

COIBC

OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER

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October 11, 2019

Honourable Darryl Plecas Speaker of the Legislative Assembly Room 207 Parliament Buildings Victoria BC V8V 1X4

Dear Honourable Speaker,

It is an honour to present the Annual Report of the Office of the Conflict of Interest Commissioner for 2018.

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,

Lynn Smith, Q.C

Acting Commissioner

Lyun Smith

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COMMISSIONER'S MESSAGE

Despite the sad, sudden and untimely passing of Commissioner Paul Fraser, Q.C., the Office of the Conflict of interest Commissioner has continued to fulfill its mandate. It has been my honour to serve as the Acting Conflict of Interest Commissioner since June 20, 2019, and to work with the very able and dedicated Conflict of Interest Office staff. I have been struck by the positive relationships that previous Commissioners and this Office have established within the community of Members of the Legislative Assembly, illustrating the Office's focus on advice and prevention.



Lynn Smith, Q.C.
Acting Commissioner

This Annual Report for 2018 relates to the work of the Conflict of Interest Office prior to my appointment, but fortunately the senior staff have remained in place and I am confident that this report is accurate and complete.

Members seek advice from the Commissioner about a variety of matters, and receive it promptly. Members might ask, for example: "Should I accept this invitation to speak, with my expenses covered?" "Can I vote on this Bill, given that my spouse earns his living in the profession that the Bill will regulate?" "How do I disclose the fact that I sold my interest in the family company?" Some questions have a straightforward answer; others require further analysis and interpretation. All are important.

The willingness of the Members to cooperate with the Office, to make and update the required financial disclosures, and to incorporate the principles embodied in the *Members'*Conflict of Interest Act in their thinking and conduct, has been evident to me. It reflects well on the groundwork laid by all of my predecessors in this role, beginning with Ted Hughes, and continuing through to the person who will be appointed sometime soon as the new permanent Commissioner.

A TRIBUTE TO PAUL FRASER, Q.C.

1941 - 2019

This Annual Report is dedicated to Commissioner Paul D. K. Fraser, Q.C., who died on March 29, 2019 after a brief illness.



Mr. Fraser was serving his third term as Commissioner, a role that he was proud and honoured to commence on January 1, 2008. For over a decade, Members of the Legislative Assembly relied on his wise counsel and appreciated his guidance and sound advice.

He will be remembered not only for his professionalism and wisdom, but for his devotion to his family, kindness, warmth, generosity of spirit, sense of humour and joie de vivre. He was a great and loyal friend, a cherished colleague and a dedicated public servant.

"He was a magnet of happiness."

"Thank you, Paul, for all the good work you did. We will miss you."

LEADER OF THE THIRD PARTY
DR. ANDREW WEAVER

"Throughout his time in public life, he was always focused on ensuring that we got the best of ourselves and the best of each other."

PREMIER JOHN HORGAN

"There is a term in our world that has fallen into disuse, and it is: "a gentleman." Paul Fraser throughout his career and his time here was a gentleman."

LEADER OF THE OPPOSITION DR. ANDREW WILKINSON

Obituary

click here to view Victoria Times Colonist Apr. 13/14, 2019



OVERVIEW

Holding elected office is a public trust. The rules governing conflict of interest for Members are set out in the Members' Conflict of Interest Act (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. Members must act in the public interest at all times, and must not use their official position for personal gain or advantage.

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.

OTHER PROHIBITIONS

INSIDER INFLUENCE EXTRA BENEFITS

SECTION SECTION 5

7

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

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.

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.

COMMISSIONER'S ROLE

The 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 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 the Members' conduct expectations and discipline. As as result, the records contained in our Office remain confidential as part of legislative privilege.

THREE PRIMARY ROLES

ADVICE & OPINIONS

Provides confidential advice to Members about their obligations under the Act

DISCLOSURE PROCESS Meets with each Member at least annually to review the disclosure of the Member's financial interests

INQUIRIES

Responds to allegations that a Member has contravened the Act, and conducts an Inquiry if warranted

ADVICE AND OPINIONS

As the focus of the Commissioner's work is to help Members understand the Act and provide guidance to prevent conflicts of interest from arising or persisting, arguably the Commissioner's most important function is the advisory role.

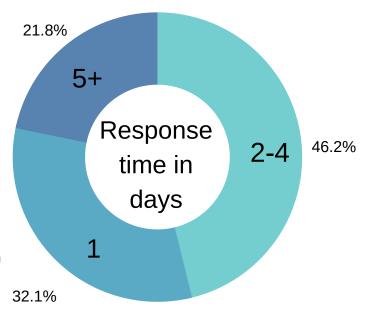
Under section 18 of the Act, Members may request that the Commissioner provide a formal written opinion on a conflict of interest matter, and are encouraged to do so if in any doubt about their obligations. This advice remains confidential unless the Member decides to release it. The Commissioner is 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 or she can make recommendations and specify a time-frame for compliance.

Responding to Requests for Advice

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 specify a time-frame for compliance.



In 2018, we responded to most requests within four business days.

REQUESTS FROM MEMBERS FOR ADVICE



Gifts/Benefits

If offered a gift in connection with their duties of office, Members ask the Commissioner whether it is appropriate to accept the gift and whether it must be disclosed.

Disclosure/Holdings

Members ask questions about reporting of investment holdings, hold mail accounts, business and other financial interests, particularly during the annual disclosure period.

Taking Part in Decisions/Withdrawal

Members who have a private interest in a matter before the Legislative Assembly or one of its Committees may be required to withdraw from participation, if the Commissioner determines that there is a conflict or apparent conflict of interest.

Outside Activities

Questions regarding outside activities primarily involve whether the Member may engage in volunteer or paid work in addition to their MLA duties.

Sponsored Travel

Sponsored Travel includes any travel and related expenses paid for in whole or in part by a third party. Members should seek approval from the Commissioner before accepting such offers.

Letters of Reference

Members may ask if it is appropriate to write letters of reference or support for individuals or groups in their constituency and about the proper use of letterhead (i.e. personal, constituency, ministerial).

Constituency Issues

Members may ask about providing appropriate assistance to constituents. Questions relating to the proper use of constituency resources are generally referred to the Office of the Speaker or the Clerk of the Legislative Assembly.

Family

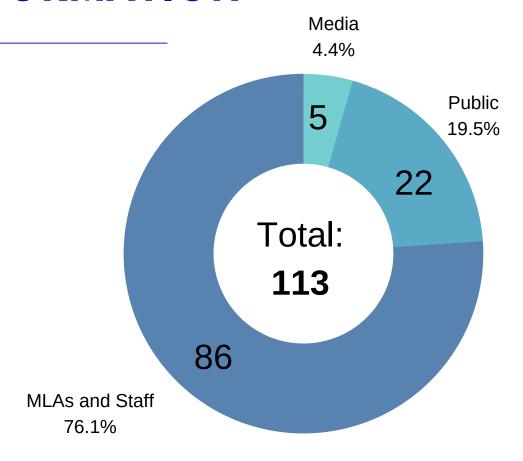
Questions involving family members primarily involve the employment activities of a spouse or child, but may include those of other family members.

INFORMATION AND REFERRALS

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

Members of the public and the media also contact our Office for information, primarily in relation to our jurisdiction and ongoing inquiries. If we are unable to assist, we try to make an appropriate referral (e.g. Ombudsperson).

REQUESTS FOR INFORMATION



ALLEGATIONS CONCERNING MEMBERS

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

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.

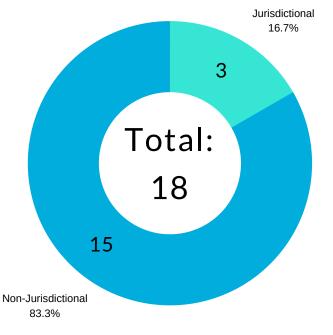
Typically, when concerns about a Member's compliance are brought to his or her attention, the Commissioner first gathers information informally to determine if there are reasonable and probable grounds to support the allegations. The Commissioner then determines whether to proceed to the formal inquiry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

REQUESTS FOR INQUIRY

Our Office received 18 requests for the Commissioner's Opinion pursuant to section 19 in 2018. Most of the requests were from the public and non-jurisdictional.

No inquiries were held in 2018.



ANNUAL DISCLOSURE PROCESS

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.

Members are required to disclose only the nature of their assets, liabilities and financial interests, not the value of those interests.

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 CDS, as well as a summary of any gifts or personal 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.

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 2018, disclosure meetings were held in Victoria and Vancouver from August to November.

ONGOING DISCLOSURE OBLIGATIONS

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.

REPORTING MATERIAL CHANGES A "material change" is 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.

After reviewing the Member's material change form, our Office prepares a Notice of Material Change ("NMC") which is then filed with the Clerk of the Legislative Assembly, where it is filed with the Member's most recent PDS.



REPORTING
GIFTS &
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 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 must disclose and provide details of any gift or personal benefits they have received if the value of the gift exceeds \$250. A summary of gifts received throughout the year is included in the Member's PDS.



PUBLICLY RELEASED OPINIONS

Request for Opinion on the matter of Bill 53 (Recall and Initiative Amendment Act, 2018)

On October 31, 2018, Mr. Andrew Wilkinson, Leader of the Official Opposition, requested the Commissioner's Opinion on whether participation by a Member in the debates and votes pertaining to Bill 53 constituted a conflict of interest where (a) the Member was aware that he or she was the target of a pending recall campaign; or (b) where an actual recall campaign targeting the Member had been initiated and registered with Elections BC.

Commissioner Fraser noted that it is the policy of the Office not to give opinions on hypothetical matters. As no recall applications had yet been filed with Elections BC, he concluded that both questions were premature.

A copy of Mr. Wilkinson's request and Commissioner Fraser's response, issued on November 6, 2018, are posted on our website here.

OTHER ACTIVITIES

CCOIN

Our Office is an active member of the Canadian Conflict of Interest Network (CCOIN), which 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.



Topics at the 2018 Conference included the reporting of material changes, bullying and harassment in a legislative environment, penalties, and outreach in a confidential environment. Delegates also shared updates and recent opinions from their respective jurisdictions and discussed emerging issues.

LEGISLATIVE INTERNSHIP PROGRAM

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.

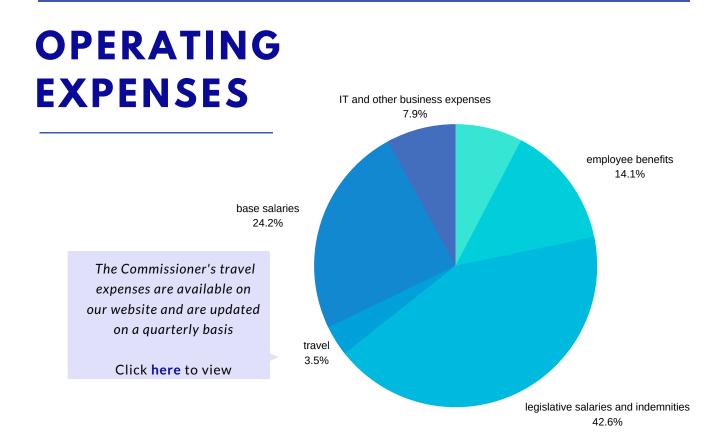
FINANCES AND ACCOUNTABILITY

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 2018/19 the Office of the Conflict of Interest Commissioner received a budget appropriation of \$718,000. Following the death of Commissioner Fraser in March 2019, the Office was granted further access to Contingencies to cover a budget overage to \$950,917 created by payment of a life insurance benefit to Commissioner Fraser's estate. The payment of a life insurance benefit outside of the group life plan, equivalent to the former Commissioner's annual salary, was a provision of the Commissioner's terms of appointment for his third term, which began on May 30, 2018.

Our Budget Proposal for 2019/2020 - 2021/2022, presented to the Committee on November 20, 2018, sought an annual budget of \$718,000. The Committee approved the annual budget and the provision of an annual capital allowance of \$25,000.



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, Former Executive Coordinator

Ms. Pink served as the operational manager of the Office from November 2012 until her retirement in July 2018. She was well known and highly regarded within the Legislative precinct and was a treasured colleague. We wish her all the best in her retirement!

The three staff members listed below were all part of the Office during the sad and difficult time when Commissioner Paul Fraser was ill and passed away. They made sure that the work of the Office continued, and that there was a smooth transition for the Acting Commissioner. They are to be commended for their diligence and fortitude.

Carol Hoyer, Executive Coordinator

Ms. Hoyer joined our Office in June 2018 as our new Executive Coordinator. She has extensive experience in senior administrative roles within government, in particular with the Ministry of Health and the Ministry of Indigenous Relations and Reconciliation. Her work is greatly valued and appreciated.

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.



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