

Legislative
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of Ontario



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OFFICE OF THE INTEGRITY COMMISSIONER



REPORT OF THE HONOURABLE J. DAVID WAKE INTEGRITY COMMISSIONER

RE: The Honourable Doug Ford, Premier of Ontario

Toronto, Ontario
December 9, 2021

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EXECUTIVE SUMMARY

This report relates to a request 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.

Because the legal and factual bases of the concerns raised with respect to Minister Mulroney and Mr. Cho are different, I have decided to issue two reports. This report responds only to the request for an opinion relating to Premier Ford.

Mr. Natyshak raises a concern that, in violation of section 2 of the Act, Premier Ford made decisions relating to the Bradford Bypass project that furthered his own political interest and improperly furthered the private interests of developers who made donations to Premier Ford's political party.

I found that there were insufficient grounds to conduct an inquiry into Mr. Natyshak's request regarding Premier Ford.

I. BACKGROUND

- [1] On November 2, 2021, Taras Natyshak, Member of Provincial Parliament (“MPP”) for Essex, submitted an affidavit to my office and the Office of the Speaker, in which he set out his belief that three members of the Legislative Assembly of Ontario each may have contravened a different section of the *Members’ Integrity Act, 1994* (“the Act”) with respect to decision-making relating to the Bradford Bypass. This proposed freeway would connect Highway 400 to Highway 404 north of Toronto.¹
- [2] The three members named in the affidavit are the Honourable Doug Ford, Premier of Ontario and MPP for Etobicoke North, the Honourable Caroline Mulroney, Minister of Transportation and Minister of Francophone Affairs and MPP for York–Simcoe, and Stan Cho, currently Associate Minister of Transportation (Transit-Oriented Communities) and MPP for Willowdale.²
- [3] With respect to Premier Ford, Mr. Natyshak cites section 2 of the Act, relating to conflicts of interest, and alleges there had been “extensive donations made to the Premier’s party from development companies who own substantial plots of land in the surrounding area of the proposed bypass.” Mr. Natyshak alleges Premier Ford’s “decision to revive and modify the Bradford Bypass causes great suspicion about a perceived conflict of interest of relevant donors and benefactors of development” and also that donations from developers to the Progressive Conservative Party of Ontario “undoubtedly advances his own political interest and supports his re-election.” In support of these allegations, Mr.

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 Because Mr. Cho was not appointed as Associate Minister of Transportation (Transit-Oriented Communities) until after the events put in issue by Mr. Natyshak, he is referred to as Mr. Cho in this report.

Natyshak submitted an article published by the Toronto Star³ and a copy of a registration from the Ontario Lobbyists Registry.⁴

- [4] In contrast, Mr. Natyshak’s allegations against Minister Mulroney and Mr. Cho relate to sections 3 (use of insider information) and 4 (influence) of the Act respectively and focus on one particular aspect of the decision-making related to the Bradford Bypass, specifically an alleged decision made to alter the route of the proposed highway so that it will not cross a golf course owned by a member of Mr. Cho’s family. In support of these allegations, Mr. Natyshak relies on the same materials submitted with respect to Premier Ford, but also submitted additional documents, including copies of corporate records, political donation records, and social media posts.
- [5] On November 5, 2021, I forwarded a copy of Mr. Natyshak’s affidavit to Premier Ford, Minister Mulroney and Mr. Cho and invited them to make submissions on whether I should commence an inquiry under section 31 of the Act. Each responded within the two-week timeframe requested.
- [6] Given the different statutory and evidentiary bases for Mr. Natyshak’s allegations regarding Premier Ford compared to that for Minister Mulroney and Mr. Cho, I have decided to issue separate reports. This report responds only to the allegations with respect to Premier Ford. I will issue a second report responding to the request with respect to Minister Mulroney and Mr. Cho at a later date.

³ 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>

⁴ The registration, which is available on the public Ontario Lobbyists Registry under registration number CL4481-2021020802628, was filed by a consultant lobbyist representing a real estate and development company. The lobbyist disclosed the goal of his undertaking as “Encourage construction of the Highway 404-400 connection (Bradford By-pass)” and listed among his lobbying targets the Office of the Minister of Transportation and the Ministry of Transportation. The consultant did not include the Office of the Premier as a lobbying target.

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.

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...”⁵

[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.⁶ 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.⁷

Section 2 of the Act: Conflict of Interest

[11] Section 2 of the Act set outs 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

⁵ *R. v. Bernshaw*, 1995 CanLII 150 (SCC), at para.48, *R. v. Storrey*, 1990 CanLII 125 SCC.

⁶ *R. v. MacKenzie*, 2013 SCC 50 (CanLII) at para. 85.

⁷ *Ibid.* at paras. 64 and 74.

private interest or improperly to further another person's private interest. 1994, c. 38, s. 2.

[12] 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 Coulter Osborne have held previously that it is not open to us to make any findings with respect to apparent conflicts of interest.⁸

[13] 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
(c) that concerns the remuneration or benefits of a member or of an officer or employee of the Assembly;

[14] Previous decisions from my Office, and other Integrity Commissioners across Canada, have established a distinction between a "political interest" and a "private interest."⁹ 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

⁸ Report re. the Honourable Bob Chiarelli and the Honourable Charles Sousa, August 9, 2016 ["Chiarelli and Sousa Report"] 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.

⁹ 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 ["Chiarelli, Coteau and Naqvi Report"] at para. 64, Chiarelli and Sousa Report, *supra* note 8 at paras. 48-52, 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 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>

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.¹⁰

III. MR. NATYSHAK’S ALLEGATIONS AND SUPPORTING INFORMATION

[15] At the outset of his affidavit, Mr. Natyshak states that he is of the belief that Premier Ford “may have” breached section 2 of the Act, but also that he is “concerned a clear conflict of interest has transpired,” writing:

I have reasonable and probable grounds to believe that Premier Doug Ford, the Member for Etobicoke North, may have breached s.2 of the Members Integrity Act, concerning a conflict of interest, in making his decision to revive and amend the Bradford Bypass. Given the extensive donations made to the Premier’s party from development companies who own substantial plots of land in the surrounding area of the proposed bypass, I am concerned a clear conflict of interest has transpired.

[16] In the final section of his affidavit, Mr. Natyshak concludes that the information he has put forward “causes great suspicion about a perceived conflict of interest of relevant donors and benefactors of the development” and that “[t]he \$858,000 donated to his party from developers who own property near the Bypass route undoubtedly advances [Premier Ford’s] own political interest and supports his re-election.”

[17] In support of these allegations, Mr. Natyshak made a number of statements of belief that he said were supported by the newspaper article he submitted, specifically the Toronto Star article published on October 31, 2021, titled “What the Ford government hasn’t told you about its next controversial highway project.”¹¹

¹⁰ Chiarelli, Coteau and Naqvi Report, *supra* note 9 at para. 50.

¹¹ Wang & McIntosh, *supra* note 3.

- [18] As an example, Mr. Natyshak states in paragraph 7 of his affidavit that “[t]he article details that the proposed Bypass modifications would greatly benefit a PC Party insider while risk damaging homes and the Greenbelt protected areas.” Upon review, the article does not use the term “PC Party insider” or otherwise reveal the identity of the person to whom Mr. Natyshak is referring.
- [19] In his affidavit, Mr. Natyshak states “the article also demonstrates the Premier’s connections to powerful developers who own land around the Bypass route, as the investigation uncovered numerous political contributions to the Premier’s PC Party by developers on the route.” The article itself does not clearly identify any personal connection between Premier Ford and any particular developer. It does not detail what lands are owned by each developer or tally how much each developer donated to the Progressive Conservative Party of Ontario.
- [20] The article does contain a map with plots of land highlighted, accompanied by a statement that “[l]arge developers, many of them prolific political donors, collectively own at least 3,100 acres of real estate near the Bradford Bypass’s proposed route and stand to benefit if the highway is built,” followed by an acknowledgement that “[t]he land holdings uncovered in the joint Torstar/Canadian National Observer investigation are just a snapshot of the total property/ownership near the route.” The article also reports a comment from a developer owning 300 acres in the area as stating in a phone interview that “land prices in the region are so high, a new highway wouldn’t impact their values.”
- [21] The article also briefly notes a handful of purchases, sales and announcements of development plans of different developers at different times, including events occurring in 1997, 2005 to 2008, 2010, 2015, 2016 and 2017. It notes a number of developers had sought to build residential developments in the area prior to the announcement of the revival of the bypass project. It also reports one named developer had “already sold 200 homes near the route of the bypass” and provided a comment that its development plans are not contingent on the bypass.

[22] The article contains a summary statement about trends of political donations by development companies to different parties but does not pinpoint any particular donation by any particular company. It states:

Many of the developers are also prolific political donors. Though most backed both the Liberals and the Progressive Conservatives and a few donated more to the Liberals, most favoured the ruling party. Altogether, the developers, their companies, senior staff and family members have given at least \$858,000 to the Progressive Conservatives since 2014. They gave about \$453,000 to the Ontario Liberals and \$38,000 to the Ontario NDP over the same period. (While names match, the Torstar/Observer investigation cannot independently verify they are the same people. Common names were excluded from the analysis.)

IV. OPINION

[23] Mr. Natyshak alleges that Premier Ford has breached both branches of section 2 of the Act by reviving the Bradford Bypass project. First it is alleged that his political interest would be advanced by the receipt of party donations from developers who, it is alleged, would stand to gain from the project. As explained above, a political interest is not a private interest within the meaning of the Act so this allegation must fail.

[24] Second, it is alleged that Premier Ford “improperly” advanced the interests of developers who made donations to his political party by reviving the Bradford Bypass project.

[25] In response to the second allegation Premier Ford replied as follows:

At the outset I would like to assert that MPP Natyshak’s allegations against me are simply untrue. As the member knows, public policy decisions made by the government are based on a careful decision-making process that is informed by the objective advice and recommendations of the public service and other experts, and in consideration of the needs and views of the public.

[26] I will have more to say on the role of the public service and other experts in the Mulroney/Cho report to follow. Suffice it to say that the only support for this allegation is the article in the Toronto Star published on October 31 which connects the Bradford Bypass project to the public record of party donations by developers. While media reports themselves cannot be considered as evidence, they can be used to buttress direct and

credible evidence to achieve the necessary reasonable and probable grounds for me to commence an inquiry.¹²

[27] The problem in this case is that there is no direct or credible evidence to support the allegation against Premier Ford. The media report is speculative at best and, standing alone, does not establish reasonable and probable grounds.

[28] In support of my conclusion that there are insufficient grounds to proceed with an inquiry, I turn to Mr. Natyshak's affidavit itself. Paragraph 19 states that he "has great suspicion about a perceived conflict of interest". As I have explained a suspicion, no matter how great it is, does not amount to reasonable and probable grounds which is the standard required by the Act before I can launch into an inquiry. Similarly, as I noted above, it is not open to me to make any findings concerning an apparent conflict of interest.

V. CONCLUSION

[29] 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. Natyshak's request of November 2, 2021 regarding Premier Ford.

Dated at Toronto this 9th day of December, 2021.

A handwritten signature in black ink, appearing to read "J. David Wake". The signature is fluid and cursive, with a long horizontal stroke at the top.

The Honourable J. David Wake
Integrity Commissioner

¹² Chiarelli, Coteau and Naqvi Report, *supra* note 9 at paras. 62-65.