



Office of the
Conflict of Interest and
Ethics Commissioner

Commissariat aux
conflits d'intérêts et
à l'éthique

Verschuren Report

2024

July 2024



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

Conflict of Interest and
Ethics Commissioner

Verschuren Report

made under the *CONFLICT OF INTEREST ACT*

For more copies of this document, please contact:

Office of the Conflict of Interest and Ethics Commissioner
Parliament of Canada
Ottawa, Ontario K1A 0A6

Email: info@cie.parl.gc.ca

Telephone: 613-995-0721

Ce document est également publié en français.

This document is also online at ciec-ccie.parl.gc.ca.

© Office of the Conflict of Interest and Ethics Commissioner, Parliament of Canada, 2024

072024-118E

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

03 CONCERNS AND PROCESS

06 FACTS

25 ISSUES

26 MS. VERSCHUREN'S POSITION

28 ANALYSIS AND CONCLUSION

40 SCHEDULE: LIST OF WITNESSES

EXECUTIVE SUMMARY

This report presents the findings of my examination under the *Conflict of Interest Act* of the conduct of Annette Verschuren while she was Chairperson of Sustainable Development Technology Canada (SDTC).

After Ms. Verschuren was appointed to SDTC in June 2019, she continued to serve on the boards of two not-for-profit corporations: the Verschuren Centre for Sustainability in Energy and the Environment (Verschuren Centre), which she founded, and the MaRS Discovery District (MaRS). Both are business accelerators that give developing companies access to mentorship, investments, and other supports.

She also remained Chair, CEO, and majority shareholder of NRStor Inc., a company she founded. NRStor Inc. builds, owns, and operates energy storage projects.

It was alleged that Ms. Verschuren was in a conflict of interest when she participated in two types of SDTC funding decisions. The first related to companies that were nominated by or associated with the Verschuren Centre or MaRS. The second related to the approval of COVID-19 emergency relief funding for NRStor.

The examination focused on subsection 6(1), section 9 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.

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.

Under section 9, they are not allowed to use their position as public office holders to seek to influence a decision of another person to further their private interests or those of their relatives or friends, or to improperly further another person's private interests.

Under section 21, public office holders must recuse themselves from any discussion, decision, debate or vote on any matter on which they would be in a conflict of interest. A recusal is more than simply abstaining from a vote. They must physically remove themselves from the location where the matter is being decided (or be moved to a separate virtual waiting room when the meeting is online), so their mere presence cannot influence the decision of others.

I examined whether Ms. Verschuren, as Chairperson of SDTC, contravened the Act by abstaining from Board decisions to approve Seed funding for projects nominated by the Verschuren Centre or MaRS, and from a Board decision to approve a modification to a Start-up funding project for a company with which the Verschuren Centre had an existing business relationship.

Because of her roles as a director of MaRS, the Verschuren Centre and SDTC, Ms. Verschuren improperly furthered the interests of the beneficiaries of SDTC funding to companies associated with those accelerators. Ms. Verschuren followed a practice to abstain from the vote instead of recusing herself, a practice that regrettably deviated from SDTC's Conflict of Interest Policy and fell short of the Act's requirements. I therefore found that she contravened subsection 6(1) and section 21 of the Act.

I also looked at whether Ms. Verschuren contravened the Act by participating in two decisions on COVID-19 emergency relief funding in March 2020 and 2021 to further her interests.

I determined that Ms. Verschuren's financial interest in NRStor in relation to those funding decisions was indeed a private interest for the purposes of the Act. She participated in those decisions knowing that NRStor would benefit from the funding. They furthered her private interests, and she should have recused herself. I therefore found that she contravened subsection 6(1) and section 21 of the Act.

Lastly, I examined whether she used her position as Chairperson of SDTC to seek to influence other Board members in those two decisions on COVID-19 emergency relief funding, by moving the motions for the payments to further her private interests.

The evidence shows that it was not Ms. Verschuren's idea to award COVID-19 emergency relief payments to existing qualified projects, and she was not involved in determining the eligibility criteria or the proportion of funds to be disbursed. Beyond participating in the discussions on SDTC management's proposals and moving the motions at the meetings, there was no evidence that she attempted to influence the decision of her colleagues. I therefore found that she did not contravene section 9 of the Act.

I note that inconsistencies in the SDTC Board's decision-making processes were a factor in these contraventions. It did not always follow its standard practice of reviewing and approving funding applications individually. That practice would have allowed directors who had a conflict of interest to recuse themselves from certain parts of meetings, as Ms. Verschuren did in other cases, in accordance with both SDTC's Conflict of Interest Policy and the Act.

CONCERNS AND PROCESS

[1] On November 10, 2023, I received a letter from Michael Barrett, Member of Parliament for Leeds–Grenville–Thousand Islands and Rideau Lakes requesting an examination under the *Conflict of Interest Act* (Act) of the conduct of Annette Verschuren, then-Chairperson of Sustainable Development Technology Canada (SDTC), in relation to the provision of SDTC funding to several projects.

[2] Ms. Verschuren became a public office holder subject to the Act when she was appointed by the Governor in Council to the Board of Directors of SDTC on June 19, 2019.

[3] In his letter, Mr. Barrett wrote that, based on Ms. Verschuren’s testimony before the House of Commons Standing Committee on Access to Information, Privacy and Ethics, he believed that Ms. Verschuren had moved a motion at a meeting of the Board of Directors of SDTC in 2020 to provide COVID-19 emergency relief payments to a number of companies, including NRStor Inc., a company of which she is Chair, Chief Executive Officer, and a beneficial owner. Mr. Barrett also wrote, based on the same information, that Ms. Verschuren’s company and others had received a further payment in 2021.

[4] Mr. Barrett alleged, based on the information above, that Ms. Verschuren may have contravened subsection 6(1) and sections 9 and 21 of the Act.

[5] 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 9 of the Act prohibits public office holders from using their position to seek to influence a decision of another person so as to further their private interests 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.

[6] Having determined that Mr. Barrett’s request for an examination met the requirements set out in section 44 of the Act, I wrote to Ms. Verschuren on November 16, 2023, to inform her that I had commenced an examination to determine whether she had contravened subsection 6(1) and 21 of the Act.

[7] My letter to Ms. Verschuren also set out a separate allegation, based on publicly available information, that she may have approved funding to several companies as Chairperson of SDTC, while those companies were supported by two accelerators on whose board she sits. Should she have done so, she may have improperly furthered the private

interests of those companies, in contravention of subsection 6(1) of the Act, and she may have failed to recuse herself from participating in decisions in respect of which she was in a conflict of interest, as section 21 of the Act would have required her to do.

[8] On November 22, 2023, Ms. Verschuren resigned from her position as Chair of the Board of SDTC.

[9] Mr. Barrett wrote to me again on November 27, 2023, to bring to my attention to other SDTC-funded projects to which Ms. Verschuren may be connected through her role on the boards of Saputo and CNRL, which participated in these projects as “consortium members.” This information did not give rise to further allegations.

[10] On December 8, 2023, following a separate request from Mr. Barrett, I initiated an examination of the conduct of Guy Ouimet, another member of the Board of Directors of SDTC, in relation to his participation in the Board’s votes of 2020 and 2021 on COVID-19 emergency relief payments.

[11] On December 21, 2023, Ms. Verschuren submitted a detailed response, with supporting documents, to the allegations I had set out in my letter of November 16. An interview was conducted with her on February 23, 2024. The Office also interviewed two additional witnesses and obtained information and documents from three additional witnesses.¹ 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 Ms. Verschuren’s and Mr. Ouimet’s examination reports.

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

[13] 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, 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 Ms. Verschuren’s testimony at both committees. 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 Ms. Verschuren in respect of her obligations under the Act.

¹ A list of witnesses is found in the Schedule of this report.

[14] 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 Ms. Verschuren, 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.

FACTS

Background

Sustainable Development Technology Canada

[15] 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*.

[16] 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.

[17] 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.

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

Funding streams

[19] 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.

[20] 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.

[21] An accelerator nominating an applicant's project for Seed funding must provide a rationale for SDTC to consider the project, outlining its strengths and risks, confirm that the applicant has been participating in its programs or using the services they offer and certify that no commission or finder's fee will be deducted from SDTC's contribution to the applicant. Companies invited to apply then provide SDTC with detailed technical and financial information pertaining to the project. SDTC reviews applications and invites eligible applicants to present a

five-minute “pitch” before a jury—which typically includes at least one member of SDTC’s Board of Directors—and the jury’s recommendations are passed on to the Project Review Committee and, as the last step, to the Board for final approval.

[22] Under contribution agreements for Seed funding, eligible project costs can include professional, scientific, technical, and contractual services costs, field testing services, supplies and equipment, including laboratory and field supplies and materials, and many other types of costs such as salaries, printing, shipping, translation, etc. The period of funding is deemed to be for a maximum of one year beginning on the effective date of this agreement, though the contribution is paid out in full immediately. Contribution agreements require Seed-funded companies to report to SDTC on their progress, on any new funding they obtain, and on any material changes to their business.

[23] 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.

[24] 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.

[25] Under the Start-up and Scale-up funding streams, projects are led by the applicant with 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.” Consortium partners cannot profit from the project during the established project timeframe. Instead, they are expected to take on some project risk and may benefit only further into the future, once the technology is proven and commercialized.

Board of Directors

[26] 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.

[27] 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.

[28] 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.

[29] 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

[30] 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.

[31] 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.

[32] 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

[33] 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.

[34] 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.

[35] 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.

[36] 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.

[37] 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).

Ms. Verschuren's activities before joining the Board of SDTC

[38] Before she was appointed as Chairperson of SDTC on June 19, 2019, Ms. Verschuren was engaged in several activities that are relevant to the matter under examination.

[39] Ms. Verschuren founded the Verschuren Centre for Sustainability in Energy and the Environment (Verschuren Centre), a clean tech accelerator, in 2010 and served on its advisory board. She has served on its Board of Directors, without remuneration, since it was incorporated as a not-for-profit corporation on July 25, 2019, having originally been created as part of Cape Breton University, in Nova Scotia. The Verschuren Centre's mandate is to help small- and medium-sized clean technology companies to scale up, with the hope that they will develop new sustainable technologies and commercialize them in Nova Scotia or elsewhere in Canada and have a positive impact on global sustainable development goals.

[40] Ms. Verschuren founded NRStor Inc. in 2012 and serves as the company's Chair and CEO. She is also its majority shareholder. NRStor builds, owns, and operates energy storage projects that leverage new or unconventional technologies. NRStor typically partners with other companies and interested parties on its projects.

[41] In May 2018, MaRS Discovery District (MaRS) announced the appointment of Ms. Verschuren as the new Chair of its Board of Directors. Ms. Verschuren serves in that role on a volunteer basis and receives no compensation. MaRS, a not-for-profit corporation, is a large

innovation hub and accelerator located in Toronto, Ontario, that provides a range of services and supports to companies in the medical and clean technology fields. MaRS also rents out office space to certain companies, including to NRStor. During her interview, Ms. Verschuren clarified that this conflict of interest is declared and registered with the Board of MaRS.

[42] Ms. Verschuren also served on the boards of directors of two companies which were consortium members for projects that applied for and received Start-up or Scale-up funding from SDTC. Some of these projects were approved before Ms. Verschuren was appointed and in the remaining cases, she declared her conflict and recused herself from the relevant discussions and votes at Board meetings, as evidenced in those meetings' minutes.

Ms. Verschuren's appointment to the Board of SDTC

[43] Ms. Verschuren was contacted by staff in the Office of the Minister of Innovation, Science and Industry in April 2019 to discuss the possibility of being appointed as Chairperson of SDTC. Further discussions followed with the Privy Council Office in May 2019.

[44] In a written conflict-of-interest declaration dated May 13, 2019, that formed part of her application for the appointment opportunity, Ms. Verschuren declared potential conflicts with NRStor, CNRL and the Verschuren Centre. In respect of NRStor, she mentioned the funding that was being received at the time from SDTC, and added "[t]here could be more applications in the future which I would obviously have to recuse myself from [. . .]."

[45] In her written submissions, Ms. Verschuren stated that, in discussions with then-Minister Navdeep Bains and then-Deputy Minister of Innovation, Science and Economic Development, John Knubley, that took place prior to her appointment, she raised the fact that NRStor would foreseeably be receiving payments from SDTC, assuming the funded project continued to progress towards completion. Ms. Verschuren's understanding following these exchanges was that the ongoing provision of funds from SDTC to NRStor was tied to objective criteria set out in a pre-existing agreement, and that SDTC staff would be making decisions in that respect, not the Board.

[46] Ms. Verschuren also spoke with a Compliance Advisor in this Office ahead of her appointment, on June 4, 2019. Based on Ms. Verschuren's recollection of the call, they discussed the potential conflicts she may have should she be appointed, which included those with NRStor, the Verschuren Centre and MaRS. They also discussed how Ms. Verschuren should deal with conflicts should they arise. In the end, she was advised that her conflict with NRStor and other potential conflicts would not prevent her from accepting the appointment, as long as she followed the rules set out in the *Conflict of Interest Act*, including by recusing herself from any discussion or decision in respect of which she would be in a conflict of interest.

[47] Having been officially appointed by Order-in-Council on June 19, 2019, Ms. Verschuren wrote the following to the Compliance Advisor she had previously spoken to: “I am seeking your formal advice on whether any further actions beyond those outlined in SDTC’s Conflict of Interest Guidelines are required to manage any perceived or potential conflict of interest.” Attached to the email was a copy of SDTC’s Conflict of Interest Policy.

[48] A manager of the Advisory and Compliance division of the Office replied to Ms. Verschuren’s request on June 28, 2019, by explaining that complying with the policies of SDTC would “no doubt support [her] obligation to abide by the *Conflict of Interest Act* [. . .]” and that she should obtain specific guidance regarding those policies from SDTC. The manager added that the Office “is concerned only with [her] compliance with the Act and, as such, [she] should become familiar with those obligations.” He also indicated that the Office would be available to answer any questions she may have in that regard.

[49] On the same day, Ms. Verschuren also received the standard letter signed by then-Commissioner Mario Dion sent to all newly appointed public office holders, along with a summary of the rules under the *Conflict of Interest Act* that apply to public office holders and a copy of the full text of the Act. Of note, this letter stated the following:

I would like to call attention to the fact that although a Code of Conduct (the Code) may be applicable to appointees of your organization, as a public office holder you are also required to abide by the provisions contained in the Act. Compliance with the Code does not automatically constitute compliance with the Act, especially in the case of similar provisions.

[50] Upon receiving this official letter from the Commissioner, Ms. Verschuren replied, “I confirm receipt of my obligations under the *Conflict of Interest Act*.” Following this, and until this examination was commenced, Ms. Verschuren had no further contact with the Office.

[51] A one-page internal record from SDTC summarizing NRStor’s funded project notes that, on June 27, 2019, NRStor had submitted an application for a second project, which was cancelled “in advance of” Ms. Verschuren becoming Chairperson. During her interview, Ms. Verschuren indicated that she intervened to withdraw this application by NRStor immediately upon learning of it. While Ms. Verschuren’s official appointment date was June 19, 2019, the first Board meeting she attended as the incoming new Chairperson was the one held on September 18, 2019.

SDTC's Seed funding program

[52] SDTC's Seed funding stream was started as a pilot program in 2019, with an initial roster of 10 accelerators invited to recommend projects. The first slate of projects under the pilot program was approved by the Board on May 7, 2019. Based on the documents obtained, including copies of SDTC's Annual Reports, Board meeting minutes, funding agreements, and SDTC's public list of funded projects, the SDTC Board approved a total of 208 projects for Seed funding between May 2019 and June 2023.

Board procedures for the approval of Seed funding

[53] Board approval of the Seed funding envelope was dealt with as part of the consent agenda. Based on a reconciliation of testimonies by the three witnesses interviewed, the usual practice at Board meetings was for the Chairperson to read through the list of consent agenda items, which included the Seed funding envelope for that funding round, to mention any conflicts of interest that had been declared in respect of Seed projects, and to call for a motion to be moved for the approval of the consent agenda as a whole. According to Leah Lawrence, SDTC's President and CEO from 2015 to 2023, the Board proceeded in this fashion because, in respect of Seed funding, each project had already been vetted through a robust internal process. The Board was simply approving the envelope rather than the individual projects themselves.

[54] In cases where a director had declared a conflict of interest in relation to a project in the Seed funding envelope, the director would vote on the consent agenda motion to approve the Seed funding envelope but note that they were abstaining in respect of the project for which they had declared the conflict. This practice is documented in the meeting minutes and was confirmed by all witnesses in their respective interviews.

[55] The vote on the motion would be by show of hands of those in favour, noting abstentions by conflicted directors in respect of the particular projects that posed a conflict. As a general practice, the SDTC Board operated on a consensus basis, meaning that directors would discuss items until they all agreed on how to proceed. According to Ms. Lawrence, there may have been certain meetings where the Seed funding item was pulled from the consent agenda in order for it to be discussed; however, this practice was not evidenced in any of the meeting minutes reviewed in this examination.

MaRS and the Verschuren Centre's participation in the Seed funding program

[56] According to documents obtained from the Verschuren Centre and MaRS, both organizations were invited to nominate projects for Seed funding for the first time on May 12, 2020.

[57] In written submissions provided in the context of this examination, Dr. Beth Mason, President and CEO of the Verschuren Centre, stated that Ms. Verschuren was not made aware of the Centre's exchanges with SDTC in respect of the Seed funding program and that the issue was not discussed at the Centre's Board.

[58] Krista Jones, the interim CEO of MaRS at the time, also stated in her written submissions that Ms. Verschuren does not appear to have been involved in any communications or discussions with MaRS employees or other Board members about SDTC's Seed funding stream, including MaRS's inclusion on the list of approved accelerators and subsequent nominations of projects. She indicated that MaRS manages the support it provides to ventures internally, independently of its Board of Directors.

[59] During her interview, Ms. Verschuren stated that SDTC's Seed funding program was never discussed at Board meetings of MaRS or the Verschuren Centre, either in respect of the organization's participation in the program or in respect of companies to be nominated for funding under the program, both aspects having been managed internally.

[60] Between May 2020 and June 2023, 12 projects were nominated for SDTC's Seed funding by MaRS and 9 projects were nominated by the Verschuren Centre.

Ms. Verschuren's abstentions from Seed funding votes

[61] There were four meetings where Ms. Verschuren declared a conflict and abstained from a consent agenda vote on Seed funding. These votes concerned five applicant companies nominated by MaRS and five nominated by the Verschuren Centre.

[62] Ms. Verschuren confirmed during her interview that she did not have a private interest in any of the Seed funding applicants; rather, she would automatically declare a conflict for any project nominated by MaRS or by the Verschuren Centre. A note to that effect was made in SDTC's internal conflict of interest registry.

[63] Asked to explain the relationship between MaRS and the companies it nominates for SDTC's Seed funding, Ms. Jones of MaRS wrote that MaRS does not charge a fee to the companies it works with for the services it provides, except for tickets sold for certain events such as conferences, and for companies that rent office space within the MaRS complex. Based on the documents provided, two companies that received Seed funding later became MaRS tenants, in both cases more than one year after their application was approved by the SDTC Board.

[64] Dr. Mason of the Verschuren Centre was also asked about the Centre's relationship with the companies it nominated for Seed funding. In her written submissions, she provided a broad description of the types of services and supplies the Centre provided to each of the companies it nominated for Seed funding, as well as documents listing the amounts paid by these companies to the Centre for those services and supplies. These amounts ranged, depending on

the company, from several thousand dollars to tens of thousands of dollars within the year following the approval of Seed funding by the SDTC Board. During her interview, Ms. Verschuren confirmed she was aware that companies pay for at least some of the services they obtain from the Verschuren Centre.

Instances where no recusal or abstention was noted

[65] In addition, during four other meetings, Ms. Verschuren deviated from her usual practice to declare conflicts and abstain from Seed funding votes.

[66] At two of these meetings, a conflict declaration on the part of Ms. Verschuren was noted in the distributed materials for four projects nominated by MaRS and three by the Verschuren Centre, but no abstention was noted in the meetings' minutes. At the other two meetings, while three projects nominated by MaRS and one by the Verschuren Centre were up for approval by the Board, no conflict declaration was noted in the distributed materials and no abstention was noted in the minutes. In three of these four cases, abstentions on the part of other directors in respect of Seed projects were noted in the minutes.

[67] When the documents pertaining to these cases were presented to Ms. Verschuren during her interview, she could not explain why no declaration would be noted in the materials or why no abstention would be noted in the minutes, other than to state that despite carefully reviewing the list of Seed projects each time, it appears there were times when she failed to notice some MaRS- or Verschuren Centre-nominated projects, and failed to abstain as a result.

[68] The minutes of Board meetings were prepared by Ed Vandenberg, a lawyer who provided certain legal services to SDTC and acted as the recording secretary to the Board. During his interview, Mr. Vandenberg explained that in this role, which he had held since around 2013, he ensured proper governance during Board meetings, in addition to recording the decisions, and preparing the minutes.

[69] Presented with one of the above cases during his interview, Mr. Vandenberg stated that the lack of a mention of Ms. Verschuren's abstention may have been a mistake on his part. Asked about the process for reviewing and finalizing the Board meetings' minutes, Ms. Lawrence stated during her interview that in her view, the minutes were carefully reviewed and amended internally where necessary, and should be considered as accurate. She also testified that it was unusual that there would be substantive changes to minutes at Board meetings.

Start-up and Scale-up funding streams

Board procedure for the approval of Start-up and Scale-up funding

[70] The regular practice for projects in the Start-up and Scale-up funding streams would be for projects to be examined and voted on individually. In cases of conflicts of interest, recusals by conflicted directors would be noted 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.

Ms. Verschuren's recusals

[71] Over 11 Board meetings, Ms. Verschuren recused herself 14 times from the discussion and votes on project applications in the Start-up or Scale-up funding streams. The meeting minutes in each of these cases note that she left the meeting and only returned once the presentation, discussion, and vote had taken place.

[72] The reasons for Ms. Verschuren's conflict declarations that led to these recusals were, for the most part, provided in her email response to the initial funding round emails and were noted in SDTC's internal conflict of interest registry. These reasons ranged from the existence of a relationship between the applicant and either MaRS or the Verschuren Centre, an existing or past personal tie with a member of the company's leadership team, or in one case the company in question being a competitor to NRStor. As mentioned above, two recusals also resulted from Ms. Verschuren's position on certain corporate boards.

Ms. Verschuren's abstention in relation to a potential conflict

[73] In January 2023, the Board approved a modification to a project by Kraken Sense that had been approved for Start-up funding one year earlier. Ms. Verschuren had recused herself from the discussion and vote on the project at the time because of the company's association with the Verschuren Centre. Based on the information and documents obtained from the Verschuren Centre, Kraken Sense has been billed by the Centre for specialty facility use and materials supply on an ongoing basis since 2021.

[74] The nature of the project modification up for Board approval at the January 19, 2023 meeting was to add a milestone to the project and increase its funding by 40%. The conflict-of-interest declaration document distributed ahead of the meeting mentioned that Ms. Verschuren had declared a conflict with Kraken Sense. At the meeting, the project modification was voted on as part of a block of projects that were approved for funding without a detailed presentation or discussion, although outside of the consent agenda. Ms. Verschuren abstained from that vote "in respect of the Kraken Sense project," as it was noted in the meeting minutes.

COVID-19 emergency relief payments

Ms. Verschuren's potential conflict in relation to NRStor

[75] In June 2017, NRStor applied to SDTC for funding for a project to build a compressed air energy storage facility in Goderich, Ontario, in partnership with another company, Hydrostor Inc., and the University of Waterloo, both identified as consortium members in SDTC's list of funded projects. In her interview, Ms. Verschuren explained that while NRStor was the project's developer, Hydrostor sought to prove the viability of its compressed-air technology and the University was interested in conducting research into the use of the salt cavern as a compressed air chamber.

[76] The SDTC Board approved funding of \$2,123,526 for the Goderich project on September 20, 2017, and a contribution agreement between SDTC and NRStor was signed on January 14, 2018. An initial instalment of \$714,510.15, which predated Ms. Verschuren's appointment to public office, was payable immediately. While subsequent instalments were scheduled to be paid out as the project reached its successive milestones, Ms. Verschuren had no involvement in the distribution of funds. According to project details appended to the contribution agreement, NRStor was projected to be the primary funder for the project, with Hydrostor and the University providing substantial in-kind support. The document also identifies one other public funding source.

[77] In her written submissions, Ms. Verschuren explained that NRStor's would ordinarily set up a limited partnership as a separate entity to develop its various projects, and that this was the case for the Goderich project. All of the funds NRStor received from SDTC were invested in the limited partnership and a full accounting of the use of those funds was provided to SDTC in accordance with the contribution agreement.

[78] In August 2019, NRStor transferred its ownership in the project for a nominal amount to Hydrostor, for reasons related to each of the partners' role and interest in the outcome of the project. Ms. Verschuren also stated that once she became Chairperson of SDTC in June 2019, she ceased to be involved in any decisions related to the Goderich project and NRStor's involvement in the project was led by the company's Vice-President.

[79] Ontario Business Registry records show that NRStor Goderich CAES LP, a limited partnership, was created in December 2015 with NRStor Goderich CAES GP Inc., a business corporation, as its general partner. This corporation was also registered in December 2015, with Ms. Verschuren as a director. In December 2021, Ms. Verschuren ceased to be listed as a director of the corporation.

[80] According to Ms. Verschuren, as supported by financial documents from NRStor, the limited partnership spent a total of approximately \$26.5 million on the Goderich project, of which NRStor and Hydrostor contributed approximately \$8.5 million and \$15 million respectively. The total contribution by SDTC (provided to NRStor, but not counted in the \$8.5 million) was \$2,341,187.42, which included the amount originally approved by the Board in 2017 and two COVID-19 emergency relief payments provided in March 2020 and 2021. Of note, NRStor contributed to the project's expenses in excess of the funds it received from SDTC and passed on to the limited partnership, including during the period after it sold its interest in the project to Hydrostor.

COVID-19 emergency relief payment of March 2020

[81] 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.

[82] 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.

[83] 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

[84] Ms. Lawrence testified that she called Mr. Vandenberg for legal advice on the idea. 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.

[85] 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.

[86] 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.

[87] 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.

[88] 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.

[89] 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.

[90] 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.

[91] 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](#)

[92] During her interview, Ms. Verschuren recalled speaking with Ms. Lawrence a few days into the pandemic about the challenges facing SDTC's portfolio companies and the possibility of providing them with some sort of blanket support.

[93] 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 interests ahead of the meeting as was usually the case when funding decisions were to be made.

[94] 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.”

[95] Thirteen directors attended the March 23, 2020 emergency meeting, including Ms. Verschuren. 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.

[96] The minutes further noted that Ms. Lawrence had discussed the matter of conflicts of interest with Mr. Vandenberg. Given that all the projects had already been previously reviewed and approved for funding according to 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.

Management's proposal

[97] 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.

[98] 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.

[99] 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.

[100] In her interview, Ms. Verschuren stated that neither she nor any other director raised any concerns about conflicts of interest in light of the legal advice provided by Mr. Vandenberg and presented to the Board by Ms. Lawrence. Her understanding of the issue of conflicts of interest was that since all conflicts had been previously declared and the decision to be made would impact all companies in the same way, it was unnecessary for directors to recuse themselves. In her recollection, the discussion at the meeting was focused on the risks companies faced and on management's recommendation.

The Board's decision

[101] 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 motion received unanimous approval.

[102] Ms. Verschuren confirmed that she knew that if the Board voted in favour of the motion, NRStor would receive an additional payment, though she did not know the amount at the time or take steps to confirm whether the payment had indeed been received. 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.

[103] According to documentary evidence, 118 companies received a COVID-19 emergency relief payment, and the amount NRStor received in relation to the Goderich project was \$106,176.

COVID-19 emergency relief payment of March 2021

[104] 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

[105] In her interview, Ms. Verschuren recalled discussing the continuing effects of the pandemic on SDTC-funded companies with Ms. Lawrence. Her understanding was that SDTC had conducted a survey of portfolio companies and that the information gathered indicated that they would need further support to deal with the ongoing challenges. Ms. Verschuren confirmed that she did not receive or complete that survey on behalf of NRStor.

[106] 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 Ms. Verschuren.

[107] 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.

[108] 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

[109] 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.

[110] 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.

[111] 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.

[112] 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.

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

The Board's decision

[114] 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.

[115] Ms. Verschuren confirmed that she knew at the time that if the Board voted in favour of the motion, NRStor would receive a payment. Based on her understanding of the criteria set out in management's proposal, NRStor would not be eligible to receive the 10% increase.

[116] According to documents prepared by SDTC staff following the board meeting, 102 companies received additional funding, with NRStor receiving a 5% increase of its funding in relation to the Goderich project, for an amount of \$111,485.

Ms. Verschuren's connections to other companies that received COVID-19 emergency relief payments

[117] COVID-19 emergency relief payments were provided to several companies in relation to projects which involved a consortium partner on whose board Ms. Verschuren sat. I take note of the fact that under SDTC's rules for Start-up and Scale-up funding, consortium members cannot derive a direct or immediate benefit from the projects they support. Therefore, Ms. Verschuren's interests in the decisions on COVID-19 relief payments involving a consortium partner are simply too remote to give rise to a conflict of interest.

[118] Two other companies in respect of which Ms. Verschuren had recused herself from earlier Board discussions and decisions for other reasons also received COVID-19 emergency relief payments. Ms. Verschuren does not have a financial interest in either of these two companies.

[119] No MaRS or Verschuren Centre-nominated Seed funding recipients received any COVID-19 emergency relief payments, since MaRS and the Verschuren Centre were first invited to nominate companies for Seed funding in May 2020 (i.e., after the March 23, 2020 meeting), and no payments were made to companies receiving Seed funding in March 2021.

ISSUES

[120] The issues to be addressed are as follows:

1. Did Ms. Verschuren contravene subsection 6(1) and section 21 of the *Conflict of Interest Act* (Act) by participating in decisions on Seed, Start-up, and Scale-up funding involving MaRS and the Verschuren Centre, and failing to recuse herself from these decisions?
2.
 - a) Did Ms. Verschuren contravene subsection 6(1) and section 21 of the Act by participating in two decisions on COVID-19 emergency relief funding that would benefit NRStor, and failing to recuse herself from these decisions?
 - b) Did Ms. Verschuren contravene section 9 of the Act by using her position as Chairperson of SDTC to seek to influence other Board members in the same two decisions on COVID-19 emergency relief funding?

MS. VERSCHUREN'S POSITION

[121] In her written submissions of December 21, 2023, Ms. Verschuren addressed her participation in the SDTC Board of Directors' decisions to approve Seed funding for companies nominated by two accelerators she is otherwise involved in and her participation in decisions by the Board to provide two COVID-19 emergency relief payments to NRStor, a company she founded and leads. Ms. Verschuren's position is that she did not contravene the Act.

[122] With respect to the Seed funding decisions, Ms. Verschuren submitted that neither MaRS nor the Verschuren Centre received any financial benefit when companies that they nominated received SDTC funding and that both of these accelerators are non-profit organizations with public-spirited aims.

[123] Referring to the Office's long-standing position that a private interest within the meaning of the Act largely refers to "an interest of a financial nature," Ms. Verschuren, who served on the boards of MaRS and the Verschuren Centre on a volunteer basis, had no private interest in the decisions in question, nor was she improperly furthering either organization's private interests as they are non-profits.

[124] Ms. Verschuren further submitted that despite not being required by the Act to do so, she had declared the perceived conflicts she had with both MaRS and the Verschuren Centre and abstained from decisions involving their nominations when they came before the Board, in order to meet the higher bar set by the SDTC Conflict of Interest Policy and out of an abundance of caution.

[125] Finally, according to Ms. Verschuren, abstention was an entirely appropriate measure to take since approvals for Seed funding were included on the consent agenda at Board meetings and there was no meaningful discussion of the applicant companies. In these circumstances, a declaration and abstention achieved the same outcome as a recusal.

[126] With respect to the Board's decisions on COVID-19 emergency relief payments, in Ms. Verschuren's view, the context of these decisions was important given the immense economic uncertainty caused by the pandemic. The decisions, which were recommended by SDTC management, were taken to respond to serious concerns about the ongoing viability of emerging companies that SDTC was already supporting.

[127] Ms. Verschuren further submitted that the COVID-19 emergency relief payments would apply generally to all companies funded by SDTC, with none receiving any preferential treatment. According to Ms. Verschuren, Board members had no list of companies when either decision was made and there was no discussion of individual companies since projects had already been approved previously. The Board voted on the envelope of funding and the criteria

used to allocate it, while SDTC staff decided the amount to be provided to each company based on the approved criteria, particularly in the case of the second payment, where companies would be eligible for different levels of support.

[128] According to Ms. Verschuren, this meant that the decisions to approve COVID-19 emergency relief payments were decisions “of general application” within the meaning of subsection 2(1) of the Act. Consequently, any financial interest Ms. Verschuren had in the additional funding allotted to NRStor was not advancing a “private interest” within the meaning of the Act, and her participation in the votes did not place her in a conflict of interest under section 4. In the alternative, and with the same result, the decisions affected her interests only “as one of a broad class of persons” within the meaning of subsection 2(1) of the Act, where the “broad class of persons” consisted of anyone with an interest in any companies in SDTC’s active portfolio of companies receiving the emergency funding.

[129] Ms. Verschuren also submitted that, in participating in the votes on both funding decisions, she and other Board members acted based on legal advice that recusals were not required since any existing real or perceived conflicts of interest had already been declared and conflicted directors had recused themselves from the original discussions and decisions to fund the projects.

[130] Finally, the purpose of the Board’s decisions on COVID-19 emergency relief payments was not to enrich Ms. Verschuren or anyone else. Rather, the decisions were an appropriate exercise of the Board’s discretion to provide additional funds to companies in accordance with SDTC’s mandate, and were meant to ensure the then-prevailing economic climate would not result in devastating consequences for the Canadian clean technology sector.

ANALYSIS AND CONCLUSION

[131] During this examination, I reviewed every funding round chaired by Annette Verschuren, then-Chairperson of Sustainable Development Technology Canada (SDTC). I specifically examined her interest in each discussion or vote in which she participated to determine the existence of a potential conflict. I also note that Ms. Verschuren regularly adopted the practice of disclosing and recusing from perceived conflicts, which goes beyond the requirements of the Act. None of these instances gave rise to concerns of contraventions of the *Conflict of Interest Act* (Act).

[132] I must therefore determine whether Ms. Verschuren placed herself in a conflict of interest in respect of two matters, which will be dealt with separately: the first relating principally to Seed funding, and the second to the COVID-19 emergency relief payments.

Issue 1: Participation in decisions on Seed, Start-up and Scale-up funding involving MaRS and the Verschuren Centre

[133] The first matter under examination concerns decisions by Ms. Verschuren's involvement in the Board's decisions to approve funding for projects that had been nominated by MaRS Discovery District (MaRS) or the Verschuren Centre for Sustainability in Energy and the Environment (Verschuren Centre). These two organizations are SDTC-approved accelerators whose support is a condition for receiving Seed funding. Ms. Verschuren sits on the board of directors of both accelerators. It was alleged that Ms. Verschuren, in her capacity as Chairperson of SDTC, participated in decisions that improperly furthered the interests of the beneficiaries of the Seed funding.

[134] 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.

[135] 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.

Board approval of Seed funding

[136] The portion of the agenda for Board meetings relating to the approval of Seed funding projects was part of the consent agenda, along with the approval of the previous meeting's minutes and other items. This means, as confirmed in the evidence, that there was little to no substantive discussion of these items. The reason provided for including the Seed funding envelope in the consent agenda was that since each project had previously been vetted and approved internally, the Board was not in fact approving individual projects but rather a process for helping early-stage companies.

[137] A single motion was moved and a single vote taken in respect of the entire consent agenda, always resulting in unanimous approval by the Board, with the minutes, at times, noting that certain directors had declared a conflict of interest in relation to certain projects and that they were abstaining in respect of those projects. Thus, rather than recusing themselves from the vote on the consent agenda, the conflicted Board member's vote appears to have been artificially split through an "abstention" of the portion of the vote relating to the conflict.

[138] The minutes of the various SDTC Board meetings show some inconsistencies in the practices that Ms. Verschuren adopted in situations where a potential conflict of interest had been identified. In most cases involving Seed funding to companies nominated by MaRS or the Verschuren Centre, she abstained from votes for which she declared a potential conflict. However, at two meetings, Ms. Verschuren did not appear to have abstained from the vote, despite having declared potential conflicts. And at two other meetings, no declaration or abstention was noted in the minutes despite the existence of potential conflicts.

Abstention vs. recusal

[139] The required compliance measure at section 21 of the Act is for public office holders to recuse themselves from any discussion, decision, debate or vote on any matter in respect of which they would be in a conflict of interest. The only reference to abstention in the Act is found at subsection 6(2), which applies only to ministers and parliamentary secretaries, when exercising their capacity as Members of Parliament, and requires them to abstain from debating or voting on matters that would place them in a conflict of interest.

[140] A recusal is defined as the “removal of oneself as judge or policy-maker in a particular matter, esp. because of a conflict of interest.”² Conversely, an abstention involves “the act of not voting for or against something.”³ In practical terms, a decision-maker such as a judge will recuse themselves from proceedings by withdrawing their ability to participate in deliberations and the outcome. A decision-maker will abstain from deliberations and votes on matters of public record, such as decisions made by nation-states during international assemblies.

[141] With respect to decisions made by public office holders, the important distinction between abstention and recusal was explained in the *Morneau II Report* as follows:

A recusal is more than a simple abstention from voting; it requires the public office holder to physically remove themselves from the location where the matter is being decided, lest their mere presence be seen to influence the decision of other public office holders.⁴

[142] This distinction was also conveyed in the SDTC’s Code of Conduct and Conflict of Interest Policy (Policy), which directors acknowledge on a yearly basis to have read and understood as part of their Oath of Office. Under the heading *Declaration at Meetings and Recusal*, the Policy reads as follows:

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).**

[Emphasis added]

[143] The paragraph quoted above, found in all versions of the Policy that applied during Ms. Verschuren’s tenure, was not modified when the Seed funding stream was launched. It makes no mention of “abstention” or of circumstances under which anything other than a recusal would be the appropriate measure to be taken by a director who has a conflict of interest.

² “Recusal” in *Black’s Law Dictionary*, 10th ed., at p. 1467.

³ “Abstention” in *Black’s Law Dictionary*, 10th ed., at p. 10.

⁴ [Morneau II Report](#), para. 261.

[144] The SDTC Board's votes on Seed funding, which formed part of the consent agenda, appeared to have been largely a formality since there were no deliberations on the projects put forward for Seed funding. Nevertheless, the SDTC's Code of Conduct and Conflict of Interest Policy and, more importantly, the Act make clear that a recusal was required in respect of all potential conflicts of interest. Recusal allows other Board members the freedom to voice concerns or to express dissent on matters that involve the private interests of other Board members. Abstention from such matters is insufficient.

Private interests involved in Seed funding decisions

[145] With respect to the allegation concerning the Seed funding votes, Ms. Verschuren submitted that neither she nor MaRS or the Verschuren Centre had any private interest in relation to any of the companies whose projects were up for approval by the Board, since they are both not-for-profit organizations. As a result, none of the decisions placed her in a conflict of interest as meant for the purposes of the Act, and yet she declared a conflict nonetheless and abstained from the votes, thus surpassing what was required by the Act.

[146] I acknowledge that Ms. Verschuren did not have a financial interest in these companies. I also recognize that neither MaRS nor the Verschuren Centre, as the nominating accelerators, were expressly prohibited from receiving a "finder's fee" to be deducted from SDTC's contribution. The primary interest in receiving \$50,000 to \$100,000 in Seed funding clearly belonged to the recipient companies.

[147] The analysis, however, does not stop there. The evidence shows that securing a nomination from a recognized accelerator was crucial for companies to obtain Seed funding from SDTC and, conversely, for accelerators to have a working relationship with companies they wished to nominate was a requirement for doing so.

[148] There is nothing in the evidence to suggest that, at the accelerator level, Ms. Verschuren played a direct role in the nomination of specific projects for Seed funding or that, at SDTC, she influenced which projects reached the Board approval stage at SDTC. Nevertheless, Ms. Verschuren's dual role as a director of both the nominating and decision-making organizations, and the potential business relationship between accelerators and nominees created a potential conflict.

[149] Additionally, in the case of the Verschuren Centre, eligible expenses as listed in the application form for Seed funding were precisely the sort of services and supplies the Centre would provide to companies for a fee. Ms. Verschuren would therefore have reasonably known that the Verschuren Centre could potentially benefit, indirectly, from a decision to grant Seed funding to a company it had nominated.

[150] For these reasons, Ms. Verschuren appropriately intended to disclose these conflicts prior to each Board vote on Seed funding, and did so in almost every case. However, even in the vast majority of cases where she did declare her conflict, the measure she took to remedy the conflict was to abstain from the vote on the matter.

[151] Having declared their conflicts in the context of Seed funding, Ms. Verschuren and other Board members may have believed that such conflicts were dealt with adequately through an abstention given the lack of a discussion on the matter before the vote. In reality, the entire approval process for Seed funding was flawed. The evidence shows that decisions regarding Seed funding had essentially already been made at earlier stages and the Board's final approval was automatic since decisions were made by consensus and Seed funding, in any event, was included in the consent agenda. Thus, an abstention, especially a partial one in respect of particular projects contained within a single agenda item, had no impact on the outcome for those projects.

[152] To say nothing of the two cases where Ms. Verschuren fell short of declaring potential conflicts of interest and the two where she declared conflicts but failed even to abstain. In every instance of conflict, only a recusal would have avoided a contravention of subsection 6(1) of the Act and met the requirements of section 21.

Abstention relating to Start-up funding

[153] One instance where Ms. Verschuren abstained in respect of Start-up funding concerned a decision to increase funding to Kraken Sense, a company that had an existing business relationship with the Verschuren Centre. This was the reason why Ms. Verschuren had declared a conflict. For the same reasons as in the case of the Seed funding decisions involving MaRS- and Verschuren Centre-nominated companies, this was a conflict of interest for the purposes of the Act. Therefore, Ms. Verschuren was required to recuse herself from that decision in order to avoid a contravention of subsection 6(1) and section 21.

Finding on issue 1

[154] Ms. Verschuren recognized the inherent impropriety in participating, as Chairperson of SDTC, in decisions involving MaRS and the Verschuren Centre given her role with those organizations. She identified the conflict and, in most cases, made the appropriate declarations prior to Board meetings. In the context of Seed funding and on one other occasion relating to Start-up funding, Ms. Verschuren followed a practice to abstain from the vote instead of recusing herself. Regrettably, this practice, which deviated from the Board's Policy, also fell short of the Act's requirements.

[155] Accordingly, I find that Ms. Verschuren contravened subsection 6(1) and section 21 of the Act.

Issue 2a: Participation in decisions on COVID-19 emergency relief payments

[156] I now turn to the matter relating to motions moved by Ms. Verschuren, as Chairperson of SDTC, in respect of COVID-19 emergency relief funding, in March 2020 and 2021. One of the recipients of that funding was NRStor Inc., a corporation founded by Ms. Verschuren and of which she is Chair and CEO as well as a majority shareholder. It was alleged that Ms. Verschuren participated in the making of decisions to further her private interests.

[157] To determine whether a conflict of interest exists under the Act, one of the elements I must examine is whether a public office holder was provided with an opportunity to further private interests. 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.

[158] The first two exclusions have relevance in this matter and were raised by Ms. Verschuren in her written submissions with respect to the Board's decisions on COVID-19 emergency relief payments.

Ms. Verschuren's interests in the matter

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

[160] The evidence shows that in March 2020, all projects qualifying for a COVID-19 emergency relief payment 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 the SDTC Board's decision.

[161] In March 2021, the 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 March 2021, 102 projects received additional funding.

[162] The decisions to grant COVID-19 emergency relief payments to companies clearly furthered the private interests of those companies. For NRStor, the two payments amounted to \$106,176 in 2020 and \$111,485 in 2021, for a total of \$217,661.

[163] This direct financial interest was not displaced or removed by the fact that these funds were transferred to a limited partnership, a legally separate entity. While the limited partnership set up by NRStor to manage the SDTC-funded Goderich project, from August 2019 onwards, may no longer have been connected to Ms. Verschuren by way of ownership, Ms. Verschuren continued to be the sole director until December 2021. Additionally, NRStor continued to be financially engaged in the project until its completion by contributing amounts that exceeded the funds it received from SDTC. As a result, while the limited partnership was the final recipient and user of the COVID-19 emergency relief payments, NRStor benefitted from SDTC's contributions insofar as they reduced its own financial contribution to the project.

[164] In my view, the financial interests of NRStor also constitute interests for Ms. Verschuren, since she is the founder, Chair, CEO, and majority shareholder of the company. Because there are *prima facie* interests for Ms. Verschuren in this matter, I must determine whether either of the two relevant exclusions operate to exclude them from being considered as such in applying the Act's conflict of interest provisions.

Decision or matter of general application

[165] Ms. Verschuren has taken the position that the decision to award COVID-19 emergency relief payments in March 2020 and 2021 was a decision of general application since all eligible projects received funding in equal proportion to their scale. This position echoes the legal advice received by SDTC management and relayed to the Board in March 2020, according to which Board directors would not need to recuse themselves from the decision since any existing conflicts of interest had already been declared and all companies and their projects were previously approved under normal processes, and because the decision to be made was an operational matter in which all companies would be treated equally.

[166] 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 legislative instruments 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.⁵ Instruments of general application therefore apply to "an undetermined number of persons" who fall within the ambit or jurisdiction of the decision-maker.⁶ They do not apply to a specific person or group of persons or to a particular situation.⁷

⁵ See: *Kruger and al., v. The Queen*, [1978] 1 SCR. 104, at para. 110.

⁶ *Reference Re Manitoba Language Rights*, [1992] 1 SCR. 212, at pp. 224-25.

⁷ See, for example: *Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component*, 2009 SCC 31, at para. 88.

[167] 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.⁸ Directives can be of general application if they apply to the entire department or ministry under the minister's statutory authority.⁹

[168] 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 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.

[169] 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 Ms. Verschuren'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

[170] 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.

[171] 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."¹⁰ 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)."¹¹ Thus, a broad class of persons would include a large number of persons that

⁸ See, for example: *Farah v. Canada (Citizenship and Immigration)*, [2018] 1 FCR 473, at para. 37.

⁹ See, for example: *Ministry of Agriculture, Food and Rural Affairs Act*, R.S.O. 1990, c. M. 16, at subss. 13(3) and 17(8).

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

¹¹ "Broad" in *Canadian Oxford Dictionary*, 2nd ed. (2004), at 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.

[172] 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.¹² 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.

[173] 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*, 1988.¹³

[174] 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 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.¹⁴

¹² See: Alberta Ethics Commissioner, [Determining a private interest](#) (2017).

¹³ 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).

¹⁴ [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](#).

[175] In light of the above, I am of the view that the beneficiaries of the COVID-19 emergency relief funding awarded by SDTC in March 2020 and 2021, which included anyone with an interest in NRStor, do not constitute a broad class of persons. Furthermore, Ms. Verschuren’s interests in the matter—as a founder, Chair, CEO, and majority shareholder of one of the recipient companies—situated her as a member of an even narrower class of persons, with a significantly different interest in the matter compared with other beneficiaries. Ms. Verschuren’s interest is therefore properly categorized as a private interest for the purposes of the Act.

Whether Ms. Verschuren reasonably should have known that she was in a conflict of interest

[176] I must now determine whether Ms. Verschuren made a decision or participated in making a decision related to the exercise of an official power, duty or function if she knew or reasonably should have known that, in making the decision, she would be in a conflict of interest and consequently in breach of subsection 6(1) of the Act.

[177] With respect to the additional COVID-19 contributions in March 2020 and 2021, Ms. Verschuren argues that these decisions did not benefit specific projects. Rather, she says there was consensus from the SDTC Board to adopt a measure that applied equally to all eligible projects. The legal advice the SDTC Board received in March 2020 held that directors’ previously disclosed conflicts of interest would not preclude them from participating in this decision on the grounds that it was of general application.

[178] In my view, Ms. Verschuren took what she believed at the time to be proper steps to ensure that her interests did not interfere with the exercise of her official duties as Chairperson of SDTC. She believed at the time that she had acted within the bounds of the Act. However, relying on an external legal opinion does not absolve a public office holder from their requirements under the Act.

Finding on issue 2a

[179] Given the exceptional circumstances of the COVID-19 pandemic, the Board’s Policy was overlooked in the context of the 2020 and 2021 decisions on COVID-19 emergency relief payments. Directors did not declare their conflicts prior to the meetings and no recusals were made. This oversight was compounded when the Board was presented with incorrect legal advice justifying this course of action.

[180] Ms. Verschuren participated in the decisions knowing that NRStor, the company she founded, leads, and owns as a majority shareholder, was one of the beneficiaries of that supplementary funding. She was required to recuse herself from those matters and failed to do so. Consequently, I find that Ms. Verschuren contravened subsection 6(1) and section 21 of the Act.

Issue 2b: Seeking to influence the decision of other Board members

[181] A second allegation relating to the same decisions to award COVID-19 emergency relief funding centred around Ms. Verschuren's role, as Chairperson of SDTC, to move the motions in March 2020 and 2021, for those relief payments. It is alleged that in moving those motions, Ms. Verschuren may have used her position as a public office holder to seek to influence the decision of other SDTC board members so as to further her private interests, contrary to section 9 of the Act.

[182] Section 9 of the Act reads as follows:

9. No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further another person's private interests.

[183] The evidence shows that Ms. Verschuren was not the one who spearheaded the idea to award COVID-19 emergency relief payments to the existing roster of qualified projects, or that she was involved in determining the eligibility criteria or the proportion of funds to be disbursed. Beyond participating in the discussions on SDTC management's proposals and moving the motions at the meetings, I found no evidence of further involvement in the matter.

Finding on issue 2b

[184] There is no evidence that Ms. Verschuren attempted to influence the decision of her colleagues on SDTC's Board. I find that she did not contravene section 9 of the Act.

Summary of findings

[185] With respect to issue 1, Ms. Verschuren contravened subsection 6(1) and section 21 of the Act by participating in decisions on Seed and Start-up funding involving MaRS and the Verschuren Centre, despite declaring her conflict and abstaining in most cases, and by failing to recuse herself from these decisions.

[186] With respect to issue 2a, Ms. Verschuren contravened subsection 6(1) and section 21 of the Act by participating in two decisions on COVID-19 emergency relief funding that would benefit NRStor, having followed incorrect legal advice, and by failing to recuse herself from these decisions.

[187] With respect to issue 2b, there is no evidence that Ms. Verschuren contravened section 9 of the Act by using her position as Chairperson of SDTC to seek to influence other Board members in the same two decisions on COVID-19 emergency relief funding.

Final observation

[188] The standard practice at the SDTC Board was to examine and approve funding applications individually. This complied with both SDTC's own Policy on conflicts of interest and the Act. It allowed directors who had a conflict of interest to properly recuse themselves from the portions of meetings for which they should not be present.

[189] It is unfortunate that a lack of consistency in decision-making processes at SDTC, coupled with incorrect legal advice, caused Ms. Verschuren to deviate from that standard practice and thus led her to contravene the Act.

A handwritten signature in black ink, appearing to read 'Konrad Finckenstein', written in a cursive style.

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

July 24, 2024

SCHEDULE: LIST OF WITNESSES

The names of all witnesses are listed below 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

- Ziyad Rahme, Interim President and CEO

The Verschuren Centre

- Dr. Beth Mason, CEO

MaRS Discovery District

- Krista Jones, Interim CEO