

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

OFFICE OF THE INTEGRITY COMMISSIONER

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REPORT OF THE HONOURABLE J. DAVID WAKE INTEGRITY COMMISSIONER

Re: The Honourable Doug Ford, Premier of Ontario and the Member for Provincial Parliament for Etobicoke North, and the Honourable Steve Clark, Minister of Municipal Affairs and Housing and Member of Provincial Parliament for Leeds—Grenville—Thousand Islands and Rideau Lakes

Toronto, Ontario
January 18, 2023

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Executive Summary

This report relates to a request made on November 28, 2022 by Mike Schreiner, Member of Provincial Parliament for Guelph, under section 30 of the *Members' Integrity Act, 1994* (“**the Act**”) regarding the Honourable Doug Ford, Premier of Ontario and Member of Provincial Parliament for Etobicoke North, and the Honourable Steve Clark, Minister of Municipal Affairs and Housing and Member of Provincial Parliament for Leeds—Grenville—Thousand Islands and Rideau Lakes.

Mr. Schreiner requested an opinion on whether Premier Ford and Minister Clark contravened sections 2 (Conflict of Interest) and section 3 (Insider Information) of the Act and Ontario parliamentary convention with respect to the recent proposal and decision to open parts of the Greenbelt for housing development.

After assessing the request and media articles provided as supporting material, the Commissioner determined that there were insufficient grounds to conduct an inquiry for the reasons set out in the report.

The Commissioner noted in the report that on December 8, 2022 he received from Marit Stiles, Member of Provincial Parliament for Davenport a request for an opinion as to whether Minister Clark contravened sections 2 and 3 of the Act with respect to the decision to allow development on lands in the Greenbelt and Duffins Rouge Agricultural Preserve. Unlike the request from Mr. Schreiner, Ms. Stiles did not include the premier as a subject of her request.

In contrast to the disposition of Mr. Schreiner’s request based on his affidavit, the Commissioner found that the extensive affidavit and supporting material from Ms. Stiles did provide reasonable and probable grounds for him to conduct an inquiry under section 31 of the Act.

I. BACKGROUND TO THE INQUIRY

[1] On November 28, 2022 Mike Schreiner, Member of Provincial Parliament (“MPP”) for Guelph sent me a letter and an affidavit under section 30 of the *Members’ Integrity Act, 1994* (the “Act”) in which he requested that I provide an opinion as to whether two members of the Provincial Parliament may have contravened sections 2 and 3 of the Act and Ontario parliamentary convention.

[2] The two members named in the affidavit are the Honourable Doug Ford, Premier of Ontario and MPP for Etobicoke North and Steve Clark, Minister of Municipal Affairs and Housing and MPP for Leeds—Grenville—Thousand Islands and Rideau Lakes.

[3] Mr. Schreiner relies on media articles relating to the government’s decision to amend the Greenbelt Plan. He expresses concern about whether this decision is in the public interest since some of the developers who own lands affected by the decision have donated to the Progressive Conservative Party of Ontario or hired “conservative” lobbyists or both. Some of the lands involved are alleged to have been purchased only recently before the decision was made to make them available for development.

[4] Mr. Schreiner believes that this situation goes beyond favours to donors and gives rise to concerns as to whether the members have breached section 2 of the Act regarding conflicts of interest and section 3 regarding the disclosure of insider information not available to the general public to advance their own private interests or improperly to further another person’s private interest.

[5] Mr. Schreiner further states that he has a concern “about a breach of parliamentary convention due to inappropriate lobbying activities by land speculators”.

[6] I forwarded a copy of Mr. Schreiner’s affidavit to both Premier Ford and Minister Clark and invited them to make submissions on whether I should commence an inquiry under section 31 of the Act. Both denied the inference in Mr. Schreiner’s affidavit that either had disclosed the lands selected for possible development to any developer. They advised that the selection of the

affected lands was made by public servants who were subject to an enhanced confidentiality protocol and that the minister was briefed and accepted their proposal only a few days before he presented it to Cabinet and the government made its announcement shortly thereafter. I make no finding in this regard.

II. LEGAL FRAMEWORK OF THE INQUIRY

The Commissioner's Jurisdiction

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

[8] Upon receiving such a request, I may conduct an inquiry and report my opinion to the Speaker of the Assembly.¹ 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.

Reasonable and Probable Grounds

[9] The concept of reasonable and probable grounds has been well developed in case law. It requires both a subjective and objective component, in that to have reasonable and probable grounds, a person must “have an honest belief that an offence has been committed and objectively there must exist reasonable grounds for this belief...”²

[10] It is also well established in law that reasonable and probable grounds is a “more demanding” standard than that of simply having a reasonable suspicion.³ Reasonable and probable grounds to believe an offence has occurred requires a higher level of certainty, more than the mere possibility that an offence has occurred.⁴

¹ *Members' Integrity Act, 1994*, s. 31.

² *R. v. Bernshaw*, 1995 CanLII 150 (SCC), at para.48, *R. v. Storrey*, 1990 CanLII 125 SCC.

³ *R. v. MacKenzie*, 2013 SCC 50 (CanLII) at para. 85.

⁴ *Ibid.* at paras. 64 and 74.

[11] Recently the Supreme Court of Canada reaffirmed the reasonable and probable grounds standard in *R. v. Beaver*⁵ citing *R. v. MacKenzie*⁶. The Court held that this standard requires that there be “an objective basis for the belief which is based on compelling and credible information”. The Court also repeated its previous holding that the standard “requires a reasonable belief that an individual is connected to the offence”.

Section 2 of the Act: Conflict of Interest

[12] Section 2 of the Act set out the following prohibition against members acting in a conflict of interest:

A member of the Assembly shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is an opportunity to further the member’s private interest or improperly to further another person’s private interest.

[13] It is important to note that the wording of the Act does not include rules relating to “apparent” conflicts of interest. An apparent conflict of interest exists when there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists. Because the language of the Act does not deal with the perception or appearance of conflicts, I and my predecessor Integrity Commissioner, the Honourable Coulter Osborne, have held previously that it is not open to us to make any findings with respect to apparent conflicts of interest.⁷

[14] The Act also does not define what constitutes a “private interest” but sets out in section 1 only what is not included within its meaning:

“private interest” does not include an interest in a decision,
(a) that is of general application,
(b) that affects a member of the Assembly as one of a broad class of persons, or

⁵ *R. v. Beaver*, 2022 SCC 54 at para 72.

⁶ *Supra* at note 3.

⁷ Report re: the Honourable Bob Chiarelli and the Honourable Charles Sousa, August 9, 2016 at para. 69 and Report re: the Honourable Ernie Eves, Premier of Ontario, and the Honourable Tony Clement, Minister of Health and Long-Term Care, August 13, 2003 at para. 17.

(c) that concerns the remuneration or benefits of a member or of an officer or employee of the Assembly.

[15] Previous decisions from my Office, and other Integrity Commissioners across Canada, have established a distinction between a “political interest” and a “private interest.”⁸ Many of these decisions responded to requests for opinions about whether donations made to political parties created a conflict of interest. As I have explained, contributions to a political party are to be distinguished from contributions made directly to an individual candidate. The latter may, depending on the circumstances, give rise to a conflict of interest. However, where the contributions are made to a political party and a minister or any member does not have possession or control of the money, a political interest may be created but not a “private interest” within the meaning of section 2 of the Act.⁹

Section 3 of the Act: Use of Insider Information

[16] Section 3 of the Act set outs the following prohibition against members using information obtained in the course of their work:

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.

⁸ See for example Report re: the Honourable Lisa MacLeod, May 23, 2019, at paras. 14-15; Report re: the Honourable Bob Chiarelli; the Honourable Michael Coteau and the Honourable Yasir Naqvi, December 8, 2016, at paras. 49-52; Report re: the Honourable Bob Chiarelli and the Honourable Charles Sousa, August 9, 2016, at paras. 50-51; Report of the Investigation into allegations involving Premier Rachel Notley, March 14, 2016, at page 6, online at: <http://www.ethicscommissioner.ab.ca/media/1564/march-14-2016-allegations-involving-premier-rachel-notley.pdf>; Opinion in the matter of applications by David Eby, MLA (Vancouver-Point Grey) and Duff Conacher with respect to alleged contraventions of the *Members’ Conflict of Interest Act* by the Honourable Christy Clark, MLA (Westside-Kelowna) and premier of British Columbia, May 4, 2016 at para 65-67, online at: <https://coibc.ca/publications/#Opinions>; and The Cheques Report: The use of partisan or personal identifiers on ceremonial cheques or other props for federal fundraising announcements (made under the *Conflict of Interest Act*), April 28, 2010 at pages 15-16, online at: <https://ciec-cie.parl.gc.ca/en/publications/Documents/InvestigationReports/The%20Cheques%20Report%20-%20Code.pdf>

⁹ Report re: the Honourable Bob Chiarelli, the Honourable Michael Coteau and the Honourable Yasir Naqvi, December 8, 2016, at para. 50.

Ontario parliamentary convention

[17] The Act requires that members comply with “Ontario parliamentary convention.”¹⁰

[18] “Ontario parliamentary convention” is not defined in the Act but consists of generally accepted rules or practices of members of the Ontario legislature.¹¹

III. OPINION

[19] I will first address Mr. Schreiner’s concerns with respect to whether there was a breach of parliamentary convention by either or both members. Mr. Schreiner has failed to identify a parliamentary convention to which he is referring. In the Brown report I identified six parliamentary conventions, such as the use of government resources for partisan purposes¹². Parliamentary convention is by no means confined to the six areas I identified in that report or subsequent reports. I regularly provide advice to members as to whether a proposed action might be contrary to parliamentary convention. Some of these are provided in my Annual Report, in the form of anonymized summaries, for the benefit of all members. None of the parliamentary conventions of which I am aware are applicable to the concerns raised by Mr. Schreiner. He seems to suggest that lobbying by developers is a breach of parliamentary convention. Lobbying is not prohibited at law or by parliamentary convention; rather it is subject to regulation under the *Lobbyists Registration Act, 1998* (“LRA”) by me as Lobbyist Registrar. Mr. Schreiner suggests that the members were inappropriately influenced by potentially unregistered lobbyists. This is not a matter for a request under s. 30 of the Act. It is a matter I can consider under the LRA.

¹⁰ The Act states that members may request an opinion and recommendations from the Commissioner regarding their compliance with Ontario parliamentary convention (s. 28). Members may also request that the Commissioner provide an opinion about whether another member has contravened Ontario parliamentary convention (ss. 30(1)). The Executive Council may request that the Commissioner provide an opinion about whether a member of the Executive Council has contravened Ontario parliamentary convention (ss. 30(5)).

¹¹ Report re: the Honourable Lisa MacLeod, May 23, 2019, para. 25 (quoting the Honourable Coulter A.A. Osborne).

¹² Report re: Patrick Brown, Member for Simcoe North, July 14, 2016 at page 2.

[20] Mr. Schreiner should be aware that, as a general rule, if I choose to conduct an inquiry under the LRA against any lobbyist I am prohibited by s.17.10 of the LRA¹³ from disclosing whether I am doing so, unless and until I find that there has been non-compliance with the LRA and impose a penalty, including naming the person against whom the finding is made.

[21] Having decided that there is no evidence of a breach of parliamentary convention in this matter and that the claim of inappropriate lobbying is misplaced in a s. 30 request under the Act, I must now determine whether Mr. Schreiner has raised reasonable grounds based on compelling and credible information and a reasonable belief that an individual is connected to the alleged contravention of sections 2 and 3 of the Act.

[22] The only information relied on by Mr. Schreiner to meet that test is media articles. I and other commissioners have said in the past¹⁴ that media articles themselves cannot be considered as evidence at an inquiry but I have acknowledged that they can be used to buttress direct and credible evidence to achieve the necessary reasonable and probable grounds for me to commence an inquiry.¹⁵ Although in that case I used the word direct I did not intend to exclude circumstantial evidence provided it was “compelling” and credible as set out in *R. v. Beaver*.¹⁶ When considering circumstantial evidence, one must consider possible exculpatory alternatives to the allegation being put forward.

[23] I find that there is no evidence that either the premier or the minister advanced their private interest, as that term has been defined, by their approval of the changes to the Greenbelt Plan. The question then becomes whether either or both improperly furthered the private or pecuniary interest of any of the owners of the affected lands. The media articles at their highest

¹³ Subsection 17.10(1) of the LRA states “Except as provided under this section, the registrar and anyone acting for or under the direction of the registrar shall not disclose to any person,(a) whether the registrar is conducting an investigation under this Act; or(b) any information, document or thing obtained in the course of conducting an investigation under this Act.” Section 17.10(2) sets out the limited exceptions, as necessary: (a) to conduct an investigation under section 17.1; (b) to refer a matter under section 17.2; (c) to enforce a penalty imposed under section 17.9; and (d) to comply with the requirements of section 17.12.

¹⁴ Report re. the Honourable Bob Chiarelli, the Honourable Michael Coteau and the Honourable Yasir Naqvi, December 8, 2016, at paras. 62-64.

¹⁵ Report re: the Honourable Doug Ford, December 9, 2021, at para. 26.

¹⁶ *Supra* at note 5.

may raise a reasonable suspicion of an improper furtherance as a result of the owners being “tipped off” to the changes to the Greenbelt Plan but that does not amount to reasonable and probable grounds to enable me to conduct an inquiry.

[24] There is a further problem with the media articles relied upon to support the request to conduct an inquiry. I go back to the statement in *R. v. Beaver* that reasonable and probable grounds requires “a reasonable belief that an individual is connected to the offence”.¹⁷ It is entirely possible that someone may have alerted one or more of the owners of the affected lands about the changes to the Greenbelt Plan and the decision as to which lands would be selected. I note that both the premier and the minister denied having done so. I am providing their response not because I am in a position to make a finding supporting their position but only to emphasize that there is no admission on their part which could be used to support Mr. Schreiner’s allegations. Therefore, I find that on the basis of the material filed by Mr. Schreiner on November 28, 2022, there is insufficient evidence linking either Premier Ford or Minister Clark to what would be an improper disclosure.

IV. THE REQUEST AND AFFIDAVIT OF MPP STILES

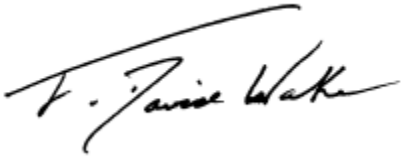
[25] On December 8, 2022, Marit Stiles, Member of Provincial Parliament for Davenport submitted a request under section 30 of the Act requesting an opinion as to whether Minister Clark contravened sections 2 and 3 of the Act with respect to the decision to allow development on lands in the Greenbelt and Duffins Rouge Agricultural Preserve. Unlike Mr. Schreiner, Ms. Stiles did not include the premier as a subject of her request. Ms. Stiles submitted an extensive affidavit which included media articles but also direct evidence. After assessing this information, I have decided to conduct an inquiry under section 31 of the Act on the request of Ms. Stiles.

¹⁷ *Ibid.*

V. CONCLUSION

[26] Pursuant to subsection 31(5) of the Act, for the reasons stated above, I find that there are insufficient grounds for me to conduct an inquiry into Mr. Schreiner's request regarding Premier Ford and Minister Clark.

Dated at Toronto this 18th day of January, 2023.

A handwritten signature in black ink, appearing to read "J. David Wake". The signature is written in a cursive, flowing style with a prominent initial "J" and a long, sweeping underline.

The Honourable J. David Wake
Integrity Commissioner