



## **OPINION**

**OF  
THE CONFLICT OF INTEREST COMMISSIONER  
PURSUANT TO SECTION 19(1) OF THE  
*MEMBERS' CONFLICT OF INTEREST ACT***

**IN THE MATTER OF AN APPLICATION BY  
LORNE DOERKSON, MLA (CARIBOO-CHILCOTIN)  
WITH RESPECT TO ALLEGED CONTRAVENTIONS OF THE  
*MEMBERS' CONFLICT OF INTEREST ACT*  
BY THE HONOURABLE JOSIE OSBORNE, MLA, (MID ISLAND-  
PACIFIC RIM) AND MINISTER OF LAND, WATER  
AND RESOURCE STEWARDSHIP**

City of Victoria

Province of British Columbia

August 30, 2022

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## GLOSSARY OF ABBREVIATIONS

Act	<i>Members' Conflict of Interest Act</i> , RSBC 1996, c. 287
ADM	Assistant Deputy Minister
CEO	Chief Executive Officer
CFO	Chief Financial Officer
Coastwise	Coastwise Holdings Corp.
Gardens	Naa'Waya'Sum Coastal Indigenous Gardens in Tofino, BC, also known as Tofino Botanical Gardens
Garden Business	Operating Business of Gardens
Garden Property	Property at 1084 Pacific Rim Highway, Tofino, BC
HWI	Healthy Watersheds Initiative
HWI 1.0	Healthy Watersheds Initiative in 2021
HWI 2.0	Healthy Watersheds Initiative in 2022
IPCA	Indigenous Protected and Conserved Area
LWRS	Land, Water and Resource Stewardship
MakeWay	MakeWay Charitable Society and MakeWay Foundation (both singly and together)
MakeWay/MECCS Funding Agreement	Agreement dated March 30, 2022 between MakeWay and MECCS
MakeWay/Patterson Contractor Agreement	Agreement effective September 15, 2021 between Mr. Patterson and MakeWay
MECCS	Ministry of Environment and Climate Change Strategy
Property Sale Agreement	September 17, 2021 Agreement between Mr. Patterson and MakeWay
Protocol Agreement	Agreement dated July 20, 2022 between Commissioner and Treasury Board
REFBC	Real Estate Foundation of BC
Share Sale Agreement	Agreement between Mr. Patterson and MakeWay regarding Coastwise shares
TBS	Treasury Board Submission dated December 22, 2021
WBC	Watersheds BC

## A. SUMMARY

[1] MLA Lorne Doerkson, the Member for Cariboo-Chilcotin, wrote to me on June 28, 2022 about a “potential conflict of interest” on the part of the Honourable Josie Osborne, Minister of Land, Water and Resource Stewardship (“LWRS”) arising from her husband’s financial dealings with MakeWay Charitable Society and the government’s Healthy Watersheds Initiative (“HWI”) grant in 2022 of \$15 million to MakeWay Foundation. (Because MakeWay Foundation and MakeWay Charitable Society operate together, I refer to them both singly and together as “MakeWay” throughout the Opinion). In later correspondence, MLA Doerkson also requested “a full accounting of the facts on everything that transpired between [MakeWay] and Minister Osborne.”

[2] I do not have jurisdiction to investigate “potential” conflicts of interest or provide “a full accounting of facts” which could relate to a conflict of interest but do not necessarily do so. I do not have the jurisdiction to investigate a matter based on suspicion alone.

[3] A Member of the Legislative Assembly is entitled to seek my opinion regarding the conduct of another member, but only by providing reasonable and probable grounds to believe that the other member is in contravention of the *Members’ Conflict of Interest Act* (“Act”), and by setting out the grounds for the belief and the nature of the contravention alleged, pursuant to s. 19(1) of the Act.

[4] I exchanged correspondence with MLA Doerkson regarding what he was required to provide if he wished to obtain my opinion under s. 19(1) of the Act.

[5] Ultimately, MLA Doerkson confirmed that he believed that Minister Osborne had contravened the Act on four occasions, which are detailed in four separate allegations set out more fully below. Essentially, MLA Doerkson alleges that Minister Osborne contravened the Act by participating in a Treasury Board meeting on January 11, 2022, by dealing with government staff prior to March 21, 2022, by participating in a lobbying activity on March 30, 2022, and by making a public announcement on April 21, 2022. Regarding dealing with staff, MLA Doerkson alleges that Minister Osborne used her office to influence government staff to select MakeWay for the \$15 million HWI grant in order to further her private interest. With respect to the three other occasions, MLA Doerkson alleges that Minister Osborne acted when there was an apparent conflict of interest.

[6] For the reasons set out below, I have concluded that Minister Osborne did not contravene the Act as alleged by MLA Doerkson.

[7] I use many abbreviations in this Opinion. I have included a Glossary of the abbreviations to assist the reader. In most quotations, I insert my abbreviations in square brackets, to clarify that I have changed the text of the quotation to ensure consistency with my abbreviations.

## B. REQUEST FOR OPINION LEADING TO ALLEGATIONS

[8] On June 28, 2022, MLA Lorne Doerkson, the Member for Cariboo-Chilcotin, wrote to me about a “potential conflict of interest” on the part of the Honourable Josie Osborne, Minister of LWRS, stating the following:

The Official Opposition has obtained information that shows the minister’s spouse listed and sold a multi-million dollar property listed on [Minister] Osborne’s financial disclosure forms to [MakeWay]. Following MakeWay’s \$2.3 million purchase, [Minister] Osborne was lobbied by the society or their coalition members on 10 separate occasions between September 23, 2021 to May 16, 2022, according to the Lobbyist Registry. In April of this year, MakeWay was awarded a \$15 million stewardship [grant] for watershed health from [Minister] Osborne’s ministry.”

[9] MLA Doerkson and the Opposition made the request public later that same day, before my Office had an opportunity to inform Minister Osborne.

[10] In his letter, MLA Doerkson provided a timeline of events from August 2020 to April 21, 2022 that he believed “suggested” a “potential conflict of interest”, and urged my office to investigate by pursuing a number of questions related to the sale of the property and communications between Minister Osborne and MakeWay. One of MLA Doerkson’s questions was “[d]id the Minister, in exercising her duties, engage in activities that in any way constitute a contravention of the provisions of the [Act]?”

[11] I wrote back to MLA Doerkson on June 28, 2022 acknowledging his letter. I asked him to confirm my assumption that his intention was to request my opinion under s. 19(1) of the Act and informed him that I would soon follow up with specific questions. Section 19(1) is as follows:

19(1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act or of section 25 of the *Constitution Act* may, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, request that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.

[12] I wrote MLA Doerkson a second letter dated June 28, 2022, stating that his assumption that I can investigate “concerns” about a “potential” contravention of the Act was incorrect, and that I do not have the jurisdiction to initiate my own investigations or to investigate a matter based on suspicion alone. Because he did not set out any clear allegations in reference to a specific section of the Act, I asked MLA Doerkson to articulate the basis for his concerns. I asked him to clarify when and how he believed Minister Osborne exercised an official power or performed an official duty regarding MakeWay, and to identify the private interest involved in relation to a conflict or apparent conflict of interest. Unfortunately, apparently due to email connectivity issues in the Cariboo area, MLA Doerkson did not receive my second letter dated June 28, 2022 at that time.

[13] I provided a copy of my two June 28, 2022 letters to Minister Osborne for her information, but did not request a response from her at that time, because the exact nature of MLA Doerkson’s allegations was unclear to me.

[14] Also on June 28, 2022, I received from an assistant to Minister Osborne the following information:

... Minister Osborne did not participate in the decision to engage [Watersheds BC (“WBC”)] and MakeWay to administer funding for the [“HWT”], as the decision was taken when the program fell under the Ministry of Environment and Climate Change Strategy [“MECCS”], prior to the creation of the Ministry of [LWRS]. Furthermore, after becoming Minister for [LWRS], Minister Osborne set up a screen with the Deputy Minister for [LWRS] to recuse herself from any decision-making involving MakeWay.

[15] I wrote to MLA Doerkson on June 29, 2022 to provide him with the information I had received on behalf of Minister Osborne, and asked whether this might affect his decision to proceed with his request.

[16] MLA Doerkson wrote back to me on July 4, 2022 to confirm that he intended to proceed with his request for my opinion. However, because he had not received my second letter of June 28, 2022, his response did not answer my questions, and instead proposed further questions for me to pursue. I provided Minister Osborne with a copy of this letter, but did not request a response from her at that time, because MLA Doerkson’s allegations were still unclear.

[17] On July 5, 2022, an assistant to Minister Osborne provided me with additional details and documentation in support of the Minister’s response of June 28, including a copy of the March 30, 2022 written agreement between MECCS and MakeWay (“MakeWay/MECCS Funding Agreement”). I provided a copy of this documentation to MLA Doerkson that same day.

[18] It was necessary to correspond further with MLA Doerkson as a result of the delay in his receipt of my second letter of June 28, 2022 and to address the remaining deficiencies in his request for my opinion. I studied MLA Doerkson’s correspondence and endeavoured to formulate what I thought were his complaints in a form I could address and which used terminology consistent with the Act. I sent copies of this correspondence, which occurred between July 6-13, 2022, to Minister Osborne for her information.

[19] In my July 11, 2022 letter to MLA Doerkson, I detailed what I understood to be his four specific allegations, one of which was expressed as two possible alternatives. The specific allegations narrowed the scope of relevant facts, recognizing that the MakeWay/MECCS Funding Agreement was with MECCS not LWRS, and reduced the number of lobbying activities which are relevant. In his letter to me dated July 13, 2022, MLA Doerkson confirmed his four allegations, including which of the alternatives accurately described his allegations.

[20] I wrote to MLA Doerkson on July 14, 2022 to advise him that, because he had confirmed the specific allegations and had offered no further documentation in support of his request for my opinion, I considered his request finalized, and that any further steps I would take as part of my internal process would be confidential to my office and those from whom I sought information.

## C. ALLEGATIONS

[21] MLA Doerkson's four allegations are as follows:

**1. Alleged breach of section 3 of the Act on January 11, 2022, regarding a Treasury Board decision, being an apparent conflict of interest as described in section 2(2) of the Act.**

Minister Osborne was a member of Treasury Board for the period commencing March 10, 2021. Commencing September 17, 2021, her spouse, George Patterson, had a contractual relationship with MakeWay as an advisor to the Naa'Waya'Sum Coastal Indigenous Gardens in Tofino, BC, also known as the Tofino Botanical Gardens ("Gardens"). MLA Doerkson believes that on January 11, 2022, Minister Osborne participated in a Treasury Board decision to approve funding of \$30 million from contingencies for the second phase of the [HWI]. Because he believes that MakeWay had lobbied Minister Osborne previously in relation to HWI 2.0, MLA Doerkson believes that Minister Osborne would have known that MakeWay would be considered for being awarded all or part of the HWI 2.0 funding. He believes that Minister Osborne's ability to participate in the decision to approve the allocation of funds for HWI 2.0 must have been affected by her private interest in MakeWay, and that her private interest in MakeWay arose from Mr. Patterson's contract with MakeWay.

**2. Alleged breach of section 5 of the Act on or before March 21, 2022, regarding Treasury Board staff.**

As stated regarding the first allegation, Minister Osborne was a member of Treasury Board for the period commencing March 10, 2021. For the period commencing September 17, 2021, her spouse, George Patterson, had a contractual relationship with MakeWay as an advisor to the Gardens. On March 21, 2022, Treasury Board staff approved an approach by MECCS that identified WBC "as the organization to deliver funding to Indigenous communities and organizations," and that "to use WBC, a grant to MakeWay was required". Materials provided by Minister Osborne during the correspondence leading to the allegations indicated that contract negotiations took place at the staff level, between Treasury Board staff and MECCS staff. MLA Doerkson believes that Minister Osborne used her office to seek to influence that staff decision.

**3. Alleged breach of section 3 of the Act on March 30, 2022, regarding MakeWay lobbying activities, being an apparent conflict of interest as described in section 2(2) of the Act.**

MLA Doerkson believes that in participating in a March 30, 2022, lobbying activity with MakeWay, on the same day as the signature of the MakeWay/MECCS Funding Agreement, Minister Osborne performed an official duty which could have influenced the outcome of the MakeWay/MECCS Funding Agreement and this constitutes an apparent conflict of interest.

**4. Alleged breach of section 3 of the Act on April 21, 2022, regarding public announcement, being an apparent conflict of interest as described in section 2(2) of the Act.**

MLA Doerkson alleged that on April 21, 2022, Minister Osborne announced that "half of the [HWI] funding (\$15 million) will be provided to [WBC] through [MakeWay] to coordinate watershed restoration projects led or co-led by First Nations" and said that a priority for her ministry was "ensuring that water and watersheds are respected and

valued, in part through the development of a Watershed Security Strategy and Watershed Security Fund". MLA Doerkson wrote that Minister Osborne introduced Zita Botelho, Executive Director of WBC, and he noted that WBC uses the MakeWay platform. MLA Doerkson believes that there is a reasonable perception that these announcements served to further MakeWay's public profile and reputation, which in turn would have a beneficial effect on Mr. Patterson's contractual relationship with MakeWay.



#### **D. INVESTIGATIONS, FINDINGS, AND SOURCES OF CONFUSION**

[22] On July 15, 2022, I wrote to Minister Osborne and asked her to address specific questions related to each of MLA Doerkson's four allegations quoted above.

[23] Since two of MLA Doerkson's allegations relate to Treasury Board matters, privileged and confidential Treasury Board documents were relevant. On July 20, 2022, I entered into a protocol agreement with Treasury Board ("Protocol Agreement") regarding my review of such documents. Among other things, the Protocol Agreement required me, where I concluded that Treasury Board documents should be referenced in my Opinion, to give a Treasury Board official 14 days' notice of the relevant portions of my draft Opinion making reference to the Documents.

[24] I received the privileged and confidential Treasury Board documents on July 21, 2022 on that basis.

[25] Also on July 21, 2022, Minister Osborne provided me with her response to my questions in my July 15, 2022 letter, together with copies of relevant documentation.

[26] I reviewed the documentation provided by MLA Doerkson, Minister Osborne, and Treasury Board, and reviewed information from other sources, as set out in the Appendix. I also made further inquiries to Minister Osborne, Mr. Patterson's lawyer, and Treasury Board.

[27] Minister Osborne provided statements about her state of mind at relevant times. Her statements are entirely consistent with the relevant documentation. This is not a case in which, for example, a "whistleblower" member of staff reported that Minister Osborne had said something to him or her which Minister Osborne denied. In other words, there is no evidence contradicting Minister Osborne's statements, and there is ample evidence which supports her statements. I therefore accept her statements as accurate.

[28] I set out below what I conclude are the relevant facts. I first set out background prior to September 2021 describing MakeWay, Mr. Patterson and the Gardens, the HWI, Real Estate Foundation of BC ("REFBC"), WBC and Minister Osborne. I then set out the relevant facts chronologically beginning September 2021.

[29] As I will discuss in the Analysis section below, two facts explain some confusion regarding Minister Osborne's alleged interactions with MakeWay.

[30] First, MakeWay utilizes what it terms a "Shared Platform" model to assist other charitable organizations. Shared Platform projects provide that legal agreements are with MakeWay, and that MakeWay provides assistance with legal and financial requirements for a charity, but that other dealings are with the particular project. WBC is a MakeWay Shared Platform project. As a result, legal agreements regarding WBC are with MakeWay. When Shared Platform projects such as WBC engage in lobbying activities, the Lobbyist Activity Report lists the "organization" as MakeWay even though the activity was with the representative of the Shared Platform project, such as WBC.

[31] A second fact discussed below is that the initial HWI in 2021 provided funding to REFBC, but in March 2022, Treasury Board staff determined that, for accounting and reporting reasons, REFBC should not receive contingency funding. This resulted in the change in mid-March 2022 of the intended recipient of the HWI 2.0 funds from REFBC to MakeWay.

## **1. BACKGROUND FACTS AS AT SEPTEMBER 2021**

### **a) MakeWay**

[32] MakeWay Foundation and MakeWay Charitable Society are both societies registered under the BC Society Act. They operate together as “MakeWay”, with a goal to “enable nature and communities to thrive together” by “building partnerships, providing solutions, grants, and services for the charitable sector across the country”. MakeWay’s partners include community initiatives, foundations, Indigenous organizations, philanthropists, governments, and diverse communities across the country. MakeWay works nationally and leases premises in Vancouver, Toronto, Yellowknife, Iqaluit, Montreal, and Niagara Falls.

[33] In 2000, MakeWay introduced its “Shared Platform” model. This is an organizational model enabling multiple projects to operate through MakeWay, rather than through individual charities. Shared Platform projects “receive a suite of capacity-building tools and operational supports, including governance and compliance expertise, financial and risk management, human resources, payroll and contract supports, and grants administration”. Shared Platform projects become part of the MakeWay organization.

[34] The audited financial statements of MakeWay for the year ending March 31, 2021 show the financial situation for the two MakeWay societies combined. The financial statements show total assets of about \$65.7 million, of which about \$61.3 million was in a “restricted fund”, either externally restricted for programmatic work, or donor advised funds. As at the time of its 2021 Annual Report, MakeWay hosted 67 Shared Platform projects.

### **b) Mr. Patterson and the Gardens**

[35] In 1997, Mr. George Patterson became sole owner of an undeveloped 12-acre property in Tofino, BC at 1084 Pacific Rim Highway (“Garden Property”). He decided to build a botanical garden with a vision to introduce visitors to the natural and cultural histories of Clayoquot Sound, including both settler and Indigenous histories. Over the following twenty or so years, Mr. Patterson worked with members of the Tla-o-qui-aht First Nations in the development of some of the Gardens’ exhibits, events, and programs. He retained ownership of the land personally. The operating business (“Garden Business”) was owned by Coastwise Holdings Corp. (“Coastwise”), a company solely owned by Mr. Patterson. Coastwise operated the Garden Business under the name “Tofino Botanical Gardens”.

[36] In 2020, Mr. Patterson was planning for his retirement. In August 2020, he listed the Gardens for sale for \$3.75 million. Mr. Patterson turned down one formal and two informal offers because the potential purchasers did not wish to retain the property as gardens, and instead wanted to develop the property for housing or other commercial development. Mr. Patterson took the Gardens off the market.

[37] Mr. Patterson discussed the sale of the Gardens with Eli Enns of IISAAK OLAM Foundation (“IOF”), an Indigenous-led non-profit organization that shares knowledge and builds capacity for Indigenous Protected and Conserved Areas (“IPCAs”). However, owing to IOF’s relative inexperience, Mr. Patterson and IOF discussed bringing in MakeWay to conduct the purchase and effectively hold the Gardens until a time that IOF can own and operate it independently.

[38] Mr. Patterson is married to Minister Osborne.

**c) HWI, REFBC, and WBC**

[39] In fiscal year 2020/21, the BC government transferred \$27 million to REFBC for watershed-related work. The funding was administered by REFBC and WBC, and became known as the HWI or HWI 1.0.

[40] REFBC is “a philanthropic organization working to advance sustainable, equitable, and socially just land use and real estate practices across BC”.

[41] WBC is a “capacity-developing” organization that provides training, resources, and peer-to-peer support to local government staff, First Nations, watershed boards and roundtables, regional provincial staff, and other watershed professionals. WBC uses MakeWay’s shared platform.

**d) Minister Osborne**

[42] The Honourable Josie Osborne was elected as MLA for Mid Island-Pacific Rim in the general election on October 24, 2020. She was appointed Minister of Municipal Affairs on November 26, 2020 and was appointed to Treasury Board on March 10, 2021. She is married to George Patterson.

## **2. CHRONOLOGY OF KEY EVENTS BEGINNING SEPTEMBER 2021**

### **a) Mr. Patterson's dealings with MakeWay in September, 2021**

[43] In September 2021, Mr. Patterson sold the Gardens to MakeWay.

[44] Minister Osborne advised that she did not have any discussion or conversation with any representative of MakeWay at any time about the purchase, or potential to purchase the Garden Property or Garden Business. I accept her statement as accurate.

[45] MakeWay purchased the Gardens in September 2021 as part of its IPCA Program. MakeWay-holds decision-making authority and responsibility for operating the Gardens. The IPCA Program is embarking on a transition period to grow the Gardens into the first IPCA Innovation Centre Campus in Canada.

[46] There are three relevant agreements regarding MakeWay's purchase of the Gardens: the agreement of purchase and sale of the Garden Property ("Property Sale Agreement"), the agreement of purchase and sale of the Coastwise Shares ("Share Sale Agreement"), and the agreement for Mr. Patterson to provide advisory services to MakeWay ("MakeWay/Patterson Contactor Agreement").

[47] The assessed value of the Garden Property in July, 2021 was \$2,308,400. The sale price of the Garden Property in the Property Sale Agreement of September 17, 2021 was \$2,304,400, being \$4,000 (about 0.2 percent) less than the assessed value.

[48] I do not have information on the value of the Gardens Business or the Coastwise shares. The Share Sale Agreement is confidential, but provides that the purchase price would be adjusted to reflect the difference between the closing working capital and the working capital target, and be calculated within 60 days after the closing date.

[49] Mr. Patterson and MakeWay entered into the MakeWay/Patterson Contactor Agreement, which is stated to be effective as of September 15, 2021. It refers to "[MakeWay]'s IPCA Innovation Program", describing the project as seeking "to establish Indigenous protected and conserved areas across Canada – starting with an innovation centre at the former Tofino Botanical Gardens in Clayquot Sound – to build capacity, mobilize knowledge and facilitate Indigenous-led conversation and stewardship initiatives".

[50] The MakeWay/Patterson Contractor Agreement states that Mr. Patterson will provide services related to maintenance and operation of the Gardens. It is for a maximum term of one year, but MakeWay can terminate it forthwith if it has cause, and on 14 days' written notice without cause. Mr. Patterson may also terminate the contract upon 14 days' notice but only if MakeWay breaches the contract. The MakeWay/Patterson Contractor Agreement provides that Mr. Patterson may receive a maximum amount per month for fees and expenses. I was advised of the amount confidentially for the purposes of my investigation. The MakeWay/Patterson Contractor Agreement does not refer to seeking government or other grants, or state that it is dependent in any way on specific grants or funding.

## **b) Lobbying Activity in October, 2021**

[51] The Lobbyist Registry has two entries in 2021 referring to Minister Osborne and MakeWay. However, both of them relate to projects utilizing MakeWay's Shared Platform.

[52] The first relevant entry is a Lobbying Activity Report dated October 6, 2021 which states that the lobbying organization is MakeWay and the lobbying activity is a letter sent on behalf of members of BC Wildlife Federation. The in-house lobbyist who participated in the activity is listed as Coree Tull. Referencing this entry, MLA Doerkson commented in his letter to me of June 28, 2022: "[l]ess than three weeks after the property sale, MakeWay lobbied [Minister] Osborne regarding 'Creation and Implementation of the Watershed Security Strategy and the Watershed Security Fund committed to in 2021 mandate letters'".

[53] I reviewed the letter which is the subject of this report. The letter is addressed to Premier Horgan and calls for a "BC-wide moratorium on groundwater extraction for water bottling and export", and one of the signatories is Coree Tull of the Canadian Freshwater Alliance. The letter does not refer to the HWI. Neither the signature line nor the letter itself refer to MakeWay.

[54] The second relevant entry in the Lobbyist Registry is a Lobbyist Activity Report dated October 26, 2021, and the topic is described as "advocacy related to mining law reform regarding tailings safety, water management and commitment to financial assurances (bonding)". The lobbyist is described as Nikki Skuce of the Northern Confluence Initiative.

[55] Both of these lobbying records relate to projects utilizing MakeWay's Shared Platform, being the BC Freshwater Initiative and the Northern Confluence Initiative. Minister Osborne advised that she was not aware, until she was reviewing MLA Doerkson's correspondence in July, 2022, that these two projects were connected with MakeWay. I accept her statement as accurate.

## **c) Development of HWI 2.0 in December, 2021 through March 29, 2022**

[56] In preparation for the meeting to be held on January 11, 2022, Treasury Board members were provided with a confidential Treasury Board Submission – Request for Decision ("TBS") dated December 22, 2021 regarding MECCS. The TBS refers to a further investment in the HWI, and refers to that as HWI 2.0. The TBS states that "funds would be managed through a shared cost arrangement, with the funding continued to be administered by REFBC with support from WBC." The TBS refers to the proposed \$30 million grant including approximately 8% in administration, staffing and program fees. The TBS does not refer to MakeWay. It lists 49 projects in a draft project list, none of which refer to MakeWay.

[57] On January 6, 2022, MECCS made a submission to Treasury Board with a request for \$30 million in funding to continue HWI. The submission was made as part of the MECCS Climate Preparedness Action Plan Submission.

[58] The Treasury Board met on January 11, 2022. MakeWay is not mentioned in the Treasury Board Minute or in the TBS under consideration at the meeting. REFBC is referred to as the intended HWI 2.0 funding administrator, and the support that WBC would provide to REFBC is not described in the documentation.

[59] A Treasury Board Decision Letter dated January 11, 2022 to MECCS Minister George Heyman approved MECCS request to access up to \$30 million from the Contingencies (All Ministries) and new Programs 2021/22 for a second phase of the HWI of MECCS. The letter

confirmed that MECCS was to work with Treasury Board staff to confirm conditions of watershed protection funding (e.g. eligible projects, program parameters) prior to launching the program.

[60] Minister Osborne advised that she was not aware that MakeWay would be considered for receiving all or part of the HWI 2.0 funding as part of the Treasury Board process. This is consistent with the information available to Minister Osborne prior to the January 11, 2022 Treasury Board meeting, and I accept this statement as accurate.

[61] In its speech from the throne on February 8, 2022, the Government announced that it would launch a new ministry to oversee better stewardship and management of B.C.'s land and resources.

[62] On February 25, 2022, Premier John Horgan appointed Josie Osborne as Minister of LWRs, effective April 1, 2022. LWRs is accountable for integrated land and natural resource management, including setting objectives for land and marine environments, effectively managing cumulative effects, and advancing reconciliation with Indigenous peoples, environmental sustainability, and economic growth.

[63] Prior to April 1, 2022, when the responsibility for watershed security initiatives was transferred from MECCS to the Ministry of LWRs, decisions in relation to the \$30 million HWI 2.0 grant allocation were made by James Mack, Assistant Deputy Minister ("ADM") of MECCS. Mr. Mack made these decisions on behalf of MECCS and informed Minister George Heyman.

[64] A Treasury Board staff memo dated March 7, 2022 refers to HWI 2.0 with "the funding continued to be administered by REFBC with support from WBC." Also on March 7, 2022, Tamara Romanova, Chief Financial Officer ("CFO") and Executive Director of MECCS, advised MECCS program staff member Jennifer Vigano that the REFBC was not eligible to receive year end or contingency funding because it is a Government Reporting Entity.

[65] A Treasury Board staff memo dated March 16, 2022 regarding Watersheds Contingency Funding refers to WBC/MakeWay, but states that if WBC is unable to take on the role described, government will consider two other options.

[66] By March 17, 2022, MECCS staff had confirmed that WBC could take on the role of administering HWI 2.0 funding.

[67] On March 17, 2022, MECCS staff advised Minister Heyman of MECCS that a grant to MakeWay was required in order to continue program elements similar to what was manifested under HWI 1.0. Staff explained that WBC was identified as the organization to deliver funding to Indigenous communities and organizations, and because WBC utilizes the MakeWay shared platform, a grant to MakeWay was required.

[68] On March 24, 2022, Jennifer Vigano, program staff member of MECCS, provided a draft agreement to MakeWay/WBC for review and feedback.

[69] On March 28, 2022, Mr. Mack, ADM of MECCS, provided MakeWay/WBC with the final form of the draft agreement.

[70] On March 29, 2022, CFO Romanova of MECCS approved the issuance of the final grant agreement with MakeWay regarding the HWI 2.0 grant.

#### **d) MakeWay/MECCS Funding Agreement and Meeting on March 30, 2022**

[71] On March 30, 2022, the MakeWay/MECCS Funding Agreement was signed by James Mack, ADM of MECCS, Joanna Kerr, CEO and President of MakeWay, and Danae Maclean, Director (Finance) of MakeWay.

[72] Also on March 30, 2022, Minister Osborne met with lobbyist Coree Tull, BC Watershed Security Coalition, and Zita Botelho, WBC. Ms. Tull also represents the BC Freshwater Legacy Initiative, which, as stated earlier, is a MakeWay Shared Platform project. This meeting is described in the Lobbyist Registry as being with MakeWay, although the request for the meeting was made on behalf of the BC Freshwater Legacy Initiative and the BC Watershed Security Coalition, not MakeWay.

[73] Minister Osborne provided a Meeting Note dated March 22, 2022 with background information on the topic to be discussed at the March 30 meeting. The note was prepared by Jennifer Vigano, Director, Watershed Sustainability (LWRS). This Meeting Note does not refer to MakeWay. It summarizes that further funding to REFBC for HWI was no longer possible due to fiscal year/accounting rules and that the Provincial Government intended to allocate \$15 million to WBC to support Indigenous led and co-led projects.

[74] The terms of the MakeWay/MECCS Funding Agreement were finalized prior to the March 30, 2022 meeting and were not changed as a result of this meeting.

[75] On or about March 30, 2022, staff explained to Minister Osborne that MakeWay would provide administrative services to WBC to facilitate WBC delivering funding to Indigenous or Indigenous-led watershed projects.

[76] Minister Osborne advised that she did not communicate with Treasury Board staff or MECCS staff at any time about the decision to select WBC/MakeWay to receive the HWI 2.0 funding. I accept this statement as accurate. Nothing in the documentation I reviewed contained any reference to communication between Minister Osborne and either Treasury Board staff or MECCS staff.

[77] I am satisfied that the selection of MakeWay was an operational decision by MECCS staff in consultation with Treasury Board staff, and that Minister Osborne did not have any role in the selection of MakeWay as the HWI 2.0 grant recipient.

#### **e) April, 2022**

[78] Effective April 1, 2022, LWRS became the lead agency responsible for water matters in the Province. As part of that portfolio, LWRS became responsible for the Watershed Security Strategy and Fund, and the HWI program was transferred from MECCS to LWRS.

[79] Upon learning that she was taking on the responsibility for the Water portfolio, Minister Osborne informed Deputy Minister Lori Halls that her husband George Patterson had a contractual relationship with MakeWay as an advisor to the Gardens. This is confirmed in a letter dated April 1, 2022 from Minister Osborne to Ms. Halls.

[80] Ms. Halls took various steps to set up a “firewall” between the Ministry of LWRS on the one hand and Minister Osborne and her office on the other, concerning matters regarding MakeWay. Those measures included advising the Ministry executive team that Minister Osborne was not to be involved in any decision regarding MakeWay. Executive Members were directed

to proactively identify to the Deputy Minister any work with MakeWay that LWRS was involved in currently, and to continue this practice going forward. However, Minister Osborne and her staff were provided with appropriate information regarding MakeWay that did not involve decision-making. The provision of information included providing Minister Osborne with details to support the announcement on April 21, 2022 of the \$30 million HWI 2.0 funding.

[81] The public announcement on April 21, 2022 was made jointly by Premier Horgan and Minister Osborne. Minister Osborne approved her speaking notes, which do not refer to MakeWay. In her introductory comments, Minister Osborne introduced Premier Horgan, Cowichan Tribes Chief Lydia Hwitsum, and Zita Botelho, Director, WBC. The only reference to MakeWay during the public announcement was one comment by Ms. Botelho. She stated that “as stewards of this new investment, [WBC] and [MakeWay] are excited to build on the foundation of HWI, including implementing the learning and principles shared by Indigenous partners and leaders.”

[82] The accompanying news release dated April 21, 2022 quotes Minister Osborne as follows:

A priority for my ministry is ensuring that water and watersheds are respected and valued, in part through the development of a Watershed Security Strategy and Watershed Security Fund.

The work that’s already being completed on wetland and watershed restoration is producing positive results and environmental benefits that will last for years to come.

[83] The Minister approved her quote, which does not mention MakeWay.

[84] LWRS staff approved the April 21, 2022 news release, which includes the following reference to MakeWay: “Half of the funding (\$15 million) will be provided to [WBC] through [MakeWay] to co-ordinate watershed restoration projects led or co-led by First Nations.”

[85] Minister Osborne advised that she did not believe or intend that MakeWay’s public profile and reputation would be furthered by making the announcement, and she did not believe that there was any connection between the announcement and Mr. Patterson’s relationship with MakeWay. I accept this statement as accurate.

#### **f) After April 2022**

[86] The period for adjusting the difference between the closing working capital and the working capital target set out in the Share Sale Agreement expired in late 2021, but it took longer to finalize the precise amount. At some point in 2022, MakeWay paid Mr. Patterson the final adjustment. I was advised of the precise amount on a confidential basis for the purposes of my investigation.

[87] In his earlier correspondence with me MLA Doerkson referred to lobbying activities that took place in April and May 2022. Minister Osborne also provided information related to those events in her response to me. However, the lobbying activities in that period do not relate to the four specific allegations, and therefore they are not relevant to my analysis.



## E. ANALYSIS

- [88] 1) **Alleged breach of section 3 of the Act on January 11, 2022, regarding a Treasury Board decision, being an apparent conflict of interest as described in section 2(2) of the Act.**

Minister Osborne was a member of Treasury Board for the period commencing March 10, 2021. Commencing September 17, 2021, her spouse, George Patterson, had a contractual relationship with MakeWay as an advisor to the Gardens. MLA Doerkson believes that on January 11, 2022, Minister Osborne participated in a Treasury Board decision to approve funding of \$30 million from contingencies for the second phase of the HWI. Because he believes that MakeWay had lobbied Minister Osborne previously in relation to HWI 2.0, MLA Doerkson believes that she would have known that MakeWay would be considered for being awarded all or part of the HWI 2.0 funding. He believes that Minister Osborne's ability to participate in the decision to approve the allocation of funds for HWI 2.0 must have been affected by her private interest in MakeWay, and that her private interest in MakeWay arose from Mr. Patterson's contract with MakeWay.

- [89] The *Members' Conflict of Interest Act* provides as follows in sections 2(2) and 3:

### **Conflict of interest**

2(2) For the purposes of this Act, a member has an apparent conflict of interest 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.

### **Conflict of interest prohibition**

3 A member must not exercise an official power or perform an official duty or function if the member has a conflict of interest or an apparent conflict of interest.

- [90] The requirements for establishing an apparent conflict of interest were summarized by then-Commissioner Fraser in the 2009 *Campbell* decision as follows:

To constitute a breach of the Act, a perception of conflict of interest cannot simply exist in the air or in the abstract, it must be established against a test of reasonableness. While the simple perception of conflict of interest may raise a "red flag" or give rise to suspicion, that is clearly not sufficient to support a finding of an apparent conflict of interest until the objective test of reasonableness, which is mandated by section 2(2), is applied to the particular circumstances under review. Whether a perception is "reasonable" depends on whether it is one that "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" (emphasis added). Notice has to be taken of the mandatory language of the section. The member's ability must have been affected, not may have been or could have been affected, by his or her private interest. I interpret the Act to mean that for a member to be found to have had an

apparent conflict of interest in breach of the Act, he or she must have acted knowingly, or have been deliberately blind in all of the circumstances.  
(at p. 15) [Emphasis in original]

[91] In other words, the question regarding the first allegation is whether there is a reasonable perception, which a reasonably well-informed person could properly have, that Minister Osborne's ability to participate in the Treasury Board decision on January 11, 2022 to approve \$30 million in funding for HWI 2.0 must have been affected by her private interest.

#### **a) Treasury Board Decision**

[92] MLA Doerkson suggested that the Treasury Board decision of January 11, 2022 gave rise to an apparent conflict of interest. I have concluded that the Treasury Board decision on January 11, 2022 was a decision to grant \$30 million in contingency funding to HWI 2.0, but MakeWay was not discussed either at the Treasury Board meeting or in the briefing materials in advance of the meeting. The discussions and decision referred to what had occurred in the prior year, when the funding was given to REFBC, not MakeWay.

[93] It is clear from the documentation I reviewed that the decision to involve MakeWay as a partner with WBC for the HWI 2.0 grant was made at the staff level in March, 2022 and that Minister Osborne could not therefore have been aware of this development in January, 2022. The information that was available to Minister Osborne prior to the January 11, 2022 Treasury Board meeting referred only to REFBC as WBC's partner organization.

#### **b) Private Interest**

[94] The documentation that I have reviewed confirms that Mr. Patterson has a contractual relationship with MakeWay as an advisor to the Gardens, and that Minister Osborne participated in the Treasury Board decision to approve \$30 million in funding for HWI 2.0. However, there was no evidence demonstrating a connection between those two things.

[95] As Mr. Patterson's spouse, Minister Osborne has a private interest in his contracts with MakeWay. Two of those contracts had obligations continuing into 2022, being the MakeWay/Patterson Contractor Agreement and the Share Sale Agreement, which I will discuss shortly. In correspondence, MLA Doerkson suggested that there were two other ways in which Mr. Patterson had an ongoing financial relationship with MakeWay arising from the fact of the property sale, independently of and in addition to the financial arrangement arising from the agreements.

[96] MLA Doerkson suggested that a continuing financial relationship arose from the fact of the property sale. Ordinarily, a seller's obligation is to provide title to property, and the purchaser's obligation is to pay the purchase price, and the obligations are satisfied when the property is transferred and the purchase monies paid. There were no facts suggesting that there would be an ongoing financial relationship here between MakeWay and Mr. Patterson relating to the sale itself after the property transfer.

[97] MLA Doerkson also suggested MakeWay's purchase of the Garden property would constitute a "private financial contribution from MakeWay foundation, thereby creating an 'indebtedness' to the organization and serving as grounds for a *quid pro quo*." In other words, MLA Doerkson was suggesting that MakeWay agreed to purchase the Gardens, and in return, the Minister or her husband agreed to facilitate the HWI 2.0 funding going to MakeWay. Again,

there are no facts suggesting that Mr. Patterson would have an “indebtedness” to MakeWay. The assessed value of the Garden Property in July 2021 was \$2,308,400, and the sale price on September 17, 2021 was \$4,000 or 0.2 percent less, being within a reasonable range for the market value. There were no facts supporting the suspicion of an “indebtedness” or “*quid pro quo*” for this sale at market value.

[98] I do not know the sale price of the Coastwise shares and I do not have the ability to assess their value. However, there was no evidence suggesting that MakeWay agreed to pay an inflated price for them, or explaining why MakeWay would do so. At the time of the sale, the Ministry of LWRs had not been created, and Minister Osborne was Minister of Municipal Affairs. There is no basis for suspecting that Minister Osborne effectively promised to pay back MakeWay for paying Mr. Patterson an inflated price for the Coastwise shares.

[99] The remaining private interests which could be relevant are the private interests arising from the MakeWay/Patterson Contractor Agreement and the Share Sale Agreement.

[100] As stated, the MakeWay/Patterson Contractor Agreement provides that, for the period ending September, 2022, Mr. Patterson can earn a maximum amount in fees and expenses, although MakeWay has the right to terminate the contract on 14 days’ notice in advance of September 2022. Mr. Doerkson’s submissions suggested that Mr. Patterson could benefit if MakeWay obtained the HWI 2.0 funding, and that the funding could result in his contract being extended or ensure that MakeWay would have the funds to pay Mr. Patterson the agreed amounts.

[101] The MakeWay/Patterson Contractor Agreement does not suggest that Mr. Patterson’s potential earnings are connected in any way to the HWI 2.0 funding. This is not, for example, a contract by which Mr. Patterson acted as a consultant to obtain government funding and was entitled to a percentage of funding obtained. He is an advisor for maintaining and operating the Gardens, not obtaining government funding. The contract is due to expire on September 14, 2022, and the agreement does not provide for a renewal. The total value of the contract is fairly modest and appears to represent fair and reasonable compensation for Mr. Patterson’s services. The potential total amount of the contract is immaterial in the context of MakeWay’s total assets of about \$65.7 million.

[102] The final adjustment of working capital under the Share Sale Agreement was paid in 2022. Again, I was advised of the precise amount on a confidential bases for the purposes of my investigation. As with the total value of the MakeWay/Patterson Contractor Agreement, the sum owing into 2022 under the Share Sale Agreement is immaterial in the context of MakeWay’s assets.

[103] It is true that if MakeWay were to become insolvent, it would be unable to pay Mr. Patterson the agreed upon amounts in the MakeWay/Patterson Contractor Agreement and the Share Sale Agreement. However, MakeWay can terminate the MakeWay/Patterson Contractor Agreement on 14 days’ notice, which would essentially be upon payment of about two weeks’ worth of fees. The final adjustment of working capital under the Share Sale Agreement paid in 2022 is modest in relation to the overall value of the sale of the Gardens. The total unpaid as of January 11, 2022 under the two Agreements is immaterial in the context of the amount of MakeWay’s assets.

[104] I reject MLA Doerkson's suggestion that Mr. Patterson's financial interest was advanced by the Treasury Board decision of January 11, 2022 to make a \$30 million HWI 2.0 grant.

**c) Conclusion on First Allegation**

[105] The lobbying activities that Minister Osborne participated in on October 6 and October 26, 2021 were with MakeWay's Shared Platform project partners. While MakeWay was the appropriate legal entity, the Shared Platform project partners bore independent names. The lobbying activities were unrelated to the HWI funding.

[106] Minister Osborne did not have an apparent conflict of interest by participating in the January 11, 2022 decision of Treasury Board to grant \$30 million in HWI 2.0 funding. The decision did not relate to MakeWay, and did not advance Mr. Patterson's financial interests. Minister Osborne's private interest was not engaged in any way.

[107] I therefore find that Minister Osborne did not breach section 3 of the Act in relation to an apparent conflict of interest regarding the January 11, 2022 Treasury Board meeting, because in all the circumstances there is not a reasonable perception, which a reasonably well-informed person could properly have, that Minister Osborne's ability to participate in the Treasury Board decision on January 11, 2022 to approve \$30 million in funding for HWI 2.0 must have been affected by her private interest.

**[108] 2) Alleged breach of section 5 of the Act on or before March 21, 2022, regarding Treasury Board staff.**

Minister Osborne was a member of Treasury Board for the period commencing March 10, 2021. For the period commencing September 17, 2021, her spouse, George Patterson, had a contractual relationship with MakeWay as an advisor to the Gardens. On March 21, 2022, Treasury Board staff approved an approach by MECCS that identified WBC "as the organization to deliver funding to Indigenous communities and organizations," and that "to use [WBC], a grant to MakeWay was required". Materials provided by Minister Osborne during correspondence leading to the allegations indicated that contract negotiations took place at the staff level, between Treasury Board staff and MECCS staff. MLA Doerkson believes that Minister Osborne used her office to seek to influence that staff decision.

[109] Section 5 of the Act is as follows:

**Influence**

**5** A member must not use his or her office to seek to influence a decision, to be made by another person, to further the member's private interest.

[110] Establishing a breach of section 5 requires proving that a member in fact used his or her office to seek to influence a decision, and did so to further the member's private interest. It is not sufficient to allege that the member "might have" sought to influence a decision, or that there may be an appearance of influence. The Act prohibits a member from actually seeking to influence a decision, and doing so for the purpose of furthering the member's private interest.

[111] This is a very serious allegation of wrongdoing. I find no grounds whatsoever to support this allegation.

[112] Typically, an allegation of this kind would be based on documentation showing that an MLA tried to influence a staff decision, or on evidence from a “whistleblower” staff member setting out the conversations or other steps the member took to influence the decision. MLA Doerkson did not provide any such evidence and I did not find any in my investigation.

[113] I accept Minister Osborne’s statement that she did not seek to influence the staff decision to provide the funding to MakeWay rather than REFBC. The documentation is entirely consistent with staff coming to the realization in mid-March 2022 that providing the funding to REFBC would be problematic because it is a Government Reporting Entity.

[114] In addition, as discussed regarding the first allegation, I do not accept that providing funding to MakeWay would advance Minister Osborne’s private interest. The potential financial impact on her husband, Mr. Patterson, arose solely from the MakeWay/Patterson Contractor Agreement and the Share Sale Agreement, and I am satisfied that the amount is not material in the context of MakeWay’s assets.

[115] I therefore find that Minister Osborne did not breach section 5 of the Act by seeking to influence the decision by staff to select MakeWay to receive the HWI 2.0 funding. In addition, the selection of MakeWay to receive the HWI 2.0 funding did not further Minister Osborne’s private interest.

[116] **3) Alleged breach of section 3 of the Act on March 30, 2022, regarding MakeWay lobbying activities, being an apparent conflict of interest as described in section 2(2) of the Act.**

MLA Doerkson believes that, in participating in a March 30, 2022, lobbying activity with MakeWay on the same day as the signature of the MakeWay/MECCS Funding Agreement, Minister Osborne performed an official duty which could have influenced the outcome of the MakeWay/MECCS Funding Agreement and this constitutes an apparent conflict of interest.

[117] Sections 3 and 2(2) of the Act are quoted above regarding the first allegation. The question for this allegation is whether there is a reasonable perception, which a reasonably well-informed person could properly have, that Minister Osborne’s participation in lobbying activities on March 30, 2022 must have been affected by her private interest.

[118] In the *Bennett* Opinion (2015), Commissioner Fraser expressed the view that “section 2 of the Act is engaged only when the official powers, duties or functions in question involve some decision making dimension”. (at para 31). Similarly, in *Kahlon* (2019), one of the factors that Acting Commissioner Smith noted in finding that MLA Kahlon did not have an apparent conflict of interest was the fact that the official duty in question (participating in a legislative committee) did not involve any decision making power (at p. 21).

[119] Commissioner Fraser was referring to section 2 in its entirety, which includes the definition of actual conflict of interest in s. 2(1) of the Act. It is as follows:

**Conflict of interest**

2(1) For the purposes of this Act, a member has a conflict of interest 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.

[120] I concur with Commissioner Fraser and Acting Commissioner Smith in this regard. If there is no ability to make a decision or affect the outcome of a decision, there is no way for the Member's private interest to be furthered (s. 2(1)), and no way that the member's private interest could influence the member's ability to carry out the duty (s. 2(2)).

[121] The "official duty" to which MLA Doerkson refers in this allegation is Minister Osborne being lobbied by MakeWay. Being lobbied is a passive activity. From the information and documentation I have reviewed, there is nothing to suggest that Minister Osborne was in a position to make any decision at the March 30, 2022 lobbying meeting that could be seen to affect her private interest. The terms of the MakeWay/MECCS Funding Agreement had been finalized. The choice of MakeWay to receive the funding had been made earlier by staff because REFBC was a Government Reporting Entity. In any event, there was no material benefit to Mr. Patterson from the grant to MakeWay, as discussed regarding the second allegation.

[122] As a result, I conclude that there is not a reasonable perception, which a reasonably well-informed person could properly have, that Minister Osborne's participation in the March 30, 2022 meeting with representatives from two of MakeWay's Shared Platform projects must have been affected by her private interest.

[123] **4) Alleged breach of section 3 of the Act on April 21, 2022, regarding public announcement, being an apparent conflict of interest as described in section 2(2) of the Act.**

MLA Doerkson alleged that, on April 21, 2022, Minister Osborne announced that "half of the [HWI] funding (\$15 million) will be provided to [WBC] through [MakeWay] to coordinate watershed restoration projects led or co-led by First Nations" and said that a priority for her ministry was "ensuring that water and watersheds are respected and valued, in part through the development of a Watershed Security Strategy and Watershed Security Fund". MLA Doerkson wrote that Minister Osborne introduced Zita Botelho, Executive Director of WBC, and he noted that WBC uses the MakeWay platform. MLA Doerkson believes that there is a reasonable perception that these announcements served to further MakeWay's public profile and reputation, which in turn would have a beneficial effect on Mr. Patterson's contractual relationship with MakeWay.

[124] Sections 3 and 2(2) of the Act are quoted above regarding the first allegation. The question for this allegation is whether there is a reasonable perception, which a reasonably well-informed person could properly have, that Minister Osborne's participation in the announcement on April 21, 2022 must have been affected by her private interest.

[125] The "official duty" that MLA Doerkson identifies as the basis for this allegation is Minister Osborne making a factual announcement about the HWI 2.0 funding decision. As with the passive activity of being lobbied as discussed in the third allegation, simply making an announcement does not involve any significant decision-making component. The decision to

approve the wording of the announcement and to provide quotes for the press release are minor in nature.

[126] As set out in the chronology above, MLA Doerkson has actually quoted a press release and Ms. Bothelho, rather than Minister Osborne. Minister Osborne herself did not refer to MakeWay during the public announcement or in the quotes she approved for the press release. In any event, Government is entitled to announce the fact that it has made a grant and provide the details. The potential benefit to the grantee of the public information about the grant arises more from the fact of the grant than from the publicity government gives to that fact. Even assuming there was some benefit to MakeWay from the publicity arising from the public announcement, I do not accept that it would have any financial impact on Mr. Patterson and through him Minister Osborne.

[127] As discussed earlier, Mr. Patterson's continuing relationship with MakeWay arising from the MakeWay/Patterson Contractor Agreement and the Share Sale Agreement was not in any way connected to or dependent on MakeWay receiving the HWI 2.0 grant of \$15 million through MECCS. In any event, there was no material benefit to Mr. Patterson from the grant to MakeWay, as discussed regarding the second and third allegation.

[128] As a result, I conclude that there is not a reasonable perception, which a reasonably well-informed person could properly have, that Minister Osborne's participation in a public announcement on April 21, 2022 must have been affected by her private interest.

## F. CONCLUSION

[129] In my opinion, Minister Osborne has not contravened the Act as alleged by MLA Doerkson.

[130] All of MLA Doerkson's allegations appear to be based on suspicions arising from the facts that MakeWay received a government HWI 2.0 grant of \$15 million, and that Minister Osborne's husband, Mr. Patterson, had financial dealings with MakeWay in connection with selling the Gardens to MakeWay. MLA Doerkson also mistakenly believed that Minister Osborne had been lobbied about an HWI grant to MakeWay shortly after Mr. Patterson's sale of the property to MakeWay, when in fact the lobbying was by MakeWay Shared Platform partners regarding other matters.

[131] As set out in more detail above, the grant agreement MakeWay entered into on March 30, 2022 was with the MECCS, not Minister Osborne's ministry, LWRS. While an HWI 2.0 grant in the total amount of \$30 million was discussed at Treasury Board on January 11, 2022, at that time it was anticipated that, as with the HWI funding in the prior year, the grant would be made to REFBC, not MakeWay. The decision to make the grant to MakeWay instead of REFBC was made by staff in March 2022 because REFBC is a Government Reporting Entity and not eligible to receive the approved form of funding. Minister Osborne was not involved in the decision to make the grant to MakeWay instead of REFBC and did not take any steps to influence staff in making that substitution. Minister Osborne's participation in lobbying on dates including March 30, 2022 did not have any impact on the HWI 2.0 grant to MakeWay. Minister Osborne's participation in the public announcement on April 21, 2022 about the HWI 2.0 grant to MakeWay was not an apparent conflict of interest.

[132] Underlying all of MLA Doerkson's allegations is the suspicion that anything of benefit to MakeWay would benefit Mr. Patterson, and thereby his wife, Minister Osborne.

[133] As set out in more detail above, Mr. Patterson sold the Garden Property to MakeWay at market value in September 2021. He sold his shares in Coastwise to MakeWay at the same time, with a final adjustment made in 2022. Mr. Patterson entered into the MakeWay/Patterson Contractor Agreement which requires him to provide services for one year ending September 15, 2022 related to maintenance and operation of the Gardens. Mr. Patterson's remuneration for a year of services is for a maximum amount and is not dependent on whether MakeWay received the HWI 2.0 grant.

[134] MakeWay is a substantial organization, with assets approaching \$70 million, and there is no realistic likelihood that MakeWay required the HWI 2.0 funding to fulfil its obligations to Mr. Patterson under either the Share Sale Agreement or the MakeWay/Patterson Contractor Agreement. Contrary to MLA Doerkson's allegations, Minister Osborne did not conduct herself with the intention to further her private interest, and a reasonably informed person could not properly have the perception that her ability to conduct herself as MLA or Minister must have been affected by her private interest.

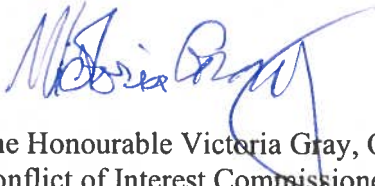
[135] For the benefit of all Members of the Legislative Assembly, I reiterate that I do not have jurisdiction to investigate "potential" conflicts of interest or provide "a full accounting of facts" which could relate to a conflict of interest but does not necessarily do so. I do not have the jurisdiction to investigate a matter based on suspicion alone. A Member of the Legislative Assembly is entitled to seek my opinion regarding the conduct of another member, but only by



providing reasonable and probable grounds to believe that another member is in contravention of the Act, and by setting out the grounds for the belief and the nature of the contravention alleged, pursuant to s. 19(1) of the Act. The allegations should set out the approximate date of the alleged breach, the section of the Act allegedly breached, the manner of the alleged breach, and the reasonable and probable grounds supporting the member's belief that another member has contravened the Act or is in the process of doing so.

[136] In this case, MLA Doerkson's initial request for my opinion did not comply with the requirements of the Act, which resulted in confusion and delay over the period of my correspondence with him to clarify his allegations. I urge all members to ensure that, when they seek my opinion on the basis that they believe another member has contravened the Act, they provide at the outset all the information I have described.

Dated this 30<sup>th</sup> day of August, 2022  
In the City of Victoria, British Columbia

A handwritten signature in blue ink, appearing to read 'Victoria Gray', with a stylized flourish extending from the end.

The Honourable Victoria Gray, Q.C.  
Conflict of Interest Commissioner

## G. APPENDIX OF INFORMATION SOURCES

### A. Provided by MLA Doerkson

1. Andrew Bailey, “Tofino Botanical Gardens for sale” in Tofino-Ucluelet Westerly News, August 17, 2020 available online at [Tofino Botanical Gardens for sale - Tofino-Ucluelet Westerly News](#)
2. Kevin Jiang, “The most Enchanting Botanical Garden in BC is On Sale For \$3.7M Right Now” in Narcity Victoria, August 19, 2020 available online at [Botanic Garden For Sale In BC Is An Enchanted Forest You Can Own For Just \\$3.7M - Narcity](#)
3. “Who’s Lobbying Who in BC: Monthly Snapshot June 2021”, [DocumentHandler.ashx \(lobbyistsregistrar.bc.ca\)](#)
4. BC Assessment Report for 1084 Pacific Rim Hwy, Tofino, 2022 assessment as of July 1, 2021 [BC Assessment - Independent, uniform and efficient property assessment](#)
5. Lobbying Activity Report (October 6, 2021) [2892-13819 - Lobbying Activity Report - Lobbyists Registry - Office of the Registrar or Lobbying of BC \(lobbyistsregistrar.bc.ca\)](#)
6. “Tofino Botanical Gardens changes hands, MakeWay Canada takes ownership” by Nora O’Malley, March 3, 2022 in Port Alberni Valley News [Tofino Botanical Gardens changes hands, MakeWay Canada takes ownership - Port Alberni Valley News](#)
7. IISAAK OLAM Foundation website <https://www.iisaakolam.ca>
8. Lobbying Activity Report (April 5, 2022) [2892-18331 - Lobbying Activity Report - Lobbyists Registry - Office of the Registrar or Lobbying of BC \(lobbyistsregistrar.bc.ca\)](#)
9. 12-Month Lobbying Summary – MakeWay Charitable Society/Joanna Kerr (updated 2022-05-01) [MakeWay Charitable Society / Joanna Kerr, President & CEO - 12-Month Lobbying Summary - Lobbyists Registry - Office of the Registrar or Lobbying of BC \(lobbyistsregistrar.bc.ca\)](#)
10. “Watershed restoration creates a healthier future for B.C.” Thursday, April 21, 2022, BC Government News [Watershed restoration creates a healthier future for B.C. | BC Gov News](#)
11. Watersheds BC website <https://watershedsbc.ca>
12. MakeWay website <https://makeway.org>

B. Provided by Minister Osborne

1. Timeline outlining the process led by the Ministry of Environment and Climate Change Strategy (MECCS) from the Treasury Board Submission to the signing of the final agreement between MECCS and MakeWay/Watersheds BC to deliver Healthy Watersheds Initiative funding
2. MakeWay/MECCS Funding Agreement signed by James Mack, Assistant Deputy Minister, Ministry of Environment and Climate Change Strategy, dated March 30, 2022
3. Order in Council establishing the responsibilities of the Ministry of Land, Water and Resource Stewardship effective April 1, 2022 Order in Council 92/2022 (gov.bc.ca)
4. Copy of a letter dated April 1, 2022 sent to Deputy Minister Lori Halls from Minister Osborne advising the Deputy Minister of the contractual relationship the Minister's spouse has with MakeWay
5. Description provided by Deputy Minister Halls outlining the process for the firewall put in place regarding MakeWay
6. Announcement of Healthy Watersheds Initiative Funding, April 21, 2022 transcript <http://tno.gov.bc.ca/tno/servlet/tno.otis.servlet?command=showstory&rsn=719322591>
7. Announcement of Healthy Watersheds Initiative Funding, April 21, 2022 transcript video link <https://www.facebook.com/profile/100044070714370/search/?q=Josie%20Osborne>.
8. January 14<sup>th</sup>, 2022 letter to MECCS Minister Heyman from the Watershed Security Coalition detailing the Coalition's reasons for requesting a meeting and its arguments in favour of a long-term stable 'Fund.'
9. Lobbying Report October 26, 2021 2892-13817 - Lobbying Activity Report - Lobbyists Registry - Office of the Registrar or Lobbying of BC (lobbyistsregistrar.bc.ca)
10. Meeting Note dated March 22, 2022 prepared by Jennifer Vigano, Director, Watershed Sustainability (LWRS) for Minister Osborne regarding Meeting with BC Watershed Security Coalition and Watersheds BC regarding watershed security
11. News Release "Watershed restoration creates a healthier future for B.C." April 21, 2022, Office of the Premier and Ministry of Land, Water and Resource Stewardship Watershed restoration creates a healthier future for B.C. | BC Gov News
12. Letter dated January 14, 2022 to Minister Heyman (MECCS) from Coree Tull, Co-Chair BC Watershed Security Coalition dated January 14, 2022
13. Meeting Note dated April 4, 2022 prepared by Brian Bawtinheimer, Executive Director, Provincial Stewardship Strategies and Planning Branch (LWRS) for Minister Osborne

regarding Meeting with Lisa Matthauss, Organizing for Change regarding conservation priorities

14. "Priorities 2021-22 for environmental leadership" Organizing for Change  
[www.organizingforchange.org](http://www.organizingforchange.org)
15. Email exchanges April 5 – May 6, 2022 between LWRS staff and Organization for Change staff re breakfast meeting May 10, 2022
16. Letter dated October 5, 2021 to Premier John Horgan from Coree Tull, Organizing Director of Canadian Freshwater Alliance and Aaron Hill, Executive Director of Watershed Watch Salmon Society re BC-wide moratorium on groundwater extraction for water bottling and export.
17. MakeWay Patterson Contractor Agreement
18. Excerpt from the Share Sale Agreement
19. MakeWay's *Shared Platform Brochure*
20. MakeWay's 2021 Annual Report  
<https://makeway.org/wpcontent/uploads/2021/12/makeway-year-in-review-2021.pdf>.

C. Provided by Treasury Board

1. TBS dated December 22, 2021
2. Treasury Board Minute January 11, 2022 (redacted)
3. Treasury Board Decision Letter, RE: Funding for the HWI under the Climate Preparedness and Adaptation Strategy, dated January 11, 2022
4. HWI 2.0 – Treasury Board Staff Memo, dated March 7, 2022
5. Email exchanges between MECCS staff and Treasury Board staff, dated March 7-8, 2022
6. Watersheds Contingency Funding staff memo dated March 16, 2022
7. Other privileged and confidential information

D. Other

1. "Conflict of Interest Commissioner asked to investigate NDP minister's actions" BC Liberal Caucus website [Conflict of Interest Commissioner asked to investigate NDP minister's actions - BC Liberal Caucus](#)

2. Lorne Doerkson on Twitter, June 28 2022 Lorne Doerkson on Twitter: "Today, I wrote to the Conflict of Interest Commissioner, raising concerns about a potential conflict on the part of NDP Minister Josie Osbourne. People deserve transparency from government - the Minister needs to explain her actions. <https://t.co/GW48ShCFEk>" / Twitter
3. Real Estate Foundation of BC [www.refbc.com](http://www.refbc.com)
4. Speech from the Throne, February 8, 2022 Throne Speech ([leg.bc.ca](http://leg.bc.ca))
5. Inquiries to Minister Osborne, lawyer for Mr. Patterson, and Treasury Board