



Office of the  
Conflict of Interest and  
Ethics Commissioner

Commissariat aux  
conflits d'intérêts et  
à l'éthique

**CONFIDENTIAL**

October 19, 2023

**Sent by email to:** info@democracywatch.ca

Mr. Duff Conacher  
Democracy Watch  
P.O. Box 821, Stn. B  
Ottawa, Ontario K1P 5P9

**Subject: Request for an examination under the *Conflict of Interest Act***

Dear Mr. Conacher:

I have reviewed your letter of August 21, 2023, in which you request an investigation, under the *Conflict of Interest Act* (Act), into the conduct of the Honourable Jonathan Wilkinson, Minister of Energy and Natural Resources.

You allege that Mr. Wilkinson has participated, either directly or through someone under his direction, in discussions regarding Teck Resources Ltd. on whether the Government of Canada should request the International Joint Commission to investigate the mining company over contamination of water system by runoff from mines it operates.

In your letter you allege that by participating in Cabinet discussions relating to Teck Resources Ltd., Mr. Wilkinson is in a conflict of interest (i) due to his previous business involvement with the mining company prior to entering public office; (ii) for having been lobbied by Teck Resources Ltd. despite his previous involvement with the company; and (iii) due to his spouse's purchase of controlled assets with financial institutions, which you say have invested in Teck Resources Ltd. You further allege that a decision not to make a request to the International Joint Commission would be financially favourable for both the mining company and for Mr. Wilkinson and his spouse.

As a result, you allege that Mr. Wilkinson is in contravention of several sections of the Act, namely sections 6(1), 7, 8, 9 and 21.

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To commence an examination under the Act, I must have reason to believe there has been a contravention of the Act. An allegation must show a direct link between a private interest and an action taken by a public office holder that could potentially lead to an improper furthering of that interest. The interests you have identified are too remote and speculative in nature to cause them to conflict with the exercise of Mr. Wilkinson's official duties and functions in respect of Teck Resources Ltd.

More specifically, you state in your letter that the Act should be interpreted broadly to encompass situations in which public officer holders place themselves in an apparent conflict of interest. As you know, this issue is the subject of an ongoing application for judicial review before the Federal Court of Appeal (File No. A-169-21). The longstanding position of the Office is that the appearance of conflict is not captured by the Act's substantive rules of conduct.

Moreover, you have not shown how Mr. Wilkinson's participation in discussions involving Teck Resources Ltd. will improperly further any private interests, contrary to subsection 6(1). You have not shown how Mr. Wilkinson's business associations and professional experiences prior to his appointment to public office would disqualify him from properly exercising his official duties and functions; nor have you shown how Mr. Wilkinson's or his spouse's assets are directly tied to the matter at issue.

Furthermore, you have also asserted, without providing any supporting evidence, that Mr. Wilkinson has provided Teck Resources Ltd. with preferential treatment in contravention of section 7 of the Act. In that regard, you have not demonstrated *how* Mr. Wilkinson afforded Teck Resources Ltd. treatment more favourable than other similarly situated entities based on the identity of one of its representatives.

You have alleged that Mr. Wilkinson has shared insider information in contravention of section 8 of the Act. However, you have not alluded to *which* information, if any, was provided to Teck Resources Ltd. by Mr. Wilkinson that would normally not be available to the public.

You have alleged that Mr. Wilkinson has sought to use his position as a public office holder to seek to influence a decision so as to further his, his spouse's or Teck Resource Ltd.'s private interests improperly in contravention of section 9 of the Act. Yet you have not said *how* Mr. Wilkinson used his public office to seek to influence another entity, presumably Cabinet, so as to further anyone's private interests improperly.

Accordingly, I see no reason why Mr. Wilkinson would be required to recuse himself from these discussions, as you have alleged that he has failed to do under section 21 of the Act.

A mere allegation that there may have been an impropriety, without any information to support the allegation, cannot constitute the basis of a reason to believe that a contravention has occurred. As a result of the above, I will not look further into the matter.

Finally, in your letter, you requested that I recuse myself from the matter and refer it to another qualified and independent person. This request is based on your allegation of an apparent bias that arose from the manner in which I was appointed. In support of your view, you cite a Federal Court of Appeal decision *Democracy Watch v. Canada (Attorney General)*, 2020 FCA 28, where Democracy Watch challenged the appointment of my predecessor, Mr. Mario Dion. That challenge was dismissed by all levels of the Courts.

In dismissing the matter, the Courts heard the same issue of an alleged bias in the appointment process, and the unanimous panel put that issue to rest by citing the Supreme Court of Canada's decision in *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, [2001] 2 S.C.R. 781. A careful reading of the decision shows that the Courts do not support the proposition that bias exists in the appointment process but rather that even in cases where bias *could* exist it can be overcome by the nature of the legislative scheme.

Consequently, there is no basis or need for a recusal in the determination of this matter.

As you have made your letter public, a copy of this letter will be sent to Mr. Wilkinson.

Sincerely,



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

c.c.: The Honourable Jonathan Wilkinson, Minister of Energy and Natural Resources