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émocratie en surveillance

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The Hon. Victoria Gray, K.C.  
Office of the Conflict of Interest Commissioner  
First Floor, 421 Menzies Street  
Victoria, British Columbia  
V8V 1X4

Via email to: [conflictofinterest@coibc.ca](mailto:conflictofinterest@coibc.ca)

August 17, 2023

**RE: Request for inquiry into whether former Premier John Horgan, and/or anyone acting on his behalf, violated the *Members' Conflict of Interest Act* by participating in or attempting to influence decisions related to Teck Resources Ltd. after process began that resulted in him becoming a director of Teck spinoff company Elk Valley Resources Ltd.**

Dear Commissioner Gray:

I am writing to request under subsection 19(2) of the "*Members' Conflict of Interest Act* (the "*MCOIA*" – [RSBC 1996, c. 287]) an inquiry and issuance of an opinion concerning the actions of former Premier John Horgan and/or persons acting on his behalf participating in or trying to influence the decision-making process concerning the Government of B.C.'s position on the Government of Canada requesting 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 using insider information to benefit Teck's interests, after the process began that resulted in Mr. Horgan becoming a director of Teck's spinoff company Elk Valley Resources on the first day after he resigned as an MLA on March 31, 2023.

As soon as that process began, according to Mr. Horgan sometime in December 2022, Mr. Horgan clearly had a conflict of interest or apparent conflict of interest as defined in the *MCOIA* (section 2) concerning Teck's interests, given that he

was negotiating a position with Teck that would provide him with financial benefits.

Given his role as Premier up to November 18, 2022, and his meeting with Teck executives on October 11, 2022, it is very likely that he and/or persons acting on his behalf continued to participate in some way in Government of B.C. decision-making process(es) concerning the Government of Canada's decision-making process(es) about whether to request an IJC investigation of Teck's mines until he resigned as an MLA on March 31, 2023.

It would be a violation of the *MCOIA* for Mr. Horgan, or persons acting on his behalf, to participate in any decision-making process concerning Teck's interests (under section 3 of the *MCOIA*), or to attempt to influence any such decision-making process (under section 5), or to use insider information to further Teck's interests (under section 4).

### **1. The decision-making process concerning Teck Resources Ltd., and Mr. Horgan'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 – as published 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>.

The Government of B.C. and Teck have opposed 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 B.C. Government officials and MLAs since 2010, including on issues of mining effluent.

Only a full investigation could determine whether Mr. Horgan's claim is true that he had his first discussion about becoming a director of Elk Valley in December 2022, according to this article in the *Globe and Mail*:

<https://www.theglobeandmail.com/politics/article-former-bc-premier-john-horgan-joins-board-of-coal-business/>.

To extend the period back somewhat further, Teck's registration of monthly Lobbying Activities in the B.C. Registry by officers and employees of the company shows that Teck directly lobbied Premier Horgan on mining issues on October 11, 2022, as you can see at:

<https://www.lobbyistsregistrar.bc.ca/app/secure/orl/lrs/do/cmmLgPblcVw?comlogId=22049&searchPage=clientOrgCorpSummary&sMdky=1692139127737>.

From that date forward, Teck's registrations in the B.C. Registry of Lobbyists covering the period from October 1, 2022 to November 1, 2022, which you can see at:

<https://www.lobbyistsregistrar.bc.ca/app/secure/orl/lrs/do/vwRg?cno=2851&regId=56565730>

and for the period November 1 to December 30, 2022, which you can see at:

<https://www.lobbyistsregistrar.bc.ca/app/secure/orl/lrs/do/vwRg?cno=2851&regId=56566220>

and for the period December 30, 2022 to January 24, 2023, which you can see at:

<https://www.lobbyistsregistrar.bc.ca/app/secure/orl/lrs/do/vwRg?cno=2851&regId=56566853>

and for the period January 24, 2023 to February 10, 2023, which you can see at:

<https://www.lobbyistsregistrar.bc.ca/app/secure/orl/lrs/do/vwRg?cno=2851&regId=56567458>

and for the period February 10, 2023 to March 31, 2023, which you can see at: <https://www.lobbyistsregistrar.bc.ca/app/secure/orl/lrs/do/vwRq?cno=2851&regld=56567758>

all show that Teck was registered to lobby the “Office of the Premier” and “Member(s) of the BC Legislative Assembly” through the entire time period from October 1, 2022 until March 31, 2023.

Only a full investigation could determine whether B.C. Environment Minister George Heyman’s claim made on April 20, 2023 in the B.C. Legislature is true that he “never had a discussion about the IJC with the former Premier [Horgan]” – although he qualified that claim by saying that it was “to the best of my recollection” that he had never had such a discussion. You can see Minister Heyman’s statement in the Hansard for April 20, 2023 under the heading “Elk Valley pollution issue and role of government officials” at: <https://www.leg.bc.ca/content/Hansard/42nd4th/20230420am-Hansard-n308.html#d4e1283>.

No other member of the B.C. Executive Council, or minister or official of the Government of Canada, has been questioned or made statements concerning whether Mr. Horgan communicated with them concerning the IJC investigation request decision during whatever time period Mr. Horgan was negotiating the position he obtained from Teck/Elk Valley.

## **2. John Horgan’s conflict of interest**

As mentioned above, as soon as the process began that resulted in Mr. Horgan becoming a director of Teck’s spinoff company Elk Valley Resources on the first day after he resigned as an MLA on March 31, 2023, which Mr. Horgan claims began sometime in December 2022, Mr. Horgan clearly had a conflict of interest or apparent conflict of interest as defined in the *MCOIA* (section 2) concerning Teck’s interests, given that he was negotiating a position with Teck that would provide him with financial benefits.

Even if it was determine that Mr. Horgan did not have a real conflict of interest as soon as this process began, it is clear that he had an apparent conflict of interest, as evidenced by the reaction to his announcement that he was joining the board of Elk Valley as reported in these media articles by CBC:

<https://www.cbc.ca/news/canada/british-columbia/john-horgan-coal-company-1.6799938>

and The Narwhal:

<https://thenarwhal.ca/bc-john-horgan-teck-coal/>

and The Tyee:

<https://thetyee.ca/Opinion/2023/04/06/Horgan-Joins-Coal-Company-Board/>

and EnergyNow.ca:

<https://energynow.ca/2023/04/energy-hypocrite-former-b-c-premier-john-horgan-to-join-board-of-new-coal-business/>.

### **3. How the *Members' Conflict of Interest Act* applies to John Horgan's conflict of interest**

#### **a) The *Members' Conflict of Interest Act* (the "*MCOIA*") must be interpreted broadly**

The *Members' Conflict of Interest Act* (the "*MCOIA*") is remedial legislation. Section 8 of the B.C. *Interpretation Act* [RSBC 1996, c. 238] requires that the *MCOIA* be "given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects."

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 *MCOIA***

Section 2, combined with section 3 and the definition of "private interest" in subsection 1 of *MCOIA*, prohibits all member of the B.C. Legislature and Executive Council from exercising an official power, duty or function if the member has a conflict of interest or apparent conflict of interest.

Subsection 2(1) states that a public office holder is in a conflict of interest when s/he "when the member exercises an official power or performs an official duty or function in the execution of his or her office and at the same time knows that in the performance of the duty or function or in the exercise of the power there is the opportunity to further his or her private interest."

Subsection 2(2) states that a public office holder is in an apparent conflict of interest when s/he "if there is a reasonable perception, which a reasonably well informed person could properly have, that the member's ability to exercise an official power or perform an official duty or function must have been affected by his or her private interest."

Section 5 prohibits a public office holder from using “his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.”

“Private interest” is defined in subsection 1 of the *MCOIA* 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.

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 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).

**c) Using insider information to further private interests also violates a provision of the *MCOIA***

Even if the member of the Legislature or Executive Council does not participate in or attempt to influence a decision-making process that violates sections 2, 3 or 5 of the *MCOIA*, they can still be in violation of the *MCOIA* if they use insider information to further their interests (under section 5).

**4. Request for examination of whether John Horgan, or anyone acting on his behalf, has violated the *Members' Conflict of Interest Act***

Given the following facts about John Horgan, as detailed in above in sections 1 and 2:

- a) Teck Resources Ltd. lobbied John Horgan directly on mining issues in October 2022;
- b) Teck was registered to lobby B.C. MLAs until Mr. Horgan resigned at the end of March 2023 and joined the board of Elk Valley Resources;
- c) Mr. Horgan claims, but has not proven, that the process that led to him joining the board of Elk Valley Resources began only in December 2022;
- d) B.C. Environment Minister Heyman has that his best recollection is that he has not communicated with Mr. Horgan about the IJC investigation issue, but has not proven that there were no communications;

and given the Government of Canada's decision-making process concerning whether to request an investigation by the IJC of contamination of water systems by mines operated by Teck (which the B.C. government opposed) continued actively through the entire time period at issue, there are reasonable and probable grounds for an inquiry into whether Mr. Horgan participated in or attempted to influence the B.C. government's or federal government's decision-making process(es) concerning whether to request the IJC investigation, or used

insider information to further his interest in obtaining the board position at Elk Valley.

As detailed above in section 3, participating in or attempting to influence a decision that applies specifically to a company about which one has a conflict of interest or an apparent conflict of interest violates provisions of the *MCOIA*, as does using insider information to further one's interests.

Only a full inquiry by you as Conflict of Interest Commissioner under section 21 of the *MCOIA*, with orders from you under subsection 21(2) to everyone involved to testify and produce records of communications and other evidence, can determine whether Mr. Horgan violated any of these provisions of the *MCOIA*.

As a result of the above, Democracy Watch requests under section 19 of the *MCOIA* that you initiate an inquiry under section 21 of the *MCOIA* into this matter.

In conclusion, Democracy Watch is happy to provide any further information to facilitate an inquiry into this matter in a timely way.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Duff Conacher', with a stylized flourish at the end.

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