



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

Ouimet Report 2024

July 2024



Hon. Konrad von Finckenstein,
C.M., K.C.

Conflict of Interest and
Ethics Commissioner

Ouimet Report

made under the *CONFLICT OF INTEREST ACT*

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072024-119E

PREFACE

This report is submitted pursuant to the *Conflict of Interest Act* (Act) S.C. 2006, c.9, s.2.

The Conflict of Interest and Ethics Commissioner may conduct an examination under the Act at the request of a member of the Senate or House of Commons, as is the case with this examination, or on his own initiative.

When an examination is conducted at the request of a parliamentarian, the Commissioner is required to provide a report to the Prime Minister setting out the relevant facts of the case as well as the Commissioner's analysis and conclusions in relation to the examination. At the same time that the report is provided to the Prime Minister, a copy of the report is also provided to the parliamentarian who made the request, as well as to the public office holder or former public office holder who is the subject of the report, and the report is made available to the public.

01	EXECUTIVE SUMMARY
02	CONCERNS AND PROCESS
04	FACTS
18	ISSUE
19	MR. OUIMET’S POSITION
21	ANALYSIS AND CONCLUSION
29	SCHEDULE: LIST OF WITNESSES

EXECUTIVE SUMMARY

This report presents the findings of my examination under the *Conflict of Interest Act* of the conduct of Guy Ouimet, then a director of Sustainable Development Technology Canada (SDTC) appointed in November 2018.

I had to determine if Mr. Ouimet was in a conflict of interest when he participated in SDTC's March 2020 and March 2021 decisions to give COVID-19 emergency relief payments to various projects, including Lithion Recycling Inc. (Lithion), a company that was incorporated and approved for SDTC funding in the summer of 2018.

Before his appointment to SDTC's Board of Directors, Mr. Ouimet advised on the development of a business and finance strategy for Lithion. As partial payment for advising on the project, Mr. Ouimet was given an option to buy up to 1% of Lithion founders' shares. In November 2020, he exercised his option to buy Lithion founders' shares at a cost of \$1,250.

The examination focused on subsection 6(1) and section 21 of the Act.

Under subsection 6(1), public office holders are not allowed to make a decision or participate in making a decision related to the exercise of an official power, duty or function if they know or reasonably should know that, in doing so, they would be in a conflict of interest.

Under section 21, they must recuse themselves from any discussion, decision, debate or vote on any matter in respect of which they would be in a conflict of interest.

As set out in section 4, public office holders are in a conflict of interest when they exercise an official power, duty or function that provides an opportunity to further their private interests or those of their relatives or friends, or to improperly further another person's private interests.

I determined that Mr. Ouimet's financial interest in Lithion in relation to SDTC's March 2020 and March 2021 funding decisions was indeed a private interest for the purposes of the Act, and that he participated in both decisions.

I also considered the principle of *de minimis non curat praetor*. It means the decision-maker is not concerned with small things. The *de minimis* principle is reflected in the Act, which allows reporting public office holders, other than a minister or parliamentary secretary, to hold certain assets that are of such minimal value that they pose no risk of conflict of interest in relation to their official duties and responsibilities.

The same minimal value test should apply to a public office holder's ownership interest in a company if the interest is trivial. I determined that Mr. Ouimet's 1% interest in Lithion when he voted on each decision was so small that there was no risk of conflict of interest.

Consequently, I dismissed the allegations against Mr. Ouimet.

CONCERNS AND PROCESS

[1] On November 16, 2023, following a request from Michael Barrett, Member of Parliament for Leeds–Grenville–Thousand Islands and Rideau Lakes, I initiated an examination under the *Conflict of Interest Act* (Act) of the conduct of the then Chairperson of Sustainable Development Technology Canada (SDTC), Annette Verschuren, in relation to the provision of SDTC funding to several projects.

[2] On November 29, 2023, Mr. Barrett wrote to the Office requesting that I expand my investigation by commencing another examination under the Act of the conduct of Mr. Guy Ouimet, then a director of SDTC, into the same matter relating to the provision of SDTC funding to several projects.

[3] Mr. Ouimet became a public office holder subject to the Act when he was appointed by the Governor in Council to the Board of Directors of SDTC on November 8, 2018.

[4] In his letter, Mr. Barrett wrote that information in the public domain showed that Mr. Ouimet was a director of Lithion Recycling Inc. (Lithion),¹ a company which had been the recipient of SDTC funding since August 2018.

[5] Mr. Barrett also wrote that in March 2020 and March 2021, the SDTC Board voted to grant COVID-19 emergency relief funding to 140 companies receiving funding from SDTC. According to Mr. Barrett, the COVID-19 emergency relief funding decisions would have resulted in almost \$400,000 in supplementary payments to Lithion.

[6] Mr. Barrett alleged that if Mr. Ouimet, who was appointed to the Board of SDTC in November 2018, participated in the decision to grant COVID-19 emergency relief funding in 2020 and 2021, Mr. Ouimet may have contravened subsection 6(1) and section 21 of the Act.

[7] Subsection 6(1) of the Act prohibits public office holders, in the exercise of their public office, from making or participating in a decision if they know or reasonably should know that they would be in a conflict of interest, namely when the decision provides the opportunity to further their own private interests, those of their relatives or friends, or to improperly further another person's private interests. Section 21 of the Act requires public office holders to recuse themselves from any discussion, decision, debate or vote on any matter in which they would be in a conflict of interest.

¹ The company's name was changed to Lithion Technologies Inc. in 2022.

[8] In his letter, Mr. Barrett also noted that Lithion is a “consortium member” in relation to a project involving eNim Inc. (Seneca experts-conseils), which was approved for funding by SDTC in November 2022. Mr. Barrett therefore asked that I determine whether the requirements of the Act were followed.

[9] Having determined that Mr. Barrett’s request for an examination met the requirements set out in section 44 of the Act, I wrote to Mr. Ouimet on December 8, 2023, to inform him that I had commenced an examination to determine whether he had contravened subsection 6(1) and section 21 of the Act, and so informed Mr. Barrett.

[10] Mr. Ouimet submitted a detailed response and supporting documents on January 11, 2024. Mr. Ouimet was interviewed on February 21, 2024. The Office interviewed two additional witnesses and received documents from a third witness.² A former SDTC employee also provided the Office with a collection of documents that, in the end, did not form part of the basis for this report. Some of the documentary evidence and testimony of witnesses gathered were used for both Mr. Ouimet’s and Ms. Verschuren’s examination reports.

[11] In keeping with the Office’s practice, I provided Mr. Ouimet with a copy of the relevant documentary evidence gathered during this examination, as well as a draft copy of the factual portion of the examination report (Concerns and Process, Facts, Issue and Mr. Ouimet’s Position) before it was finalized.

[12] In conducting my examination, I was aware that the Office of the Auditor General was also conducting an audit on how SDTC is financing sustainable development technologies. Furthermore, studies were undertaken by the House of Commons’ Standing Committees on Access to Information, Privacy and Ethics (ETHI), and on Industry and Technology, on concerns raised in a complaint by a group of whistleblowers into the practices of SDTC, and I was aware of Mr. Ouimet’s testimony before ETHI. The work of the Office of the Auditor General and of the House Committees did not impede my own in any way. It is important to note that this examination dealt solely with the conduct of Mr. Ouimet in respect of his obligations under the Act.

[13] I wish to note that the findings of the Auditor General’s report, published on June 4, 2024, relate to decisions involving both types of directors of the Board: those who, like Mr. Ouimet, are Governor-in-Council appointees subject to the Act, and those who are not. Furthermore, the instances of conflicts of interest cited by the Auditor General were in reference to SDTC’s Code of Conduct and Conflict of Interest Policy.

² A list of witnesses is found in the Schedule of this report.

FACTS

Background

Sustainable Development Technology Canada

[14] Sustainable Development Technology Canada (SDTC, also referred to as the Canada Foundation for Sustainable Development Technology) is a not-for-profit foundation that was established by the Government of Canada in 2001 through the *Canada Foundation for Sustainable Development Technology Act*.

[15] The governance and oversight of SDTC's activities are provided by a Board of Directors and a Member Council. The Board consists of two types of directors. The Chair of the Board and six directors are appointed for a term not exceeding five years by the Governor in Council, on the recommendation of the Minister of Innovation, Science and Industry. The other eight directors are appointed by the members. After their term has expired, directors continue to hold office until their successors are appointed.

[16] SDTC's objectives and purposes are to provide funding for projects that develop and demonstrate new technologies to promote sustainable development, including technologies to address issues related to climate change and the quality of air, water, and soil.

[17] SDTC is accountable to Parliament through the Minister of Innovation, Science and Industry.

Funding streams

[18] During the period relevant to this examination, SDTC funded clean technology projects through three funding streams under its SD Tech Fund: Seed, Start-up, and Scale-up.

[19] Seed funding provides early-stage companies with a one-time non-repayable contribution of \$50,000 to \$100,000 to develop projects that have the potential to bring environmental or sustainability benefits. Applicants must have secured funding from other private sources and be nominated by one of SDTC's approved accelerator partners. An accelerator is an organization that gives developing companies access to mentorship, investments, and other supports that help them become stable, self-sufficient businesses.

[20] Start-up funding is available to companies with technology that has been proven on a small scale, demonstrates promise, has the potential to deliver an environmental benefit, and is ready to be validated in a market setting. Companies must participate in a competitive funding process and can receive up to \$10 million over a period of up to five years.

[21] Similar to Start-up funding, Scale-up funding is targeted to high-growth companies, with proven environmental outcomes, who are looking to accelerate their growth and expand their customer base. Project proposals are evaluated on their environmental benefits, technology readiness, business plan and path to market, strength of technology innovation, management capability, and financial strength.

Board of Directors

[22] The *Canada Foundation for Sustainable Development Technology Act* requires SDTC's Board of Directors to be representative of persons engaged in the development and demonstration of technologies to promote sustainable development—including technologies to address issues related to climate change and the quality of air, water and soil— to be representative of the business community, and to have sufficient knowledge of technologies that promote sustainable development.

[23] Section 24 of the *Canada Foundation for Sustainable Development Technology Act* prohibits the Board from delegating to anyone, including to a committee of directors, its power to authorize the funding of eligible projects, thus establishing the full Board's exclusive authority to make funding decisions for SDTC.

[24] The work of the Board is supported by the Audit, Governance and Nominating, People and Culture, and Project Review committees. These committees operate independently from management, serve in an advisory capacity with no independent decision-making authority, and report to the Board through committee chairs. Both the Chairperson as well as the President and CEO of SDTC serve on the committees as ex-officio, non-voting members.

[25] The Audit Committee assists the Board of Directors in ensuring that SDTC meets its fiduciary obligations for financial management, auditing, and reporting. The Governance and Nominating Committee reviews governance policies and assesses compliance measures, such as those related to SDTC's Code of Conduct and Conflict of Interest Policy, and also reviews and discusses significant corporate risk exposures. The People and Culture Committee is responsible for advising the Board of Directors on CEO performance, organizational structure, and compensation benefits. The Project Review Committee reviews project proposals and makes funding recommendations to the Board of Directors for approval.

SDTC's Conflict of Interest Policy for the Board of Directors

[26] Until a new Code of Ethics came into force in November 2023, all members of SDTC's Board of Directors were subject to SDTC's Code of Conduct and Conflict of Interest Policy (Policy). Governor-in-Council-appointed directors are also subject to the *Conflict of Interest Act* as public office holders. Directors appointed by members are not legally bound by the Act. In their oath of office, which they must sign annually, all directors acknowledge that they have read and understood the Policy.

[27] The Policy, a publicly available document, sets out standards of conduct with respect to the manner in which directors are expected to fulfill their duties to the Board, including by "act[ing] honestly and in good faith" and by providing their input on proposed projects "based exclusively on the merits of the business case presented." Under the Policy, directors are also expected to "be informed of the legislation under which the Foundation was created, and SDTC's bylaws and policies as they pertain to the Board" and to "demonstrate due diligence and dedication in preparation for Board meetings." The Policy also provides for restrictions on securities-related trading activities.

[28] Section 3 of the Policy provides that all directors are expected to comply with the obligations of public office holders found in the *Conflict of Interest Act*, even those not legally bound by it. The Policy also provides a description of conflict of interest that mirrors the wording of section 4 of the Act, but also extends it to capture situations that may reasonably be perceived to result in a conflict.

Board procedures with respect to conflicts of interest

[29] The procedures to be followed by directors for the disclosure of conflicts of interest with respect to companies that have applied for funding from SDTC is set out at section 5 of the Policy.

[30] Under the Policy, in advance of a slate of proposed projects being presented to the Project Review Committee, and then to the full Board of Directors for review and approval, directors are provided, for each proposed project, with the name of the applicant and of consortium members, as well as a brief description of the project. Upon receiving this information, directors must declare to SDTC, in writing, any potential, real, or perceived conflict of interest or otherwise acknowledge "no conflict of interest" with any of the proposed projects, prior to receiving additional information on the projects.

[31] The documentary evidence and testimony show that, several weeks before each Board meeting, an email from SDTC staff would be sent to all directors to request that they declare "real or perceived" conflicts of interest with any of the projects listed in an attached information table. This table would list the names of project proponent companies and the names of titles of members of their management team, as well as the names of consortium

members and a one-paragraph overview of the proposed projects. Where projects in the Seed funding stream would be coming to directors for approval, similar but more succinct information would be circulated in the same way and at the same time. A two-page summary of the Policy, titled “Review of Conflict of Interest Guidelines,” would also be attached to the email.

[32] Directors declared their conflicts by replying to all recipients of the original email. Having responded to the declaration request email, directors would then gain access through an online portal to detailed information about all projects for which they had not declared a conflict. At that time, SDTC staff would also update the internal registry of conflicts of interest as needed with any newly declared conflicts.

[33] Section 5 of the Policy further describes, as follows, the procedure at meetings of directors where proposed projects are reviewed:

Each agenda for meetings of the Project Review Committee and for funding-approval meetings of the Board shall include—prior to any consideration of any of the Proposed Projects—an item requiring the declaration and recording of any potential conflicts. In the case where a conflict has been declared, the Director or Committee Member shall recuse themselves from the deliberations on the Proposed Project(s) with which they have a conflict. For greater clarity, recusal requires the Director or Committee Member to exit the boardroom or leave the conference call and not participate in any way in discussions or vote on the Proposed Project(s).

[34] The regular practice for projects in the Start-up and Scale-up funding streams would entail noting recusals by conflicted directors in the minutes of Board meetings. All witnesses interviewed confirmed that in cases where a recusal took place, the affected director would physically leave the room (or be moved to a separate virtual waiting room, as the case may be) before the discussion of the project started and re-enter the meeting only once the vote on a motion to fund the project had concluded.

Mr. Ouimet's activities before joining the Board of SDTC

[35] Mr. Ouimet included, with his written submission, a copy of his opening remarks from his appearance before the House of Commons Standing Committee on Industry and Technology. During his appearance of December 5, 2023, Mr. Ouimet informed the Committee that he is an engineer, that he holds a Master of Business Administration, and that he has many years of experience in the fields of venture capital, private equity, project finance and mergers and acquisitions. Additionally, he is a certified member of the Institute of Corporate Directors.

[36] Mr. Ouimet also informed the Committee that with his combined expertise in multi-sector venture capital and in the development of large-scale projects, he became an external advisor for SDTC in 2006, a role he held until 2014. He also said that his experiences led him to start his own firm, Celtis Capital Inc., where he participated in multiple projects in the energy and cleantech industries.

[37] In his written submission, Mr. Ouimet wrote that from November 2017 to October 2018, through Celtis Capital Inc., he advised Seneca experts-conseils—a consulting firm made up of engineers specializing in industrial materials process engineering—in the development of a business plan and financing strategy for Lithion, a lithium-ion battery recycling technology project. According to the Enterprise Register of the Province of Quebec, the project was incorporated as Lithion Recycling Inc. in July 2018, and was approved for funding by SDTC in August 2018.

[38] As part of the compensation for his professional services to Seneca experts-conseils on the Lithion project, Mr. Ouimet was provided with an option to acquire up to 1% of the Lithion founders shares. Mr. Ouimet testified that he has never been a shareholder nor a director of Seneca experts-conseils.

Mr. Ouimet's appointment to the Board of SDTC

[39] According to his governor-in-council application letter, which Mr. Ouimet enclosed with his written submission, he disclosed his previous role as an expert advisor for SDTC and his professional relationship with Seneca experts-conseils.

[40] Mr. Ouimet testified that he was informed in October 2018 of his appointment to the Board of SDTC. Mr. Ouimet also testified that prior to beginning his mandate on the Board, he ended his professional relationship with Seneca experts-conseils.

[41] On November 8, 2018, Mr. Ouimet was appointed to the Board of Directors of SDTC for a term of four years. As a Director of the Board, Mr. Ouimet was a member of the Project Review Committee and the Governance and Nominating Committee.

[42] Persons appointed by the Governor in Council on a part-time basis are generally considered public office holders without reporting obligations under the *Conflict of Interest Act* (Act), and this was the case for Mr. Ouimet. They must comply with the general rules of conduct found in Part 1 of the Act, but do not have to complete an initial compliance process, including making disclosures and declarations about their interests, withdrawing from activities, or divesting of assets. They also do not need to complete an annual review process. After they are appointed, the Office sends them a letter with a summary of the rules they need to follow.

[43] Mr. Ouimet received a letter from this Office in late March 2019, informing him that as a public office holder he was subject to the Act. He was instructed that, while the organization to which he was appointed might require him to abide by a code of conduct, as a public office holder, he was required to comply with the provisions of the Act, and that compliance with a code of conduct was not necessarily synonymous with compliance with the Act, especially in the case of similar provisions.

[44] In the letter, Mr. Ouimet was also invited to communicate with the Office should he have any questions or require clarifications relating to his obligations. Mr. Ouimet testified that he had not communicated with the Office or sought advice because he had already disclosed and sought advice from SDTC on his prior work with the Lithion project as well as on the option he held to purchase Lithion shares.

Mr. Ouimet addresses his conflicts of interest

[45] Following his appointment, documentary evidence shows that in early March 2019, Mr. Ouimet sought advice from the Chair of SDTC's Governance and Nominating Committee and Leah Lawrence, SDTC's President and CEO from 2015 to 2023, relating to his conflict of interest with Lithion in light of the option he held.

[46] Ms. Lawrence testified that, prior to the creation of the position of Ethics Advisor, she and the Chair of the Governance and Nominating Committee met with directors, regardless of their appointment status, to discuss any questions or concerns a director might have relating to their conflicts of interests and provide advice in respect of their obligations.

[47] Based on the notes he took during his meeting, Mr. Ouimet was told that he could retain his option to purchase the shares and that he ought to recuse himself from matters relating to Lithion. He was also told that he could participate in decisions regarding projects submitted by Seneca experts-conseils after declaring a perceived conflict of interest.

[48] In November 2020, Mr. Ouimet exercised his option to purchase Lithion shares at a cost of \$1,250 before the option's expiration date. Documentary evidence shows that after having done so, he informed Ms. Lawrence and Ms. Annette Verschuren, Chair of the Board.

[49] In an April 2, 2021, email to Ms. Lawrence, Ms. Verschuren, the Governance and Nominating Committee and the Vice-President of the SDTC, Mr. Ouimet informed them that he had accepted an offer to become a member of the Board of Lithion, which was ratified on April 30, 2021. In his email, he stated that as per the SDTC Code of Conduct, he would exclude himself from any discussion regarding Lithion and SDTC.

Mr. Ouimet's perceived conflicts of interest

[50] Documentary evidence and testimony show that Mr. Ouimet identified his perceived conflict of interest with Seneca experts-conseils and four companies (KSM, Nano One Materials, West High Yield Resources, Nouveau Monde Graphite) who had Seneca experts-conseils as the engineering firm on their project. Mr. Ouimet testified that he never had an interest or relationship with any of the four companies.

[51] Mr. Ouimet also identified having perceived conflicts of interest with two other companies, NoviFlow, and Li-Cycle. Mr. Ouimet testified that one of the owners of NoviFlow was an acquaintance and that Li-Cycle was a direct competitor of Lithion.

Mr. Ouimet's conflict of interest with Lithion

[52] Documentary evidence supports Mr. Ouimet's testimony that, prior to receiving any documentation in preparation for meetings of the Project Review Committee and of the Board, he consistently identified his conflict of interest with Lithion.

[53] In the spring of 2021, Mr. Ouimet declared a conflict of interest when Lithion submitted a funding request modification, which is reflected in the minutes of the May 11, 2021 Project Review Committee meeting. The minutes indicate that Mr. Ouimet abstained from the matter, but do not reflect whether Mr. Ouimet recused himself by physically leaving the meeting.

[54] According to the minutes of the May 18, 2021 Board meeting, Mr. Ouimet left the meeting prior to the discussion relating to the Lithion's funding request modification. The minutes also reflect that Mr. Ouimet returned to the meeting after the Board passed a motion calling for Lithion's request to be approved.

[55] In the fall of 2022, Mr. Ouimet declared a conflict of interest in relation to two projects, one submitted by eNim and one submitted by Nano One Materials, where Lithion was identified as a consortium partner in both projects. Under two of SDTC's funding streams, Start-up and Scale-up, project applicants receive the support of a "consortium." SDTC defines a consortium partner as "an organization that is unrelated to the applicant and is willing to make a contribution to the project at cost."

[56] The minutes of the November 17, 2022 Project Review Committee meeting reflect that Mr. Ouimet's conflict of interest with both eNim and Nano One Materials, as a result of his relationship with Lithion, was noted. However, the minutes do not reflect whether Mr. Ouimet recused himself by leaving the virtual meeting prior to the discussions taking place.

[57] In the minutes of the November 23, 2022 Board meeting, it is written that Mr. Ouimet "left the meeting to address his conflict of interest" before the discussions relating to the Nano One Materials and eNim projects took place. The minutes also reflect that Mr. Ouimet returned to the meeting after the Board passed a motion calling for both projects to be approved for funding.

[58] In his testimony, Mr. Ouimet was adamant that he did in fact recuse himself from discussions of the Project Review Committee relating to Lithion by leaving the room during the May 11, 2021 meeting, and by leaving the November 17, 2022 virtual meeting. He said that an audit, which was conducted after a complaint was made by a whistleblower about SDTC practices, revealed that the minutes of the Project Review Committee were, at times, inaccurate. Mr. Ouimet testified that following this audit, steps were taken to ensure the accuracy of the minutes.

[59] In her testimony, Ms. Lawrence said that while the minutes of the Project Review Committee—which were taken by an SDTC staff member—did not reflect when recusals occurred, she confirmed that directors left the room when the Committee addressed any project in which they had identified a conflict of interest.

COVID-19 emergency relief payment of March 2020

[60] On March 11, 2020, COVID-19 was declared a pandemic by the World Health Organization. On March 18, 2020, the Canada-U.S. border was closed to all non-essential travel, and provinces and territories implemented varying gathering restrictions and self-isolation measures.

[61] Ms. Lawrence testified that, at that time, staff and Board members were concerned for SDTC-funded companies given that most were not generating any income. She said that the federal government had not yet announced any support measures for non-revenue-generating companies, and as a result, there was a sense of urgency at both the staff and Board level for a need to intervene.

[62] Ms. Lawrence testified that SDTC staff was directed to come up with proposed approaches and scenarios. According to documentation, staff communicated with the CEOs of more than half of the funded companies to understand the state of their businesses and their needs brought on by pandemic restrictions. According to Ms. Lawrence, this activity resulted in SDTC management proposing the idea of providing bridge financing to businesses while the industry waited for the federal government to announce support programs for pre-revenue-generating businesses.

Legal advice sought by Ms. Lawrence

[63] Ms. Lawrence testified that she called Ed Vandenberg for legal advice on the idea. Mr. Vandenberg's law firm provided legal services to SDTC. As a result of that arrangement, he also acted as the Recording Secretary to the Board, a role he held since around 2013.

[64] Testifying on his role as Recording Secretary to the Board, Mr. Vandenberg said that his responsibilities were to ensure proper governance during meetings, record the decisions, and prepare the minutes. He testified that on occasion he provided legal counsel to both SDTC staff and the Board.

[65] Ms. Lawrence testified that during her call with Mr. Vandenberg, she described, in broad strokes, the proposed idea of providing a bridge payment to SDTC-funded companies. She testified that she asked Mr. Vandenberg for governance advice on how SDTC should proceed with the approval at the board level in light of the conflicts of interests of its directors.

[66] According to Ms. Lawrence, Mr. Vandenberg told her that given every project would be treated equally from both a criteria and approach perspective, having separate motions for directors with perceived or direct conflicts of interests was not required. Ms. Lawrence said that she accepted his advice.

[67] Mr. Vandenberg testified that during the call, Ms. Lawrence explained that it would be a general application of additional funding for all projects across the board without exemptions. On this basis, he told her that because no particular decision was being made relating to a specific company, there was no need to declare conflicts of interests given that they had already been declared when the initial funding decisions were made. He further testified that he told her that looking at the matter as a set of individual decisions would be incorrect given that it was a general decision.

[68] According to Mr. Vandenberg, conflicts of interests were always at the forefront in the minds of everyone at Board meetings when any funding decision was made. When asked why he didn't suggest, out of an abundance of caution, that directors with a conflict of interest remove themselves from the vote, Mr. Vandenberg stated that it would have suggested that it was no longer a general application of a funding percentage to every company. According to Mr. Vandenberg, this wasn't the intent of the proposal. His view was that it was a decision that all directors had a responsibility to weigh in on, which wouldn't have occurred if directors with previously declared conflicts had recused themselves.

[69] Ms. Lawrence testified that she did not recall Mr. Vandenberg mentioning terms such as "general application" or "broad class," terms found in the *Conflict of Interest Act*. Both she and Mr. Vandenberg testified that there was no mention of this Act during their discussion. Ms. Lawrence said that the issue of "conflicts" was raised within the context of the processes and procedures that govern SDTC. Mr. Vandenberg testified that his legal advice was based on his general knowledge of governance and how it should be carried out.

[70] Both Ms. Lawrence and Mr. Vandenberg testified that they did not consider whether quorum requirements might not be met due to the conflicts of interests of some of the directors.

[71] The by-laws of SDTC set out quorum requirements for Board meetings. Section 6.05 of the by-laws states that a majority of the directors holding office shall constitute a quorum for the transaction of business at any meeting of the Board.

[72] According to Ms. Lawrence, quorum was assessed by SDTC's Governance Administrator at the beginning of each meeting. According to Mr. Vandenberg, while ensuring quorum was met to start a meeting, any decision would only require a majority of the directors entitled to vote on that matter. Therefore, quorum requirements would continue to be met even if a reduced number of directors took part in a given vote.

Emergency Board meeting of March 23, 2020

[73] According to the documentary evidence, on March 20, 2020, Ms. Lawrence advised directors of an emergency Board meeting to be held on March 23 for the purpose of addressing the situation at hand. The email informed directors of the steps taken by SDTC staff to communicate with portfolio companies and stated: "We are ready, pending a Board approval and discussions with ISED [Innovation, Science and Economic Development Canada], to action an immediate cash injection to our companies in the next four weeks, with the first instalment going out as early as March 31." The email did not require directors to identify conflicts of interest ahead of the meeting as was usually the case when funding decisions were to be made.

[74] Materials for the emergency meeting were made available to directors later on March 20, 2020. These included an agenda, and two supporting documents: a deck of five slides providing context for the meeting and summarizing the proposal to be discussed, and a document entitled “Proposed increase to SDTC contribution of 5% for Active Project – FAQs.”

[75] Thirteen directors attended the March 23, 2020 meeting, including Mr. Ouimet. According to the minutes of the meeting, which were recorded by Mr. Vandenberg, Ms. Lawrence noted that SDTC staff had reached out to SDTC-funded companies, and that the information received was being used to develop solutions and approaches to address the short-, medium- and long-term challenges the companies were facing in light of the pandemic. An immediate short-term response from SDTC was to provide companies with support to allow them additional time to assess impacts and implement new measures to build longer-term resiliency.

[76] The minutes further noted that Ms. Lawrence had discussed the matter of conflicts of interest with Mr. Vandenberg. Given that all of the projects were previously reviewed and approved for funding under normal processes, that the current proposal was an operational matter, that all companies were treated equally and that no company was being singled out for differential treatment, it was determined that no director had a real or perceived conflict of interest related to the proposal as a result of any interest that a director might have in any specific company.

[77] Mr. Ouimet testified that he had no concerns in agreeing to have one motion for all projects given the legal opinion provided to the Board by legal counsel for SDTC, which stated that due to the equal treatment provided to all companies, there was no conflict.

Management’s proposal

[78] According to the minutes of the meeting and supporting documents, industry concerns prompted the recommendation of an immediate additional payment of 5% based on the previously approved contribution amounts to all companies with an active contract in place and with ongoing projects, including projects in the Seed funding stream. Under this proposal, approximately 126 projects would receive an increase in funding for a total of approximately \$18.6 million, which would represent an average payment of \$148,000 to individual companies. The majority of the funds were meant to be paid out before the end of March 2020. For companies that had not yet entered into a contract with SDTC, the objective was to contract the projects as quickly as possible in order to provide relief in the form of a first milestone payment. According to the supporting documents, the proposal was meant to allow SDTC to quickly deliver support to companies without creating an additional administrative burden.

[79] With respect to projects in the Seed funding stream, both Ms. Lawrence and Mr. Vandenberg's general recollection of the discussion was that directors were of the view that applying the 5% to these projects would be too low of an amount to help with COVID-19 relief. Mr. Vandenberg explained that in order to make the amount of funding practical, directors decided that a higher percentage of payment should be provided. In the end, the minimum payment was set at \$15,000 for these projects.

[80] Mr. Vandenberg and Ms. Lawrence both testified that the change in the approach to introduce a minimum amount for certain companies did not give rise to any further discussion regarding conflicts of interest given that there was no breakdown of specific companies.

[81] Mr. Ouimet understood that SDTC had a \$25 million budget surplus, and that the purpose of providing the additional payment was to assist companies with their working capital. He testified that he believed it was a good idea in light of the issues brought on by the pandemic. As a result, he had no concerns with the proposal.

The Board's decision

[82] According to the minutes, Ms. Verschuren, as Chairperson, then proposed Motion 94-B-01: "That the Board of Directors increase disbursements for all companies currently in active portfolio by 5 percent to appropriate de minimis considerations, in particular for Seed Companies." The decision received unanimous approval.

[83] Mr. Ouimet confirmed that he knew that if the Board voted in favour of the motion, Lithion would receive an additional 5% in funding. He testified that there were no separate discussions relating to any of the companies and that the directors were not provided with the payment amounts. That was left to SDTC staff to calculate. Consequently, Mr. Ouimet did not know the exact amount Lithion stood to receive. This was confirmed by Ms. Lawrence, who testified that the Board was called to vote on the approach and the mechanism by which the support payments would be provided rather than individual amounts.

[84] According to documentary evidence, 118 companies received a COVID-19 emergency relief payment; Lithion received \$192,100.

COVID-19 emergency relief payment of March 2021

[85] According to Ms. Lawrence, a year into the pandemic, there was a continued sense of urgency and a concern for the companies receiving SDTC funding as well as for the Canadian clean tech sector as a whole. Companies were facing ongoing lockdowns and had difficulty accessing products.

Special Board meeting of March 9, 2021

[86] On March 9, 2021, a special meeting of the Board of Directors was held to discuss pandemic recovery efforts. Fourteen directors attended the meeting, including Mr. Ouimet.

[87] In preparation for the meeting, on March 2, 2021, directors received an agenda with “Pandemic recovery effort to accelerate climate technology adoption in Canada” as an item. They also received a document prepared by SDTC staff describing the difficulties the companies faced in light of ongoing travel restrictions due to the pandemic and international factors, such as global climate tech investments. The document raised a concern that Canadian climate tech ideas, jobs and associated manufacturing capacity, as well as private capital infrastructure, might be transferred outside of Canada. According to this document, there was an urgent need to build out the domestic market, strengthen supply chains and accelerate the scaling up of climate technology projects.

[88] Contrary to what occurred in the context of the March 2020 meeting on relief measures, the question of conflicts of interest of directors was not raised in March 2021. Ms. Lawrence also testified that she did not contact Mr. Vandenberg for legal advice in advance of this meeting.

Management’s proposal

[89] According to the minutes of the meeting, Ms. Lawrence presented to the Board a proposal to provide an increase to companies with an active contract in place and ongoing activities, and who were on their way to project completion.

[90] Along with contextual information, the funding criteria, which were also set out in an appendix to the document distributed to directors ahead of the meeting, were also presented. With respect to companies with an active contract with SDTC, revenue-positive projects in the Scale-up funding stream that had an established customer base would receive an increase of up to 10% as they were closer to market and had greater needs. All other eligible projects would receive an increase to their SDTC contribution of up to 5%. So-called “graduate companies” without an active project with SDTC, but that were generating revenues and demonstrating growth, could receive up to \$100,000. Projects in the Seed funding stream were not included in the proposal.

[91] According to the documentation, companies would be encouraged to direct the funds to develop domestic supply chain partners and customers, with the goal of strengthening the domestic market for climate technologies.

[92] Ms. Lawrence testified that more frequent outreach to the companies throughout the pandemic allowed SDTC staff to gain a better understanding of the needs of the companies and how staff could best provide oversight as well as support. This allowed for the development of a more nuanced approach of providing different levels of additional funding.

[93] According to documentary evidence and testimony, neither the question of conflicts of interests nor Mr. Vandenberg's legal opinion provided in March 2020 was raised during the meeting.

[94] Mr. Ouimet testified that, even though different percentages of funding would be applied this time, what was being proposed was still viewed as a universal application of funding to all companies. He and Ms. Lawrence both testified that there was a general understanding that the decision was based on the same principle as the year prior. Mr. Ouimet said that he viewed it as a second phase of the initial 2020 decision.

The Board's decision

[95] According to the minutes of the meeting, Ms. Verschuren, as Chairperson, then proposed Motion 100(B).01: "That the Board approve the recommendation to provide \$25 million in funds to support companies in their efforts to develop domestic supply chain partners and customers." The motion received unanimous approval.

[96] Mr. Ouimet confirmed that he voted in favour of the motion. He also confirmed he knew that by doing so, Lithion would receive supplementary funding. He testified that he did not know the funding percentage the company would receive as SDTC staff was tasked with deciding which companies would receive 5% and which ones would receive 10%.

[97] According to documents prepared by SDTC staff following the board meeting, 102 companies received additional funding, with Lithion receiving \$201,705.

ISSUE

[98] Did Mr. Ouimet contravene subsection 6(1) and section 21 of the *Conflict of Interest Act* (Act) by participating in two decisions on COVID-19 emergency relief funding that would benefit Lithion Recycling Inc., and failing to recuse himself from these decisions?

MR. OUIMET'S POSITION

[99] In his letter dated January 11, 2024, Mr. Ouimet stated that he did not contravene any of his obligations set out in the Act. He supported his statement by pointing to the documentation that showed he had declared his conflict of interest involving Lithion to SDTC and that he had recused himself, by leaving the room, each time matters involving Lithion were discussed by the Project Review Committee. He also recused himself each time a matter involving Lithion was discussed by the SDTC Board of Directors, save for on two occasions.

[100] The two occasions where he did not recuse himself involved SDTC Board decisions taken in March 2020 and March 2021 to support previously approved and ongoing projects with COVID-19 emergency relief funding.

[101] Mr. Ouimet's position is that these decisions related to exceptional and urgent circumstances and provided for a universal program that, in 2020, affected all SDTC-funded projects that were ongoing at the time that decision was taken. According to Mr. Ouimet, the decisions of 2020 and 2021 applied without exception and did not single out any particular company or project. He wrote that the Board's decisions involved approving parameters for a funding envelope that would be actioned later by SDTC staff. He added that all conflicts of interests of the directors, including his own, had been declared prior to these decisions being taken.

[102] Mr. Ouimet also wrote that in the context of the March 2020 decision, a legal opinion was shared with the SDTC Board that specifically addressed the conflicts of interests of the directors when participating in this decision. He wrote that he relied in good faith on this legal opinion when he participated in the March 2020 and March 2021 decisions.

[103] Mr. Ouimet wrote that to be in a conflict of interest within the meaning of section 4 of the Act, a private interest must be engaged. He added that the Act defines "private interest" in section 2 and that that definition excludes an interest in a decision or matter that is of general application.

[104] Mr. Ouimet submits that given that the COVID-19 emergency relief funding was provided to all of SDTC's active projects, the decisions were of general application and consequently his interest in Lithion, a beneficiary of the funding as one such active project in 2020 and in 2021, was not a private interest in the context of these decisions.

[105] Mr. Ouimet supported this position by referring to case law where the Court recognized the exclusions to “private interests” set out in the Act. He also noted a similar “general application” exception in the *Conflict of Interest Code for Members of the House of Commons*. Additionally, he wrote that information on the Office’s website explains that “private interests” has traditionally been given a narrow interpretation by the Office.

[106] Mr. Ouimet also referred to case law involving municipal government decisions, where Courts have recognized that, at times, decision-makers may have an interest in a decision which goes beyond the public interest that would not give rise to a conflict of interest. The case law supports that no conflicts of interests were found where that decision-maker’s interest is broadly shared with the public. For example, in the case of zoning matters that applied to a municipality’s entire territory, no conflicts were found despite a councillor owning a property whose value could be affected.

ANALYSIS AND CONCLUSION

[107] The facts show that following his appointment to Sustainable Development Technology Canada's (SDTC) Board of Directors in 2018, Guy Ouimet had declared to SDTC a private interest in Lithion Recycling Inc. (Lithion). The Board meeting minutes also support his testimony that, except for on two occasions where he participated in decisions relating to COVID-19 emergency relief payments in March 2020 and 2021, Mr. Ouimet recused himself, by leaving the meeting, from all Board discussions and decisions relating to Lithion.

[108] While the Project Review Committee meeting minutes did not make reference to a recusal on the part of Mr. Ouimet, I accept his sworn evidence that he did recuse himself, by leaving the meeting, from all discussions involving Lithion within the Committee. His evidence was corroborated by the testimony of Ms. Leah Lawrence, who stated that directors within the Committee always recused themselves even if the meeting minutes did not accurately capture such recusals. Mr. Ouimet adamantly testified that he recused himself in all instances and that it was unfortunate that the minutes of meetings of the Committee were inaccurate. The evidence also supports that Mr. Ouimet consistently and out of an abundance of caution also recused himself from matters that could give rise to even the appearance of conflicts, such as those involving Seneca experts-conseils and eNim, which are not captured by the *Conflict of Interest Act* (Act).

[109] I must determine whether Mr. Ouimet was in a conflict of interest when he participated in the March 2020 and March 2021 decisions by the SDTC Board given that Lithion, a qualifying project at the time of each decision, was a recipient of the COVID-19 emergency relief funding in the amount of \$192,100 in 2020 and \$201,705 in 2021.

[110] The relevant provisions are subsection 6(1) and section 21 of the Act. These provisions read as follows:

6. (1) No public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest.

21. A public office holder shall recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest.

[111] Section 4 of the Act sets out the circumstances in which a public office holder is in a conflict of interest within the meaning of the Act. It reads as follows:

4. For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests.

[112] For subsections 6(1) and section 21 to be engaged, I must first determine whether Mr. Ouimet knew or reasonably should have known that in participating in those decisions he would be in a conflict of interest. To be in a conflict of interest, the decisions would have to offer him an opportunity to further his private interests or those of a relative or friend, or to improperly further another person's private interests.

[113] While the Act does not provide a definition of private interest, it does set out the following three exclusions:

Private interest does not include an interest in a decision or matter

- (a) that is of general application;
- (b) that affects a public office holder as one of a broad class of persons; or
- (c) that concerns the remuneration or benefits received by virtue of being a public office holder.

[114] To date, in applying the Act, the Office has interpreted the term "private interest" to refer largely to interests of a financial nature.

[115] It is relevant to set out the exact nature of Mr. Ouimet's interest at the time of each of the two SDTC Board decisions under review. In March 2020, Mr. Ouimet was the holder of an option to purchase Lithion shares for a token amount of \$1,250 representing 1% of the company. By the March 2021 decision, Mr. Ouimet held Lithion shares, having exercised his option to purchase them in November 2020 before his option expired.

[116] However, despite having a financial interest engaged by each of these decisions, Mr. Ouimet's position is that these were decisions of general application and therefore his interests were excluded from consideration by operation of the Act. According to Mr. Ouimet, the decisions were taken in exceptional and urgent circumstances to provide for a universal program.

[117] Mr. Ouimet also referred to a legal opinion that was shared with the SDTC Board at the time of the March 2020 decision, advising that SDTC directors were not in a conflict of interest by participating in the decision since it was an operational matter, all companies and their projects were previously approved under normal processes, and all companies would be treated equally.

[118] The evidence shows that in March 2020, all qualifying projects received the same proportional increase, namely a funding increase of 5% that was calculated on the basis of their existing contribution agreements with SDTC, subject to a minimum of \$15,000. Based on the evidence, in March 2020, 118 projects were affected by this decision.

[119] In March 2021, the SDTC Board approved a more complex COVID-19-related funding formula, where companies meeting some criteria would receive 5%, others would receive 10%, and yet others would be ineligible. Whether a qualifying project received 5% or 10% was to be determined by SDTC staff. In 2021, 102 projects received additional funding.

[120] In support of his position, Mr. Ouimet referred to case law involving municipal government decisions where courts have recognized that, at times, decision-makers may have an interest in a decision which goes beyond the public interest but does not give rise to a conflict, such as where the decision is general in nature or where the decision-maker's interest is broadly shared with the public.

[121] As set out above, there are three enumerated exclusions to the definition of what constitutes a private interest in a decision or matter for the purposes of the Act. These exclusions in the Act mirror the concepts put forward by Mr. Ouimet where broad and general interests do not amount to a conflict of interest. The first two are relevant to this examination and relate to interests (a) in matters or decisions that are of general application or (b) in matters or decisions that affect the public office holder as one of a broad class of persons.

[122] I must examine whether the March 2020 and March 2021 decisions by the SDTC Board were decisions of general application or even decisions that affected Mr. Ouimet as one of a broad class of persons so as to exclude Mr. Ouimet's interest in Lithion from consideration in applying the Act.

Decision or matter of general application

[123] Although the term "general application" is not defined in federal legislation, the Supreme Court of Canada has written extensively on this topic in the context of laws of general application. It held that if an Act extends uniformly throughout a territory and it is not "in relation to" one class of citizens in object and purpose, it is a law of general application.³ Instruments of general application therefore apply to "an undetermined number of persons" who fall within the ambit or jurisdiction of the decision-maker.⁴ They do not apply to a specific person or group of persons or to a particular situation.⁵

³ See: *Kruger and al., v. The Queen*, [1978] 1 SCR 104, at para. 110.

⁴ *Reference re Manitoba Language Rights*, [1992] 1 SCR 212, pp. 224-25.

⁵ See, for example: *Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component*, [2009] 2 SCR 295, at para. 88.

[124] Judicial rulings or ministerial directives can also be of general application. Courts or members of administrative tribunals can issue decisions or practice directives of general application; that is to say, ones that are applicable to anyone who falls under a tribunal's jurisdiction.⁶ Directives can be of general application if they apply to the entire department or ministry under the minister's statutory authority.⁷

[125] As the case law cited in the preceding paragraphs illustrates, matters of general application apply to an undetermined number of persons without regard to class. Here, the impugned SDTC decisions, in March 2020 and March 2021, applied specifically to an identifiable group: the ongoing projects that had previously been approved for funding. The list of criteria developed by SDTC to identify the eligible funding recipients did not apply prospectively; a snapshot of the existing landscape was taken in March 2020 and the decision was applied against that backdrop.

[126] A decision or a matter that applies to a particular regulated activity and to an identifiable group, even in a uniform fashion, is not of general application. In my view, the Board's decision in March 2021 to award two different proportions of COVID-19 emergency relief funding only serves to underscore this determination and undermines Mr. Ouimet's position that all organizations received equal treatment. Such decisions or matters would instead be subject to scrutiny under the second exception in the definition of private interest; that is to say, whether the public office holder's interests are affected as one of a "broad class of persons" within the meaning of the Act.

Decision or matter that affects the public office holder as one of a broad class of persons

[127] To determine whether the second exclusion to private interests under the Act might apply, I must examine whether the public office holder is affected by the decision or matter in question as one of a broad class of persons.

[128] Also undefined in federal legislation, the term "broad class of persons" can be interpreted in its ordinary and grammatical sense. A class is defined as a "group of people, things, qualities, or activities that have common characteristics or attributes."⁸ The simplest definition of "broad" equates it with "wide," but something broad can be understood to include "a great variety of people, things or experiences; extensive (a broad range of options; broad experience)."⁹ Thus, a broad class of persons would include a large number of persons that

⁶ See, for example: *Farah v. Canada (Citizenship and Immigration)*, [2018] 1 FCR 473, at para. 37.

⁷ See, for example: *Ministry of Agriculture, Food and Rural Affairs Act*, R.S.O. 1990, c. M. 16, subss. 13(3) and 17(8).

⁸ "Class" in *Black's Law Dictionary*, 10th ed., at p. 304.

⁹ "Broad" in *Canadian Oxford Dictionary*, 2nd ed. (2004), at p. 189.

may have all sorts of different characteristics or attributes, but share at least one important one. Examples of broad classes of persons might be occupational groups (teachers, lawyers, farmers, etc.) or other readily identifiable groups such as homeowners or children, that include a large number of people.

[129] If a matter or decision affects all members of a broad class of persons in the same manner and the public office holder is a member of that class, then their interest in the matter or decision is likely excluded from the application of the Act.¹⁰ Conversely, if a decision or matter is narrowly focused and affects the interests of the public office holder as one of a small group or if the public office holder is treated differently or has a dominant interest in the matter, it would no longer be considered a matter that affects them as one of a broad class of persons. In other words, the broader the class of persons affected by a particular decision or matter, the greater the chances that the public office holder is acting in the public interest, rather than furthering a private interest.

[130] This is consistent with the interpretation given to similar private-interest provisions in respect of matters examined by my provincial counterparts. In a memorandum issued in 1993, the Honourable Gregory T. Evans, then Ontario Integrity Commissioner, determined that Members of Provincial Parliament who were also members of farm organizations could participate in committee business in consideration of a bill that would benefit them if it became law. Commissioner Evans determined that the sub-class of 20,000 such members, though forming a “minority” of the 60,000 farmers living in Ontario, constituted a sufficiently broad class of electors to exclude their interests from the definition of private interest from the *Members’ Conflict of Interest Act*, 1988.¹¹

[131] The Alberta Ethics Commissioner also opined on the term “broad class” in the context of an investigation. A Member of the Legislative Assembly of Alberta had used the powers of his office to seek to influence a decision of the provincial government to further his spouse’s private interests. The spouse was the sole shareholder and director of a retailer in the energy market and the Member used an intervention during Question Period to attempt to influence the government to drop its energy policy that was detrimental to his spouse’s business. The Commissioner held that a class of 34 electricity retailers did not constitute a broad class and her interests as the sole shareholder of an energy retailer, as opposed to her interests as an electricity consumer, did not make her one of a broad class of the public.¹²

¹⁰ See: Alberta Ethics Commissioner, [Determining a Private Interest](#), (2017).

¹¹ Hon. Gregory T. Evans, Memorandum Re: Committee Meetings (September 20, 1993), in [Report of the Honourable Robert C. Rutherford Re: Mr. Joseph Tascona, MPP](#), Office of the Integrity Commissioner of Ontario (January 15, 1998), at pp. 31-32 (Exhibit 3).

¹² [Report of the Investigation by Hon. Marquerite Trussler, Q.C., into allegations involving Ric McIver](#), January 4, 2017. Although challenged on other grounds, the Commissioner’s findings were upheld by the Alberta Court of Queen’s Bench in *McIver v. Alberta (Ethics Commissioner)*, [2018 ABQB 240](#).

[132] I am therefore of the view that the beneficiaries of the COVID-19 emergency relief funding awarded by SDTC in both March 2020 and 2021, which included Lithion, do not constitute a broad class of persons. Consequently, Mr. Ouimet's financial interest in relation to both matters is properly categorized as a private interest for the purposes of the Act.

Whether Mr. Ouimet knew or reasonably should have known that in making these decisions he was in a conflict of interest

[133] I have established that the evidence supports that Mr. Ouimet participated in the March 2020 and March 2021 SDTC Board decisions. I have also established, based on the evidence, that those decisions were not of general application, nor did these decisions affect Mr. Ouimet as part of a broad class of persons. Consequently, his private interests in Lithion were engaged by each of those decisions.

[134] For there to be a contravention of subsection 6(1), the evidence should support that Mr. Ouimet knew or reasonably should have known that he was in a conflict of interest when he participated in the March 2020 and March 2021 decisions. If so, he would have also failed in his obligation to recuse himself from such decisions as required by section 21 of the Act.

[135] Mr. Ouimet's position is that he relied in good faith on the legal advice that the Board had received in 2020, advice that according to him reassured directors that they were not in a conflict of interest if they participated in the March 2020 decision. The testimony supports that this same advice was passively followed in the case of the March 2021 decision despite it pertaining to different facts.

[136] Mr. Ouimet's conduct and behaviour outside of the March 2020 and March 2021 decisions shows, as supported by the evidence, that he recused every time a matter involving Lithion came before the SDTC Board or Project Review Committee. Even during the March 2020 and 2021 SDTC decisions related to COVID-19 emergency relief funding, Mr. Ouimet believed at the time that he had acted within the bounds of the Act because his private interest in Lithion had been previously disclosed and because he relied on the legal advice that his participation, as well as that of all other directors, would not give rise to a conflict of interest. Relying on an external legal opinion does not absolve a public office holder from their requirements under the Act.

[137] The evidence, including his own testimony shows that when Mr. Ouimet participated in both the March 2020 and March 2021 decisions, he knew at the time that Lithion would benefit from the COVID-19 emergency relief funding and consequently that he had a private interest in those decisions.

[138] As such, Mr. Ouimet's conduct at the March 2020 and March 2021 SDTC Board meetings fell short of the requirements of subsection 6(1) and section 21 of the Act.

[139] However, in determining whether Mr. Ouimet's conduct amounted to an actual contravention of subsection 6(1) and section 21 of the Act, I must view this matter practically, taking the purposes of the Act into account, reading sections 4, 6 and 21 in their entire context, harmoniously with the scheme and object of the Act and the intention of Parliament.

[140] Parliament's desire to have a practical conflict of interest regime can be found in the Act's purposes, to encourage experienced and competent persons to seek and accept public office, to facilitate interchange between the private and public sectors, while minimizing the possibilities of conflicts of interests between private interests and public duties. The purposes also provide the Commissioner with the mandate to determine what is appropriate to avoid a conflict and to determine when the Act has been contravened. I am also mindful of the principle of *de minimis non curat praetor*, where courts or decision-makers are not concerned with trifling matters or small things.

[141] The Act shows an intent by the drafters to apply a *de minimis* test to interests in controlled assets which include an ownership interest in publicly traded companies. It applies if those interests are of minimal value and so long as those interests are not held by a minister of the Crown, a minister of state or a parliamentary secretary and where the Commissioner is of the opinion that they do not, because of their minimal value, pose any risk of conflict of interest. When there is no conflict of interest, there is no duty to recuse oneself.

[142] Interests held by reporting public office holders in private corporations like Lithion are not considered controlled assets and therefore not subject to divestment. They can be held by a reporting public office holder but must be publicly declared. Owning such assets may give rise to a conflict of interest within the meaning of section 4 of the Act and engage the duty to recuse oneself under section 21. However, in my view, for a fair and practical application of the Act's administration, the approach by the drafters for dealing with minimal-value controlled assets should also be followed to assess any risks of conflict of interest arising from the ownership of minimal value shares of private corporations.

[143] Furthermore, in this particular case, I am mindful that Mr. Ouimet, as a director of SDTC, is a part-time governor-in-council appointee and as such is not even a reporting public office holder. Parliament intended that non-reporting public office holders be subject only to the general rules of conflict of interest set out in the Act and that they not be held to the same reporting and compliance obligations, such as disclosures, declarations, withdrawals from activities and divestment of controlled assets, as those who meet the Act's definition of reporting public office holders. For practical reasons, a public office holder's ownership interest in a company should therefore benefit from the same minimal value test to determine whether that asset, considering its minimal value, constitutes any risk of conflict of interest for the purposes of section 4 of the Act.

Conclusion

[144] Applying the aforementioned principle of *de minimis non curat praetor*, I am of the view that Parliament did not intend for section 4 of the Act to capture conflicts where the private interest of a public office holder who is not a minister of the Crown, minister of state or parliamentary secretary is of a trivial nature. Mr. Ouimet's 1% interest in Lithion at the time of each relevant decision was of such minimal value that it weighed little on his votes and did not constitute a risk of conflict of interest.

[145] Consequently, I dismiss the allegations raised against Mr. Ouimet.



Hon. Konrad von Finckenstein, C.M., K.C.
Conflict of Interest and Ethics Commissioner

July 24, 2024

SCHEDULE: LIST OF WITNESSES

The witnesses are listed according to the organizations to which they belonged at the time of the events that are the subject of this examination.

Interviews

Sustainable Development Technology Canada

- Leah Lawrence, President and CEO
- Ed Vandenberg, legal counsel (on retainer), recording secretary to the Board

Information and Documents Requested

Sustainable Development Technology Canada

- Annette Verschuren, Chairperson
- Ziyad Rahme, Interim President and CEO