

Legislative
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OFFICE OF THE INTEGRITY COMMISSIONER



REPORT OF THE HONOURABLE J. DAVID WAKE INTEGRITY COMMISSIONER

Re: Stephen Crawford, Member of Provincial Parliament for
Oakville

Toronto, Ontario
February 17, 2022

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EXECUTIVE SUMMARY

This report relates to a request made to me by Stephen Blais, Member of Provincial Parliament for Orléans, for an opinion under section 30 of *Members' Integrity Act, 1994* regarding Stephen Crawford, Member of Provincial Parliament for Oakville and, during the time period relevant to this report, Parliamentary Assistant to the Minister of Infrastructure. Mr. Blais alleged that Mr. Crawford contravened the conflict of interest provisions of the Act by holding investments in companies involved in long-term care and failing to recuse himself from decisions which would have a material impact on these companies, specifically decisions relating to the Ministry of Infrastructure's Long-Term Care Development Program and Bill 218, *Supporting Ontario's Recovery and Municipal Elections Act, 2020*.

In this report, I determined that the key issues were: 1) whether Mr. Crawford had any involvement in decision-making in the Long-Term Care Development Program; 2) whether the *Supporting Ontario's Recovery and Municipal Elections Act, 2020* ("Bill 218" or "the subject legislation") is of general application; and 3) whether Mr. Crawford's participation in the October 26, 2020 debate on Bill 218 was a conflict of interest contrary to sections 2, 4 and 8 of the Act?

The evidence did not disclose that Mr. Crawford, as parliamentary assistant, had any influence in the decision-making process surrounding the Long-Term Care Development Program.

Further, I found that it is an established legal principle that if a law purports to apply to the public at large, or to a broad sector of the public, then it can be considered as a law of general application. I found that Mr. Crawford was not in breach of sections 2 or 4 of the Act when he voted for Bill 218 on two occasions since the bill, as presented, was one of general application so that his private interest was, by the Act's definition, not engaged by the bill.

Finally, due to Mr. Crawford's limited role in the debate on Bill 218, and because the questions he posed did not touch on the impact that Bill 218 might have on the liability protection for long-term care homes, I did not find that his participation in the debate furthered his private interest, given the exclusion of a private interest in a decision of general application, and thus it was not a conflict of interest contrary to sections 2, 4 and 8 of the Act.

I made one recommendation in this report suggesting that it is time to review the Act and consider whether investment restrictions should be extended from cabinet ministers to include members and parliamentary assistants who have significant assets or stock portfolios.

I. BACKGROUND TO THE INQUIRY

[1] This is a report about an inquiry I have conducted under the *Members' Integrity Act, 1994* (“**the Act**”) in response to a request by Stephen Blais, Member of Provincial Parliament (“**MPP**”) for Orléans. I have considered the concern raised, namely whether Stephen Crawford, MPP for Oakville and Parliamentary Assistant to the Minister of Infrastructure¹, breached the conflict of interest provisions of the Act by holding investments in companies involved in long-term care and failing to recuse himself from debates and/or decisions which would have a material impact on these companies, specifically decisions relating to Bill 218 and the Ministry of Infrastructure’s Long-Term Care Development Program.

[2] I identified the following sections of the Act that could relate to the concerns raised by Mr. Blais:

- a. Section 2 of the Act in that Mr. Crawford made, participated in or sought to influence a decision where there was an opportunity to further his own private interest or improperly further another person’s private interest;
- b. Section 4 of the Act in that he used his office to influence a decision made or to be made by another person so as to further his own private interest or improperly further another person’s private interest; and/or
- c. Section 8 of the Act in that he had reasonable grounds to believe he had a conflict of interest in a matter before the Assembly and failed to: i) disclose the general nature of the conflict of interest, and ii) withdraw from the meeting without voting or participating in consideration of the matter.

¹ On July 19, 2021, Mr. Crawford was appointed Parliamentary Assistant to the Minister of Energy. In this Report, he will be referred to as Parliamentary Assistant to the Minister of Infrastructure, as he was during the time in question for this inquiry.

1. Bill 218, Supporting Ontario’s Recovery and Municipal Elections Act, 2020

[3] Bill 218 was introduced by the Attorney General on October 20, 2020, passed second reading on October 27, 2020, passed third reading on November 16, 2020 and received Royal Assent on November 20, 2020.

[4] As indicated by its title (Supporting Ontario’s Recovery and Municipal Elections Act), Bill 218 attempted to do two things: 1) limit lawsuits with respect to exposure to or contracting COVID-19 and, 2) amend the *Municipal Elections Act, 1996* to remove the option to use ranked ballots in municipal council elections.

[5] Mr. Blais alleges a conflict of interest on the part of Mr. Crawford only with respect to the first part of the bill, the limitation of liability provisions.

[6] As will be discussed in more detail in the Analysis and Findings section of this Report, the scope of the application of the limitation of liability provision is indisputably broad. It does not carve out litigation against named publicly-traded long-term care homes such as those held by Mr. Crawford. In fact, long-term care homes are not specifically referred to in Bill 218 or the subject legislation. Instead, it applies to lawsuits against individuals, corporations, and other entities, including the Crown,² as a result of an individual being or potentially being infected with or exposed to COVID-19 on or after March 17, 2020, as a result of an act or omission of a person, if the person made a “good faith effort” to act in accordance with public health guidance or laws and their act or omission does not constitute “gross negligence.”³ The limitation of liability has retroactive effect.⁴ It also exempts from its liability protections certain employment related claims, including claims related to occupational disease or injury.⁵

[7] Many other jurisdictions in Canada and the United States had introduced or were introducing similar legislation at the same time as Ontario.

² Section 1(2), *Supporting Ontario’s Recovery Act, 2020*, S.O. 2020, c.26.

³ Section 2, *Supporting Ontario’s Recovery Act, 2020*, S.O. 2020, c.26.

⁴ Subsection 2(5), *Supporting Ontario’s Recovery Act, 2020*, S.O. 2020, c.26.

⁵ Section 4, *Supporting Ontario’s Recovery Act, 2020*, S.O. 2020, c.26.

2. Long-Term Care Development Program

[8] On November 3, 2020, the Ministry of Long-Term Care announced a plan to sell three “surplus provincial properties” with the requirement that long-term care homes be built on portions of the properties.⁶

[9] Infrastructure Ontario and the broker of record created a flyer, titled “Long-Term Care Development Program,” providing some additional information about the properties, anticipated conditions of sale and the process to be followed with respect to marketing and offers. According to this flyer, the lands were to be sold with a condition of developing and operating licensed long-term care homes for a minimum of 30 years.⁷

[10] One of the three parcels of land announced as being for sale through this program is located within Mr. Crawford’s riding in Oakville, Ontario.

[11] Mr. Blais alleges a conflict of interest on the part of Mr. Crawford stemming from his role as Parliamentary Assistant to the Minister of Infrastructure, and specifically that he could have had “a real or perceived influence over several programs that provide funding to Long-Term Care, including through Ontario’s Long-Term Care Development Program”.

II. LEGAL FRAMEWORK OF THE INQUIRY

1. Members’ Integrity Act, 1994

[12] This inquiry arises from the authority granted to me as Integrity Commissioner under the Act.⁸

⁶ Ontario News Release “Ontario Selling Surplus Properties to Build Three New Long-Term Care Homes: Initiative will add nearly 900 additional spaces for seniors,” November 3, 2020, retrieved November 23, 2021, online at <https://news.ontario.ca/en/release/59047/ontario-selling-surplus-properties-to-build-three-new-long-term-care-homes>

⁷ Ibid, p.2.

⁸ *Members’ Integrity Act, 1994* s.23.

[13] The Act requires that Members of Provincial Parliament arrange their private affairs so they can:

- broadly represent their constituents,
- promote public confidence, and
- maintain the respect and dignity of the Legislative Assembly of Ontario.⁹

[14] The Act establishes an Integrity Commissioner. The Integrity Commissioner provides opinions and recommendations to individual members about their obligations under the Act. The Commissioner can also, upon the request of a member, conduct an inquiry regarding whether a member has failed to comply with the Act or parliamentary convention.¹⁰

2. The Act's approach to investments by members

[15] The Act sets out that a member of the Executive Council shall not hold or trade in securities, stocks, futures or commodities.¹¹ The Act also specifically exempts parliamentary assistants from this restriction.¹²

[16] Certain rights are preserved in the Act for all members of the Assembly who are not a member of the Executive Council, including the right to hold or trade in securities, stocks, futures or commodities, and the right to hold shares or an interest in any corporation, partnership, syndicate, co-operative or similar commercial enterprise.¹³

[17] The Act requires every member to file with my Office an annual private disclosure statement, in which they must identify, amongst other things, the assets and liabilities of the

⁹ Act, preamble.

¹⁰ Act, s. 31.

¹¹ Act, s. 11(1).

¹² Act, s. 19.

¹³ Act, s. 9.

member and his or her spouse and minor children, and state the value of the assets and liabilities.¹⁴

[18] The Act establishes a threshold regarding the disclosure of assets and liabilities of each member. Any assets or liabilities worth less than \$2,500 need not be listed in the public disclosure statement.

3. The standard of proof in this inquiry

[19] The standard of proof I must apply in this inquiry is proof on the balance of probabilities. This means that I must find that the evidence proves that it is more likely than not that Mr. Crawford breached the Act. The evidence must be clear, convincing, and cogent to satisfy the balance of probabilities test.¹⁵

III. THE INQUIRY PROCESS

1. The request and MPP Crawford's response

[20] On June 1, 2021, Mr. Blais requested my opinion. As required by the Act, he filed his request, in the form of a sworn affidavit with the Speaker of the Legislative Assembly. In accordance with the procedure developed by my Office, he also submitted evidence supporting his request.

[21] Mr. Blais attached four documents to his affidavit, including a copy of Mr. Crawford's public disclosure statement, a brief description of the Long-Term Care Development Program and the role of Infrastructure Ontario, an opinion piece written by Mr. Crawford on November 5, 2020 from the *Oakville Beaver*¹⁶ on the topic of long-term care facilities in Ontario and in his riding, and a copy of Mr. Crawford's comments during the debate of Bill 218.

¹⁴ Act, s. 20.

¹⁵ *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 SCR 41 at para 40.

¹⁶ Crawford, Stephen. (2020, November 5). Committed to long-term care, *The Oakville Beaver*.

[22] Mr. Blais requested that I “investigate a perceived conflict of interest between MPP Stephen Crawford’s role as Parliamentary Assistant to the Minister of Infrastructure and his private financial holdings”. Mr. Blais also stated “[t]here is a clear conflict of interest.” As evidence of this allegation of a conflict, he specifically identified Mr. Crawford’s holdings in Sienna Senior Living and Chartwell REIT and the following activities of Mr. Crawford:

- “[w]hile receiving monthly dividends for these Long-Term Care Homes, MPP Crawford has continued to defend his government’s record on Long-Term Care.”
- “[i]n his role as Parliamentary Assistant to the Minister of Infrastructure, MPP Crawford could have a real or perceived influence over several programs that provide funding to Long-Term Care, including through Ontario’s Long-Term Care Development Program, which falls under his Ministry.”
- “MPP Crawford has debated and voted for the same bill that the Ford government passed to protect the profits of Long-Term Care Operators and shareholders, all the while failing to mention his financial ties to the sector.”

[23] As is my practice, after Mr. Blais submitted his request for my opinion, I asked Mr. Crawford for submissions about whether I should conduct an inquiry. Mr. Crawford provided responses on June 9, 2021, and June 17, 2021.

[24] On July 7, 2021, after reviewing the materials received from the members, I decided to begin an inquiry under section 31 of the Act and notified both members of my decision to do so.

2. Evidence-gathering process

[25] At the outset of my inquiry, I chose to use the powers given to me under section 33 of the *Public Inquiries Act, 2009*. These powers allow me to require any person, by summons, to give evidence on oath or affirmation and to produce such documents as I may specify.

[26] On August 11, 2021, Mr. Crawford provided me with documents pursuant to a request for more information. At that time, an interview with Mr. Crawford was scheduled for September 17, 2021.

[27] On September 9, 2021, Mr. Crawford informed my Office that he had retained counsel, Arthur Hamilton, to represent him in this matter. The interview of Mr. Crawford was adjourned as a result and rescheduled for October 22, 2021.

[28] Mr. Hamilton made submissions on October 18, 2021, prior to the interview of Mr. Crawford, and also on November 3, 2021 after the interview.

[29] On October 22, 2021, general counsel and counsel with my Office interviewed Mr. Crawford. I attended the interview of Mr. Crawford. He was the only witness interviewed in the course of this inquiry.

[30] Because of the restrictions in place due to the COVID-19 pandemic, the interview was conducted via videoconference.

[31] I was satisfied with the cooperation of the witness in the scheduling of his interviews and promptly producing relevant documents and information.

[32] Prior to reaching any conclusions, on December 3, 2021, I provided Mr. Crawford and Mr. Hamilton with a summary of the evidence gathered on which I intended to rely and invited them to make submissions before the final report was released.

3. Mr. Crawford's submissions

On December 15, 2021, Mr. Hamilton provided written submissions after reviewing a summary of evidence provided by my staff.

IV. EVIDENCE

1. MPP Crawford and his spouse's experience and investments

[33] Prior to his election as an MPP in June 2018, Mr. Crawford worked in the financial industry for more than 20 years. Mr. Crawford acknowledged in his interview that he has a high level of expertise and experience in understanding investments.

[34] Mr. Crawford's spouse is a professional investment advisor.

[35] Mr. Crawford told me that he and his spouse are responsible for management of his personal investment accounts. He said he regularly checks his personal holdings, and has "a pretty good awareness" of his spouse's investment accounts.

[36] Since his election, pursuant to the requirement in subsection 20(2) of the Act, Mr. Crawford has provided me with annual private disclosure statements detailing, among other things, his assets and those of his spouse and minor children. As required by subsection 21(1) of the Act, I have used the information from this private disclosure statement to create, post and update as required a "public disclosure statement" for Mr. Crawford. This public disclosure statement lists the source and nature of most of these assets but not their specific value, as set out in the Act. Subsection 21(4) specifically exempts certain assets, liabilities and sources of income from public disclosure, including any asset worth less than \$2,500.

[37] Mr. Crawford's public disclosure statement indicates that both he and his spouse hold investments in two companies that are involved in long-term care services in Ontario: trust units in Chartwell Retirement Residences ("Chartwell") and shares in Sienna Senior Living Inc. ("Sienna"). Mr. Crawford noted that neither company operates exclusively in the long-term care sector or exclusively in Ontario. He described both as "diversified businesses" and noted that each earns significant revenue from retirement residences, which are different from long-term care homes.

[38] Mr. Crawford held investments in Chartwell and Sienna well before the outbreak of the pandemic in March, 2020. The Sienna stock has been held since at least 2018. The Chartwell trust units were acquired prior to September 1, 2019 by Mr. Crawford and prior to September 1, 2020 by his spouse.

[39] In the course of this inquiry, I requested, and Mr. Crawford promptly provided, evidence of the value of his holdings and those of his spouse during the time period put in issue by Mr. Blais' request. Collectively, as of October 30, 2020, his holdings and those of his spouse in Sienna and Chartwell amounted to more than \$100,000.

[40] Mr. Crawford's counsel advised that as of December 15, 2021, Mr. Crawford and his wife continued to hold these shares.

[41] Counsel for Mr. Crawford requested that my report include "context to describe and demonstrate that the Member and his wife's positions in Chartwell and Sienna represent a small fraction (i.e. under 5%) of their total holdings."

2. MPP Crawford's role as Parliamentary Assistant

[42] From June 2019 until July 2021, Mr. Crawford held the position of Parliamentary Secretary to the Minister of Infrastructure.

[43] The Government of Ontario website¹⁷ says that parliamentary assistants "help Ministers deliver on the commitments made to the people, families and businesses of Ontario" and describes their role as follows:

Parliamentary Assistants support ministers with legislative and committee matters, including special projects and assignments that require dedicated leadership. They also play a key role in building relationships and communicating government initiatives across the province.

[44] When asked to describe what he did as Parliamentary Assistant to the Minister of Infrastructure, Mr. Crawford told me that this role was occasional, requiring him to attend meetings and conferences, make announcements on behalf of the Minister, and speak in lieu of the Minister in the legislature.

[45] Mr. Crawford explained that "for the most part", in his role as Parliamentary Assistant, he met with mayors to learn about their infrastructure needs and passed this information on to the Minister.

[46] Mr. Crawford said he was assigned one special project, which was "talking to different towns, municipalities, [and] companies to see if there is a more efficient way to work with each

¹⁷ See online: <https://www.ontario.ca/page/ontarios-parliamentary-assistants>, retrieved on November 22, 2021.

other to deliver water more efficiently, safer to residents and businesses.” He said he completed this project and staff reported the results of his discussions to the Minister.”

[47] Mr. Crawford told me that in his role as Parliamentary Assistant, he had no involvement in the drafting of any proposed legislation and further that he “had absolutely no knowledge of any drafting of legislation before it came out.” Similarly, he was very clear that he did not participate in discussions about policy development or new programs and regulations.

[48] Mr. Crawford also told me that as Parliamentary Assistant, he had minimal interaction with the Minister or his staff on substantive programs. His interactions included an initial meeting to discuss the role of Parliamentary Assistant, and then occasional briefings about programs that could be raised during question period in the legislature, when the Minister was not present and Mr. Crawford was expected to speak on her behalf.

3. MPP Crawford’s lack of involvement in the Long-Term Care Development Program

[49] Mr. Crawford told me that, despite his position as Parliamentary Assistant to the Minister of Infrastructure, he had no involvement whatsoever with the Long-Term Care Development Program.

[50] Mr. Crawford said he did not discuss this program, or the sale of parcels of land that were part of the program, with anyone. He specifically denied discussing it with anyone from Infrastructure Ontario, the Ministry of Infrastructure, the Ministry of Health, the Ministry of Long-Term Care, representatives of long-term care companies or the sector, lobbyists, or CBRE Limited (the real estate broker of record). He did not recall any friends, neighbours or constituents raising the topic or asking any questions about it.

[51] Mr. Crawford acknowledges that he had an interest in and supported the government’s policy to invest in the quality of long-term care and the number of beds available. He wrote an article on this subject which was published on November 5, 2020 in the Oakville Beaver,¹⁸ and

¹⁸ *Supra* note 16.

discussed increased funding and standards of care for the sector. While he did not mention the Long-Term Care Development Program by name, he wrote “[n]umerous projects to build homes have been introduced. Locally, a great announcement will see two 256-bed long-term-care homes, a total of 512 beds, constructed here in Oakville.”

[52] Mr. Crawford also advised that he was invited to participate in the announcement of the selection of the purchaser for the Oakville property through the Long-Term Care Development Program on October 13, 2021, because he is the member for the local area. He indicated this is the usual practice, not specific to this program, explaining that “any time there is an announcement in the...in your community, you are typically invited by the minister’s staff.” He also said that he provided a quote for the news release accompanying the announcement because he was asked to do so by ministry representatives a few days before the actual announcement.¹⁹ Subsequently, he wrote the article in the Oakville Beaver referred to above.

[53] The news release indicates the province signed a conditional agreement of purchase and sale for the Oakville parcel with Schlegel Villages Inc.

4. MPP Crawford debates and votes on Bill 218 in the Legislature

[54] Mr. Crawford stated that he was not involved in the drafting or introduction of this bill and had no advance knowledge of its contents. On the same day it was introduced for first reading, October 20, 2020, he and all members of the government caucus received a briefing note explaining the rationale for the legislation and providing some points to understand the legislation better.

[55] Mr. Crawford participated in the debate in the Legislature on the motion for second reading of Bill 218 on October 26, 2020. He believes he likely found out that same day, or possibly

¹⁹ See October 13, 2021 News Release “Ontario Building New Long-Term Care Homes in Oakville,” online at <https://news.ontario.ca/en/release/1000959/ontario-building-new-long-term-care-homes-in-oakville>, which contains the following quote attributed to Mr. Crawford:

“The Ontario government recognizes the local need in Oakville to build new long-term care homes,” said MPP Crawford. “These two homes being developed are a positive step towards decreasing the growing long-term care waitlist and ensuring quality care for up to 640 people. In the process, more jobs will be created to support the residents.”

the day before, that Bill 218 would be debated while he was scheduled to be in the legislature on October 26, 2020.²⁰

[56] Mr. Crawford said that, in preparation for his interview with my staff, he had reviewed the Hansard transcript of the debate on October 26, 2020. He summarized his participation as taking the opportunity to ask three questions of the opposition members speaking that day. He said he did not make a prepared speech and did not have any prepared text from which he spoke.

[57] Mr. Crawford agreed that, at the time of his participation in the debate on October 26, 2020, he was “of course” aware that the opposition members in the legislature took the position that the bill should not provide for-profit long-term care operators with the same protection from legal liability as non-profit providers and volunteer and charitable organizations.

[58] During the course of the debate on October 26th, 2020, on two of the three times Mr. Crawford spoke,²¹ he asked questions of opposition members who were specifically addressing the application of the bill to for-profit long-term care homes, although his questions related to the impact on non-profit organizations if Bill 218 did not pass. There was one reference to long-term care homes and the government’s establishment of the Ministry of Long-Term Care which preceded one of the questions.

[59] On both occasions, Mr. Crawford cited a statistic, estimating one in five non-profits and charities would shut down if the bill did not proceed.²² He asked what one member would say to those charities, and why another would not support the bill in such circumstances. In answer to the first question, the opposition member replied: “I think we’re pretty clear when we talked about charities that we support them in the bill. But that’s not what this is about. It’s nothing more than a smokescreen. This is about making sure these for-profit long-term-care homes that, in my humble opinion... ..have killed our grandparents and our moms and dads in these long-

²⁰ Mr. Crawford noted that during the fall of 2020, in the context of the ongoing pandemic, members were assigned to sit in the legislature in co-horts.

²¹ On one of the three occasions during which he participated in the debate on Bill 218, Mr. Crawford spoke about proposed changes to the *Municipal Elections Act, 1996*, which are irrelevant to the concerns raised by Mr. Blais.

²² Hansard Transcript, October 26, 2020, at 10005 and 10014, online at: https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2020-10-26/hansard#P836_172201

term-care facilities. They knew exactly what they were doing. We didn't need the military to tell you. You've been told."²³ With respect to the second question, the member responded that "I feel like we're saying the same thing again," noting every member of his party supports protecting charities and non-profits but "[w]hat we don't support is, if the crown was negligent or if long-term care facilities were negligent in causing deaths, they should not be held to a higher standard..."²⁴ I take it that the member was referring to the provision in Bill 218 which would attach liability only if gross negligence could be shown as opposed to simply negligence.

[60] Mr. Crawford confirmed he also voted in favour of Bill 218 during its second and third readings in the Legislature.

5. Companies report litigation risk and introduction of Bill 218 to shareholders

[61] In their 2020 second quarter reports to shareholders,²⁵ both Sienna and Chartwell reported being named as defendants in litigation related to their handling of the pandemic and that there was a risk that further litigation could be commenced which, even if not meritorious and covered by insurance, could result in increased operating costs to the company.

[62] In their 2020 third quarter reports to shareholders,²⁶ both Sienna and Chartwell reported increased litigation risks, having by then been named as defendants in multiple class actions

²³ Hansard Transcript, October 26, 2020, at 10005, online at: https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2020-10-26/hansard#P836_172201

²⁴ Hansard Transcript, October 26, 2020, at 10014, online at: https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-1/2020-10-26/hansard#P836_172201

²⁵ See *Report to Shareholders, Q2 2020, Sienna Senior Living Inc.* at p.52, online at: <https://www.siennaliving.ca/getmedia/7410c8f6-e673-43be-85f2-556a3c21010d/Sienna-Q2-2020-Financial-Results-FINAL.pdf> and *Management's Discussion & Analysis, Second Quarter Report, June 30, 2020, Chartwell Retirement Residences*, at pp. 5 and 44, online at https://s23.g4cdn.com/371771841/files/doc_financials/2020/AODA/Q2-2020-Chartwell-MDA-August-6-2020_revised.pdf

²⁶ See *Report to Shareholders, Q3 2020, Sienna Senior Living Inc.* at p.58, online at: <https://www.siennaliving.ca/getmedia/3a19e187-ea57-4d98-850c-8ad5df067bff/Sienna-Q3-2020-Financial-Results-FINAL.pdf> and *Management's Discussion & Analysis, Third Quarter Report, September 30, 2020, Chartwell Retirement Residences*, at pp. 6 and 45, online at: https://s23.g4cdn.com/371771841/files/doc_financials/2020/AODA/Q3-2020-Chartwell-MDA-November-5-2020_final.pdf

claiming hundreds of millions of dollars. However, both companies then also reported the introduction of Bill 218, noting that, if passed, it would deem existing civil proceedings related to COVID-19 exposure to have been dismissed without costs and bar future proceedings from being brought, as long as the defendant acted in good faith and not with gross negligence.

[63] In his interview, Mr. Crawford acknowledged that Bill 218 was a factor that could increase the value of the investments he and his spouse held in Sienna and Chartwell but pointed out that the bill could also affect “many other companies.”

6. MPP Crawford’s understanding of his ethical obligations

[64] Mr. Crawford stated that prior to this inquiry he had reviewed the Act and was familiar with it.

[65] Mr. Crawford told me that he may have received some training on the Act early in his days as an elected MPP, but that this was some time ago and he cannot recall the details.

[66] Mr. Crawford did not approach my Office and ask for any advice regarding a potential conflict of interest in this case. He emphasized that he felt that there was no conflict in this case and that there was no need to contact my Office to obtain any advice. He did say that he was cognizant of the Act.

[67] Mr. Crawford told me that he has more than 20 years of experience as a senior executive in the financial industry, having worked closely with high-level compliance people. He stated that he is very aware of conflict of interest rules, of compliance rules and of trading rules.

V. ANALYSIS AND FINDINGS

1. Issues

[68] The issues in this inquiry are:

- a. Did Mr. Crawford have any involvement in decision-making in the Long-Term Care Development Program?

- b. Is the subject legislation, Bill 218, of general application?
 - c. Was Mr. Crawford's participation in the October 26, 2020 debate on Bill 218 a conflict of interest contrary to sections 2, 4 and 8 of the Act?
2. Did Mr. Crawford have any involvement in decision-making in the Long-Term Care Development Program?

[69] In his affidavit, Mr. Blais alleges that Mr. Crawford, in his role as a Parliamentary Assistant to the Minister of Infrastructure, "could have a real or perceived influence over several programs that provide Long-Term Care, including through Ontario's Long-Term Development Program which falls under his Ministry". He attached as an exhibit to his affidavit information on the bidding process and the program which, I note, discloses that it was launched by Infrastructure Ontario and the Ministry of Long-Term Care.

[70] Since Mr. Blais does not specify programs other than the Long-Term Care Development Program, I will confine my opinion to that program. The program offered 23 developable acres of surplus government lands for the building of long-term care facilities.

[71] Mr. Blais noted that the bidding process had closed on January 27, 2021, and no winner had been disclosed at the time he affirmed his affidavit on June 1, 2021. Mr. Blais went on to say that "the public has an interest in knowing what, if any, role MPP Crawford is playing in this selection process given his financial interests in the Long-Term Care sector."

[72] To a large extent Mr. Blais' concerns have been answered by events subsequent to his affidavit of June 1. First, Mr. Crawford is no longer the Parliamentary Assistant to the Minister of Infrastructure. He was moved to become the Parliamentary Assistant to the Minister of Energy in July, 2021. Second, the winning bid in the selection process was announced on October 13, 2021, to a company in which Mr. Crawford has not held any shares.

[73] Both in his evidence and in his written response to Mr. Blais' allegations, Mr. Crawford states that he had no involvement with respect to the program in question or the offering of 23 acres of surplus government lands for the construction of long-term care facilities.

[74] Mr. Crawford also outlined the limited role a parliamentary assistant has generally and particularly in the decision-making process for a program such as the one in question.

[75] I accept that Infrastructure Ontario is an independent agency of the government with well-established protocols for both procurement and development programs. It is hard to believe that a Parliamentary Assistant would have any influence, as Mr. Crawford states, in the decision-making process here.

[76] I accept Mr. Crawford's evidence on this issue and find that Mr. Blais' allegation is unfounded.

3. [Is the subject legislation, Bill 218, of general application?](#)

[77] For the sake of convenience, I will again set out sections 2 and 4 of the Act:

2. A member of the Assembly shall not make a decision or participate in the making of 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.

4. 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.

[78] Obviously both sections deal with "private interest", so it is important to examine how these words are defined in section 1 of the Act. Ordinarily, one might expect that holding a significant value of shares in a company that is the subject of debate or affected by a bill before the legislature would constitute a "private interest" addressed by the prohibitions in sections 2 and 4. Such matters bring into conflict a member's public duties and private interests. However, this Act also states that a 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.

[79] Canadian ethics, conflict of interest and integrity commissioners have issued few reports that consider the carve-out of a private interest* in a matter of general application.

[80] Mr. Hamilton submits that two reports by my predecessor, Commissioner Coulter Osborne, are applicable. However, in one report Re: Mr. Ernie Eves,²⁷ Commissioner Osborne found that the private interest* carve-out was based on the third branch of the definition of private interest* exclusions, namely, a decision that concerned remuneration of a member. Commissioner Osborne specifically found that the first branch, namely, a decision that is of general application, was not engaged.

[81] In the second report Re: The Honourable James Flaherty,²⁸ Commissioner Osborne explained that the “general application” carve-out would apply to a broad-based program even where it is a program that clearly preferred the interests of a segment of Ontario’s society-working families with children and retailers whose program beneficiaries would spend their money”. This explanation was made *in obiter* since it was not the basis for the ultimate decision. Nevertheless, it is helpful in determining the scope of the “general application” carve-out.

[82] By far the most recent and detailed analysis of the “general application” exclusion is contained in the Morneau Report²⁹ from the federal Conflict of Interest and Ethics Commissioner Mario Dion. The matter related to a complaint that Mr. Morneau, as finance minister, had

* The original version of this report, issued on February 17, 2022, contained references to “public interest”. This misprint was corrected on February 28, 2022 by replacing “public interest” with “private interest”.

²⁷ Report re: Mr. Ernie Eves, Former Member of the Legislative Assembly, Minister of Finance and Deputy Premier, May 6, 2002 at para 42.

²⁸ Report re: The Honourable James M. Flaherty, Deputy Premier & Minister of Finance, February 8, 2002 at page 6.

²⁹ Morneau Report, June 18, 2018 (<https://ciec-ccie.parl.gc.ca/en/investigations-enquetes/Pages/MorneauReport.aspx>).

introduced legislation which proposed changes that could further his interests and that of his father as shareholders of Morneau Shepell Inc., a major administrator of pension plans. The analysis of that report is worth setting out below:

The Office of the Conflict of Interest and Ethics Commissioner has previously determined that, when a matter affects all those governed within an area of activity, without exception, the matter is considered to be of general application.

For example, in 2011, the Office was asked whether Members of Parliament who were grain farmers would be required to withdraw from debates or votes related to Bill C-18, *An Act to reorganize the Canadian Wheat Board*. For the purpose of the *Conflict of Interest Code for Members of the House of Commons* (Code), a Member of Parliament is not considered to further his or her own private interests or the interests of another person if the matter in question is of general application or affects the Member as one of a broad class of the public.

At that time, there were some 70,000 grain farmers in Western Canada. Although Members of Parliament who were grain farmers in Western Canada had an interest in the subject matter of Bill C-18, my predecessor ruled that it was an interest shared with all Canadian grain farmers in Western Canada. The bill was considered to be a matter that fell within the exclusions of the Code, which correspond to the ones found in section 2 of the Act, identified above.

In my view, the same reasoning should apply in this case. Bill C-27 is part of the general legislative framework for pension plans. The purpose of the bill is to amend the *Pension Benefits Standards Act, 1985* to provide a framework for the establishment, administration and supervision of target benefit pension plans. This act covers all federally-regulated private-sector employers and certain Crown corporations, as well as their current and retired employees. It also creates obligations for all pension plan administrators, who must file actuarial reports with the Office of the Superintendent of Financial Institutions. Neither Bill C-27, nor the *Pension Benefits Standards Act, 1985* create particular classes within this federally-regulated sector. Rather, both affect the sector as a whole.

I am therefore of the opinion that decisions made by a minister of Finance, as well as any other federal minister, that apply to all those regulated within an area of activity, for example, decisions pertaining to pensions, taxation or benefits, are of general application.

Since this matter clearly relates to all stakeholders affected by the *Pension Benefits Standards Act, 1985*, it is of general application. Mr. Morneau's interests, those of his relatives, and those of Morneau Shepell Inc. in this matter are therefore excluded from the application of the *Conflict of Interest Act*. [Emphasis added].

[83] The principle from this decision, which I am prepared to accept, is that if a law purports to apply to the public at large, or to a broad sector of the public, then it can be considered as a law of general application.

[84] Applying this principle to the subject legislation I am prepared to find that it is a law of general application. I accept Mr. Hamilton's submission that "it applies to any individual, business, volunteer, non-profit organization, charity or amateur sports team that makes a good faith effort to follow public health guidance and law from civil liability arising from infection with or exposure to COVID-19".

[85] As a result, Mr. Crawford was not in breach of sections 2 or 4 of the Act when he voted for Bill 218 on two occasions since the bill, as presented, was one of general application so that his private interest was, by the Act's definition, not engaged by the bill.

[86] This, however, does not end the matter. There still remains the question of whether Mr. Crawford's participation in the debate on Bill 218 could result in him losing the protection of the "general application" carve-out to his private interest. It is one thing to vote on a bill of general application, but it may be another to engage in the debate on that bill so that his pecuniary interest would be protected.

[87] The Prussian Chancellor Otto Von Bismarck is credited with having said: "Laws are like sausages, it is better not to see them being made". In this matter the subject legislation may be the sausage but in order to determine the next issue I must delve into how it was made.

4. Was Mr. Crawford's participation in the October 26, 2020 debate on Bill 218 a conflict of interest contrary to sections 2, 4 and 8 of the Act?

[88] The debate on second reading of Bill 218 was a lengthy one. It had commenced on October 22, 2020, and was carried over to October 26 when Mr. Crawford rose to pose two questions (a third question dealt with the Municipal Act which is not relevant to our purposes).

[89] It is clear from reading Hansard of the October 26 proceedings that the opposition members were critical of the bill's provisions retroactively dismissing outstanding class actions and preventing future actions arising from the transmission of or exposure to COVID-19 unless the act or omission constituted gross negligence. Opposition members noted, correctly, that gross negligence is a much more difficult standard for a plaintiff to prove than simple negligence, which would have been the existing standard had Bill 218 not been passed.

[90] Although the bill would provide protection from liability to many, including non-profit organizations, charities and sports team coaches, the thrust of the opposition's attack centred around whether the bill would provide such protection to privately-owned long-term care homes.

[91] Wayne Gates, MPP for Niagara Falls, made a statement in the debate in which he said "you [the government] are focusing on legally protecting yourselves and these horrible for-profit homes". In response to a government member's question concerning the bill's protection for coaches and volunteers in service clubs Mr. Gates had this to say:

I want to be very clear. We want to protect the hockey coach, the dance coach. We're in agreement there. Where we're not in agreement is on our long-term care facilities...particularly in for-profit ones. So what we are saying to you is, take it out of the bill.

[92] This response quoted above was made shortly before Mr. Crawford asked Mr. Gates his first question. His second question was posed to Jamie West, MPP for Sudbury, who had earlier in the debate posed the following question to a government member:

If you believe it is important to protect the people at the bottom, why not just take the provision for long-term care out of this bill? We'll be happy to go along with you.

[93] Had Mr. Crawford taken the opportunity to use his questions to launch a spirited defence of the protections the bill might provide to long-term care homes, given what I find to be a

significant investment in two companies with interests in long-term care homes, I would have to consider whether he had thereby removed himself from the protection of the general application exclusion to his private interest. But he did not. Instead, he offered up two similar questions designed to point out the salutary benefits of the bill to non-profit organizations and charities.

[94] The questions produced similar responses from Mr. Gates and Mr. West who reiterated their support for the bill's provisions protecting charities and non-profits but not for long-term care homes.

[95] As a result of Mr. Crawford's limited role in the debate on Bill 218, and since the questions he posed did not touch on the impact the bill might have on liability protection of long-term care homes, I cannot find that his participation in the debate furthered his private interest, given the exclusion of a private interest in a decision of general application.

[96] It remains an open question as to the extent someone with significant investments, which could be affected by legislation of general application, can participate in the debate of the bill, particularly where the opposition is seeking to remove the sector in which the investments are held from the protection of the bill.

VI. OTHER ISSUES ARISING IN THE INQUIRY

[97] In light of my findings on the issues I identified in this report, it is unnecessary for me to deal with many of the arguments submitted by Mr. Hamilton. A considerable amount of time was spent analyzing the share performance of both Chartwell and Sienna to determine the impact Bill 218 may have had on the two companies' shares. Depending on what time period was covered in the analysis the share price may have surged or not changed significantly. I agree with Mr. Hamilton that there were a number of other geopolitical events occurring in November, 2020, other than the passage of Bill 218, such as the announcement of successful trials of a vaccine and the United States election. Any consideration of how Mr. Crawford's investments might have been affected if Bill 218 had not been passed would be speculative. I mention some of these

arguments, not because they need to be dealt with, but to demonstrate the depth of the investigation and the time spent on it.

[98] Mr. Blais' remaining allegation is that Mr. Crawford has "continued to defend his government's record on Long-Term Care homes" while receiving dividends from his investments in companies which have an interest in long-term care homes. Mr. Blais attached to his affidavit an opinion piece written by Mr. Crawford in an online edition of a local newspaper "showing his strong support for increased funding in Long-Term Care facilities in Ontario and in his riding of Oakville".³⁰

[99] I have read the article and see nothing objectionable in Mr. Crawford reporting to his constituents on the steps being taken by his and their government to increase funding for long-term care or celebrate the planning of two facilities in his riding. I see no connection between his reporting on these developments and how that may further his private interest.

[100] The Act specifically permits Parliamentary Assistants and members who are not in cabinet to own and trade in stocks. In my view, simply owning stocks in a particular sector and reporting on publicly available information as to what the government is doing in that sector does not trigger the conflict of interest provision of the Act.

[101] This brings me to a final observation on how any inherent or apparent conflict arising out of a member's ownership of securities should best be handled. A member who has a significant stock portfolio involving a number of sectors could be hamstrung by those holdings from voting and participating in the debate on any law not of general application which could affect any one of those sectors and the member's investments in them.

[102] In sections 17 and 19 of the *Conflict of Interest Code for Members of the House of Commons*³¹ a member is not prohibited from owning securities in a public corporation that contracts with the Government of Canada unless the commissioner is of the opinion that the size

³⁰ *Supra* note 16.

³¹ Standing Orders of the House of Commons, Appendix I, Conflict of Interest Code for Members of the House of Commons (<https://www.ourcommons.ca/about/standingorders/appa1-e.htm>).

of the holdings is so significant that it is likely to affect the member's obligations under the code. In that case provision is made for the securities to be held in a blind trust.

[103] Currently the United States Congress is considering a bill in the Senate introduced by Senators Jon Ossoff [D-Georgia] and Mark Kelly [D-Arizona] that would require members of Congress, their spouses, and dependent children to either sell their individual stocks or place them in a blind trust. House Speaker Nancy Pelosi initially was dismissive of a companion bill in the House of Representatives but, as reported in an article by Russell Berman dated January 30, 2022 in *The Atlantic* entitled "The Bill That Congress Might Be Embarrassed Enough to Pass," he wrote that "last week [she] softened her stance, telling reporters that although she remained personally opposed to the proposal "if members want to do that, I'm okay with that."³²

[104] In Ontario cabinet ministers have long been restricted under section 11 of the Act from holding or trading in securities, futures or commodities unless the assets are placed in a blind trust. Is it time to extend that restriction to members and Parliamentary Assistants who have significant stock portfolios? This could be managed by setting out a threshold determining that portfolios of that size should be placed in trust, or where the Integrity Commissioner is of the opinion that the portfolio holdings could otherwise affect a member's obligations under the Act. Such an approach may actually be helpful to members with large stock portfolios by providing them with the freedom to take positions on policies and enactments without being concerned about criticism that they are merely feathering their own nests.

VII. CONCLUSIONS

[105] In conclusion I find that Mr. Crawford did not breach the Act.

[106] The evidence did not disclose that Mr. Crawford, as Parliamentary Assistant, had any influence in the decision-making process surrounding the Long-Term Care Development Program. In addition, Mr. Blais' concerns were answered by events subsequent to his affidavit,

³² Berman, Russell. (2022, January 30). The Bill That Congress Might Be Embarrassed Enough to Pass. *The Atlantic* (online: <https://www.theatlantic.com/politics/archive/2022/01/congress-stock-trading-ban/621402/>).

namely, that Mr. Crawford was no longer the Parliamentary Assistant to the Minister of Infrastructure when the selection process chose the winning bid which went to a company in which Mr. Crawford did not hold any shares.

[107] Further, based on previous decisions from this Office and the Office of the federal Conflict of Interest and Ethics Commissioner, it is an established legal principle that if a law purports to apply to the public at large, or to a broad sector of the public, then it can be considered as a law of general application. I find that Mr. Crawford was not in breach of sections 2 or 4 of the Act when he voted for Bill 218 on two occasions since the bill, as presented, was one of general application so that his private interest was, by the Act's definition, not engaged by the bill.

[108] Finally, due to Mr. Crawford's limited role in the debate on Bill 218 and because the questions he posed did not touch on the impact that Bill 218 might have for liability protection of long-term care homes, I do not find that his participation in the debate furthered his private interest, given the exclusion of a private interest in a decision of general application. Mr. Crawford's participation in the debate on October 26, 2020 on Bill 218 was not a conflict of interest contrary to sections 2, 4 and 8 of the Act.

VIII. RECOMMENDATIONS

[109] The Act requires that every member of the Assembly shall file with me a private disclosure statement identifying the assets and liabilities (and value thereof) of the member and his or her spouse and minor children, amongst other items. I then provide a public disclosure statement on the basis of information provided by the members.

[110] As I stated earlier, cabinet ministers have long been restricted under the Act from holding or trading in securities, futures or commodities unless the assets are placed in a blind trust. This restriction allows cabinet ministers to take positions on policies and legislation without being accused of a conflict of interest.

[111] I believe it is time to review the Act and consider whether such restrictions should be extended to members and parliamentary assistants who have significant assets or stock

portfolios. Such restrictions could be imposed based on portfolio values set in the Act, or when, in the opinion of the Integrity Commissioner, those investments could otherwise affect a member's obligations under the Act.

Dated at Toronto this 17th day of February, 2022.

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

The Honourable J. David Wake
Integrity Commissioner