

Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

# **OFFICE OF THE INTEGRITY COMMISSIONER**

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## **REPORT OF J. DAVID WAKE, K.C. INTEGRITY COMMISSIONER**

Re: The Honourable Kinga Surma, Minister of Infrastructure and  
Member of Provincial Parliament for Etobicoke Centre

Toronto, Ontario  
January 16, 2025

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## I. BACKGROUND

[1] On October 16, 2024, Marit Stiles, Leader of the Opposition and Member of Provincial Parliament for Davenport sent me a letter requesting that I investigate whether Kinga Surma, Minister of Infrastructure and Member of Provincial Parliament for Etobicoke Centre breached sections 2 and 3 of the *Members' Integrity Act, 1994* (“**the Act**”).

[2] The letter was accompanied by Ms. Stiles' affidavit which had been filed with the Speaker, as is the correct practice, in support of her request that I offer an opinion under section 30 of the Act as to whether Minister Surma breached sections 2 and 3 of the Act “with respect to events connected to the Ontario Place revitalization project, including negotiation and approval of a long-term agreement with Therme Group Canada Inc. (“**Therme**”) that included publicly-funded facilities”.

[3] Ms. Stiles alleged that there had been irregularities in the Call for Development of Ontario Place, and in the evaluation process and Therme lease agreement. Further irregularities were alleged regarding the business case for relocating the Ontario Science Centre to Ontario Place and the state of repair and closure of the Science Centre.

[4] As is my practice whenever I receive a section 30 request from a member I provide it to the member who is the subject of the request and ask for a response. In this case I provided Ms. Stiles' letter and affidavit to Minister Surma on October 17, 2024, and asked for a reply by October 31, 2024. After granting a request for an extension from Minister Surma's counsel, Guy Giorno, I received an affidavit from Minister Surma and counsel's submissions on November 14, 2024. Minister Surma's affidavit disclosed that she had informed herself of the processes that had been put in place prior to her becoming the minister responsible for Ontario Place and disputed the irregularities as set out in Ms. Stiles' complaint.

[5] A further request for a brief extension was made by counsel for Minister Surma and granted by me to allow for time to review the Auditor General's annual report issued on December 3, 2024, which included a performance audit regarding the Ontario Place

Redevelopment and the relocation of the Science Centre. On December 10, 2024, Mr. Giorno advised me that there would be no further submissions.

[6] I did receive a request from Ms. Stiles' office on December 4, 2024, as to whether any further information could be received to support her October 16 request. Through my office I replied on December 5, 2024, that any further relevant information could still be forwarded to me for my review. I received nothing by the end of the year, so I am prepared to provide my opinion as to whether there are sufficient grounds for me to commence an inquiry on the basis of the material now before me.

## II. LEGAL FRAMEWORK

### 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.<sup>1</sup> Alternatively, I may refuse to conduct an inquiry if I am of the opinion that the referral was frivolous, vexatious, not made in good faith or that there are either no or insufficient grounds for an inquiry as set out in subsection 31(5) of the Act.

### Section 2 of the Act: Conflict of Interest

[9] Section 2 of the Act sets 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

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<sup>1</sup> *Members' Integrity Act, 1994*, s. 31.

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.

[10] 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.<sup>2</sup>

[11] 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.

### [Section 3 of the Act: Use of Insider Information](#)

[12] 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.

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<sup>2</sup> 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.

### III. OPINION

[13] I am of the opinion that there are insufficient grounds for me to conduct an inquiry into whether Minister Surma breached either section 2 or section 3 of the Act. I have come to this conclusion based on several considerations which are set out below.

A. There is a difference between ministerial accountability under the Act and the constitutional principle of ministerial responsibility

[14] In Ms. Stiles' letter to me of October 16, 2024, she stated the following:

In your previous report on Steve Clark, you observed that “ministers are responsible to the parliament for the conduct of their ministry and government as a whole.” You also noted that “a member may be found in breach of the Act or parliamentary convention because of the mistakes of their staff [...] where the member engaged – through action or inaction – in blameworthy conduct.

You found that Steve Clark committed two breaches of the *Member's [sic] Integrity Act*, despite his claimed lack of awareness of consequential decisions made by other, finding that “his lack of awareness was also an aggravating element since he should have provided greater supervision and control over this significant undertaking entrusted to his ministry. The lack of oversight led to the unfortunate results set out in this report.”

[15] The first quote<sup>3</sup> made by Ms. Stiles is simply a statement of the constitutional principle of ministerial responsibility. I read the insertion of the second quote<sup>4</sup> as an attempt by Ms. Stiles to conflate ministerial responsibility with ministerial accountability, which would be incorrect. In the past I have tried to make a distinction between the two.

[16] In the Clark Report<sup>5</sup> I stated the following concerning my jurisdiction under the Act and the constitutional principle of ministerial responsibility:

[...] my jurisdiction under the Act does not extend to enforcing “ministerial responsibility”, a constitutional principle whereby ministers are responsible to parliament and the public for everything that happens in their ministries.

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<sup>3</sup> Report re: the Honourable Steve Clark, August 30, 2023 (“Clark Report”) at para. 622.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

[17] Again, in a previous report<sup>6</sup> I stated:

My powers under the [Act] do not include enforcing “ministerial responsibility”, a constitutional principle whereby ministers are responsible to parliament and the public for everything that happens in their ministries.

[18] To be clear, the accountability of a minister under the Act is much narrower than a minister’s constitutional responsibility to the Legislative Assembly and the people of Ontario for the conduct of public servants in their ministries or agencies over which they have control. The constitutional responsibility exists even where the minister has not engaged in any blameworthy conduct on her own and where it would be unreasonable and unfair to attribute to her the actions or inactions of public servants in her ministry or agency for which she is responsible.

[19] For purposes of ministerial accountability under the Act attribution of blameworthy conduct committed by the minister’s staff can be attributed to the minister in some circumstances. As I stated in the Bethlenfalvy Report:<sup>7</sup>

On the other hand, members cannot hide from accountability under the [Act] where, through carelessness or inattention, they fail to oversee important policies or decisions in their offices.

[20] The reference to “offices” in the above quote is to the minister’s or member’s personal staff – commonly known as ministers’ staff – and not to the public servants working in a ministry or agency under the minister’s responsibility. Otherwise there is a danger that the net for capturing vicarious liability under the Act would be cast too wide. Mr. Giorno submits that the basis for the attribution of mistakes made by personal staff to their ministers is their close personal relationship and special loyalty.

[21] There has never been a section 30 matter where the actions of ministry or agency public servants have been attributed to a minister to establish blameworthy conduct on the minister’s part (in the Clark report the blameworthy conduct attributed to the minister related to his chief of staff, not the public servants in the ministry). While that has been the history of attributions, I cannot rule out the possibility that if it were ever shown that a public servant in a ministry

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<sup>6</sup> Report re: the Honourable Peter Bethlenfalvy, October 21, 2020 (“Bethlenfalvy Report”) at para. 271.

<sup>7</sup> Ibid. at para. 273.

committed an egregious act at the direction of a minister, that action might be used to establish the minister's accountability under the Act. Fortunately, I have not been called upon to make such a determination and I am certainly in no position to do so in the circumstances of this matter.

#### B. Ministers are not responsible for the actions of their predecessors

[22] This is undoubtedly the steepest hurdle for Ms. Stiles to overcome since for most of the period under scrutiny Minister Surma was not the Minister of Infrastructure and she did not have responsibility for Ontario Place until August 29, 2022.<sup>8</sup>

[23] As seen in the previous section it may be one thing to attribute blameworthy conduct of a minister's staff to the minister who has direct control over that person, but it would be grossly unfair to attribute to her all actions taken by the staff of other ministers before Minister Surma took office. Even if it were possible to attribute the actions of public servants in a ministry or at Infrastructure Ontario the same would be true to prevent attribution.

[24] In Minister Surma's responding material the relevant chronology is carefully set out:

- The Ontario Place Call for Development was issued May 28, 2019. The process closed September 24, 2019, and the assessment team conducted its work until December 2019.
- It is alleged that a lobbyist representing Therme contacted a member of the assessment team in July 2020.
- On June 18, 2021, Minister Surma was sworn in as Minister of Infrastructure. On July 30, 2021, the Ontario Government announced the three successful participants from the 2019 Call for Development including Therme (one participant subsequently withdrew). The minister responsible for Ontario Place at the time was the Minister of Heritage, Sport, Tourism and Culture Industries.

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<sup>8</sup> Order in Council 1198/2022, Lieutenant Governor of Ontario, August 29, 2022.



- Negotiations with Therme took place from July 2020 until April 2022 when Treasury Board approved the final lease terms and subsequently on May 3, 2022, a Ground Lease between Therme and the Province was executed.
- Minister Surma did not become responsible for Ontario Place until August 29, 2022, by Order in Council 1198/2022.

[25] Minister Surma has provided an affidavit in response to Ms. Stiles’ allegations, which sets out why she believes that the solicitation process was fair. Since the solicitation process occurred before she became the responsible minister I do not propose to comment on the process since I find it to be irrelevant to the issue of whether Minister Surma breached the Act.

### C. Reasonable and probable grounds

[26] Before I decide to embark on an inquiry under the Act I must be satisfied that Ms. Stiles has demonstrated that she has reasonable and probable grounds to believe that Minister Surma has breached section 2 and section 3 of the Act. Reasonable grounds is a high bar to meet. I had occasion to review the concept in a report two years ago<sup>9</sup>:

[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...”<sup>10</sup>

[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.<sup>11</sup> 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.<sup>12</sup>

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<sup>9</sup> Report re: the Honourable Doug Ford and the Honourable Steve Clark, January 18, 2023, at paras. 9-11.

<sup>10</sup> *R. v. Bernshaw*, 1995 CanLII 150 (SCC), at para.48, *R. v. Storrey*, 1990 CanLII 125 SCC.

<sup>11</sup> *R. v. MacKenzie*, 2013 SCC 50 (CanLII) at para. 85.

<sup>12</sup> *Ibid.* at paras. 64 and 74.

[11] Recently the Supreme Court of Canada reaffirmed the reasonable and probable grounds standard in *R. v. Beaver*<sup>13</sup> citing *R. v. MacKenzie*.<sup>14</sup> 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”.

[27] I discussed the term “improperly to further another person’s interest” in the context of the Act in a report from 2019<sup>15</sup> which I have set out below:

***Prior interpretation of “improperly furthering”***

[298] In a 2001 report of this Office, *Re Harris*, the Honourable Gregory T. Evans, Acting Integrity Commissioner, noted:

Black’s Law Dictionary defines “improperly” as:

*“ ‘Improper’. Not suitable; unfit; not suitable to the character, time, and place,... Not in accordance with fact, truth or right procedure and not in accord with propriety, modesty, good taste, or good manners.”*<sup>16</sup>

[299] Integrity Commissioner Osborne also took a broad approach in *Re Flaherty*:

It appears to me that the qualification “improperly” is intended to convey a sense that the decision made (section 2) or influence exercised (section 4) was objectionable, unsuitable or otherwise wrong (see Black’s Law Dictionary definition of “improper”).<sup>17</sup>

[300] While these broad definitions are helpful they may not assist in sifting through the facts and circumstances of each case to determine whether a member has drifted over the line between conduct that is proper and conduct that is not.

[301] It may be more useful to examine some of the factors used to analyze conduct in other cases from across Canada.

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<sup>13</sup> *R. v. Beaver*, 2022 SCC 54 at para 72.

<sup>14</sup> *Supra* at note 3.

<sup>15</sup> Report re: The Honourable Doug Ford, March 20, 2019, at pages 79-80.

<sup>16</sup> Report re: The Honourable Michael D. Harris, May 16, 2001.

<sup>17</sup> Report re: The Honourable James M. Flaherty, February 8, 2002.

[302] A review of the jurisprudence points to five factors to determine whether a member's conduct improperly furthers another person's private interest. I will review each of those factors separately below.

***Five factors***

[303] Briefly stated the five factors are:

- the relationship between the member and "another person";
- the degree of the member's involvement in the decision at issue, or the process leading to it;
- whether the member acted for an improper purpose;
- the process used for the decision; and
- whether there was an objective basis for the decision.

[28] In assessing the five factors it is important to realize that a single factor may point to a finding of impropriety but it is also possible that such a finding may be counteracted by another factor. For instance, a member may have a close relationship with the beneficiary of a decision but this factor may be outweighed by another factor like the existence of a process which insulates the decision-maker from his or her friend. Another example would occur where the process is flawed which might point to impropriety but is outweighed by the fact that the member has no relationship with the beneficiary of that process or knowledge that the process was flawed. In the end I must weigh each of the factors to determine whether, in this case, MPP Stiles had reasonable and probably grounds to believe Therme's private interest was furthered improperly by Minister Surma.

[29] Ms. Stiles has made no specific allegation as to how Minister Surma, after she became the minister responsible for Ontario Place, improperly furthered Therme's interest. This is probably because Ms. Stiles has attempted to attribute all decisions made with respect to Ontario Place to Minister Surma, a position I have rejected for the reasons stated above.

[30] Ms. Stiles has provided no allegation nor has she provided any indication as to how Minister Surma improperly furthered anyone's private interest through the use of confidential information about the Science Centre contrary to section 3 of the Act. That allegation must be dismissed.

[31] I will therefore confine my assessment of each of the five factors to the bald allegation that Minister Surma breached section 2 of the Act.

[32] Applying the five factors test to the decisions made by Minister Surma after she became responsible for Ontario Place I make the following observations:

- i. *The relationship between the member and “another person”* - In this case there is no evidence of a relationship between Minister Surma and Therme prior to her becoming the minister responsible for Ontario Place.
- ii. *The degree of the member’s involvement in the decision at issue, or the process leading to it* - Minister Surma played no role in the selection process through which Therme became a participant in the Ontario Place redevelopment. She did play a role in the final provision of parking for the site but negotiations for that had been ongoing for some time before she became responsible for Ontario Place.

Parking became more of a consideration after the Government announced on April 18, 2023, that the Ontario Science Centre would be moved to Ontario Place. As a result, Minister Surma has stated in her affidavit that “Parking is acknowledged as a governmental responsibility and is being approached as a precinct-wide initiative, with shared parking solution for all tenants. Consequently, parking revenues will be collected by the Government rather than individual tenants, and therefore, neither the revenue nor the expenses related to parking at the Ontario Science Centre at Ontario Place are reflected in the business case.”<sup>18</sup>

Recently the premier weighed in on the evolving parking issue when he stated, “That parking that we’re working on right now will be the number one income generator, and by the way, no one gets it, but the people of Ontario get that income. That’s the difference between how they operate and how we operate. We operate this province like a business. It will be the most profitable area of that whole complex of Ontario

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<sup>18</sup> On March 8, 2023, Infrastructure Ontario released the Ontario Science Centre Modernization Business Case.

Place. It will be the number one tourist attraction in all of Canada. When we get it completed, five to six million people will be going there every single year.”<sup>19</sup>

- iii. *Whether the member acted for an improper purpose* - Ms. Stiles alleges that Therme “received preferential treatment , and its private interests furthered, as a result of decisions for which Minister Kinga Surma is ultimately responsible”. While it is true that the provision of preferential treatment can be an improper purpose, in this case by the time Minister Surma became involved in the decision as to how parking would be provided, negotiations between Therme and Infrastructure Ontario had already concluded with the Province agreeing to provide 1,600 dedicated parking spaces. That number was increased under Minister Surma’s watch due to the relocation of the Science Centre to the Ontario Place site.

It is difficult to see what motive Minister Surma would have to provide preferential treatment to Therme on the parking issue. Ms. Stiles has suggested that the premier and a former member of his staff may have had some connection to Therme but the information submitted in support of this suggestion is so remote that I find it to be speculative at best and nowhere close to being worthy of consideration as to the existence of reasonable and probable grounds. Also, the information submitted in no way implicates Minister Surma as having had any prior contact with Therme.

- iv. *The process used for the decision* - This factor is related to ii. above but focuses on the process itself and not the member’s involvement in it. Ms. Stiles and Minister Surma are at odds over whether the process used to select Therme was flawed. Ms. Stiles maintains that “the provision of publicly-funded parking facilities as a requirement of the Therme lease directly contradicts the Ontario Place Call for Development” which provided that the Government would not be “making any financial contributions toward the design or construction of any proposed facilities”. Minister Surma disagrees and submits that “the inclusion of parking considerations was a deliberate

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<sup>19</sup> Ontario, Legislative Assembly, *Official Report of Debates (Hansard)*, 43<sup>rd</sup> Parl., 1<sup>st</sup> Sess., No. 171A (23 October 2024, at p. 9796).

aspect of the Call for Development, which specifically called for submissions to articulate parking needs”. Even if the process were flawed for the selection of Therme and the provision for parking I do not propose to delve into these competing arguments to determine whether there were any irregularities in the process since Minister Surma was not the responsible minister at the time the process was entered into.

- v. *Whether there was an objective basis for the decision* - Minister Surma has put forward a defence of both the selection process when she was not the minister involved as well as her role in the expansion of the parking facility when she was. I believe her position amounts to an objective basis for any decision she made in the matter after she became the responsible minister. Ms. Stiles may disagree with that position and may continue to attempt to demonstrate that the position was incorrect but that does not detract from the fact that there was at least an objective basis for Minister Surma’s decisions.

[33] Weighing the five factors I find that there are insufficient grounds for me to believe that Therme’s interest was improperly advanced by Minister Surma.

#### The decisions to move the Ontario Science Centre to Ontario Place and subsequently to close the Science Centre

[34] Ms. Stiles alleges that there were irregularities regarding the business case for relocating the Ontario Science Centre and the decision to close it at its original location. However, nowhere is it specifically alleged that Minister Surma improperly furthered anyone’s private interest as a result of any decisions made with respect to the Ontario Science Centre. As stated in *R. v. Beaver* reasonable grounds requires “a reasonable belief an individual is connected to the offence”.<sup>20</sup> It must be shown that the minister’s decisions were connected to the improper benefit of someone. That connection is not made here.

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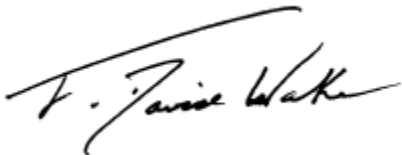
<sup>20</sup> *Supra* at note 13.

[35] I certainly do not question Ms. Stiles' good faith in making this request. I also affirm her right to continue to seek information concerning decisions made about Ontario Place and the Ontario Science Centre through other avenues. However, using section 30 of the Act, which requires reasonable and probable grounds that Minister Surma committed blameworthy conduct under the Act before an inquiry could be embarked upon, was not the vehicle to do so in this case.

#### IV. CONCLUSION

[36] 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 Ms. Stiles' request of October 16, 2024, regarding Minister Surma.

Dated at Toronto this 16<sup>th</sup> of January, 2025.

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.

J. David Wake, K.C.  
Integrity Commissioner