

Legislative
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of Ontario



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de l'Ontario

OFFICE OF THE INTEGRITY COMMISSIONER



REPORT OF THE HONOURABLE J. DAVID WAKE INTEGRITY COMMISSIONER

Re: The Honourable Caroline Mulroney, Minister of
Transportation and Minister of Francophone Affairs,
and Stan Cho, Member of Provincial Parliament for Willowdale

Toronto, Ontario
February 2, 2022

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EXECUTIVE SUMMARY

This is the second report relating to a request for an opinion made by Taras Natyshak, Member of Provincial Parliament for Essex, under section 30 of the *Members' Integrity Act, 1994*, regarding the Honourable Doug Ford, Premier of Ontario and Member of Provincial Parliament for Etobicoke North, the Honourable Caroline Mulroney, Minister of Transportation and Minister of Francophone Affairs and Member of Provincial Parliament for York–Simcoe, and Stan Cho, Member of Provincial Parliament for Willowdale. The opinion relates to the decision-making process concerning the Bradford Bypass, a proposed freeway that would connect Highway 400 and Highway 404.

Because the legal and factual bases of the concerns raised with respect to Minister Mulroney and Mr. Cho are different than those raised with respect to Premier Ford, I decided to issue two reports. The first report, relating to Premier Ford, was issued on December 9, 2021, in which I found there were insufficient grounds to conduct an inquiry.

In this report, I focus on the remaining allegations made by Mr. Natyshak that Minister Mulroney breached section 3 (use of insider information) of the Act and Mr. Cho breached section 4 (influence). These allegations focus on one aspect of decision-making related to the Bradford Bypass; specifically, an alleged decision to alter the route of the proposed highway so that it would not have an impact on a golf course owned by Mr. Cho's father.

On the information available to me I was satisfied that neither Minister Mulroney, Mr. Cho nor their staff had any involvement in directing the process which led to a proposed highway realignment avoiding the golf course. I found that the process was conducted entirely by public servants. As a result, I concluded that there were insufficient grounds to conduct any further inquiry into this matter.

I. BACKGROUND

- [1] This is the second report I have made in response to a November 2, 2021 request from Taras Natyshak, Member of Provincial Parliament for Essex. The request was for my opinion as to whether three different members of the Legislative Assembly may each have contravened a different section of the *Members' Integrity Act, 1994* (“the Act”) with respect to decision-making related to the Bradford Bypass, a proposed freeway that would connect Highway 400 and Highway 404 north of Toronto.¹
- [2] One of the three members who was the subject of Mr. Natyshak’s request was Premier Doug Ford. Since the statutory and evidentiary basis for Mr. Natyshak’s allegations against Premier Ford was different than his allegations against the other two members I decided to issue two reports.
- [3] On December 9, 2021, I found that there were insufficient grounds for me to conduct an inquiry into Mr. Natyshak’s request regarding Premier Ford.²
- [4] This report deals with Mr. Natyshak’s allegations against Caroline Mulroney, Minister of Transportation and Minister for Francophone Affairs and Member of Provincial Parliament for York-Simcoe, and Stan Cho, currently Associate Minister of Transportation (Transit-Oriented Communities) and Member of Provincial Parliament for Willowdale.³ The allegations relate to section 3 of the Act (use of insider information) against Minister Mulroney and section 4 of the Act (influence) against Mr. Cho. The allegations focus on one particular aspect of decision-making related to the Bradford Bypass; specifically, an

¹ Ontario Regulation 697/21 provides a description of the location of the proposed bypass in section 1: “...a freeway connecting Highway 400 in the Town of Bradford West Gwillimbury (County of Simcoe) to Highway 404 in the Town of East Gwillimbury (Regional Municipality of York), located north of and parallel to Simcoe County Road 88 in the Town of Bradford West Gwillimbury and Queensville Sideroad (York Road 77) in East Gwillimbury, with the route traversing a small segment of the Township of King in York Region.”

² Report re. the Honourable Doug Ford, December 9, 2021

³ On June 18, 2021, Mr. Cho was appointed Associate Minister of Transportation. Because this appointment occurred after the events under review, in this report he will be referred to as Mr. Cho.

alleged decision to alter the route of the proposed highway so that it would not affect a golf course owned by Mr. Cho's father.

[5] On November 5, 2021, I forwarded to Minister Mulroney and Mr. Cho the affidavit of Mr. Natyshak, sworn November 2, 2021, which he had filed with the Speaker of the Legislative Assembly and submitted to me with his request for an opinion. I invited both Minister Mulroney and Mr. Cho to provide me with a response as to whether I should commence an inquiry under the Act. Both responded in a timely fashion. I requested further information from Minister Mulroney concerning her attendance at Silver Lakes Golf Course ("**Silver Lakes**"), which she readily provided.

[6] Since the process used to determine a preferred route for the Bradford Bypass has been a lengthy one (it originated in 1989) I decided, as part of this *pre-enquete*, to write to Laurie LeBlanc, Deputy Minister of Transportation, for information on the revival of the Bradford Bypass and how the route of the Bypass was, or will be, determined. Ms. LeBlanc provided me with a lengthy response on January 7, 2022 and responded to a further inquiry from me as to the role, if any, played by Minister Mulroney in the process.

II. LEGAL FRAMEWORK

The Commissioner's Jurisdiction

[7] Under s.30(1) of the Act, a member of the Legislative Assembly of Ontario who has reasonable and probable grounds to believe that another member has contravened the Act or Ontario parliamentary convention may request that I give an opinion on the matter.

[8] When a matter is referred to me, I may then conduct an inquiry and report my opinion to the Speaker in accordance with section 31 of the Act. Alternatively, I may refuse to conduct an inquiry if I am of the opinion that the referral was frivolous, vexatious, not made in good faith or that there are either no or insufficient grounds for an inquiry as set out in subsection 31(5) of the Act.

Section 3 of the Act: Use of Insider Information

[9] Section 3 of the Act sets out the following prohibition against members using insider information:

Insider Information

A member of the Assembly shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or seek to further the member's private interest or improperly to further or seek to further another person's private interest. 1994, c. 38, s. 3 (1).

Section 4 of the Act: Influence

[10] Section 4 of the Act sets out the following prohibition against members seeking to influence a decision by another person:

Influence

A member of the Assembly shall not use his or her office to seek to influence a decision made or to be made by another person so as to further the member's private interest or improperly to further another person's private interest. 1994, c. 38, s. 4.

III. Allegations, Responses and Findings

[11] Mr. Natyshak alleges in his affidavit that Mr. Cho "may have breached S.4" of the Act "concerning undue influence, by using his position as a Member of the Legislature to influence the decision-making around changes to the proposed Bradford Bypass highway route in the York-Simcoe riding of the province."

[12] Mr. Natyshak further alleges in his affidavit that Minister Mulroney "may have breached S. 3 of the Members' Integrity Act by allowing information relayed to her by MPP Cho concerning the route of the bypass to influence the Ministry of Transportation's decision and her Ministerial direction, to alter the proposed route of the bypass".

- [13] In support of these allegations Mr. Natyshak relies on an article published in the Toronto Star and the National Observer on October 31, 2021⁴ which he attached as an exhibit to his affidavit. Mr. Natyshak states in his affidavit that “the article notes that a new plan for the Bradford Bypass route was decided upon in April of 2021.” In fact, the article reports that the status of the route modifications was “proposed” rather than final. It also reports that the Ministry of Transportation’s (the “MTO’s”) rationale for the proposed change is to “lessen the 16.2 kilometer road’s impact to the Holland River and avoid an archaeological site”.
- [14] Mr. Natyshak also relies on the article’s reporting for his statement that “the new plan involved a rerouting of the proposed Bypass to avoid cutting into the Silver Lakes Golf and Country Club. This golf course is owned by John Cho, the father of MPP Cho.”
- [15] Mr. Natyshak then notes that a Facebook post of Silver Lakes discloses that the golf course invited Minister Mulroney and Mr. Cho for a visit in March 2021, a month before the proposed route change of the Bradford Bypass was announced. The clear assumption of Mr. Natyshak is that the Minister and Mr. Cho may have discussed the Bradford Bypass at that meeting, which resulted in the change to the proposed route announced the following month so that it would avoid Mr. Cho’s father’s golf course. Attached to the affidavit is a copy of the Facebook post which discloses that the ostensible reason for the visit was to support Silver Lakes’ winter activities including a skating rink, nature trails and raise awareness for its fundraising work.
- [16] In her response to these allegations Minister Mulroney stated the following:

I have two principal submissions to make in relation to this allegation.

⁴ Wang, Sheila & Emma McIntosh, “What the Ford government hasn’t told you about its next controversial highway project” Toronto Star (31 October 2021), online: <https://www.thestar.com/news/investigations/2021/10/31/bradford-bypass-ford-government-secrecy.html>
Emma McIntosh & Sheila Wang, “How Bradford Bypass became a pork barrel for Doug Ford’s rich developer donors” National Observer (31 October 2021), online: <https://www.nationalobserver.com/2021/10/31/news/how-bradford-bypass-became-pork-barrel-doug-fords-rich-developer-donors>

First, Associate Minister Cho never relayed information to me about the Bradford Bypass.

Second, the proposal to route the Bradford Bypass to the south was made by non-partisan public servants with no involvement by me or my staff.

I would respectfully submit that these two points are dispositive of the allegation that I breached s. 3 of the Act. I had no information from Associate Minister Cho, and I have done nothing to influence the route of the bypass, let alone to further my private interest or to improperly further another person's private interest.

- [17] Minister Mulroney went on to say that she was aware that Mr. Cho's father had an ownership interest in Silver Lakes on which the Bradford Bypass would have an impact. She stated that she felt it would be inappropriate to discuss the matter with Mr. Cho, and never did so. She was unaware of the change to the proposed route and was never briefed on it until she informed herself for the purposes of this response.
- [18] Minister Mulroney further stated that the realigned route is still only a proposed alteration, has not been formally approved, and that a consultation process is underway, after which public servants will make a final recommendation in fall 2022.
- [19] Mr. Cho denies having had any discussions regarding the Bradford Bypass with Minister Mulroney during her visit to Silver Lakes. He also denies having had any discussions with his parents about Silver Lakes business operations or about the Bradford Bypass and whether any expropriation plan would be more favourable to Silver Lakes or less so. Since being appointed to cabinet on June 18, 2022, he recognized that his family relationship and their ownership of the golf club placed him in a conflict of interest, particularly as Associate Minister of Transportation, and arranged for a screen to be put in place so that he is unable to have any discussions concerning the Bradford Bypass.
- [20] Mr. Cho stated that prior to his appointment to cabinet his parents asked him to invite Minister Mulroney to Silver Lakes as their local MPP so that she could see the walking trail and skating rink which Silver Lakes had set up for the winter months. The federal Member of Parliament had earlier visited the golf course to see the walking trail and skating rink. After Minister Mulroney accepted the invitation Mr. Cho stated that he decided to attend

because he knew she would meet his parents and he wanted to be present “because I am so proud of them”.

[21] Minister Mulroney confirmed that she was invited to Silver Lakes by Mr. Cho and she attended in her capacity as MPP for York-Simcoe. She said that she has visited many businesses in her riding as part of her constituency work to see how they were affected by COVID-19. She also visited Silver Lakes in May and posted about her visits afterwards. She maintained that on neither visit did she discuss anything related to her role as Minister of Transportation or to the Bradford Bypass.

[22] Mr. Natyshak appears to have drawn conclusions on the basis of a suspicion created by the timing of Minister Mulroney and Mr. Cho’s meeting at the golf course in March and the MTO announcement of a proposed route modification in April which would avoid the golf course.

[23] Not only do Minister Mulroney and Mr. Cho each strenuously deny that any discussion took place at the March meeting concerning the Bradford Bypass, but there is no evidence to contradict their statements to me. I am prepared to accept their statements.

[24] I am also prepared to accept the uncontradicted statement of Minister Mulroney that the proposal to route the Bradford Bypass to the south was made by public servants working in the MTO with no involvement from her or her staff. There can be no doubt of this fact after my reading of the information provided to me by Deputy Minister Laurie LeBlanc in response to my inquiries.

[25] In her first letter to me dated January 7, 2021, Ms. LeBlanc confirmed that the Bradford Bypass originated as a MTO project in 1989. Much of the history of the MTO’s route planning and environmental assessment work for the Bradford Bypass, while interesting, is not particularly relevant to my report other than to underline that this was a MTO project as opposed to an endeavour planned and managed out of the minister’s office. Part of that project involved the evaluation of several alternatives to determine a

“Technically Preferred Route” which had to be submitted to the Ministry of the Environment for approval and which was received in 2002.

- [26] It is not until 2019 when Minister Mulroney enters the Bradford Bypass history in Ms. LeBlanc’s account, which states:

Following technical briefings on June 24, 2019 and July 15, 2019, Minister Mulroney directed staff to prepare a Treasury Board submission to seek Stage 1 approval to advance the necessary design and environmental assessment work for the Bradford Bypass.

During the Treasury Board meeting on August 14, 2019 approval was granted to begin the planning work for the Bradford Bypass through an open competitive procurement for non-consulting services. The Treasury Board approval was for \$23M in funding for this phase of engineering work and property acquisition.

In 2019, following Treasury Board approval, MTO initiated the Preliminary Design and EA update for the Bradford Bypass. As part of this work, MTO is undertaking a design update for the project, which includes a review of the highway alignment for the Bradford Bypass that was developed as part of the 1997 EA and identified opportunities to refine the design to be in accordance with current MTO standards for safety and engineering design standards as well as with current legislation. Currently, MTO is undertaking additional environmental work in accordance with the Ontario Regulation 697/21, Bradford Bypass Project, under the *Environmental Assessment Act* related to the following disciplines: Archaeology, Agriculture, Air Quality, Built Heritage, Drainage and Hydrology, Fisheries, Groundwater, Land Used Factors, Noise and Vibration, Terrestrial Ecosystems, and Waste and Contamination.

- [27] The impact of the 2002 Technically Preferred Route on Silver Lakes and the more recent review of the engineering design following Treasury Board approval of funding in August, 2019 is set out below in the letter from Ms. LeBlanc:

The 2002 Technically Preferred Route impacted the Silver Lakes Golf Course and Albert’s Marina.

The 2002 EA contains the following passage, in which MTO committed to consult further with Silver Lakes’ owner to minimize impacts to their facilities and to discuss reconfiguring the facilities during a subsequent design phase:

The Recommended Plan will also impact property occupied by parts of Albert 's Marina and the Silver Lakes Golf Club on either side of the Holland River East Branch, but the functional and economic viability of both enterprises will remain. Consultation with Albert's Marina and Silver Lakes Golf Club will be necessary

during the design phase to minimize impacts to each business; some re configuration of the facilities within each property will be needed.

To meet the EA commitment, following the completion of the 2002 approved EA, the ministry worked with Silver Lakes (from 2003-2005, 2009) and revised the proposed Bradford Bypass alignment (by shifting to the south) to reduce the impacts on the golf course. As a result, the EA-approved 6.08 acres property requirement was revised to 2.45 acres. In addition, in 2005, a Stage 3 Archaeological Assessment (AA) of the East Holland River site (BaGv-42) required by the *Ontario Heritage Act* was completed. The results indicated that this is a significant archaeological site and that a Stage 4 would need to be carried forward as part of future engineering work. The results of the Archeological Assessment further affect the alignment of the Bradford Bypass in the area of the golf course.

Given the amount of time that elapsed since the project was approved in 2002, MTO initiated a review and update of the engineering design and EA for the Technically Preferred Route following Treasury Board approval of funding on August 14, 2019. It is appropriate for staff to initiate an update of the engineering design and EA on projects where there is a prolonged delay in moving from planning to the preliminary design phase. When EAs are not implemented within five years of completing the EA, MTO (in accordance with the EA Act) is required to update the EA to account for any significant changes that have occurred since approvals.

[28] The final communication I received on January 21, 2022 from Ms. LeBlanc, as a response to a follow up question I had as to Minister Mulroney's involvement in the process, is the most salient with respect to this report:

Neither Minister Mulroney, MPP Cho, nor their staff had any involvement in determining the highway alignment options in the plans that were presented to the public in April 2021. The highway alignment alternatives were established by MTO's project team comprised of MTO staff and consultants and were presented to senior MTO staff for endorsement on March 23, 2021. All highway alignment alternatives presented to the public in April 2021 avoided Albert's Marina and Silver Lakes Golf Club.

As noted in my previous response, MTO initiated a review and update of the engineering design and environmental assessment (EA) for the Technically Preferred Route following the Treasury Board funding approval in August 2019. Specifically, a consultant was engaged in July 2020 to review and update the 2002 EA approved highway alignment to ensure conformance with current MTO safety and engineering standards, current legislation and to meet commitments made as part of the 2002 EA regarding consultation with Albert's Marina and Silver Lakes Golf Club.

To reiterate, based on the information available to MTO staff, at no point was there direction from the Minister, or the Minister's Office, on any aspect of this process or in

terms of the highway alignment in any of the alternatives that were presented to the public.

[29] Deputy Minister LeBlanc is a career public servant who has served in the Ontario Public Service for more than 30 years under several governments. She has been a deputy minister for 10 years with several ministries including the Ministry of Aboriginal Affairs, the Ministry of Municipal Affairs and Housing and since August, 2020 the MTO. I accept the information she has provided to me without reservation. As a result, I find that there is not only insufficient evidence to support Mr. Natyshak's allegations, but what evidence there is points very much in the opposite direction.

IV. CONCLUSION

[30] Pursuant to subsection 31(5) of the Act I find that there are insufficient grounds for me to conduct an inquiry into Mr. Natyshak's request of November 2, 2021 regarding Minister Mulroney and Mr. Cho.

Dated at Toronto this 2nd day of February, 2022.

A handwritten signature in black ink, appearing to read "J. David Wake". The signature is written in a cursive style with a long, sweeping horizontal line above the name.

The Honourable J. David Wake
Integrity Commissioner