandemic. Ms. Gray has legal authority to close Toronto roads on a short-term basis. As she described, her management team at Transportation

Services met daily in March 2020, to discuss how to support other divisions and serve the public in light of the emergency public health restrictions being imposed. She said:

It became clear pretty quickly that the amount of public space that people had to engage in was quite limited ... So we came back. Our team put together some ideas and thoughts.

121. This was the genesis of ActiveTO. Ms. Gray had her team examine options for “major trail corridors.” As she described, these were temporary bike corridors that typically paralleled major transit facilities because people were not taking transit. Because bike trails were so full, temporary bike corridors were sometimes put in place along Bayview Avenue and Lake Shore Boulevard.
122. Most big cities in the world adopted similar programs. Ms. Gray explained one of the policy questions facing all cities, including Toronto, has been whether to sustain some of these closures when other activities resumed. This very question was raised at the May 25, 2022 meeting of the City of Toronto’s Infrastructure and Environment Committee (IEC) because of a letter it received from Councillor Mike Layton.
123. As Councillor Layton said in committee:

This is in regard to getting a staff report on ActiveTO installations on Lakeshore West. Just an update from staff about the criteria and the challenges with hosting them due to other factors as well as potentially other interventions that can help achieve the same.
124. Councillor Layton also advised me his political fear was that ActiveTO’s future was at risk.
125. As a result of Councillor Layton’s letter, a motion was adopted at IEC requesting Ms. Gray, in her role as general manager, to:

Report to the next meeting of Council [June 15 and 16, 2022] on:

 - (a) the potential for full road closures on Lake Shore Boulevard West on weekends this summer to continue to provide people of all ages and abilities access to the waterfront safely, without noise and traffic pollution and any constrain[t]s or barriers to closures; and,

(b) the potential for reducing lanes on Lake Shore Boulevard West to accommodate the pressures on public spaces, while fulfilling the intent of ActiveTO with protected recreational opportunities.

126. This report back to Council became agenda item IE30.19 “Revisiting ActiveTO Interventions on Lake Shore Boulevard West.”
127. Ms. Gray advised she had not been preparing to report to Council on ActiveTO at that time and that Councillor Layton, who she understood was a supporter of ActiveTO, had not discussed his request with her in advance of sending this letter.
128. I asked Ms. Gray to explain why, if ActiveTO was popular, it would have been necessary to bring such a motion. She said that up until the Victoria Day weekend it had been but the closure on Lake Shore Boulevard on the holiday Monday (May 23, 2022) had attracted adverse comment. She elaborated that in late 2021, after public health restrictions began to ease, her staff did start to hear concerns about Lake Shore Boulevard West road closures because of construction on King Street West, Queen Street West and Roncesvalles Avenue affecting the Queensway, which were supposed to be relief routes.
129. Ms. Gray explained when Lake Shore Boulevard West lanes were closed for ActiveTO and there was a collision or similar problem on the Gardiner Expressway, the impact on people travelling through the city by car was significant. Councillors Grimes and Perks and businesses on Lake Shore Boulevard contacted Transportation Services with their concerns. For these reasons, the length of roadway being closed was often shortened at the end of 2021.
130. Mayor Tory was advised of these concerns in monthly road closure meetings with Transportation Services. Ms. Gray gave me the briefing materials for these meetings.
131. Don Boyle, the Chief Executive Officer of Exhibition Place, and a number of affected business owners contacted Transportation Services with their concerns in early May 2022.

132. Before June 2022, neither the Blue Jays nor the Rogers Centre were among the businesses that had contacted Transportation Services with concerns. When Ms. Gray received Mr. Shapiro's letter, she spoke to communications staff in the Mayor's Office about it.
133. Ms. Gray also remembers talking with Mr. Robertson about Mr. Boyle's concerns in early May 2022. When Ms. Gray decided to close Lake Shore Boulevard on May 23, 2022 she called and spoke with Mr. Boyle to let him know of her decision. She also spoke with Mr. Robertson to let him know she would be contacting Mr. Boyle.
134. When tasked with reporting to Council on ActiveTO, Ms. Gray said Transportation Services knew they would be criticized by both supporters and opponents of ActiveTO for ordering too few or too many road closures. Prior to drafting and submitting their report, Transportation Services briefed Mayor Tory on June 6, 2022 about recent negative feedback concerning ActiveTO as well as the proposed road closure schedule from June to October. The proposed closures did not coincide with major professional sporting events, including Blue Jays home games.
135. Ms. Gray explained that her Report for Action did not include recommended actions seeking Council approval as ActiveTO road closures were ordered under her administrative authority and did not require Council direction.
136. Ms. Gray also explained that when there were overlapping events like concerts, sports and cultural events, as well as road construction, these things would be factored into scheduling road closures. Mayor Tory was briefed on these matters.
137. Finally, Ms. Gray told me she believed business impacts on the Blue Jays were minimal as Blue Jays fans had a variety of routes to get to the Rogers Centre that people attending events along Lake Shore Boulevard did not.
138. Mr. Shapiro's letter to Mayor Tory says the opposite.

The Letter from the Blue Jays: “In, out, done, boom.”

139. The issue of whether Mayor Tory should declare a pecuniary interest in connection with ActiveTO crystallized in public debate with the release of a letter from Mark Shapiro, the President and Chief Executive Officer of the Toronto Blue Jays.

140. The letter was sent to the Mayor, the Clerk’s Office and Ms. Gray on June 6, 2022. It was made public on June 10, 2022 with the release of the agenda and supporting documents for the June 15 and 16, 2022 Council meeting. Mr. Shapiro wrote:

Please add my comments to the agenda for the June 15, 2022 City Council meeting on item 2022.IE30.19, Revisiting ActiveTO Interventions on Lake Shore Boulevard West.

I understand that my comments and the personal information in this email will form part of the public record and that my name will be listed as a correspondent on agendas and minutes of City Council or its committees. Also, I understand that agendas and minutes are posted online and my name may be indexed by search engines like Google.

I am writing to request you do not vote in favour of extending ActiveTO on Lake Shore Boulevard West.

The Toronto Blue Jays are a major sports franchise that draw millions of fans to Rogers Centre every season. Given the unprecedented levels of construction and other diversions in downtown Toronto, removing one of the only ways into and out of the downtown core would be extremely challenging to our fans, who rely on these routes to attend our games.

Opening our ballpark for a full baseball season after two years away has been extremely meaningful to our fans and players, and an important part of Toronto's pandemic recovery. We recognize ActiveTO played a crucial role in encouraging people to get outside and moving again, at a time when entertainment options were limited; however, the location of this program in 2022 drastically impacts fans' ability to access the ballpark on summer weekends, when baseball is a main attraction in the city.

Many of our fans travel to Rogers Centre from outside of the GTA and taking public transit is not an option. Out-of-town fans are often not aware of ActiveTO and do not know to allocate extra travel time. On the days when Active TO has been in effect on Lake Shore, our local fans have experienced significant transit delays because traffic is grinded to a halt on all downtown routes.

As a sports organization, we support folks getting outside and being active, but Toronto has many options and routes to use, whereas our fans do not. Please do not vote to close Lake Shore Boulevard West.

141. As a reporter with the Toronto Star noted on Twitter on June 10, 2022:

Blue Jays President Mark Shapiro has written to Mayor Tory and council, urging an end to the ActiveTO program on Lake Shore West. “We support folks getting outside and being active, but Toronto has many options and routes to use, whereas our fans do not”

142. In response, Mr. Chaleff Tweeted that day:

If the impact on the Blue Jays is so significant that they are lobbying council, @johnTory should declare an interest in this decision given his continued role at Rogers.

143. It was not Mr. Shapiro’s idea to send this letter. It was Councillor Mark Grimes’ idea.

Mark Shapiro: The Toronto Blue Jays President and CEO

144. Mark Shapiro is a senior and experienced Major League Baseball executive from the United States. He joined the Blue Jays in 2015. He was recruited from Cleveland by Edward Rogers and Roger Rai (who Mr. Shapiro described as Mr. Rogers’ “point person on sports”) to become the President and CEO.

145. Mr. Shapiro described that his job incorporates the following responsibilities. He is accountable for and oversees the day-to-day operation of both the business side and the baseball side for the Blue Jays. He also represents the “the ownership within the context of Major League Baseball,” which he said means casting 1 of 30 votes on league issues and attending league meetings “on behalf of Rogers as a corporate entity.” He also “reports up” to an advisory board, which does not have a formal title, and includes Mr. Rogers, Mr. Rai and a few very senior executives from Rogers.

146. The advisory board meets on a quarterly basis and its agenda is usually set by Mr. Shapiro. Mr. Rogers decides who attends these meetings. As Mr. Shapiro described it, he only brings “macro” issues to that group such as high-level budget issues including

capital approval for stadium renovations. He also provides a detailed baseball update which includes information about players' salaries and performance.

147. Mr. Shapiro explained he has a great deal of autonomy, he does not have daily or weekly contact with the "Rogers organization" but does talk with Mr. Rogers every three to four weeks.
148. Mr. Shapiro said that he knows little about Canadian politics, including municipal politics. He received advice and knew that he should register if he was lobbying municipal politicians, had done so in the past, but does not have regular dealings with City of Toronto officials.
149. Mayor Tory's tenure as an executive at Rogers ended before Mr. Shapiro was hired by the Blue Jays. Mr. Shapiro says he first met Mayor Tory in Toronto at a welcome reception for him as the new President and CEO hosted by Paul Godfrey. Since then, Mr. Shapiro has seen Mayor Tory "every 18 months or so" at sports events in Toronto. Ironically, Mr. Shapiro says that he has seen Mayor Tory at more Raptors and Leaf events rather than Blue Jays events. These were social interactions. Mayor Tory confirmed these details. Mayor Tory said that he attended these events as a fan, not in an official capacity, and purchased his own tickets.
150. In 2020 and until July 30, 2021, the Blue Jays were prohibited from playing in Toronto due to the travel and public health restrictions imposed in response to the pandemic. Mr. Shapiro said he was in direct and personal contact with Mayor Tory about the Blue Jays returning to play in Toronto. Mayor Tory confirmed these details. Mayor Tory added this took place before the Blue Jays returned and would have been only a few times over the span of several months. In these calls, Mayor Tory discussed with Mr. Shapiro the independent role of Toronto Public Health and what public health steps he understood the federal and provincial governments were also taking. Mayor Tory described he had similar conversations in this time period with other professional sports organizations and theatre owners.

151. Mr. Shapiro only engages with City of Toronto officials on high-level issues. He explained that his staff had, for example, contacted the City about repairs needed to the pavement in front of the Rogers Centre and that he did not have time to engage in such minor or specific issues.
152. The redevelopment of the lands around the Rogers Centre in 2019 was a high-level issue that engaged Mr. Shapiro. From that experience, he was aware that Mayor Tory had a conflict with respect to matters concerning the Blue Jays going before Council. He said:
- I have definitely been told that if it – if there's an issue related to Rogers or even the Blue Jays that involves the Mayor, he would have to recuse himself ...
153. Mr. Shapiro learned this from his own staff. He said they had been told this by either Mayor Tory's Chief of Staff or a councillor, he was not sure which.
154. In the spring of 2022, ActiveTO was not on Mr. Shapiro's "high-level issue" radar. Councillor Grimes put it there and ghost-wrote Mr. Shapiro's letter.

Councillor Grimes' opposition to ActiveTO

155. Councillor Grimes' opposition to ActiveTO galvanized once he saw a report on it was being put on the June 2022 Council agenda.
156. Councillor Grimes had originally supported ActiveTO as a way to help Toronto residents get out for fresh air and exercise during the height of the COVID-19 pandemic. With the easing of restrictions, however, his view of the program changed. He had serious concerns about the impact on nearby communities, businesses and institutions arising from the many complaints he was receiving from his constituents.
157. Councillor Grimes' initial strategy to defeat ActiveTO at Council involved a letter writing campaign. He proposed to write an open letter to Mayor Tory and Transportation Services opposing all future ActiveTO road closures on Lake Shore Boulevard. He

proposed to rally professional sports organizations to write their own letters to do the same thing.

158. When I spoke with staff in Councillor Grimes' office, they described him as the "unofficial Sports Councillor," i.e. the member of Council most linked with professional sports organizations in Toronto. Councillor Grimes spoke to me about his affiliation with the Blue Jays in liaising with officials from Dunedin, Florida where the Blue Jays train and with other teams in his role as Chair of the Board of Governors for Exhibition Place.
159. My investigation shows the Mayor's Office, but not Mayor Tory, was aware of Councillor Grimes' strategy in early June 2022.

Councillor Grimes contacts the Mayor's Office

160. Councillor Grimes' says he spoke in early June with Luke Robertson, the Mayor's Chief of Staff, about the letter he was proposing to write and the letters he was proposing others write.
161. On Wednesday, June 1, 2022 at 2:50 p.m., Councillor Grimes' office texted Tasnia Khan, one of the staff in Mayor Tory's office responsible for liaising with Council, with a draft of the open letter that Councillor Grimes was proposing to send to the Mayor and the General Manager of Transportation Services. The text says "here is the draft ActiveTO letter he mentioned." From the context, it is clear that the letter was being sent as a follow-up of an earlier call Councillor Grimes had with someone in the Mayor's Office. Ms. Khan stated her thanks and said the Mayor's Office would review the draft.
162. Two days later, on Friday, June 3, 2022 at 3:38 p.m., Ms. Khan texted Councillor Grimes' office. She asked that the letter not be addressed to Mayor Tory and that the letter be held pending a meeting the Mayor's Office was having on June 6, 2002 with Transportation Services.
163. I interviewed Ms. Khan and asked why she asked that the draft open letter not be addressed to Mayor Tory. She explained that she had spoken to Mr. Robertson and he

noted the letter should not be addressed to Mayor Tory as he was not the decision-maker on this matter. Mr. Robertson does not specifically recall having been consulted on this letter, but had no reason to feel Ms. Khan's account was not accurate and acknowledged that this would be something he would likely have said.

164. This letter was never sent, for reasons that will be clear below.

Councillor Grimes contacts the Blue Jays

165. On Wednesday, June 1, 2022 at 10:45 a.m., Councillor Grimes emailed Mr. Shapiro from a personal email account. The subject of the email was "Layton's ActiveTO Motion." It included an excerpt from IEC and a link to Councillor Layton's May 25, 2022 letter. Councillor Grimes email said: "I don't believe this motion below coming to council is in the Blue Jays best interest to put it mildly. I'm working to have it defeated."

166. We asked Mr. Shapiro about whether he follows what is on City Council agenda. We assumed he had no independent knowledge of what Council considers. He replied it was "[v]ery safe to say I have no knowledge or interest in that."

167. Mr. Shapiro said this was the first and only time Councillor Grimes had ever contacted him about a Council agenda item. Mr. Shapiro said they first met early in his career with the Blue Jays, when Councillor Grimes was in Dunedin. Mr. Shapiro said Councillor Grimes "makes a regular trip to Dunedin as a fan" and in that first meeting he:

[C]ame by to introduce himself as, you know, a member of the council and a Blue Jay fan and just kind of said, I'm here to support the team and happy to say hello. And if there's a way I can help at the City, feel free to let me know.

168. Mr. Shapiro said that he has never met with Councillor Grimes about anything official. He recalled meeting the Councillor socially at a different time when municipal officials and chamber of commerce members from Dunedin came to Toronto for a weekend to watch the Blue Jays play. However, they are on a first name basis and know how to directly reach each other by telephone, text and email.

169. Mr. Shapiro quickly agreed to follow Councillor Grimes' lead on opposing ActiveTO.
170. After they spoke on June 1, 2002, Councillor Grimes sent Mr. Shapiro an email the next morning (Thursday, June 2, 2002 at 10:14 a.m.) with a draft letter saying:
- Below is a draft letter to get you started. It includes who to address it to and where to send it. Please edit and add content as you see fit.
171. Mr. Shapiro reported this telephone call on the Toronto Lobbyist Registry.
172. Councillor Grimes' office learned the Mayor's Office's did not want him to send a letter addressed to Mayor Tory, and wanted the letter held, the day after he had sent a draft letter to Mr. Shapiro to send out. In other words, Councillor Grimes had given Mr. Shapiro bad advice that he should send a letter to Mayor Tory asking him to vote against ActiveTO. Unfortunately for Mr. Shapiro, this was not flagged for him. It was caught, however, before other professional sports organizations were sent similar draft letters.

Councillor Grimes' contact with Others

173. Councillor Grimes said he did not send letters to other professional sport organizations before ActiveTO was considered by Council because he spoke to Mr. Robertson, who told him that letters like the one Mr. Shapiro sent were unhelpful as they were "fanning the flames" of the ActiveTO debate. Mr. Robertson does not remember having such a conversation with Councillor Grimes and believes the councillor's recall is faulty.
174. However, Mr. Robertson does recall having this sort of conversation with Don Boyle, the CEO of Exhibition Place. Mr. Robertson says he specifically remembers speaking with Mr. Boyle before ActiveTO was considered by Council. He told Mr. Boyle that:
- [A]s we did not expect staff to recommend any further closures of LSBW [Lake Shore Boulevard West], it was my preference that he not send the letter. In my opinion, because there was not going to be a recommendation to close LSBW, nor a motion from City Council to close LSBW, the item would be less contentious than anticipated unless attention continued to be drawn to the matter.

We know from Mr. Robertson that he saw Mr. Shapiro's letter the day it was sent to Mayor Tory.

175. We interviewed Mr. Boyle. He said he spoke with Mr. Robertson at about the same time as Councillor Grimes spoke with Mr. Shapiro. He is certain of this because Mr. Boyle and Councillor Grimes were coordinating the proposed letter-writing campaign. This was at the very start of June. Mr. Robertson advised him not to send any letters to the Mayor and Council about this. Mr. Boyle then relayed this message to the other businesses he had been dealing with. However, he did not relay this message to Councillor Grimes before Mr. Shapiro sent out his letter.
176. It is entirely possible that Councillor Grimes is confused that he spoke directly with Mr. Robertson. He may have learned of Mr. Robertson's concerns from Mr. Boyle. Whether Mr. Robertson had this discussion with Councillor Grimes or Mr. Boyle is of less importance than what was being communicated.
177. Before ActiveTO reached the floor of Council, the Mayor's Office was clearly communicating to others that it did not want a long and divisive debate at Council over ActiveTO. This is evident from texts Ms. Khan sent to Councillor Grimes office and what Mr. Robertson was saying to others. We asked Mayor Tory about whether he felt what was being conveyed by his office was appropriate. He said he said it was.
178. As I noted above, Mayor Tory was personally unaware of Councillor Grimes' proposed letter-writing strategy before ActiveTO was debated at Council. He learned about it in the course of our interviews.
179. In interviewing Mayor Tory, he said that his approach to Council meetings has been to minimize the length and divisiveness of debate at Council. He also said he relies on his staff to perform their duties with this in mind because it would not be realistic or possible for staff to report back to him for specific direction on the hundreds of agenda items going to Council.

180. When I reviewed with Mayor Tory what Mr. Robertson and Ms. Khan communicated, he endorsed their actions as consistent with his preferred approach for dealing with Council on this matter.

Mr. Shapiro does what Councillor Grimes advised

181. Unaware of the Mayor's Office concerns, Mr. Shapiro in an email on Thursday, June 2, 2022 directed his communications advisor to use the draft letter from Councillor Grimes "as a template and edit or rewrite as necessary." Mr. Shapiro did not speak to anyone outside his office about the letter.
182. While he had texted to Councillor Grimes on Thursday afternoon that his letter would go out on Friday, it was not sent until Monday.
183. While Councillor Grimes could have advised Mr. Shapiro not to send a letter, he did not do so. Councillor Grimes said in his interviews that Mr. Shapiro's letter should not have been sent and that it was his mistake that it was.
184. Because it is relevant, I include below the text of the letter that Councillor Grimes sent for Mr. Shapiro to use:

Please add my comments to the agenda for the June 15, 2022 City Council meeting on item 2022.IE30.19, Revisiting ActiveTO Interventions on Lake Shore Boulevard West.

I understand that my comments and the personal information in this email will form part of the public record and that my name will be listed as a correspondent on agendas and minutes of City Council or its committees. Also, I understand that agendas and minutes are posted online and my name may be indexed by search engines like Google.

I am writing to request you do not vote in favour of extending ActiveTO on Lake Shore Boulevard West.

The Toronto Blue Jays are one of the largest sports attractions in this city. We draw upwards of 50,000 people to our stadium, in the heart of downtown Toronto, several times a week. Given the current unprecedented levels of

construction and other diversions in Toronto, removing one of the only routes into and out of the City would be devastating.

<<<something about the pandemic and recovery >>>

Many of our fans travel to the Rogers Centre from outside of the GTA, and even outside of Canada. Taking public transit is not an option for them. On the days when ActiveTO has been in effect on Lake Shore, our local fans have experienced crushing delays on transit because traffic is at a dead stop on all routes around downtown. Out of town fans are often not aware of ActiveTO so they do not know to allocate an extra hour or two for travel time. The results in thousands of fans missing the start of the game.

As a sports franchise, we absolutely support and encourage people to get outside and be active, but Toronto has many options and routes to use, whereas our fans do not. Please do not vote to close Lake Shore Boulevard West.

Mark Shapiro
President & CEO of Toronto Blue Jays

185. Mr. Shapiro said he and his office edited the letter because “it wasn’t a hundred percent accurate with what I believed or thought.” In comparing what Mr. Shapiro sent out, however, it tracks the draft he was given almost word for word and inserted his own original text where recommended.
186. Mr. Shapiro said that ActiveTO was a “thorn in the side” of fans getting to baseball games. He said he received emails about this, complaints from his staff and heard this from people taking him aside.
187. He was critical:
 - a) That few people were using the closed roads “as compared to hundreds of thousands of fans trying to get in, you know, to our games every weekend.”
 - b) Of the “absolute logjam of traffic ... from the closure ... it seemed like it was no longer fitting for a world that was no longer shut down.”

188. Before he was contacted by Councillor Grimes, Mr. Shapiro said he took no steps to raise concerns with the City of Toronto. As he said:

I never did anything because, frankly, in the hierarchy of issues I am trying to deal with, it was a nuisance but not something that ever was on ... I pride myself on prioritization and not something that ever had gotten to the level where I'm going to spend time and energy on this.

189. Mr. Shapiro only engaged with this issue because of Councillor Grimes' email to him:

...which kind of spurred the thought, oh, this would be an efficient and easy way for me to voice my objection. And that's -- that's honestly -- that was my reaction. I am not bureaucratic in nature. I have a general distaste for politics.

190. Councillor Grimes emailed Mr. Shapiro in June 2022. Prior to then, the last time that an ActiveTO road closure on Lake Shore Boulevard overlapped with a home game was eight months earlier, in September 2021.

191. Mr. Shapiro elaborated that, in the absence of Councillor Grimes contacting him, he would not have devoted 90 minutes to this matter. Councillor Grimes' draft letter presented him an opportunity to object to something that was not "fan friendly or business friendly." The draft letter "teed [it] up perfectly for me." As he said (emphasis added):

Okay. Good. I'll do it. **I'll write a letter efficiently, in, out, done, boom ... And then I stopped thinking about it.** Then I went back to doing my job, which is to help the Blue Jays be a world champion, not -- not defeat ActiveTO.

ActiveTO did not adversely affect the Blue Jays

192. Based on what Mr. Shapiro said, the Blue Jays were experiencing revenue challenges. Mr. Shapiro said the team's most important revenue source is ticket sales. Purchases at the stadium, including concession sales, are only ancillary. The Rogers Centre seats fifty thousand people and he said there are only seven thousand season ticket holders. In his own words, Mr. Shapiro said the Blue Jays rely too heavily on "single game ticket sales," which he said were down.
193. Mr. Shapiro said that his primary concern was revenue pressures linked to ticket sales and he was surprised by the slow return of fans to the Rogers Centre in light of the

team's success. The team's own business analysts had flagged for him there was a "multitude of reasons" ticket sales were down, including the number of people who had not returned to work in the downtown core, the reticence of people to attend live events because of the pandemic and traffic challenges not related to ActiveTO.

194. From what I have found, ActiveTO had no impact on attendance on Blue Jays games up to the time Mr. Shapiro wrote his letter.
195. ActiveTO road closures on Lake Shore Boulevard had only been in place on eight days when there was a Blue Jays home game. The last time it happened was September 19, 2021.
196. When the Blue Jays were permitted to resume playing at home, they had to adhere to seating limits imposed by the provincial government. Between July 30 and September 23, 2021, the seating limit in the Rogers Centre was fifteen thousand people. In that period, there were thirty home games. Attendance was above average on most dates when there was a road closure on Lake Shore Boulevard. Attendance was also almost at the permitted maximum capacity on those days.
197. After the permitted seating capacity was raised to thirty thousand people on September 24, 2021, there were never any ActiveTO road closures on Lake Shore Boulevard when the Blue Jays were playing at home. This analysis is found in Appendix 2.

Public Reaction to Mr. Shapiro's letter

198. "Boom" indeed. Mr. Shapiro's letter attracted a lot of public attention.
199. Council meetings usually begin on Wednesdays and the materials for meetings are publicly released by the Clerk's Office the preceding Friday morning. Those materials include the agenda and reports on agenda items from City staff and submissions from the public. Mr. Shapiro's letter was sent to the Clerk's Office on Monday, June 6, 2022. It was posted on the City of Toronto's open portal by the Clerk's Office on Friday, June 10, 2022, as part of this process.

200. Mr. Shapiro did not make his letter public, did not send it to anyone at Rogers, but did send Councillor Grimes a copy of the letter on Monday, June 6, 2022. Councillor Grimes did not release the letter. Mr. Robertson saw the letter that Monday when it arrived in the Mayor's general email inbox but did not speak to Mayor Tory about it until Friday, June 10, 2022.
201. Mayor Tory described that he was told his office had received 1200 emails (an unprecedented volume) about ActiveTO in the lead up to the debate on ActiveTO. He said he does not follow social media but relies on others to advise him if there is anything he needs to know. He did not see the Friday, June 10, 2022 Tweet from Mr. Chaleff before ActiveTO was considered at Council.
202. Mr. Robertson says he and Don Peat, Executive Director of Communications and Strategic Issues Management, spoke to Mayor Tory about how to answer questions about Mr. Shapiro's letter on Friday, June 10, 2022. Mayor Tory also said that he was not shown the letter and did not read Mr. Shapiro's letter before the ActiveTO debate in Council.
203. A CBC reporter asked Mayor Tory about Mr. Shapiro's letter the following day, Saturday, June 11, 2022, at a public event. While not having read the letter, Mr. Tory said the following about the debate surrounding it:

I really found it so sad that that Mr. Shapiro should write a letter simply setting out the views of his business and the fact that he has 30, 40, 50,000 people coming to a game and the abuse he took from people online for daring to state his opinion.

My job is to sort of take all the evidence of people who love ActiveTO as I do. And I understand why people like it and those who have to get a vote and those who have neighbourhoods and those who have businesses and balance all of that and the right answer. That is what we are doing.

Mr. Shapiro simply wrote a letter indicating his view. And I think in our country, we should welcome people who do that and take their responsibility seriously. Doesn't mean we have to accept his point of view. It means we have it and we can listen to it as we will listen to all the others.

204. This is relevant for purposes of Mr. Chaleff's application because he submits Mayor Tory's comments in this interview were inappropriate because "Mayor Tory ought to have been aware of the appearance of a conflict of interest" due to his "involvement with the Rogers Control Trust Advisory Committee."
205. However, I have found no coordination between the Mayor's Office and Mr. Shapiro in devising Mayor Tory's response.
206. Mr. Shapiro was not concerned about the adverse comments that were made about his letter. As he said:
- [I]n this job, media feedback and social media sentiment is just part of the deal ... You know, I've faced far more criticism from other things including when I arrived here than I have on that [his June 6, 2022 letter].

**Mayor Tory's Characterization of Mr. Shapiro's letter:
"A view on an issue to do with traffic"**

207. Mayor Tory's view of Mr. Shapiro's letter was "that it was a letter they [the Blue Jays] wrote along with literally hundreds and thousands of other people just expressing ... a view on an issue to do with traffic."
208. Mayor Tory first read Mr. Shapiro's letter just before I interviewed him and was unaware that Councillor Grimes was behind it. Having advised Mayor Tory of the origin of Mr. Shapiro's letter, I asked him if he would have said anything different in his remarks from June 11, 2022 to the CBC. He said he would not.
209. Four days after making these remarks to the CBC, ActiveTO went to the floor of Council.

The Debate at Council on IE30.19

210. Council considered "IE30.19 Revisiting ActiveTO Interventions on Lake Shore Boulevard West" ("IE30.19") on June 15, 2022.

211. Mr. Chaleff submits Mayor Tory's vote at Council on June 15, 2022 ended "the possibility of revisiting ActiveTO interventions on Lake Shore Boulevard West for the summer of 2022."
212. Mayor Tory submits he simply voted "yes" on a planning item "to consider quick start actions which improve pedestrian and cycling amenities as part of the 2023 Western Waterfront Master Plan Update."
213. The minutes of Council show, Mayor Tory was one of 22 members of Council who voted yes on "IE30.19 - Perks – motion 2 – Adopt the Item as amended." While this is the accurate and objective description of what was voted on, understanding what unfolded at Council requires decoding.
214. At the start of every Council meeting, after the call to order and protocol items, the Speaker asks for committee chairs to report on matters from their committees. This procedural step is what formally conveys the matters decided at committee to Council.
215. After that procedural step, the Speaker asks members of Council to declare any agenda items they have a pecuniary interest in as required by the *MCI*A. Had Mayor Tory decided he needed to declare a pecuniary interest, this is when he would have done so.
216. The Speaker then reviews the Order Paper with Council. The Order Paper lists all the items on Council's meeting agenda and the order in which they will be debated. There are hundreds of agenda items for each meeting of Council. While they are all voted on, they are not all debated as it would be impossible to do so in the course of one meeting. Matters that are straightforward or do not raise questions are not debated. Members of Council who wish to debate an item ask the Speaker to "hold" the item during the review of the Order Paper. This can also be done through the meeting and document management software application the Clerk's Office uses to communicate with members. Placing a hold is not something that is voted on. Someone who holds an item also gets to speak first on it. Councillor Grimes held IE30.19.

217. During the review of the Order Paper, members may also request that matters be “timed.” As Council meetings last two to three days, it is practical that some matters be scheduled for debate at particular times. Members must move that something be timed as this is something that can be debated and voted on. Councillor Grimes moved IE30.19 be “timed” for June 15, 2022 after a couple of other items. He did so independently and did not discuss this with the Mayor’s Office. His motion was adopted when Council voted to approve the Order Paper.
218. It is important to understand these steps because holding and timing agenda items can be very political. Members make decisions about these things, and try to influence others, to advance their legislative objectives.
219. In this case, there is no evidence that Mayor Tory was trying to coordinate or exert influence over when IE30.19 was going to be debated on the floor of Council and how anyone should vote.
220. Once the Order Paper is approved, substantive debates on agenda items begin. IE30.19 was debated on the afternoon of June 15, 2022. The debate proceeded smoothly but Ms. Gray’s report posed a small procedural anomaly.
221. Committees regularly pass motions requiring City staff to report at a later date to Council with policy and operational recommendations for Council to review and provide direction on. When this occurs, such reports have not been received, read and voted on by the committee. This means that the committee chairs do not convey these reports to Council at the outset of the meeting.
222. Only reports that recommend Council decide something can be debated and voted on. Ms. Gray’s report, in contrast, did not formally ask Council to decide anything. Instead, her report recommended that City Council receive it “for information.” In such cases, for Council to debate the substance of her report (rather than just ask questions about it), a member of Council had to formally move that the report be “received.”

223. Quite understandably, anyone reading the report would say it does include recommendations. The report itself says Transportation Services:
- a) recommends “that the ActiveTO Major Road Closures on LSBW be treated as limited special events to be planned and advertised in advance, rather than operated as regular recurring weekend events”; and,
 - b) does not recommend “implementing interim design changes to LSBW in advance of an update to the Western Waterfront Master Plan.”
224. However, as Ms. Gray described to me, her position was that these recommendations were not matters she needed to obtain formal Council direction on, as they were within her administrative authority, so Council was not being asked to decide anything.
225. When IE30.19 came up for consideration, the Speaker invited members of Council to ask questions on Ms. Gray’s report in accordance with Council procedure. The questions Ms. Gray was asked focussed on ActiveTO. Mayor Tory did not ask Ms. Gray any questions. Ms. Gray was not asked any questions by anyone about the impact of ActiveTO on the Blue Jays.
226. When the allotted time for asking questions ended, the Speaker invited members to speak to the item.
227. Councillor Grimes spoke first, as he was entitled to do because of the hold he placed. He also moved that Council “receive” Ms. Gray’s report. This motion would also afford Councillor Grimes an advantage in curtailing the length of debate. This was Motion 1 in the debate. He spoke at length about ActiveTO, as did the three members who spoke after him.
228. The fourth member to speak after him was Councillor Perks, who introduced a motion of his own that City staff consider “quick start actions which improve pedestrian and cycling amenities as part of the 2023 Western Waterfront Master Plan Update.” This was Motion 2 in the debate.

229. I asked Councillor Perks why he moved this motion. While advocating for improved accommodation of the bicyclists and pedestrians, he was critical of how ActiveTO had been administered. What he said to me is consistent with what he said at Council. He explained his motion would support a more comprehensive and rational solution for his concerns than ActiveTO was doing. He discussed the motion with Mr. Robertson during the course of the debate.
230. I also asked Councillor Layton why, after receiving Ms. Gray's report, he did not make any substantive motion directing staff to take any particular steps in regard to administering ActiveTO. He said he felt it unnecessary as staff committed ActiveTO would continue. He had met the objective he identified at IEC. He received an update from City staff about the criteria used in deciding when and where ActiveTO road closures would be scheduled.
231. Councillor Grimes learned of Councillor Perks motion when it was moved. As he said in debate, he wanted support it. As a result, Councillor Grimes consulted the speaker to see if he needed to withdraw his motion to receive Ms. Gray's report. The speaker told Councillor Grimes to move withdrawal of his motion; he did so and Council voted to approve the withdrawal.
232. Debate then resumed on IE30.19 and remained focussed on ActiveTO. In the course of this debate, Deputy Mayor Minnan Wong noted the following:
- I will say this, I am disappointed that it takes a letter from the General Manager, or the President of the Toronto Blue Jays for us to sit up and take notice.
233. As is his right as head of Council, Mayor Tory spoke at the end of the debate on IE30.19. His remarks focussed almost exclusively on ActiveTO. In particular, he said the following:
- I will tell you as Mayor I want to see this program [ActiveTO] continue. I want to see it continued as often as it can be. I think the transportation staff would confirm to you that when it sort of started to become evident it wasn't as possible to do it as often this year I said "is that all we can do?"
- I asked that question. But then I went through it event by event, weekend by weekend. Paid duty officer by paid duty officer. Construction project by construction

project and realised if you were being responsible and balanced in a city that has to keep functioning. That has to be fair to the residents in those neighbourhoods like Humber Bay Shores, and Stadium Road, and all those other places. That probably what our staff were recommending was right. Which most often it is because they are not you know affected as much as we might be by the prevailing winds that are blowing against us from all sides.

234. After speaking for several minutes about ActiveTO, this is what Mayor Tory said about Councillor Perk's motion:

And I think the Council sounds like it is going to be in the mood to take Councillor Perks' motion. Make good of that for future planning ... So thank you again to Councillor Perks for his motion.

235. Council then voted on Councillor Perks' motion, which was the only substantive motion before council on IE30.19. It carried with 22 "yes" votes (including Mayor Tory's vote) against 1 "no" vote.

236. Following the vote, the City of Toronto issued a news release about Council's consideration of the item which was entitled: "ActiveTO to continue on Lake Shore Boulevard West as special event." It said:

Today, Toronto City Council accepted City of Toronto staff recommendations to treat ActiveTO major road closures on Lake Shore Boulevard West as limited special events that are to be planned and advertised in advance, rather than operated as regular recurring weekend events.

...

Council also directed the Chief Planner and Executive Director, City Planning and the General Manager, Transportation Services to consider quick start actions which improve pedestrian and cycling amenities as part of the 2023 Western Waterfront Master Plan update.

237. The news release included a quote from Mayor Tory. While such quotes are typically not what someone has actually said as they have been drafted by communications staff, they are not issued without approval. Mayor Tory is said to have said:

We have made huge progress reopening Toronto and that progress is going to continue. City staff are working to accommodate and balance, as much as possible, all the major events across the city that are now back. ActiveTO was a great pandemic program and City staff will work to make sure the program continues where and when it is possible.

238. Once the vote on IE30.19 was over, Councillor Grimes texted Mr. Shapiro:

We knocked out ActiveTo today.
Thanks for your help Mark.
MG

239. Mr. Shapiro texted right back:

Excellent. Appreciate your leadership on that Mark.

Why Mayor Tory did not declare an interest

240. One of the very first questions I asked Mayor Tory was why, in this particular case, he felt he did not need to declare an interest. He said it was because the issue was a very broad issue affecting and engaging hundreds of thousands of people. He noted in 2022 his office had received more correspondence on this issue than any other. He was highly confident that it was an issue that was of broad application so no declaration was required.

241. Mayor Tory reiterated this view in relation to Mr. Shapiro's letter. He said the letter was about a broad issue and said it made no reference to any direct or indirect pecuniary interest. As he had not been shown or read the letter, he was presumably relying on the analysis of Mr. Robertson.

242. I asked Mayor Tory to explain how he applied his screening template to this matter given that "[a]nything with 'Rogers' in the name ..." is a very broad criterion.

243. Mayor Tory agreed it is a broad definition but also said it is only included "to make sure anything with Rogers in the name has been checked." He said that just because something has Rogers in the name it does not automatically mean he has a pecuniary interest in it.

244. I then asked Mayor Tory what criteria he applies in deciding whether to declare a pecuniary interest in connection with the "Blue Jays", which is also listed in his screening template. He answered that he would look to see if the Blue Jays had a direct or indirect pecuniary interest in the matter.

245. Mayor Tory reached the conclusion he had no pecuniary interest to declare in discussion with Mr. Robertson on June 10, 2022. Mr. Robertson described this is why the review of the agenda for the June 15, 2022 Council meeting did not append to it any flagged items in the agenda. It was already decided by Mayor Tory that he did not need to declare an interest.
246. Mr. Robertson was the most senior person in Mayor Tory's office advising him when it was appropriate to declare a pecuniary interest in an agenda item as required by the *MCI*A.
247. I asked Mr. Robertson what personal and business interests Mayor Tory had in the past specifically discussed with him, which might require him to declare as a conflict. Mr. Robertson said it was only interests in RCI and a number of properties that Mayor Tory or members of his family own that he discussed with Mayor Tory. Mr. Robertson said Mayor Tory never spoke with him about the Blue Jays.
248. However, the screening template that Mr. Robertson uses, that we were subsequently provided, says "Anything with 'Rogers' in the name ..." and the "Blue Jays."
249. It appears from my interviews that Mayor Tory and Mr. Robertson believe that "having a pecuniary interest" is the same thing as "having to declare a pecuniary interest with respect to an agenda item." However, the two things are not synonymous. The former describes something that exists independent from being a member of Council (e.g. my parents own a grocery store). The latter is an action that must be taken when a matter comes before Council or committee where the exercise of an official duty would engage or affect that personal situation (e.g. I am declaring an interest in this zoning matter because it affects my parents' grocery store). A two-step analysis is required. The first step is to identify the interest and the second is to determine if it is an interest that needs to be declared.

250. In this instance, Mayor Tory and his office appear to have applied only the second step of this two-step inquiry. In doing so, Mayor Tory determined that he did not need to declare an interest under the *MCIA* in relation to IE30.19. It also appears to me that the analysis that was used did not specifically consider whether the answer under the *MCIA* might be different as it concerned Mayor Tory's shareholdings, directorships and trusteeships. If this had been done, Mayor Tory might have paused longer to question whether any of his roles within the Rogers family ownership structure had to be considered.
251. It is important not to skip the first step in this analysis for two reasons. First, if someone believes an exception applies to them in declaring an interest, this specificity helps them identify and properly apply the exception on which they hope to rely. Second, defining the nature of a pecuniary interest is required by the *MCIA* if it is the converse situation where someone has to make a declaration. In other words, someone's declaration should not just be "I am declaring an interest in this zoning matter because it affects a pecuniary interest I have." That does not meet the statutory requirement. To meet the statutory requirement, the proper declaration is "I am declaring an interest in this zoning matter because it affects my parents' grocery store."
252. Let us now turn to the requirements of the *MCIA* as they apply to this application.

F. ANALYSIS

253. To decide whether the evidence set out above shows Mayor Tory violated the *MCIA*, I needed to consider these four issues:

Issue 1: Were ActiveTO road closures on Lake Shore Boulevard West the matter that was the subject of consideration in agenda item IE30.19 before Council on June 15, 2022?

Issue 2: Did Mayor Tory have a pecuniary interest, direct or indirect, with respect a matter that was before Council?

Issue 3: Do any of the exceptions in section 4 of the *MCIA* apply?

Issue 4: Should the Integrity Commissioner apply to the court for a determination that Mayor Tory has contravened the *MCIA*?

254. The standard of proof I have applied in considering this evidence in relation to the statutory requirements has been the “balance of probabilities.” Assessing something on a balance of probabilities means finding that it is more likely than not to have happened. In applying this standard, I have also objectively considered the evidence. In doing so, I reviewed the evidence, and applied the test of how an objective elector, apprised of the circumstances, would draw reasonable conclusions.

Issue 1: Were ActiveTO road closures on Lake Shore Boulevard West the matter that was the subject of consideration in agenda item IE30.19 before Council on June 15, 2022?

255. Yes.

256. Mayor Tory’s legal counsel submitted that I should conclude otherwise. They submitted the ActiveTO Agenda Item, IE30.19, was not about road closures but was limited to City staff considering “quick start” actions to improve pedestrian and cycling amenities as part of the Western Waterfront Master Plan. This item was simply a request for information and/or options that could inform a variety of programs or planning initiatives.

257. For the reasons that follow, I do not agree with their conclusion.

258. The Courts have consistently decided that the phrase the “matter [that] is the subject of consideration” in section 5 of the *MCIA* must be interpreted broadly and purposively in context of the facts in each case.

General Principles

259. Section 5(1) of the *MCIA* states:

Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter

and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

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

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

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

260. As the leading case from the Divisional Court in 1979 noted³:

The obvious purpose of the Act is to prohibit members of councils and local boards from engaging in the decision-making process in respect to matters in which they have a personal economic interest. The scope of the Act is not limited by exception or *proviso* but applies to all situations in which the member has, or is deemed to have, any direct or indirect pecuniary interest. There is no need to find corruption on his part or actual loss on the part of the council or board. So long as the member fails to honour the standard of conduct prescribed by the statute, then, regardless of his good faith or the propriety of his motive, he is in contravention of the statute...

261. This approach is based on the principle that no one can faithfully serve the public if they have divided loyalties. As the Divisional Court noted, the judgment of even the most well-meaning person may be impaired when their personal financial interests are affected.

262. Public office is a trust conferred by public authority for public purpose. The *MCI*A's broad application is meant to bar members of Council from participating in matters where their economic self-interest may be in conflict with their public duty. The public's confidence in its elected representatives demands no less.

263. The Divisional Court elaborated on this principle in 2011 when it stated:

The *MCI*A is important legislation. It seeks to uphold a fundamental premise of our governmental regime. Those who are elected and, as a result, take part in the decision-making processes of government, should act, and be seen to act, in the public interest. This is not about acting

³ *Moll v Fisher* (1979), 23 OR (2d) 609.

dishonestly or for personal gain; it concerns transparency and that the certainty that decisions are made by people who will not be influenced by any personal pecuniary interest in the matter at hand. It invokes the issue of whether we can be confident in the actions and decisions of those we elect to govern.⁴

264. Given this purpose, the Court of Appeal for Ontario has been clear that the application of the *MCI*A should not be “narrowly confined.”⁵ The threshold question which must be answered is whether the matter to be voted upon has a potential to affect the pecuniary interest of the member of Council.⁶

What does the phrase “the matter [that] is the subject of consideration” mean?

265. Section 5 of the *MCI*A requires that a member of Council disclose that they are in a conflict of interest and refrain from discussing “any matter” in which they hold a pecuniary interest at a meeting of council where the matter is the subject of consideration.
266. The scope of this prohibition was recently considered in an application to a judge about a member of council who declared an interest in a specific matter concerning a fee her son had to pay to a City agency. In a number of council meetings that followed, the member questioned and criticized agency officials about its finances and activities.
267. One of the central issues before the judge was whether having declared a conflict, it was open to the member of council to question officials about these other things.⁷ The member of council submitted that the fee her son was required to pay was not “the matter under consideration” when she was questioning officials about other matters. The judge disagreed and upheld the principle that the *MCI*A “is intended to be construed

⁴ *Mondoux v Tuchenhagen*, 2011 ONSC 5398, at para 25.

⁵ *Ferri v Ontario (Ministry of Attorney General)*, 2015 ONCA 683, at para 10.

⁶ *Greene v Borins* (1985), 50 OR (2d) 513, at para 42.

⁷ *The Corporation of the Townships of Brudenell, Lyndoch and Raglan (Integrity Commissioner) v. Andrea Emma Budarick*, 2021 ONSC 7635 at para 61.

broadly in order to achieve the purposes for which it was enacted, that is, transparency, integrity and accountability in municipal government operations.”⁸

268. The member of council appealed the judge’s decision to the Divisional Court, which upheld the decision and offered further guidance on what the phrase “matter [that] is the subject of consideration” means. The Court stated (emphasis added)⁹:

The extent of what can be considered to be the matter under consideration ... depends on the context and the evidence. Section 5(2) prohibits a conflicted member from taking part in the discussion of any question in respect of the matter that gives rise to the conflict. Whether or not words spoken by the member that do not directly address the member's precise pecuniary interest in the matter nonetheless amount to taking part in a discussion of any question in respect of that matter is a question of mixed fact and law for the application judge in light of all of the circumstances.

269. To summarize, the Courts have made it clear that the “matter [that] is the subject of consideration” should be interpreted broadly and purposively. It is not just the member’s specific pecuniary interest that is at issue but also any related topics that could potentially affect the member’s pecuniary interest. Provided that the topic has a nexus to the member’s pecuniary interest and could have some impact on that interest, then the topic falls within the “matter [that] is the subject of consideration.” This is why determinations under the *MCIA* are very context specific and will turn on the facts of each case¹⁰.

What was “the matter under consideration” in Agenda Item IE30.19 in Toronto City Council on June 15, 2022?

270. The subject matter under consideration in agenda item IE30.19 was ActiveTO road closures on Lake Shore Boulevard West. It was not simply a planning item concerning the Western Waterfront Master Plan. I have concluded this based on the following evidence:

⁸ *Budarick (ONSC)* at para 71.

⁹ *Budarick v. the Corporation of the Townships of Brudenell, Lyndoch and Raglan (Integrity Commissioner)*, 2022 ONSC 640 (Div Ct), at para 48.

¹⁰ *Cooper et al. v Wiancko et al.*, 2018 ONSC 342, at para 61.

- The agenda item title was “Revisiting ActiveTO Interventions on Lake Shore Boulevard West.”
- Ms. Gray’s report on this item was titled “ActiveTO on Lake Shore Boulevard West.”
- The matter was put to Council because, as moved at committee, Councillor Layton wished to get an update on ActiveTO road closures on Lake Shore Boulevard West.
- Councillor Grimes held the item at Council as he opposed ActiveTO road closures on Lake Shore Boulevard West.
- Councillor Perk’s motion on the Western Waterfront Master Plan related to the assertion in Ms. Gray’s report that the ActiveTO program would have to suffice until the Western Waterfront Master Plan was completed and implemented. Because he was dissatisfied with the ActiveTO program, his motion for “quick start” changes were meant to hasten the replacement of ActiveTO.
- The debate at Council, including Mayor Tory’s own remarks, focussed almost exclusively on ActiveTO.
- The news release the City of Toronto issued following the debate on this item was entitled “ActiveTO to continue on Lake Shore Boulevard West as special event” and reported on ActiveTO and Councillor Perk’s motion in context of ActiveTO.

271. Having concluded this, we must move to the question whether ActiveTO had a nexus to Mayor Tory’s pecuniary interests.

Issue 2: Did Mayor Tory have a pecuniary interest, direct or indirect, with respect a matter that was before Council?

272. Yes.

Statutory Requirements

273. The term “direct pecuniary interest” is not defined in the *MCI/A* but it is generally accepted as any matter where the outcome of a vote may affect a member’s personal financial situation, the value of their property or holdings or create the potential of gain or loss for their business.

274. The term “indirect pecuniary interest” is defined in section 2 of the *MCIA*. It states:

[A] member has an indirect pecuniary interest in any matter in which the council ... is concerned, if,

(a) the member or his or her nominee,

(i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,

(ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or

(iii) is a member of a body,

that has a pecuniary interest in the matter; or

(b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

275. A “controlling interest” is defined in section 1 of the *MCIA*. It means:

[T]he interest that a person has in a corporation when the person beneficially owns, directly or indirectly, or exercises control or direction over, equity shares of the corporation carrying more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding definition.

276. Pursuant to section 3 of the *MCIA*, the pecuniary interests, direct or indirect, of a member of Council’s parent, spouse or children, if known to the member, are deemed to be the pecuniary interest of the member.

277. Pursuant to section 5(1) of the *MCIA*, if a member of Council has a pecuniary interest, direct or indirect, in something being considered in a Council or committee meeting, they:

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

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

- c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.
278. If the Council or committee meeting is not open to the public, they must also leave the meeting pursuant to section 5(2) of the *MCIA*.
279. Members of Council for the City of Toronto disclose their interests at the beginning of a meeting and submit a Declaration of Interest form to the Clerk.
280. However, the *MCIA* includes exceptions to the requirements in sections 5(1) and (2) of the *MCIA*. Members do not need to comply if one of the eleven exceptions set out in section 4 of the *MCIA* apply.
281. The exceptions do not negate the fact that someone has a pecuniary interest, they simply acknowledge there are some matters the legislature deems it necessary or desirable for someone to participate in decision-making even though they have a financial stake in the topic.

Application of the *MCIA*: Did Mayor Tory have a pecuniary interest in IE30.19?

282. In answering this question, I looked at whether:
- a) Mayor Tory has a pecuniary interest in the Blue Jays; and
 - b) the Blue Jays had a pecuniary interest in IE30.19.

Does Mayor Tory have a pecuniary interest in the Blue Jays?

283. Yes.

Mayor Tory's interests in Rogers family Ownership Structure

284. Mr. Chaleff submitted that because Mayor Tory is a trustee of RCT, and a member of its Advisory Committee, he has an indirect interest pecuniary interest in the Blue Jays. Further analysis of this question was warranted for two reasons. First, Mayor Tory has for many years proactively disclosed he also holds directorships in the Rogers family

ownership structure. Second, I wanted to better understand the precise corporate structure in order to draw a clear line between RCI and the Blue Jays.

285. RCI is the parent company which owns the Blue Jays franchise. RCI owns the Blue Jays through a holding company called Blue Jays Holdco Inc. I found RCI has control and ownership over the Blue Jays through RCI's filings with the CRTC and the Ontario Securities Commission.
286. It would defeat the *MCIA*'s purposes of transparency, integrity and accountability if the use of the word "corporation" in section 2 of the *MCIA* was interpreted restrictively to only refer to a parent corporation, rather than including its subsidiary corporations. The screening tool Mayor Tory uses acknowledges this, too. It screens all companies with "Rogers" in the name and specifically includes the Blue Jays, which does not have "Rogers" in its name.

Shareholdings

287. As Mayor Tory and his family own shares in RCI (a corporation that offers its securities to the public), I needed to investigate whether these shareholdings constitute a "controlling interest" in RCI as defined by the *MCIA*. Taking into account RCI's dual share structure, the evidence I obtained from Mayor Tory shows he does not own ten percent or more of Rogers Class A shares. Thus, as a shareholder in RCI, Mayor Tory does not have an indirect pecuniary interest in the Blue Jays for purposes of s. 2(a)(ii) of the *MCIA*. This conclusion, however, does not end the inquiry into Mayor Tory's shareholdings.
288. Mayor Tory, even if he does not have a controlling interest in RCI, still holds shares in the corporation. In theory, if the value of his shareholdings was affected by a matter at Council relating to the Blue Jays, that would have an affect on his direct pecuniary interests. As Mayor Tory's legal counsel has submitted, there is no evidence that IE30.19 as it may have related to the Blue Jays did or could have had any impact on the value of the RCI shareholdings of Mayor Tory and his family. I agree.

289. This conclusion about Mayor Tory's shareholdings, however, does not end the inquiry. I note this because, even were Mayor Tory and his family to divest themselves of their RCI shares or place them in a blind trust over which he has no control, Mayor Tory's directorships would need to be considered.

Directorships

290. Mayor Tory is a director of Rogers Voting Shares Holdings Incorporated, which does not offer its securities to the public. It has a controlling interest (77.14 percent) in Rogers Enterprises (2015) Incorporated that, in turn, has a controlling interest (slightly more than 97 percent) in RCI in conjunction with two other holding companies under its control. For this reason, because he is a director of a corporation that controls the Blue Jays' parent company, Mayor Tory does have an indirect pecuniary interest in the Blue Jays for purposes of s. 2(a)(i) of the *MCI*A. Again, this is consistent with Mayor Tory's own screening template.
291. As this directorship establishes Mayor Tory has an indirect pecuniary interest in the Blue Jays, I have not analysed whether his trusteeships or membership in the RCT Advisory Committee also give rise to a direct or indirect pecuniary interest. I did initially consider this question but have not needed to answer in my inquiry because, in this case, Mayor Tory's shareholdings and directorships were the more relevant line of inquiry.
292. While Mr. Chaleff's application asked me to inquire about Mayor Tory's pecuniary interests relying on Mayor Tory's trusteeships, my inquiry was better able to consider the question of these pecuniary interests based on more direct and relevant grounds. This is not a criticism of Mr. Chaleff. It reflects the fact that, as the Integrity Commissioner for the City of Toronto, I have greater capacity and investigative powers than he does.

Did the Blue Jays have a pecuniary interest in IE30.19?

293. Yes.
294. As noted above, the matter under consideration in agenda item IE30.19 was ActiveTO road closures on Lake Shore Boulevard West.
295. As set out below, the surrounding circumstances shows a clear nexus between IE30.19 and the pecuniary interests of the Blue Jays.
296. ActiveTO's road closures on Lake Shore Boulevard West were a controversial public issue and Councillor Layton put it on Council's June 2022 agenda because he was concerned about the future of the program.
297. Before it came to Council:
- a) Councillor Grimes alerted Mr. Shapiro about this item saying he believed ActiveTO was contrary to the best interests of the Blue Jays.
 - b) Mr. Shapiro agreed with Councillor Grimes and concluded ActiveTO was not "fan friendly or business friendly."
 - c) Mr. Shapiro wrote to Mayor Tory about the adverse impact ActiveTO was having on fans being able to attend home games and asked Mayor Tory to vote against the program.
 - d) Mr. Shapiro's letter attracted public criticism. Mayor Tory came to the defence of Mr. Shapiro saying that like other business owners who were adversely affected by ActiveTO, he should be allowed to express the "views of his business" on this issue.
298. Mayor Tory's legal counsel cautioned that pecuniary interests should not be found to exist if the issue is hypothetical or speculative. I agree. However, the public discourse on IE30.19., of which Mr. Shapiro was a part, shows the issues were far from hypothetical or speculative.
299. Mayor Tory's legal counsel submitted Mr. Shapiro was only concerned about "fan experience" rather than bottom line business issues. This was not the view Mr. Shapiro

expressed about why he wrote to Mayor Tory. Major League Baseball is a multi-billion dollar industry in North America. If it is true Mr. Shapiro was expressing his view about “fan experience,” that is a business concern being voiced by a senior executive of a multimillion-dollar Toronto business.

300. Mayor Tory’s legal counsel also submitted that pecuniary interests should only be found to exist where “transactional” issues, like a planning application, grant, or licensing matter, are being considered. I do not agree. Such a narrow approach would be antithetical to the purpose of the *MCIA*. Its rules are meant to apply to all decision-making where a nexus can be established between the matter before Council and someone’s personal financial interests.

Summary

301. For these reasons, I believe the evidence showed Mayor Tory did have an indirect pecuniary interest with respect to IE30.19. It showed he has an indirect pecuniary interest in the Blue Jays and the Blue Jays had a pecuniary interest in IE30.19.
302. I then needed to consider if any exceptions applied to relieve Mayor Tory from having to declare an interest. On this point, Mayor Tory’s legal counsel submitted the exceptions set out in sections 4 (j) or (k) of the *MCIA* apply.

Issue 3: Do any of the exceptions in section 4 of the *MCIA* apply?

Section 4(j): “A Pecuniary Interest which is an Interest in Common with Electors Generally”

303. There are generally two questions to consider in determining whether s. 4(j) applies: who are the “electors generally” in the circumstances of the case, and do they share a pecuniary interest with the member.
304. “Electors generally” does not necessarily mean all electors within the municipality, but rather all electors who are affected by the matter under consideration (such as electors within a particular geographic area).

305. Those “electors generally” must have a pecuniary interest in the matter that is of the same kind as the pecuniary interest of the member; conflicting interests or an interest of a different nature will not ground the application of s. 4(j). However, the pecuniary interest of the member does not necessarily need to be the same in degree as that of the electors generally.

Statutory Provision

306. Section 4(j) of the *MCIA* exempts a member of Council from having to declare an interest, or leave a closed meeting, if they have “a pecuniary interest which is an interest in common with electors generally.”

307. The phrase “interest in common with electors generally” is defined in s. 1 of the *MCIA* as meaning:

[A] pecuniary interest in common with the electors within the area of jurisdiction and, where the matter under consideration affects only part of the area of jurisdiction, means a pecuniary interest in common with the electors within that part;

General Principles

308. The Courts have decided the purpose of this exception is to restrict participation in the debate of a measure by Council to¹¹:

- a) those whose interest in it is no greater than that of all other electors affected by the decision; or
- b) those whose potential interest in it, if it exceeds that of others, is still so insignificant as to be unlikely to affect their decision.

The “interest” in common

309. The “interest in common” in section 4(j) refers to the member’s pecuniary interest in the matter before Council, not some other non-pecuniary interest which the member and electors generally might share in the subject matter.¹²

¹¹ *Gammie v. Turner*, 2014 ONSC 4563, at para. 76.

¹² *Davidson v. Christopher*, 2017 ONSC 4047.

310. For example, in one case where a councillor had failed to disclose his interest in a tax sale of a property until after he had submitted a bid, the court agreed that while he would share with “electors generally” an interest in whether the municipality obtained the best price possible for the property, this was not the interest at issue. Rather, the member’s pecuniary interest in whether to make a bid on the property was the interest to be considered, and this was not held in common with “electors generally.”¹³
311. It is the nature of the pecuniary interest that must be shared with the other electors for the exception to apply. In other words, if the pecuniary interest is the same kind as that held by the other electors, even if it is different in degree, section 4(j) will still apply. For example, council members would not be disqualified after finding they had a pecuniary interest shared with all other businesses in the area governed by the by-law in issue.¹⁴

Electors generally

312. In determining whether section 4(j) applies, it is necessary to identify the relevant class of electors with whom the member’s pecuniary interest is said to be in common. It does not mean that literally every elector has to have the interest. It includes a particular class or group of electors who are affected in a pecuniary way by the matter under consideration¹⁵. It does not require everyone in the class or group to have the same opinion on the matter.¹⁶
313. Once the group comprising “electors generally” is ascertained, the analysis then moves to determining whether the member’s pecuniary interest in the matter is shared with “electors generally”.

¹³ *Tuchenhagen v. Mondoux*, 2011 ONSC 5398, at paras. 46-47.

¹⁴ *Ennismore (Township) (Re)*, [1996] O.J. No. 167 (Ont. C.J. Gen. Div.), at paras. 11, 17.

¹⁵ *Ennismore (Township) (Re)*, [1996] O.J. No. 167 (Ont. C.J. Gen. Div.), at para. 16.

¹⁶ *Ennismore (Township) (Re)*, [1996] O.J. No. 167 (Ont. C.J. Gen. Div.), at para. 18.

Does this exception apply to Mayor Tory's vote on IE30.19?

314. No.
315. Mayor Tory's indirect pecuniary interest is different in kind from the interest of electors generally. For the purposes of this analysis, the pecuniary interest at issue relates to negative impacts on the Blue Jays' revenue as a result of the ActiveTO road closures and related traffic impacts.
316. "Electors generally" in this context (those who are "affected" by the ActiveTO matter) includes businesses in the area, cyclists and pedestrians who made use of the ActiveTO program, and those in surrounding communities who were affected by road closures. Limiting "electors generally" in this case to just those owning businesses in the area would be unduly restrictive.
317. In this exception, "electors generally" is not a stand-alone criterion. It is not a general public interest exception. Mayor Tory has submitted ActiveTO road closures were a traffic issue that affected everyone alike and that, in the public interest, he needed to become involved as Mayor to sort out the issue.
318. For this exception to apply, the class or group needs to be identified and Mayor Tory's pecuniary interests need to be an interest in common with those electors generally. In this case, Mayor Tory's indirect pecuniary interest as a director in the Rogers family ownership structure is not one that all electors would share.

Section 4(k): "An interest that is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member"

319. In considering this provision, it is relevant to note that a member of Council's motive is relevant to consider in applying this section¹⁷. I note this because Mayor Tory's assertion

¹⁷ *Amaral v Kennedy*, 2012 ONSC 1334, at para 44.

that he believed he was acting in the best interest of all electors would better have been made in relation to this exception than the exception in section 4(j) of the *MCIA*.

Statutory Provision

320. Section 4(k) of the *MCIA* exempts a member of Council from needing to remove themselves from participating in a decision when the interest of the member “is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member.”

General Principles

321. In light of the broad application of the principle no one can faithfully serve the public if they have divided loyalties, the Court of Appeal has noted it is counterbalanced by the exception under section 4(k):

The competing policy imperative is that “pecuniary interest” must not be construed so broadly that it captures almost any financial or economic interest such that it risks needlessly disqualifying municipal councillors, and others captured under the ambit of the *MCIA*, from participating in local matters of importance to their constituents. Section 4(k) of the *MCIA* operates to respond to this concern and ameliorate the potentially harsh effects of a broad definition of pecuniary interest by ensuring that pecuniary interests that are truly remote or insignificant are not caught under s. 5.¹⁸

322. The applicable test under section 4(k) for determining whether the member’s pecuniary interest is too remote or insignificant is the “reasonable elector” test. The reasonable elector test asks “[w]ould a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councillor as likely to influence the councillor’s action and decision on the question?”¹⁹

323. The analysis is highly contextual and different factors will be relevant depending on the circumstances. The following is a non-exhaustive list of factors that have been considered in the section 4(k) analysis:

¹⁸ *Ferri v Ontario (Attorney General)*, 2015 ONCA 683, at para 10.

¹⁹ *Whiteley v Schnurr*, [1999] OJ No 2575 (Ont SC), at para 10.

1. Whether there is a financial benefit or detriment, financial or otherwise, to the member depending on the manner in which the member disposed of the subject matter;²⁰
2. Whether the member has a record of faithful service to the municipality;²¹
3. Whether the member has otherwise been diligent in declaring conflicts of interest under the *MCIA*;²²
4. The member's motives (i.e. whether they were motivated by good faith or private gain);²³
5. Whether the matter is of public interest to the member's constituents;²⁴ and
6. Where the member's pecuniary interest stems from an employment relationship, whether the member's continued employment, pay, benefits, and/or advancement opportunities may be impacted depending on the manner in which the member disposed of the matter.²⁵

324. The first factor, whether there is a financial benefit or detriment to the member based on the disposition of the matter, appears to be the most significant and most frequently referenced factor in the caselaw, though it is not necessarily dispositive. Conversely, where the member does receive a financial benefit – to themselves or to a company owned by them – this will weigh significantly towards section 4(k) not applying.²⁶

²⁰ See *Whiteley v Schnurr*, [1999] OJ No 2575 (Ont SC), at para 10; *Ferri v Ontario (Attorney General)*, 2015 ONCA 683, at para 21; *Lastman (Re)*, 183 DLR (4th) 546 (Ont SC), at para 15; *Bowers v Deleгарde*, [2005] OJ No 689, at para 95.

²¹ *Ferri v Ontario (Attorney General)*, 2015 ONCA 683, at para 21.

²² *Ferri v Ontario (Attorney General)*, 2015 ONCA 683, at para 21; *Smith v Lapointe*, 2001 CarswellOnt 1815 (Ont SC), at para 57.

²³ *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683, at para 21; *Amaral v Kennedy*, 2012 ONSC 1334, at para 44; *Bowers v Deleгарde*, [2005] OJ No 689, at para 95.

²⁴ *Ferri v Ontario (Attorney General)*, 2015 ONCA 683, at para 21.

²⁵ *Whiteley v. Schnurr*, [1999] OJ No 2575 (Ont SC), at para 10; *Smith v Lapointe*, 2001 CarswellOnt 1815 (Ont SC), at para 57.

²⁶ See e.g. *Davidson v Christopher*, 2017 ONSC 4047; and *Cooper et al. v Wiancko et al.*, 2018 ONSC 342.

Does this exception apply to Mayor Tory?

325. Yes.
326. I have concluded this based on my review of the factors set out above. I note the following:
1. Based on the what I found in my inquiry, there is no evidence Mayor Tory's vote on IE30.19 resulted in any personal financial benefit or loss to him or the Blue Jays. His compensation as a director of Rogers Voting Shares Holdings Incorporated, as well as a trustee for the RCT (and as a member of its Advisory Committee) are not tied to ticket sales for the Blue Jays as he receives either a flat fee or compensation tied to RCI share prices. In theory, even if attendance at Blue Jays could have an impact on RCI share prices (which is highly doubtful), the evidence I found is that ActiveTO had no impact on attendance so this theory is disproved.
 2. In assessing whether Mayor Tory has a record of faithful service to the City of Toronto, I note that he was first elected mayor in 2014 and was recently elected to a third term of office in October 2022.
 3. Mayor Tory, when first elected, voluntarily disclosed his interests and involvements with the Rogers family ownership structure and has declared these interests at Council and committee, and his deemed pecuniary interests, on several occasions. In one matter, he set up proactive screens to ensure he could not become involved with a matter even before it came to the floor of Council.
 4. It is apparent from the evidence that the primary objective of Mayor Tory and his office was, in the days leading up to the debate in Council, to lessen the potential of a divisive and lengthy debate.
 5. ActiveTO resulted in an unprecedented amount of correspondence to Mayor Tory's office and number of submissions to Council. It would have been very difficult for Mayor Tory not to have spoken about the matter before or at Council.
 6. Mayor Tory is a long-standing trustee, director and advisor to the Rogers family and there is no evidence his continued engagement could or would have been impacted by voting for, against or recusing himself from the debate on IE30.19.
327. For these reasons, I believe a reasonable elector, apprised of this evidence, would find Mayor Tory's indirect pecuniary interest in the Blue Jays was unlikely to influence his action or decision on IE30.19.

328. Consequently, Mayor Tory was not required to declare an interest pursuant to section 5(1) of the *MCIA* in IE30.19.
329. This is a fact-specific finding. It is not a blanket exemption. If some other matter came before Council involving the Blue Jays, the outcome could well be different. Mayor Tory should keep the “Blue Jays” on his screening template.
330. Having concluded this, it is important I address the requirements of section 160.1(15) of the *City of Toronto Act, 2006*.

Issue 4: Should the Integrity Commissioner apply to the court for a determination that Mayor Tory has contravened the *MCIA*?

331. No.
332. Section 160.1(15) of the *City of Toronto Act, 2006* provides that upon completion of an inquiry under the *MCIA*, I may, if I consider it appropriate, apply to a judge for a determination as to whether a member of Council has contravened section 5, 5.1, 5.2 or 5.3 of the *MCIA*.
333. Mr. Chaleff submitted that if I believe there has been a contravention of the *MCIA*, it is incumbent on me to make an application to the court on behalf of an applicant to my Office. I do not agree. I have an independent role and conduct inquiries in an independent manner. I do not perform my duties on behalf of either an applicant or respondent.
334. I also disagree with Mr. Chaleff’s submission that following an inquiry, if I believe there has been a contravention of the *MCIA*, I am statutorily required to apply to a judge for that determination. I do not agree. I am awarded discretion whether or not to do so. The legislature has recognized I have an independent and expert role and that I have discretion to decide, even in the face of an apparent contravention, to exercise discretion whether or not to apply to a judge. One can easily imagine circumstances,

like illness, death of a member or other valid reason, where it would be inappropriate to be automatically required to make such an application.

335. I note these things as Mr. Chaleff submits my Office simply serves a “screening function” in respect of *MCIA* applications. I do not agree. My Office has been entrusted the mandate to do expert and independent investigations. It is not mandatory for applicants to apply to my Office if they wish to pursue an application. Indeed, Mr. Chaleff:
- a) was free to make his own application to a judge before he came to my Office;
 - b) was free to make his own application to a judge as soon as my Office was required to terminate my inquiry on August 19, 2022; and,
 - c) is free to make his own application to a judge if, as in this case, I am of the opinion the evidence does not show Mayor Tory violated the *MCIA*.
336. Based on the standard of review I noted at the outset, in my view the evidence does not show that Mayor Tory violated the *MCIA*. Consequently, I will not be applying to a judge to request such a determination or impose any penalty. I have reached my decision based on this evidence, my analysis of how the law applies to these circumstances and the submissions I received from Mr. Chaleff and Mayor Tory. If Mr. Chaleff disagrees with my conclusion, he is able to apply to a judge to request this determination himself.

G. CONCLUSION

337. In the course of my inquiry, it was suggested by some that Mr. Shapiro’s letter was just about “baseball” and “fan experience.” Professional baseball is a game played on and off the field. Baseball is about strategy and making choices to optimize the chances of scoring a run, winning a game, and having a championship season. Major League Baseball franchises, including the Blue Jays, foster fan support to grow and sustain their business. The Blue Jays is a multi-million-dollar business. The Rogers family business controls the franchise through RCI and Mr. Rogers is actively involved in it; he personally recruited Mr. Shapiro.

338. Mr. Shapiro is a very successful and experienced Major League Baseball executive. People in these roles must be adept at working with the cities where their teams are based. That is just good business sense. Even if they have a distaste for politics, professional sport executives have to know and seek advice about how to navigate that world.
339. When Councillor Grimes contacted Mr. Shapiro, he had a political purpose in mind. Councillor Grimes said Mr. Shapiro should write to Mayor Tory to tell him how to cast his vote in Council on something. Councillor Grimes even ghost-wrote the letter for Mr. Shapiro to send.
340. Mr. Shapiro had never been contacted before by Councillor Grimes about a Council agenda item. Nevertheless, he took the call and wrote the letter. It was not a big issue for him. He did not give it much thought. It was not even something he needed to talk with anyone about.
341. Mr. Shapiro says he knew, before he sent his letter, that his staff had been told that Mayor Tory had to recuse himself from voting on matters involving the Blue Jays. Instead, Mr. Shapiro followed the advice of Councillor Grimes. I suspect that had Mr. Shapiro consulted with his government relations advisors about the letter, they would have advised him not to send it.
342. When Councillor Grimes' Office showed the Mayor's Office a draft of his own letter he was intending to send Mayor Tory, he was told not to address the letter to Mayor Tory and that Councillor Grimes should hold off sending it, as it would inflame public debate. ActiveTO was a controversial topic in the summer of 2022 and it was not a contravention of the *MCIA* for Mayor Tory's Office, when asked by Councillor Grimes and also the Chair of Exhibition Place whether it would be helpful to write a letter to Mayor Tory, to say "no." The proposed letter Councillor Grimes intended to send Mayor Tory from his office was not conveying new information. It was just political posturing.

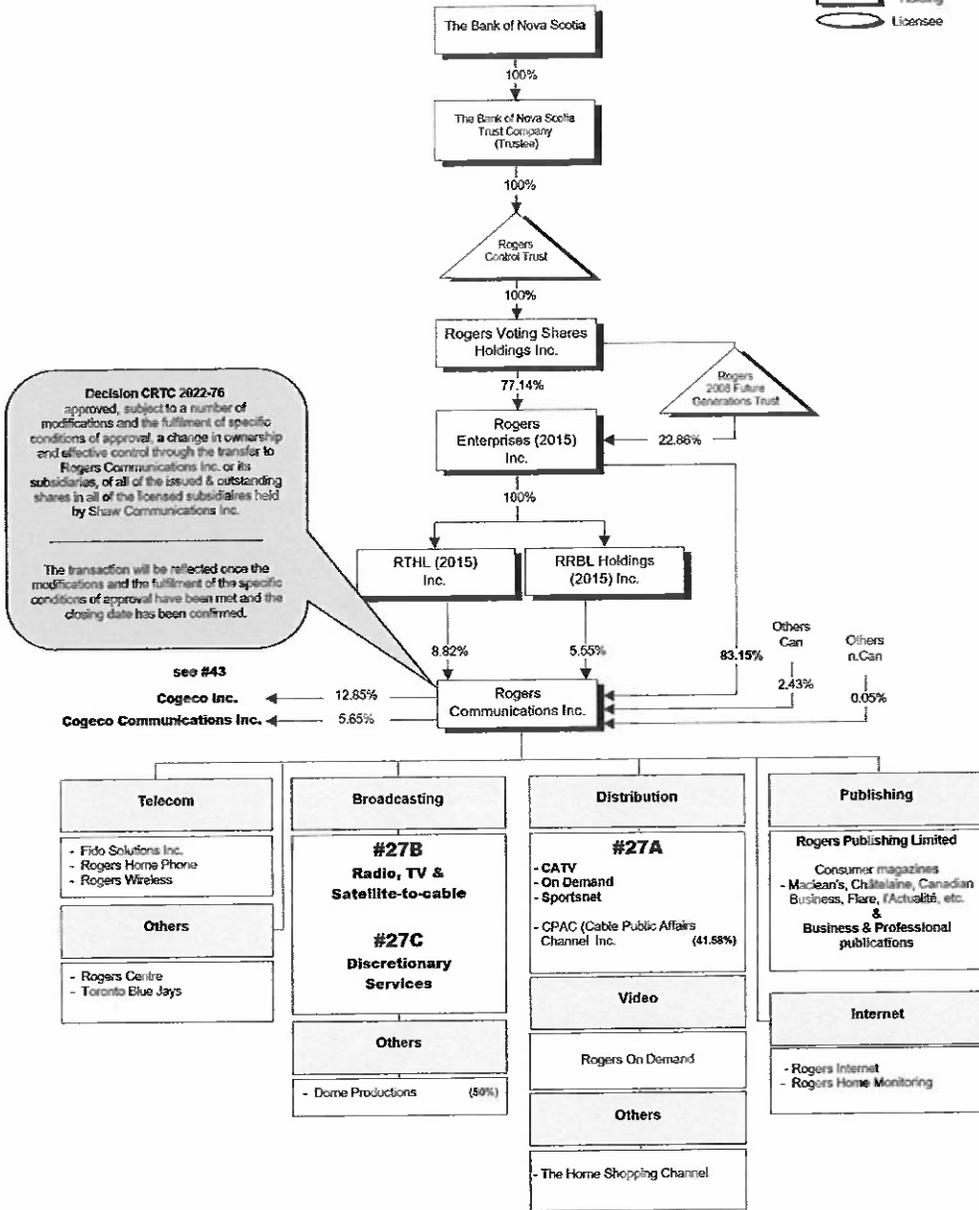
343. However, Councillor Grimes' ghost-written letter for Mr. Shapiro did contain "new information." Since its inception in 2020, no one in City Hall had ever heard from the Blue Jays that ActiveTO was impacting its business. In June 2022, from the face of the letter, one would gather this was a pressing business problem for the franchise. In this inquiry, however, we have learned it was not.
344. While Councillor Grimes held off from sending his own letter to Mayor Tory because of what he was advised by the Mayor's Office, Councillor Grimes did not relay to Mr. Shapiro that sending his ghostwritten letter to Mayor Tory was an equally bad idea.
345. Mr. Shapiro's letter did no favour for Mayor Tory.
346. Mayor Tory was briefed by his staff about how to respond to questions about the letter. Mayor Tory had not read the letter and they did not show him the letter.
347. In future, if the Mayor's Office is advising him about how to answer questions about a letter from an executive of a Rogers subsidiary listed on Mayor Tory's screening template, they should have him read the letter first. The fact the letter asked Mayor Tory to vote on a matter that was supposedly affecting its business should have raised flags.
348. ActiveTO was a matter of great public concern and it is understandable and important for a Mayor of Toronto to comment on such matters.
349. Mayor Tory did no favour for himself, however, when he came to the personal defence of Mr. Shapiro. What may have been well-intentioned was ill-advised. Mayor Tory did not calm the waters of public debate.
350. Mayor Tory has a close business relationship with the Rogers family; he is a trustee and director within their family controlled business. In 2019, he proactively declared and instituted screens in relation to a matter affecting the Rogers Centre, where the Blue Jays play.

351. When he came to Mr. Shapiro's personal defence, it reasonably raised the question about whether there was direct or indirect communication, consultation and coordination between Mr. Shapiro (the president of a Rogers family company) and Mayor Tory (in his role within the Rogers family business) about the "problem" the Blue Jays was having with ActiveTO road closures.
352. When he came to Mr. Shapiro's personal defence, it reasonably raised the question under the *MCI*A about whether Mayor Tory voted on, or was active in relation to, a matter in which he had a pecuniary interest.
353. Mr. Shapiro did not ask for Mayor Tory to defend him nor need Mayor Tory to do so. As Mr. Shapiro noted, far worse had been said of him in social media while he has been with the Blue Jays.
354. This matter warranted inquiry. There is no evidence there was direct or indirect communication, consultation and coordination between Mr. Shapiro and Mayor Tory. There is evidence Mayor Tory has a pecuniary interest in the Blue Jays. He did not have to declare it because, as it turns out, the agenda item had no effect upon the Blue Jays, i.e. the interest was "remote" because it did not exist. The outcome could have been different if my Office obtained information or evidence that demonstrated the Blue Jays' business operations had been materially affected by ActiveTO as Mr. Shapiro's ghostwritten letter had initially suggested.
355. Mayor Tory has declared interests on may occasions. In this case, the communications approach he adopted was a mistake and caused questions to be asked as a result. I recommend his office review and update the screening template as I have suggested. I will also be updating the guidance my Office provides all members of Council about these matters as I believe this will be of assistance to all.

Appendix 1

ROGERS
Corporate Structure

The percentages refer to voting rights only



Appendix 2

**July 30, 2021 to June 15, 2022 Blue Jays' Home Games
and Lakeshore Boulevard closures for ActiveTO**

Blue Jays home game dates	Lakeshore Blvd E or W or both closed for ActiveTO	Attendance*
July 30, 2021	N	13,446
July 31, 2021	Y	13,953
August 1, 2021	Y	14,427
August 2, 2021	N	14,653
August 3, 2021	N	14,270
August 4, 2021	N	14,410
August 5, 2021	N	14,289
August 6, 2021	N	14,719
August 7, 2021	Y	14,768
August 7, 2021**	Y	12,659
August 8, 2021	Y	14,766
August 20, 2021	N	14,649
August 21, 2021	Y	14,887
August 22, 2021	Y	14,865
August 23, 2021	N	14,640
August 24, 2021	N	14,553
August 25, 2021	N	14,276
August 26, 2021	N	14,958
August 30, 2021	N	14,406
August 31, 2021	N	13,963
September 1, 2021	N	14,262
September 3, 2021	N	14,843
September 4, 2021	N	14,947
September 5, 2021	N	14,988
September 13, 2021	N	12,119
September 14, 2021	N	13,103
September 15, 2021	N	12,153
September 17, 2021	N	14,798
September 18, 2021	Y	14,722
September 19, 2021	Y	14,601
September 28, 2021***	N	28,769
September 29, 2021	N	29,601
September 30, 2021	N	29,659
October 1, 2021	N	28,855
October 2, 2021	N	29,916
October 3, 2021	N	29,942
April 8, 2022****	N	45,022
April 9, 2022	N	43,386
April 10, 2022	N	31,549
April 15, 2022	N	35,415
April 16, 2022	N	32,330
April 17, 2022	N	27,490
April 25, 2022	N	20,981
April 26, 2022	N	22,611
April 27, 2022	N	20,468
April 28, 2022	N	23,144
April 29, 2022	N	35,066
April 30, 2022	N	40,732
May 1, 2022	N	31,802
May 2, 2022	N	18,577
May 3, 2022	N	22,491

Appendix 2

May 4, 2022	N	29,057
May 16, 2022	N	28,207
May 17, 2022	N	22,988
May 18, 2022	N	20,472
May 20, 2022	N	29,300
May 21, 2022	N	39,393
May 22, 2022	N	42,323
May 31, 2022	N	25,424
June 1, 2022	N	23,312
June 2, 2022	N	25,250
June 3, 2022	N	27,753
June 4, 2022	N	36,987
June 5, 2022	N	34,088
June 13, 2022	N	19,716
June 14, 2022	N	23,106
June 15, 2022	N	19,961

* Attendance numbers taken from [ESPN's MLB Blue Jay stats](#) for 2021 and 2022

** Doubleheader (two games in one day)

*** July 30, 2021 the Blue Jays returned to playing home games at the Rogers Centre, with the Ontario government allowing a 15,000-person capacity. On September 24, 2021, Ontario eased capacity limits for seated-spectator outdoor events to 75% capacity or 30,000 people.

**** In the 2022-2023 Blue Jays season there were no public health capacity restrictions, and the Rogers Centre could return to holding about 50,000 fans.