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émocratie en surveillance

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

Via email to: [info@cie.parl.gc.ca](mailto:info@cie.parl.gc.ca)

August 17, 2023

**RE: Request for examination into whether Minister of Energy and Natural Resources Jonathan Wilkinson, and/or anyone acting on his behalf, violated the *Conflict of Interest Act* by, given Minister Wilkinson's ties to Teck Resources Ltd., participating in or attempting to influence decisions related to Teck or its subsidiaries, or giving them preferential treatment**

Dear Office of the Commissioner:

I am writing concerning enforcement of the *Conflict of Interest Act* (the "COIA" -- (S.C. 2006, c. 9, s. 2) generally, and specifically requesting an inquiry into the actions of Minister of Energy and Natural Resources Jonathan Wilkinson and/or persons acting on his behalf participating in or trying to influence the decision-making process concerning whether the Government of Canada requests an investigation by the International Joint Commission (IJC) of contamination of water systems by runoff from mines operated by Teck Resources Ltd. and its subsidiaries, or giving preferential treatment to Teck based on whomever has represented Teck, or using insider information to benefit Teck's interests.

There is evidence that gives reason to believe that Minister Wilkinson has a conflict of interest as defined in the *COIA* concerning Teck's interests and/or that it would be improper for him further Teck's interests, and given his roles in Cabinet it is very likely that he and/or persons acting on his behalf have

participated or are participating in the Government of Canada's decision-making process(es) concerning whether to request an IJC investigation of Teck's mines.

Based on the evidence concerning Minister Wilkinson's conflict of interest concerning Teck's interests and ties to Teck, it would be a violation of the *COIA* for him, or persons acting on his behalf, to participate in any decision-making process concerning Teck's interests (under section 4 and subsection 6(1) of the *COIA*), or to attempt to influence any such decision-making process (under section 9), or to give preferential treatment to Teck based on whomever is representing Teck (under section 7) or to use insider information to further Teck's interests (under section 8). Failing to recuse oneself from a decision-making process when you have a conflict of interest, or when it would be improper in some other way for you to participate, is a violation of section 21 of the *COIA*.

You will see also at the end of this letter a section setting out details and requesting that an Interim Commissioner, or the next full-term Conflict of Interest and Ethics Commissioner, recuse themselves from investigating and ruling on this complaint if they are appointed solely by the Trudeau Cabinet, instead of through an independent, merit-based process in which the opposition parties have actual decision-making power.

### **1. The Cabinet decision-making process concerning Teck Resources Ltd., and Minister Wilkinson's involvement**

The Government of Canada has been actively considering over the past couple of years, and continues to consider, whether to request an investigation by the International Joint Commission (IJC) of contamination of water systems by runoff from mines operated by Teck Resources Ltd. and its subsidiaries, including by selenium. From 2012 on, First Nations, environmental groups, academics have called on the Government of Canada to request an IJC investigation (known as a "reference"). You can see details about this overall situation in these media articles from CBC:

<https://www.cbc.ca/newsinteractives/features/doubts-downstream-in-libby-montana>

and The Narwhal:

<https://thenarwhal.ca/teck-coal-mining-ijc-ktunaxa/>

and

<https://thenarwhal.ca/copper-mountain-mine-flyover/>

In October 2021, the US Department of State formally requested that Canada agree to a joint referral of the matter to the IJC. That request has been endorsed U.S. President Joe Biden, the U.S. Environmental Protection Agency (EPA), and the state governments of Montana and Idaho, as you can see described in media articles by the Canadian Press (CP – in the *Toronto Star*):

[https://www.thestar.com/politics/first-nations-environmentalists-tired-of-government-stonewalling-over-selenium-probe/article\\_14ffe8cd-e561-5b71-9497-f6991d870871.html](https://www.thestar.com/politics/first-nations-environmentalists-tired-of-government-stonewalling-over-selenium-probe/article_14ffe8cd-e561-5b71-9497-f6991d870871.html)

and CP (as published in the *Winnipeg Free Press*):

<https://www.thefreepress.ca/news/u-s-expected-to-pressure-canada-to-review-kootenays-cross-border-mining-toxins/>

and an investigation is also supported by six Canadian and American members of the IJC, as you can see in this letter:

<https://ijc.org/sites/default/files/letter-prime-minister-trudeau-president-biden-selenium-contamination.pdf>.

Teck opposes a reference to the IJC to initiate an investigation, as you can see summarized in these media articles by *Nelson Star*:

<https://www.nelsonstar.com/news/b-c-teck-opposed-to-international-study-of-kootenay-watershed-pollution/>

and *The Narwhal*:

<https://thenarwhal.ca/bc-teck-lobbied-against-coal-mine-pollution-inquiry/>

Teck has been registered as a company to lobby the Government of Canada since 2010, including on issues of mining effluent, as you can see in Teck's registration in the federal Registry of Lobbyists:

<https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/vwRg?cno=270204&regId=937793>

and Teck also has contracted with several consultant lobbyists to lobby on the company's behalf, as you can see in the results of this search of the Registry:

<https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/clntSmmrySrch?return=true&time=1692046512377>

Teck's registration in the Registry of Monthly Communications by officers and employees of the company, which you can see under the heading "Monthly Communications Reports at:

<https://lobbycanada.gc.ca/app/secure/ocl/lrs/do/clntSmmry?sMdKy=1692046512619&clientOrgCorpNumber=270204>

shows that Teck has directly lobbied Minister Wilkinson on mining issues six times in the past year alone, on December 21, 2022; February 17, 2023; March 7, 2023; April 19, 2023; May 4, 2023 and July 12, 2023.

The registrations in the Registry of Monthly Communications by the consultant lobbyists hired by Teck also shows communications with staff of Minister Wilkinson.

Minister Wilkinson was appointed Minister of Energy and Natural Resources on July 26, 2023, and was:

- Minister of Natural Resources from October 26, 2021 to July 26, 2023;
- Minister of and Climate Change from November 9, 2019 to October 16, 2021;
- Minister of Environment and Climate Change from July 18, 2018 to November 9, 2019, and;

- Parliamentary Secretary Minister of Environment and Climate Change from December 2, 2015 to July 18, 2018.

Minister Wilkinson is also a senior Cabinet minister from B.C., the province in which Teck's mines are located.

As a result of his current and past Cabinet roles, and Teck's lobbying communications with him over the past year, it is reasonable to believe that Minister Wilkinson is involved in Government of Canada decision-making processes concerning Teck and mining runoff issues, including whether to request an IJC investigation.

## **2. Minister Wilkinson's ties, financial and otherwise, to Teck Resources that cause him to have a conflict of interest**

### **a) Minister Wilkinson's financial ties to Teck Resources**

Minister Wilkinson disclosure in the Public Registry maintained by the Office of the Conflict of Interest and Ethics Commissioner shows that since April 22, 2021

<https://prciec-rpccie.parl.gc.ca/EN/PublicRegistries/Pages/Declaration.aspx?DeclarationID=28300586-4fbd-4c4e-8d43-84fa58b7a934>

his spouse has owned shares in TD Bank and BlackRock Inc., and a May 3, 2022 Notice of Material Change in the Registry

<https://prciec-rpccie.parl.gc.ca/EN/PublicRegistries/Pages/Declaration.aspx?DeclarationID=7323ebb4-efe0-ec11-815d-001dd8b72449>

also shows his spouse purchasing shares of BlackRock Inc.

A May 18, 2023 Notice of Material Change in the Registry shows that his spouse purchased shares of Royal Bank of Canada (RBC):

<https://prciec-rpccie.parl.gc.ca/EN/PublicRegistries/Pages/Declaration.aspx?DeclarationID=07be5099-ddf3-ed11-8166-001dd8b7242d>.

Minister Wilkinson's current [Summary Profile](#) in the Registry shows that his spouse continues to own shares in TD Bank, BlackRock Inc., and RBC.

According to this Fintel webpage on Teck Resources:

<https://fintel.io/s/ca/teck.b>

RBC, Blackrock Inc. and TD Bank (via its wholly owned subsidiary TD Asset Management Inc.) are all in the top 25 institutional investors in Teck Resources.

According to this article by Fintel:

<https://www.nasdaq.com/articles/blackrock-increases-position-in-teck-resources-teck.b>

BlackRock Inc. has owned shares in Teck Resources since at least February 2, 2021.

According to Teck Resources Annual Reports from 2019 on, RBC has provided Teck with a \$150 million line of credit since 2018, and TD Bank provided Teck with a \$50 million line of credit since at least 2018, which increased to \$100 million in 2020, and then to \$150 million in 2021. See page 103 of the 2019 report at:

<https://www.sec.gov/Archives/edgar/data/886986/000119312519055171/d677438dex991.htm>

and see page 100 of the 2021 annual report at:

<https://www.sec.gov/Archives/edgar/data/886986/000088698621000007/teck-20201231xexx991aif.htm>

and see page 91 of the most recent 2023 annual report at:

<https://www.sec.gov/Archives/edgar/data/886986/000088698623000008/teck-20221231xexx991aiffin.htm>.

According to a search of the “Financing by Bank or Client” section of this website:

<https://www.bankingonclimatechaos.org/>

TD Bank and RBC both provided financing to Teck Resources of \$157.16 million in 2016, \$144.68 million in 2017, and \$62 million (all figures in U.S. dollars).

## **b) Minister Wilkinson’s past work ties to Teck Resources**

Minister Wilkinson was the CEO of the company BioteQ Environmental Technologies (now known as “BQE Water”) in May 2013 when the company won a contract from Teck Resources for a pilot plant to remove selenium from wastewater from Teck’s mines. You can see this summarized in this BioteQ news release:

<https://www.bqewater.com/bioteq-secures-contract-selenium-removal-piloting/>

and in these media articles:

<https://biv.com/article/2013/05/bioteq-inks-deal-with-teck-on-selenium-treatment>

and

<https://www.canadianminingjournal.com/news/environmental-bioteq-to-pilot-selenium-removal-process/>.

Selenium is the main contaminant at issue concerning the call for an investigation by the IJC of contamination by mining runoff from the mines owned and operated by Teck Resources.

### **3. How the federal *Conflict of Interest Act* applies to the Cabinet decision concerning whether to request an IJC investigation into Teck**

#### **a) The *Conflict of Interest Act* (the “COIA”) must be interpreted broadly**

The *Conflict of Interest Act* (the “COIA”) is remedial legislation. The *Interpretation Act* requires that the COIA be “given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.” (*Interpretation Act*, R.S.C., 1985, c. I-21, section 12).

The primary purpose of the COIA in section 3 is to “minimize the possibility of conflicts arising between the private interests and public duties of public office holders and provide for the resolution of those conflicts in the public interest should they arise.” That means the *Act* should be interpreted by the Conflict of Interest and Ethics Commissioner with this goal in mind.

The Supreme Court of Canada ruled in two cases in 1996 that “If democracies are to survive, they must insist upon the integrity of those who seek and hold public office” (*Harvey v. New Brunswick*), and; “given the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe” and; “[t]he magnitude and importance of government business requires not only the complete integrity of government employees and officers conducting government business but also that this integrity and trustworthiness be readily apparent to society as a whole” (*R. v. Hinchey*).

#### **b) Participating in or attempting to influence a decision that applies specifically to a company about which one has an apparent conflict of interest violates provisions of the COIA**

Subsection 6(1), combined with section 4 and the definition of “private interest” in subsection 2(1) of *Conflict of Interest Act* (the “COIA”), prohibits all public office holders (who are defined as Cabinet ministers, their staff and Cabinet appointees such as deputy ministers and assistant deputy ministers) from making or participating in 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.”

Section 4 states that a public office holder is in a conflict of interest when s/he “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.”

Section 9 prohibits a public office holder from using his/her position to “seek to influence” (i.e. attempt 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.”

“Private interest” is defined in subsection 2(1) of the *COIA* as excluding only situations involving matters of general application (such as participating in passing a law that applies generally to many people or organizations) and a couple of other situations. None of these situations apply in any way to a decision about whether to refer a matter about a specific company to a regulatory body.

Paragraphs 288-292 of the *Trudeau II Report* (pages 45-46) by former Ethics Commissioner Mario Dion, which can be seen at: [https://ciec-cicie.parl.gc.ca/en/publications/Documents/InvestigationReports/Trudeau II Report.pdf](https://ciec-cicie.parl.gc.ca/en/publications/Documents/InvestigationReports/Trudeau%20II%20Report.pdf):

state that, under the *COIA*, “Private and public interests can take many forms, including financial, social or political.”

Given that the subsection 6(1) of the *COIA* covers situations in which the public office holder “reasonably should know” that they would be in a conflict of interest, the *COIA* clearly covers situations involving an appearance of a conflict of interest. This conclusion is reinforced by the broad, comprehensive language used in the operative provisions of the *COIA*, which make it clear that it was intended to apply to real and apparent conflicts of interest. As noted above, section 3 of the *COIA* articulates among its purposes prevention and avoidance of “conflicts of interest” generally, without any limiting language that would confine it to “real” conflicts of interest.

The Federal Court of Appeal has ruled unanimously that the phrase “a conflict of interest” means a situation in which a public office holder has “competing loyalties” or “a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties” that “might reasonably be apprehended to give rise to a danger of actually influencing the exercise of a professional duty” (*Democracy Watch v. Campbell*, [2010] 2 F.C.R. 139, 2009 FCA 79, para. 49, quoting from *Cox v. College of Optometrists of Ontario* (1988), 65 O.R. (2d) 461 (Div. Ct.)). In other words, “conflict of interest” includes an apparent conflict of interest.

As Justice L’Heureux-Dubé wrote for the majority in *Hinchey*: “The need to preserve the appearance of integrity...” requires that the statutory provisions at issue in *Hinchey* be interpreted so as to prohibit actions



"...which can potentially compromise that appearance of integrity" (para. 16). The Justice also noted: "...it is not necessary for a corrupt practice to take place in order for the appearance of integrity to be harmed. Protecting these appearances is more than a trivial concern" (para. 17).

In articulating the definition of "apparent conflict of interest" in the seminal report *Commission of Inquiry into the Facts of Allegations of Conflict of Interest Concerning the Honourable Sinclair M. Stevens* ("Parker Commission"), which can be seen at:

<https://publications.gc.ca/site/eng/9.818247/publication.html>

Justice Parker emphasized the underlying objectives of conflict of interest rules as maintaining and enhancing trust and confidence in government and ensuring the public perceives that government business is being conducted in an "impartial and even-handed manner" (p. 31). To this end, the Justice Parker defined an apparent conflict of interest as follows:

"An apparent conflict of interest exists where there is a reasonable apprehension, which reasonably well-informed persons could properly have, that a conflict of interest exists." (p. 35)

The Parker Commission report also emphasized that to be "reasonably well-informed" means only to have knowledge of the "surrounding circumstances" – the person is not required to "conduct his or her own commission of inquiry before he or she can draw any conclusions about appearance of conflict" or know "all the facts" (pp. 32-35).

This definition drew upon the definitions set out in Supreme Court of Canada rulings, such as *Committee for Justice and Liberty v. National Energy Board*, [1978] 1 SCR 369, and *Old St. Boniface Residents Association Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170, and also, as Justice Parker notes, on *Valente v. The Queen*, 1985 CanLII 25 (SCC), [1985] 2 SCR 673, the Supreme Court of Canada's seminal ruling on reasonable apprehension of bias.

In addition, Justice Parker determined that the politician or public official does not need to know that they have a private interest that creates a conflict with their public duties in order for them to have an apparent conflict. All that is needed is that the situation appears to a reasonably well-informed person to be a situation in which the politician or public official would know about their conflicting private interest (pp. 32-33).

The reason for the distinction is obvious – if the politician or official knew about their private interest then they would have a real conflict of interest, and if the reasonably well-informed observer knew that they knew then it wouldn't be an appearance of a conflict, it would be a confirmed conflict, as Justice Parker discusses when defining "real conflict of interest" in his report (pp. 25-29).



It is also important to note that the combination of section 4, section 9 and subsection 6(1) of the *COIA* make it a violation not only to participate in a decision-making process or try to influence a process in which there is an opportunity to further one's own private interest or the interest of a relative or friend, but also make it a violation to participate or influence when one could "improperly further another person's private interests."

"Improper" is not defined in the *COIA*. However, in paragraphs 296-301 of the *Trudeau II Report* cited above (at pages 46-47), former Conflict of Interest and Ethics Commissioner Dion defined "improper" actions as actions that are "incorrect, unsuitable or irregular" or "fraudulent or otherwise wrongful" and "lie on a spectrum, ranging from irregularity through inadvertence to willful fraud."

The Commissioner has also defined "person" as including entities, such as businesses or other types of organizations.

The Prime Minister's *Open and Accountable Government* code ("*PM's Code*") for Cabinet ministers and ministerial staff

<https://www.pm.gc.ca/en/news/backgrounders/2015/11/27/open-and-accountable-government>

states in the [Message to Ministers](#) section, and Part I of [Annex A: Ethical and Political Activity Guidelines for Public Office Holders](#), that ministers and their staff "shall act with honesty and uphold the highest ethical standards so that public confidence and trust in the integrity, objectivity and impartiality of the government are conserved and enhanced" and that they "have an obligation to perform their official duties and arrange their private affairs in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law."

In the "Administration" subsection of Part I of Annex A of the *PM's Code*, it states that:

"Compliance with these Guidelines is a term and condition of appointment. Before appointment, a public office holder shall certify that he or she will comply with these Guidelines."

[Annex B](#) of the *PM's Code* states that the PM and all members of the Cabinet to "must avoid conflict of interest, the appearance of conflict of interest and situations that have the potential to involve conflicts of interest."

In other words, it is improper for any member of Cabinet to participate in a decision-making process, or try to influence a process, when they have an appearance of a conflict of interest or may have a potential (i.e. future) conflict of interest, or when their participation does not bear the closest

public scrutiny because it does not uphold the highest ethical standards or would undermine public confidence.

Therefore, it is a violation of sections 4 and 6(1) of the *COIA*, because it is violation of the *PM's Code* rule (and is, therefore, "improper"), for any member of Cabinet to participate in a decision-making process when they have an appearance of a conflict of interest or may have a potential (i.e. future) conflict of interest, and it is a violation of section 9 to attempt to influence such a process.

Section 21 requires the public office holder to "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." Subsection 25(1) requires public disclosure of the details of the recusal, and the conflict that required the recusal, within 60 days of when the recusal happens.

**c) Providing preferential treatment or using insider information to further private interests also violates provisions of the *COIA***

Even if the member of Cabinet or their staff does not participate in or attempt to influence a decision-making process that violates sections 4 or 9 and subsection 6(1) of the *COIA* combined, they can still be in violation of the *COIA* if they give preferential treatment to a person or entity based on whomever is representing the person or entity (under section 7) or if they use insider information to further the person's or entity's interests (under section 8).

With regard to section 7, in former Ethics Commissioner Mary Dawson's 2012 ruling on Conservative Minister Paradis giving preferential treatment to former Conservative MP Rahim Jaffer, which can be seen at:

<https://ciec-ccie.parl.gc.ca/en/publications/Documents/InvestigationReports/The%20Paradis%20Report.pdf>

Commissioner Dawson wrote that "preferential treatment" means:

"The expression "preferential treatment" is not defined in the Act and was not defined in the predecessor 2006 Conflict of Interest and Post Employment Code for Public Office Holders. I believe, however, that its meaning is quite clear. I take note of the 1984 Report of the Task Force on Conflict of Interest, co-chaired by the Honourable Michael Starr and the Honourable Mitchell Sharp, entitled *Ethical Conduct in the Public Sector*, in which "preferential treatment" is defined as "treatment more favourable than might be accorded to anyone else in similar circumstances." (p. 21)

**4. Request for examination of whether Minister Wilkinson, or anyone acting on his behalf, has violated the *Conflict of Interest Act***

Given the following facts about Minister Wilkinson, as detailed in above in sections 1 and 2:

- a) His current role as Minister of Energy and Natural Resources, and past roles as minister and parliamentary secretary since December 2015 always in the areas of natural resources and the environment;
- b) He is one of the senior Trudeau Cabinet ministers from B.C.;
- c) The Government of Canada, and Cabinet of which he is a member, is considering whether to request an investigation by the IJC of contamination of water systems by mines owned and operated by Teck Resources;
- d) Teck Resources has lobbied him directly on mining issues six times in the past year alone;
- e) His spouse has investments in financial institutions that are among the top 25 largest institutional investors in Teck Resources, and;
- f) He was CEO of BioteQ when it had a contract with Teck to clean up selenium contamination caused by Teck's mines,

it is reasonable to believe that Minister Wilkinson has participated, or is participating, in the Government of Canada's decision-making process(es) about whether to request an investigation by the IJC of contamination of water systems by mines owned and operated by Teck Resources.

And it is also reasonable to conclude that Minister Wilkinson has a conflict of interest, or at least an appearance of a conflict of interest, concerning Teck.

As detailed above in section 3, participating in or attempting to influence a decision that applies specifically to a company about which one has an apparent conflict of interest violates provisions of the federal *Conflict of Interest Act* (COIA), as does giving a company preferential treatment or using insider information to further the company's interests.

As a result of the above, Democracy Watch requests an examination by the Commissioner under sections 44 or 45 of the COIA of whether Minister Wilkinson, or anyone acting on his behalf, has violated sections 4, 6(1), 7-9, 21 and/or 25 the COIA by participating in or attempting to influence Government of Canada decision-making processes that affect Teck, or giving preferential treatment to Teck or using insider information to further Teck's interests.

**5. Request that an Interim Ethics Commissioner, or the next full-term Ethics Commissioner recuse themselves if they are appointed solely by the Trudeau Cabinet, instead of through an independent, merit-based process in which the opposition parties have decision-making power**

This complaint letter is about one of ministers in the Trudeau Cabinet. In *Democracy Watch v. Canada (Attorney General)*, 2020 FCA 28, the Federal Court of Appeal ruled unanimously that the federal Cabinet is biased when choosing the Ethics Commissioner, who enforces the *COIA*.

As a result, Democracy Watch's position is that if an Interim Ethics Commissioner and/or the next full-term Ethics Commissioner is chosen by the Trudeau Cabinet alone, they will have an apparent conflict of interest/reasonable apprehension of bias in examining and ruling on this complaint.

This bias would only disappear if the Interim Ethics Commissioner and/or the next full-term Ethics Commissioner is chosen either through an all-party committee that reaches a consensus on the person chosen, or through an independent appointments commission made up of people chosen by all federal parties that have seats in the House of Commons (or made up of people who have permanent positions that are not tied to the government or any of the political parties), with the commission doing a public search for candidates and then submitting a short list of qualified candidates to an all-party committee that would make the final choice by consensus.

If an all-party joint process is not used to choose the Interim Ethics Commissioner and/or the next full-term Commissioner, then the Commissioner will be biased, and must recuse themselves and refer the examination and ruling on this matter to someone qualified and independent from all federal political parties, such as a provincial ethics commissioner who has no ties to any federal political party or the provincial wing of any federal political party.

In conclusion, Democracy Watch is happy to provide any further information to facilitate the examination of this matter in a timely way.

Sincerely,



Duff Conacher, Board member of Democracy Watch  
On behalf of the Board of Directors of Democracy Watch