

Office of the Conflict of Interest
Commissioner of British Columbia

2016 Annual Report





BRITISH
COLUMBIA

Office of the Conflict of Interest Commissioner

Paul D.K. Fraser, Q.C.
Annual Report 2016

Office of the
Conflict of Interest
Commissioner

Paul D.K. Fraser, Q.C.
Commissioner

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BRITISH COLUMBIA

September 15, 2017

The Honourable Darryl Plecas, MLA
The Speaker of the Legislative Assembly
of British Columbia
Room 207, Parliament Buildings
Victoria, British Columbia V8V 1X4

Dear Mr. Speaker,

It is an honour to present the Annual Report of the Office of the Conflict of Interest Commissioner for 2016.

This Report is submitted pursuant to section 15 of the *Members' Conflict of Interest Act*, Chapter 287 of the Revised Statutes of British Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul D.K. Fraser".

Paul D.K. Fraser, Q.C.
Commissioner

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Paul D.K. Fraser, Q.C.

2016 WAS A busy and productive year. It was a time to reflect as we celebrated the 25th anniversary of the establishment of the Office, and the new challenges we face in doing our adjudicative work with what Aristotle called "practical wisdom".

Through the *Members' Conflict of Interest Act* (the "Act"), the Legislative Assembly declared that the discipline of Members is the responsibility of the Assembly itself and not the Judicial branch of government.

Disciplining Members is, therefore, included as one of the established categories of what is known in law as parliamentary privilege. The legislature has delegated this responsibility to the Commissioner, in the unique role as the only Officer of the Legislative Assembly. A decision of the British Columbia Court of Appeal in 1998 affirmed that that determinations made by the Commissioner in carrying out his powers under the *Act* are protected by parliamentary privilege, and are

All provincial and territorial jurisdictions in Canada, as well as the House of Commons and Senate, have appointed Commissioners with mandates similar to mine. In addition to meeting annually to discuss matters of common interest, the Commissioners are generous in sharing their experience informally throughout the year. On very rare occasions, a more formal request for assistance occurs. In early 2016, I was asked by the Alberta Ethics Commissioner to conduct a re-investigation, based on the disclosure of new information, of a matter in which she was unable to act for personal reasons. The *Redford* case involved a former Premier of Alberta. Accordingly, it was an important matter to the citizens of Alberta and to the parties involved.

We responded in a timely manner to numerous requests for information from Members and the public. I frequently provided confidential advice to Members about their compliance obligations. Overseeing our robust disclosure process continues to be the mainstay of the Commissioner's role in ensuring that British Columbians can have confidence in their elected representatives. We are grateful for the co-operation we have received from Members during the reporting period.

not reviewable by the courts. The decision in the *Tafler* case remains good law and has been cited, with approval, in numerous cases across Canada. However, in October 2016, an organization known as Democracy Watch brought an application for judicial review to the British Columbia Supreme Court, challenging an Opinion I issued in May 2016. I remain confident that once the case reaches its final resolution, the question of parliamentary privilege as it relates to the Commissioner's functions will be affirmed.

Fidelity to the rule of law, as well as to the rule of justice, is a quality that we strive for in the exercise of our independent administrative powers. In our office we pay attention to proportionality and to what Chief Justice McLachlin has called "conscious objectivity". My goal in performing the mandate from the Legislative Assembly is to perform my delegated duties with both empathy and impartiality and in a manner that becomes service and not dominion.

Members of the Legislative Assembly are expected to act in the public interest at all times, and must not use their official position for personal gain or advantage.

HOLDING ELECTED OFFICE is a public trust. The rules governing conflict of interest for Members are set out in the Act and ensure that those who are elected to public office are held to high standards of conduct.

A conflict of interest arises when a Member’s duty to act in the public interest is or may be affected by his or her private interest. In most cases “private interest” will be pecuniary in nature. However, a private interest can also be non-pecuniary, providing it confers a real and tangible benefit on the Member.

Members must avoid both actual and apparent conflicts of interest, and must arrange their private affairs to prevent such conflicts from arising.

Members are required to resolve any conflicts which do arise promptly and transparently.

In addition to the general prohibition against actual or apparent conflicts of interest, other prohibitions include:

Insider information

A member must not use information that is gained in the execution of his or her office and is not available to the general public to further or seek to further the member’s private interest.

Section 4

Influence

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

Section 5

Extra benefits

A member must not accept a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of his or her duties of office.

Section 7

The Conflict of Interest Commissioner is an independent, non-partisan Officer of the Legislative Assembly who is responsible for impartially administering the *Members' Conflict of Interest Act*.

IN BRITISH COLUMBIA, as in most parliamentary democracies, there are several Statutory Officers of the Legislature (such as the Auditor-General) whose work is essential to ensure accountability and promote good governance. However, the Conflict of Interest Commissioner is the only Officer of the *Legislative Assembly*.

The Conflict of Interest Commissioner is dedicated exclusively to the service of the Legislative Assembly itself in respect of Members' conduct expectations and discipline.

As a result, the records contained in our Office remain confidential as part of the legislative privilege which we enjoy as a matter of law.

The Commissioner has three primary roles:

<p>PROVIDE ADVICE AND OPINIONS</p> <hr/> <p>Provide confidential advice to Members about their obligations under the <i>Act</i></p> <hr/>	<p>OVERSEE DISCLOSURE PROCESS</p> <hr/> <p>Meet with each Member at least annually to review the disclosure of the Member's financial interests</p> <hr/>	<p>RESPOND TO ALLEGATIONS</p> <hr/> <p>Respond to allegations that the <i>Act</i> has been contravened, and conduct an Inquiry if warranted</p> <hr/>
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The focus of the Commissioner’s work is to help Members understand their obligations under the *Act* and provide guidance to prevent conflicts of interest from arising or persisting.

ARGUABLY, THE COMMISSIONER’S most important function is his **advisory role**.

Under section 18 of the *Act*, Members may request that the Commissioner provide a formal written opinion on a conflict of interest matter, and are encouraged to do so if in any doubt about their obligations under the *Act*. This advice remains confidential unless the Member decides to release it. The Commissioner is also available to provide confidential oral advice to Members.

If the Commissioner determines that a Member has or may have a conflict of interest, he can make recommendations and specify a timeframe for compliance.

Our Office receives a great variety of requests for advice from Members and their staff. Some requests are informal and do not proceed beyond the initial phone call or email to the Commissioner. Others are more substantial and may involve multiple communications back and forth with the Member, require background research, and result in a written response.

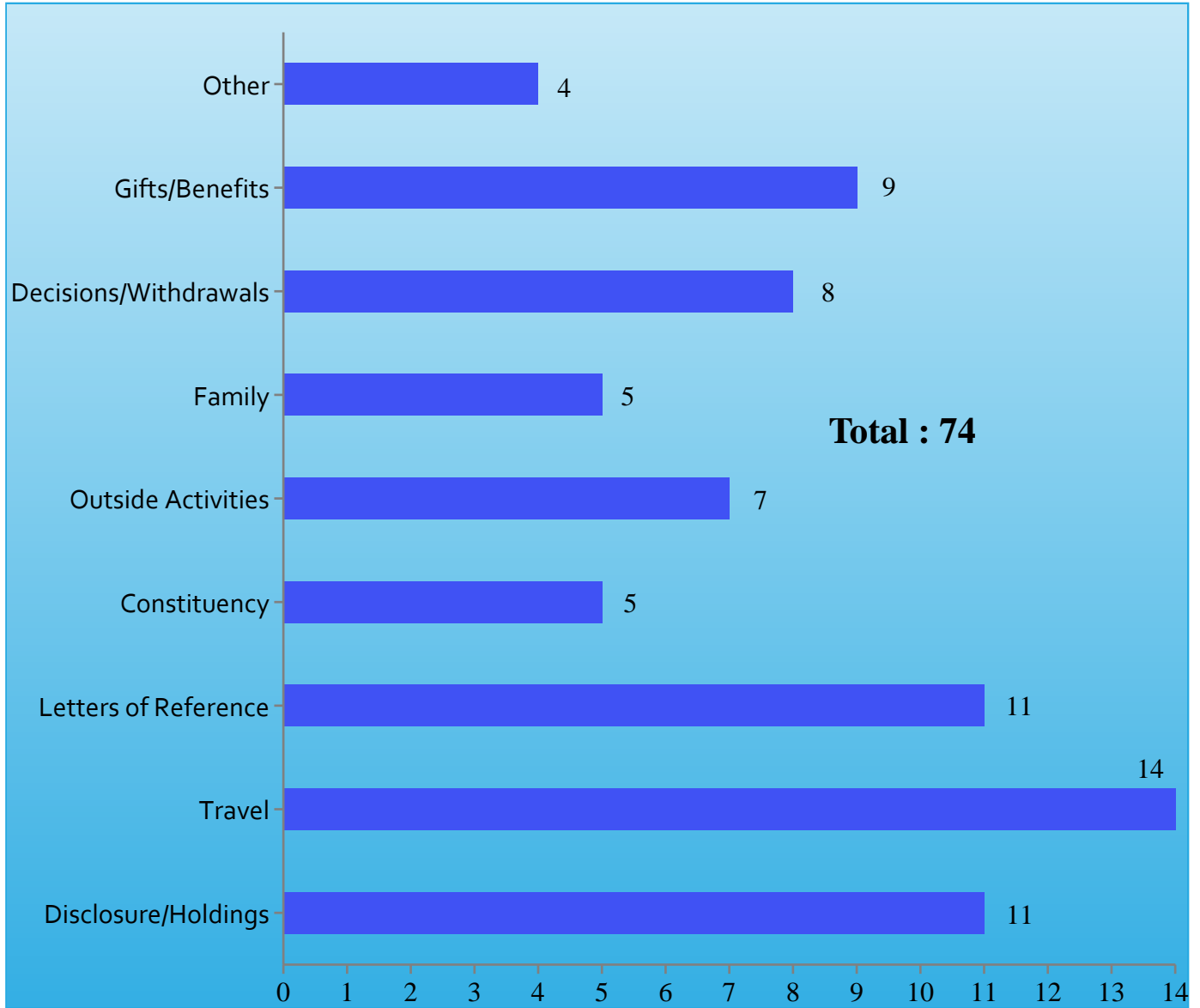


IN ADDITION TO responding to requests for advice in relation to specific matters, we frequently provide general information to Members about their obligations and provide assistance with disclosure, reporting and procedural matters.

The Commissioner also engages in numerous outreach interactions and exchanges with Members throughout the year. From time to time, prospective candidates for provincial office seek information about their obligations should they be elected.

A breakdown by topic of the requests for advice received in 2016 is shown below:

Requests from Members for Advice 2016



Time to respond to Requests from Members for Advice

Median	Average
1 business day	3 business days

Members are required to disclose the nature of their assets, liabilities and financial interests.

EVERY MEMBER MUST, within 60 days of being elected, and after that annually, file with the Commissioner a **Confidential Disclosure Statement** ("CDS"), which contains a statement of the nature of the assets, liabilities and financial interests belonging to the Member and his or her spouse.

Separate disclosure forms are required if the Member has any minor children, and if the Member, his or her spouse or minor child, has a controlled private corporation. The content of the CDS is proscribed by the regulation to the Act. Members' completed CDSs remain securely and exclusively within our Office.

A key difference between British Columbia and many other jurisdictions is that under British Columbia's legislation, disclosure statements are qualitative rather than quantitative. Members must disclose only the nature of the assets, liabilities and financial interests, not the value nor the amount or worth of those interests.

Once the Member's confidential disclosure forms have been received and reviewed by our Office, a meeting between the Member and the Commissioner is arranged.

In 2016, disclosure meetings were held in Victoria and Vancouver from August to November.

ONCE THE CONTENTS of the confidential statements have been finalized and acknowledged to be accurate, **Public Disclosure Statements** ("PDS") are prepared by our Office.

The PDS contains most, but not all of the information contained in the Member's confidential disclosure statement, as well as a statement of any gifts or benefits that have been disclosed to the Commissioner since the Member's last filing.

Members' PDSs are all filed together on the same date with the Clerk of the House, where they are available for public inspection.

Members' 2016 PDSs were filed on November 30, 2016.

Throughout the year, Members must report “material changes” and receipt of certain gifts and personal benefits.

MATERIAL CHANGES

AFTER MEMBERS HAVE filed their annual confidential disclosure statements, they have an ongoing obligation to report any material changes to their financial interests within **30 days** of the change occurring.

After reviewing the Member’s material change form, our Office prepares a Notice of Material Change which is then filed with the Clerk of the Legislative Assembly, where it is filed with the Member’s most recent PDS. A copy of the Notice is also sent to the Member.

A “material change” is defined as an acquisition or disposition, whether in whole or in part, occurring after the Member has filed a disclosure statement, of any asset, liability, financial interest or source of income by the Member, his or her spouse or minor children, or a private corporation controlled by any of them, if the change or event would reasonably be expected to have a significant effect on the information previously disclosed.

In 2016, our Office processed 61 Notices of Material Change.

GIFTS AND PERSONAL BENEFITS

MEMBERS ARE PROHIBITED from accepting gifts or personal benefits in connection with the performance of their official duties. However, there is an exception for gifts or personal benefits received “as an incident of

Before accepting a gift, Members must consider whether accepting the gift would - or would appear to - place the Member under an obligation to the donor.

protocol or social obligations”. In most cases this means a token expression of appreciation or complimentary hospitality in the context of some official interaction.

Members are required to disclose and provide details of any gift or personal benefits they have received if the value of the gift exceeds \$250, or if the combined value of multiple gifts from the same donor exceeds \$250 in a twelve month period. A summary of gifts received is included in the Member’s PDS.

The Commissioner may conduct an Inquiry into allegations that a Member has breached the *Act*.

THE MEMBERS’ CONFLICT of Interest Act concerns itself with the specialized issue of real and apparent conflict of interest. The policy of the *Act* is to ensure that Members do not advance (or are not perceived to advance) their private interest or use their office for their own private gain.

Under section 19 of the *Act*, the Commissioner may provide an opinion about a Member’s compliance with the *Act* or section 25 of the *Constitution Act* in response to a request from a member of the public, a Member of the Legislative Assembly or Executive Council, or the Legislative Assembly.

Typically, when concerns about a Member’s compliance are brought to his attention, the Commissioner first gathers information informally to determine if there are reasonable and probable grounds to support the allegations. The Commissioner then determines whether to proceed to the formal Inquiry stage or dismiss the allegations as unwarranted.

“...decisions made by the Commissioner in the carrying out of the Commissioner’s powers under the Act are decisions made within, and with respect to, the privileges of the Legislative Assembly and are not reviewable in the courts.”

Tafler, 1998 (BCCA)

If a Member is found in contravention of the *Act*, the Commissioner may recommend a penalty, which may include a reprimand, suspension, fine of up to \$5,000 or a declaration that the Member’s seat be declared vacant until an election is held in the Member’s electoral district. While the Commissioner may recommend penalties against the Member, it is up to the Legislative Assembly to accept or reject the recommendation.

Formal Requests for Opinions (section 19)

From MLAs	1
From public (jurisdictional)	3
From public (non-jurisdictional)	8
TOTAL	12

Formal opinions issued under section 19 of the *Act**OPINION CONCERNING PREMIER
CHRISTY CLARK***ALLEGATIONS**

IN APRIL 2016, Mr. Duff Conacher of Democracy Watch, and Mr. David Eby, the Member for Vancouver-Point Grey, alleged that Ms. Christy Clark, the Member for Westside-Kelowna and Premier of British Columbia, had breached the *Members' Conflict of Interest Act* by participating in a number of "exclusive" fundraising events .

The issue of politicians attending "exclusive" events has been (and continues to be) a hot topic of debate across the country. Such events are characterized by the attendance of a party leader or cabinet minister; a relatively high ticket price (ranging from several hundred to several thousand dollars per person); and a relatively small number of attendees. The general concern expressed is that it is inappropriate for politicians to "sell access" to themselves in this manner.

Mr. Eby cited several media stories suggesting that the Premier regularly attended "exclusive" fundraising events. The Premier acknowledged that she attended such events in her capacity as Leader of the Liberal Party. As Leader, the Premier receives an allowance from the Liberal Party, which in 2015 was set at \$50,000. Such allowances have been paid by the BC Liberal Party to its leaders since 1993 and its existence has been disclosed annually in the accordance with the *Act*.

Mr. Eby alleged that the Premier had a direct, private interest in the donations from "exclusive" events "because the central party returns this money, in part, to the Premier through her Leader's Allowance".

Mr. Eby's position was that the Premier's private interest had thus been furthered and the Premier was required to recuse herself from any decision involving donors who attended "exclusive" fundraising events.

Mr. Conacher's request also centred on the Premier's attendance at "exclusive" fundraising events, but raised separate grounds. Mr. Conacher alleged that the donations to the Liberal Party made at "exclusive" fundraising events constituted gifts or personal benefits to the Premier, which she was prohibited from accepting under section 7 of the *Act*. Given the common subject matter of both requests, they were addressed together in an Opinion issued on May 4, 2016.

ANALYSIS AND CONCLUSION

IN ORDER TO find the existence of a conflict of interest, or an apparent conflict of interest, the threshold question is whether there is an identifiable “private interest” that has been or could be advanced. A Member must be found to have preferred his or her private interest over his or her public duty.

There may be circumstances where receiving a political donation places a Member in a conflict or apparent conflict of interest situation. However, this is generally limited to situations where a candidate receives a personal campaign contribution and due to a variety of other factors, is in a position to “return a favour” to the person who has made the donation. That was the outcome of the first Opinion under the *Act* issued by Commissioner Ted Hughes of this Office in 1993 (*Blencoe*). However, as set out in the *Harcourt* Opinion issued in 1995, contributions to the Party are different altogether, as such donations do not benefit Members in a direct and particular way. In extensive briefs from the applicants, neither were able to cite any decisions in British Columbia or elsewhere that hold otherwise.

The Commissioner concluded that the Premier’s Leader’s Allowance did not create a “private interest”. There was no evidence that the issuance of the Premier’s Leader’s Allowance was related to her attendance at “exclusive” fundraising events or varied according to the amount of money raised. Accordingly, her private interest was not advanced by any particular donor or group of donors, and therefore she could not be in a conflict or apparent conflict of interest in relation to those donors.

With respect to Mr. Conacher’s allegations, the Commissioner rejected the notion that donations to the Liberal Party could be construed as a “gift or personal benefit” accruing to the Premier. Whether or not a Member participates directly or indirectly in fundraising activities for their Party, the donated money is never in the Member’s possession or under their control. The funds raised at the “exclusive” events in question were given to the BC Liberal Party and were not accessible for the Premier’s personal use.

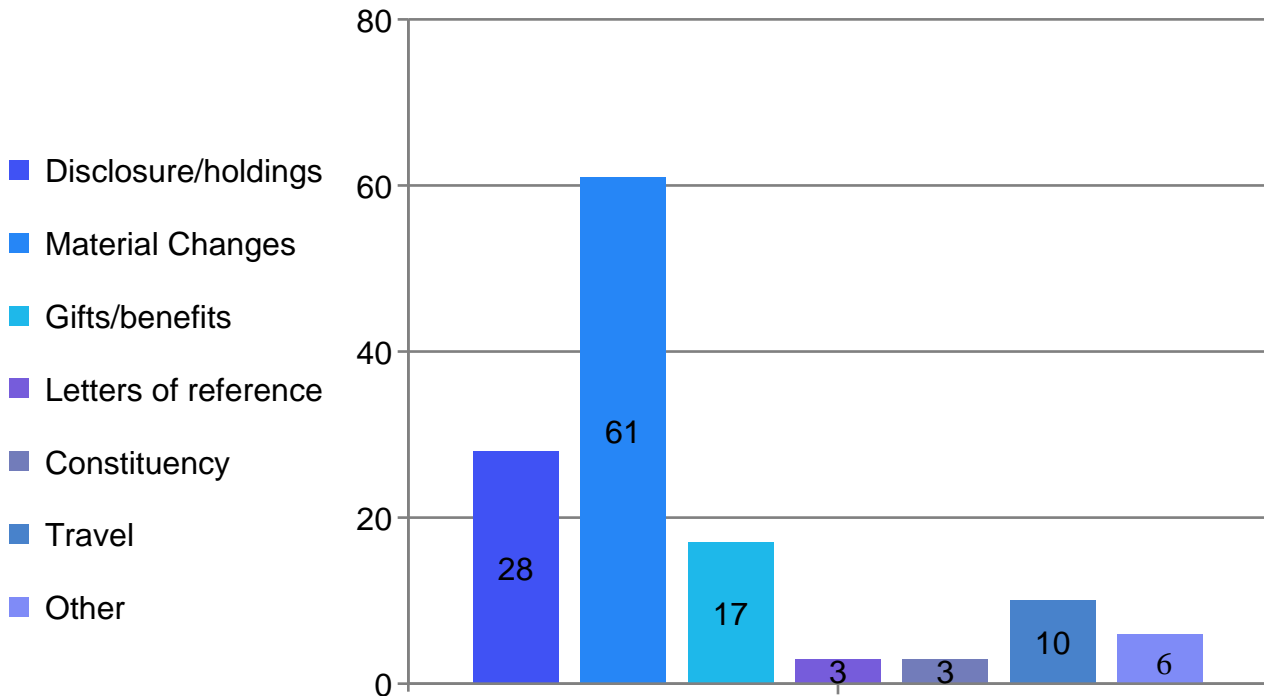
The Commissioner noted that the *Act* is not a moral code and he is not an arbiter of what may be political morality in the campaign finance context. Political fundraising is a legal activity that is governed by the *Election Act*. Whether the rules surrounding the limits on ticket prices to fundraising events, the advertising of such events, and the disclosure of attendees ought to be changed is a matter that must be decided by the Legislature.

The Commissioner’s full Opinion and an addendum issued on August 9, 2016, as well as the *Blencoe* and *Harcourt* Opinions, are available on our website at http://www.coibc.ca/opinion_default.htm

The Commissioner and staff engage in a variety of communications, outreach and other activities throughout the year.

THROUGHOUT THE YEAR, our Office responds to many requests for general information from Members, their staff, the media and the general public. When we receive requests that relate to matters beyond the Commissioner’s jurisdiction, we do our best to refer individuals to the appropriate agency.

Requests for Information: Members



Requests for Information: Overall

MLAs	General Public	Media
128	53	39
Total:		220

In most cases we are able to respond to requests for information on the same day.

CCOIN

OUR OFFICE IS an active member in the Canadian Conflict of Interest Network (CCOIN), an organization that brings together Commissioners and professional colleagues from all the parliamentary and legislative jurisdictions in Canada. CCOIN members meet annually to exchange information and learn about best practices and developments in their respective jurisdictions.

In 2016, the annual CCOIN Conference was held in Edmonton from September 7-9. Participants shared best practices in carrying out investigations, addressed the issue of solicitor-client privilege, and discussed emerging issues such as Members' use of social media, political fundraising and re-opening investigations. Distinguished guests presented on the topics of future trends in ethics, responding to the media, and teaching ethics in leadership.

The 2017 Conference will be held in Charlottetown, Prince Edward Island.

OTHER ACTIVITIES

EACH YEAR THE Commissioner meets with Legislative Interns who have been selected for the BC Legislative Internship Program. The Program has been sponsored for more than 40 years by the Legislative Assembly and the exchange is a valuable experience for both the Commissioner and the Interns.

IN APRIL, 2016, Commissioner Fraser accepted a request from Alberta Ethics Commissioner, the Honourable Marguerite Trussler, Q.C., to conduct a re-investigation of a matter involving former Premier Alison Redford. Commissioner Fraser's report is available on the Alberta Ethics Commissioner's website at <http://ethicscommissioner.ab.ca>.

25TH ANNIVERSARY CELEBRATION

TO CELEBRATE THE 25th anniversary of the establishment of the Office of the Conflict of Interest

Commissioner, a special event was held on February 10, 2016 at Government House, hosted by Her Honour Judith Guichon, Lieutenant Governor of British Columbia. Many distinguished guests attended, including the Chief Justice of the Supreme Court of British Columbia, Members of the Legislative Assembly, Officers of the Legislature, and Commissioners from other Canadian jurisdictions.

Commissioner Fraser began his remarks by paying tribute to British Columbia's former Commissioners. The Province's first Commissioner, the Honourable E.N. (Ted) Hughes, Q.C., served from 1990 to 1997. It was an honour to have Mr. Hughes present at the celebration and to thank him for his lifelong commitment to integrity in public life.

During the early years of the Office, Mr. Hughes issued several important Opinions, providing the foundational principles of interpretation that helped guide Conflict of Interest and Ethics Commissioners across the country.

Mr. Hughes was succeeded in 1997 by the Honourable H.A.D. "Bert" Oliver.

Mr. Oliver was appointed Commissioner after a distinguished career as a lawyer, diplomat and Supreme Court Judge. Mr. Oliver served until 2007, and expanded on Mr. Hughes' legacy. He encouraged Members to seek his advice and take proactive measures to avoid conflicts before they arose. Mr. Oliver died in January 2011, and is remembered in the precinct by the legislative community with fondness and respect.

British Columbia's first Conflict of Interest Commissioner, the Honourable E.N. (Ted) Hughes, Q.C., was appointed in October, 1990. Soon after, in November, 1990, the Members' Conflict of Interest Act passed into law. British Columbia was the second jurisdiction in Canada to enact comprehensive conflict of interest legislation.

Commissioner Fraser was appointed in January, 2008. He reflected on the consistent record of the Office over the past 25 years, and highlighted the success of an approach that from the beginning has focused on prevention, education and advice. Of equal importance has been the prudence, good sense, and cooperation of the Members.

Looking ahead, it is important for British Columbia's Conflict of Interest legislation to evolve, so we can respond to emerging issues and changing public expectations.

GENERAL ELECTION - MAY 2017

A PROVINCIAL GENERAL ELECTION was held on May 9, 2017. Under sub-section 16(1) of the *Act*, every Member must file a confidential disclosure statement with the Commissioner within **60 days** of being sworn in.

While returning Members are able to simply update their previous disclosure statements, new Members submitting statements for the first time require guidance from our Office staff throughout the disclosure process.

The Commissioner and staff look forward to welcoming incoming Members and assisting them to understand their obligations under the *Act*.

Activities may include giving presentations to the party caucuses, participating in orientation programs for new Members, and meeting individually with Members to answer specific questions.

DEMOCRACY WATCH PETITION

IN OCTOBER 2016, Democracy Watch filed a petition in British Columbia Supreme Court seeking judicial review of the Commissioner's Opinion issued in response to its allegation that Premier Clark had breached the *Act* (see summary of Opinion on pages 9-10).

The Commissioner applied to have the petition dismissed on the grounds that Opinions issued by the Commissioner are protected by legislative privilege; the Opinion was not subject to judicial review under the *Judicial Review Procedures Act*; and that Democracy Watch lacked standing to bring the application. A trial date was set for early January, 2017 and we expect that the court process will take several months to complete.

ACCOUNTABILITY

THE OFFICE IS accountable for its operations through the issuance of the annual report and the annual budget presentation to the Select Standing Committee on Finance and Government Services (the “Committee”).

For fiscal year 2016/17, we received a budget appropriation of \$701,000. The actual cost of our operations for the year was \$692,050.

Our Budget Proposal for 2017/2018 - 2019/20, presented to the Committee on November 14, 2016, sought an annual budget of \$743,000. The Committee approved the annual budget and the provision of an annual capital allowance of \$25,000.

In addition to approving the annual budget of the statutory officers, the Committee has an important role to play throughout the year. Additional meetings are held at other times of the year which provide a forum for broader discussion of annual reports and service plans separate from the budget review process.

In 2016, the Commissioner met with the Committee twice, on May 4 and November 14.

TRAVEL EXPENSES

THE COMMISSIONER’S TRAVEL expenses are posted on our website and updated on a quarterly basis, available at <http://www.coibc.ca/admin.htm>

We look forward to our continuing work in the service of the public and the Legislative Assembly of British Columbia.

ACKNOWLEDGEMENTS

TECHNICAL SUPPORT TO our Office is provided by the Legislative Assembly Information Technology Branch (LAITB). Many thanks to the LAITB staff for their expert advice and assistance with our day to day technology needs, as well as support for our ongoing projects. We are also grateful to the Ministry of Finance (Corporate Financial Services and Facilities Branch) which provides financial services assistance, and to the Speaker and the Clerk of the House and their respective Offices, as well as the Caucus Chairs and their assistants.

Linda Pink, Executive Coordinator

Ms. Pink has been the operational manager of the Office since November 2012. Her experience in senior administrative positions within the public service informs her work and benefits the Office. She is well known and highly regarded within the Legislative precinct as a wise and helpful colleague possessed of both common sense and a friendly manner. We are fortunate to have Ms. Pink as our administrative leader.

Alyne Mochan, Legal Officer

Ms. Mochan has been our talented and diligent Legal Officer since 2011. She is an important member of our team, as well as a valuable resource for the work of CCOIN - where she has earned the respect and gratitude of our colleagues around the country.

OFFICE COLLEAGUES

Amber Derricourt, Executive Administrative Assistant

Ms. Derricourt joined the Office in July 2012. Her primary responsibility has been working with the Members in the annual disclosure process and throughout the year. Her experience and gentle nature has continued to make her a valuable and appreciated colleague.

Caitlin Ross, Administrative Assistant and Receptionist

Ms. Ross was a part-time colleague for much of 2016. She welcomed those who visited the office with grace and consideration. Her research and writing skills were much appreciated.

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