



COIBC

OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER

2017 Annual Report

Annual Report 2017
Paul D.K. Fraser, Q.C.

COIBC | OFFICE OF THE CONFLICT OF
INTEREST COMMISSIONER

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OFFICE OF THE CONFLICT OF
INTEREST COMMISSIONER

October 1, 2018

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

Dear Honourable Speaker,

It is an honour to present the Annual Report of the Office of the Conflict of Interest Commissioner for 2017.

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', with a stylized, flowing script.

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

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COMMISSIONER'S MESSAGE

Paul D.K. Fraser, Q.C.

The majority of our work is the time spent preparing for and meeting with all 87 Members of the House to obtain annual disclosures and providing advice as requested.

THIS REPORT TO the citizens of British Columbia, through our accountability to their Legislative Assembly, is an opportunity to describe our activities of the last year. I am pleased to confirm that, as it has for the past 26 years, this independent Office has discharged its duties free from government influence or control. As the late Norman Ruff once observed, "Appointed officers are not plucked from the heavens". But, we do our best work when we adhere to our statutory mandate and ensure that our activities are conducted fairly and appropriately.

The *Members' Conflict of Interest Act* ("Act") we administer is based on the principle of public disclosure by Members of the Legislative Assembly and their spouses soon after entering office; and continuously thereafter, of private financial interests and activities by source and type depending on the nature of the asset or interest disclosed. The Act is not intended as a code for moral conduct. The disclosure process is well documented and the information obtained is available for public inspection. There are voluntary recusal provisions within the Act, and the Office performs functions relating to information, education, consultation, advice, investigation and inquiry as well as issuing Opinions. I am pleased to report that we continue to have good participation and support from Members and their staff.

The concept of independent Commissioners who are Officers of the Legislature is a Canadian innovation that is working. In British Columbia, I am pleased to say that increased awareness by Members over the years of their ongoing obligations has contributed to a reduction in the number of serious allegations, and even fewer actual findings of breaches. In fact, as this report indicates, no such opinions or findings were issued by our Office in 2017.

Finally, thanks to colleagues in this Office for their support and commitment to our work. I also want to acknowledge the productive working relationship we have with our colleagues across the country as part of the Canadian Conflict of Interest Network of Commissioners and their offices.

OVERVIEW

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.

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.

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

COMMISSIONER’S ROLE

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:

PROVIDE ADVICE AND OPINIONS	OVERSEE DISCLOSURE PROCESS	RESPOND TO ALLEGATIONS
Provide confidential advice to Members about their obligations under the Act	Meet with each Member at least annually to review the disclosure of the Member’s financial interests	Respond to allegations that the Act has been contravened, and conduct an Inquiry if warranted

ADVICE AND OPINIONS

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.

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.

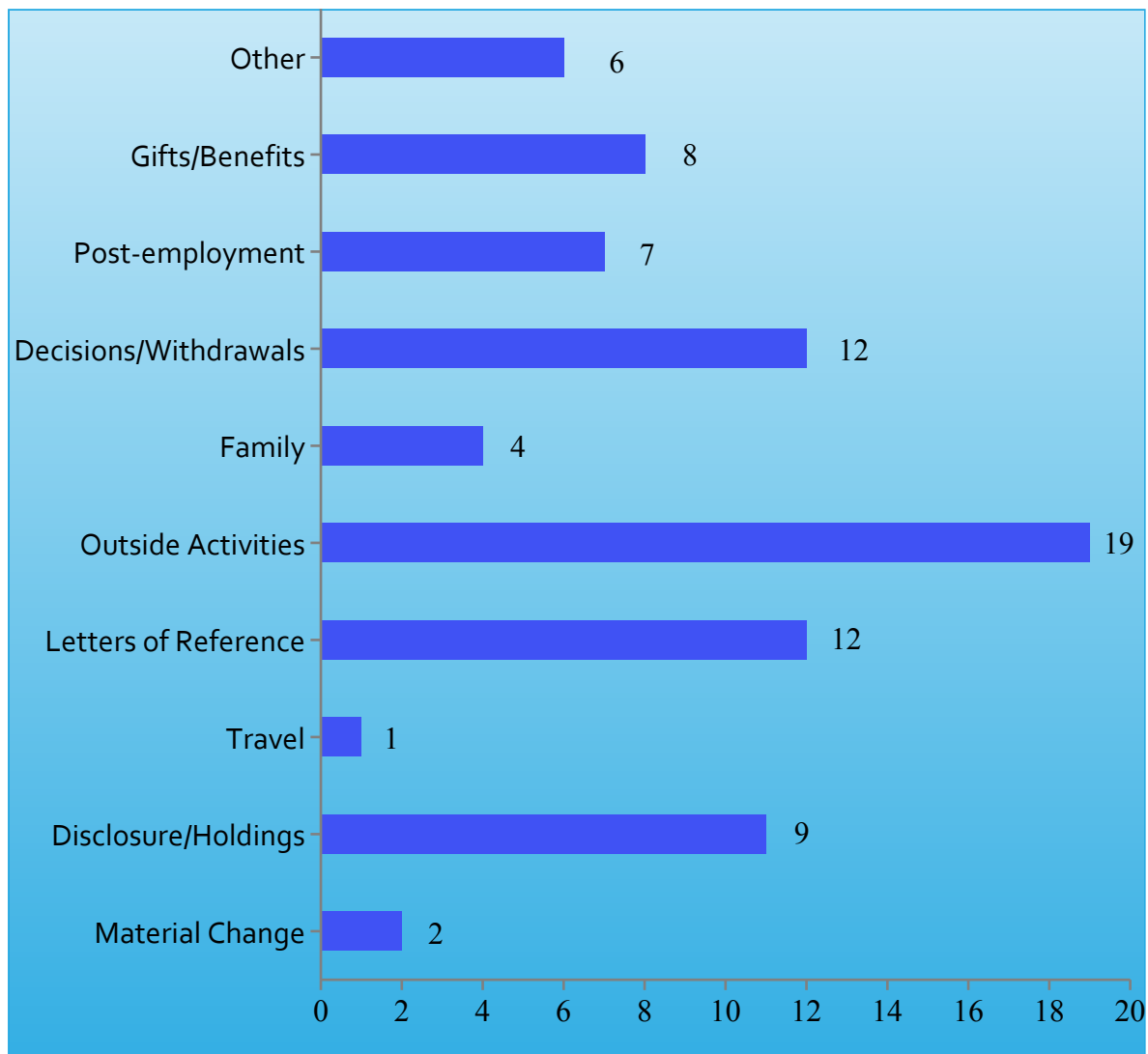
If the Commissioner determines that a Member has or may have a conflict of interest, he can make recommendations and specify a timeframe for compliance.

INFORMATION
AND
OUTREACH

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.

Requests from Members for Advice 2017



Time to respond to Requests from Members for Advice

Median	Average
1 business day	2 business days

DISCLOSURE PROCESS

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 PDSs 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 2017, 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 in late November with the Clerk of the House, where they are available for public inspection.

ONGOING DISCLOSURE OBLIGATIONS

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

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 2017, our Office processed 43 Notices of Material Change.



43 NOTICES
OF MATERIAL
CHANGE
PROCESSED IN
2017

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 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.

ALLEGATIONS CONCERNING MEMBERS

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

THE POLICY OF the *Members' Conflict of Interest Act* is to prevent conflicts of interest from arising and ensure that Members do not 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 unsupported.

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. It is then up to the Legislative Assembly to accept or reject the recommendation.

No public Opinions were issued in 2017.

Formal Requests for Opinions (section 19)

From MLAs	0
From public (jurisdictional)	2
From public (non-jurisdictional)	12
TOTAL	14

IN 2016, COMMISSIONER Fraser examined whether former Premier Christie Clark furthered her private interest by participating in fundraising events and whether she should have recused herself from decisions involving donors who attended these events. He found that she was not in an apparent conflict of interest and that the donations did not constitute illegal gifts or personal benefits. One of the complainants, Democracy Watch, then sought judicial review, alleging that the “decision” by the Commissioner was unreasonable. The case was heard in British Columbia Supreme Court in November, 2016, and a decision issued on January 15, 2017. Democracy Watch appealed. The appeal was heard on October 18, 2017 and oral reasons issued that same day. The cases are summarized below.

Democracy Watch v. British Columbia (Conflict of Interest Commissioner)
2017 BCSC 123

The Commissioner applied to have the petition dismissed on the basis that his proceedings are protected by parliamentary privilege and not subject to judicial review. Justice Affleck of the BC Supreme Court agreed, and the case was dismissed without costs. He cited the abundance of high authority against Democracy Watch’s position on

jurisdiction, and noted that it was the role of the Legislature to consider the conduct of its officers, when they are performing their assigned role, not the courts.

“..the Commissioner is authorized by the Act to do no more than conduct an inquiry; arrive at an opinion, and in the appropriate circumstance make a recommendation to the Legislative Assembly.. It is then for the Legislature, not the Commissioner, if it chooses to do so to exercise discipline authority over its members. An opinion of the Commissioner has no legal consequence unless and until the Legislature acts on it.”

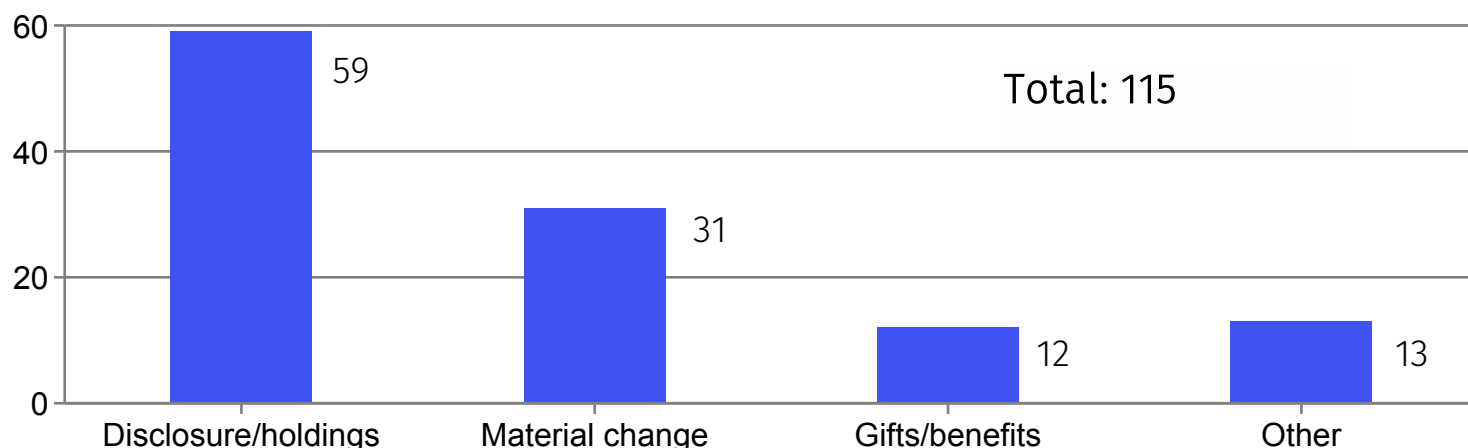
Democracy Watch v. British Columbia (Conflict of Interest Commissioner),
2017 BCCA 366

Prior to the hearing of the appeal, a general election was held. Thereafter, Premier Clark ceased to be a member of the executive council and vacated her seat in the legislature. As a result, the appeal was dismissed as moot.

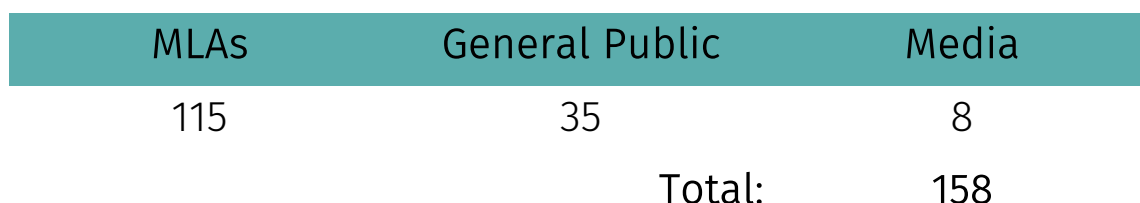
COMMUNICATIONS, OUTREACH AND OTHER ACTIVITIES

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



Other Activities

IN 2016, COMMISSIONER Fraser was asked by the Alberta Ethics Commissioner to conduct a re-investigation into a matter involving the Honourable Alison Redford, Q.C., as the Ethics Commissioner was unable to act for personal reasons. The issue was whether Ms. Redford had improperly furthered her ex-husband's private interest contrary to section 3 of the *Conflict of Interest Act* when as former Justice Minister she selected a consortium of law firms, which included her ex-husband's law firm, to conduct tobacco litigation for the Province of Alberta. In his Opinion issued on March 29, 2017, Commissioner Fraser concluded that Ms. Redford did not improperly further another person's private interest in making her decision and, therefore, did not breach the *Conflicts of Interests Act*. Available online at <http://www.ethicscommissioner.ab.ca/media/1787/redford-reinvestigation-decision.pdf>

Other Activities.

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 2017, the annual CCOIN Conference was held in Charlottetown, Prince Edward Island from September 6-8. Topics discussed included the effect of solicitor-client privilege and other legal privileges on the work of Commissioners; the role of the Commissioner in the development of legislation and codes of conduct. There was also a unique opportunity to hear the view from the seat of a Member of Parliament and the spouse of a Member of the P.E.I. Legislative Assembly. The 2018 Conference will be held in St. John's, Newfoundland.

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.

FINANCES AND ACCOUNTABILITY

Office 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 2017/18 we received a budget appropriation of \$743,000. The actual cost of our operations for the year was \$721,330.

Our Budget Proposal for 2018/2019 - 2020/2021, presented to the Committee on November 22, 2017, sought an annual budget of \$687,000. The Committee approved the annual budget and the provision of an annual capital allowance of \$25,000.

The Commissioner’s travel expenses are posted on our website and updated on a quarterly basis, available at <http://www.coibc.ca/admin.htm>

ACKNOWLEDGEMENTS AND APPRECIATION

External Support

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 Speaker and the Clerk of the House and their respective Offices, as well as the Caucus Chairs and the Members' assistants.

Office Colleagues

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.

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.

Nicola Main, Administrative Assistant and Receptionist

Ms. Main was a part-time colleague who assisted us through part of 2017. Her friendly manner and attention to detail were greatly appreciated, especially during the busy disclosure period.



COIBC

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