



GUIDE TO GIFTS AND PERSONAL BENEFITS

COIBC

OFFICE OF THE CONFLICT OF INTEREST
COMMISSIONER

JUNE 2020

ABOUT THIS GUIDE

This Guide has been compiled to help MLAs understand their obligations under Section 7 of the *Members' Conflict of Interest Act* (the "Act") and to provide guidance for how to respond appropriately in a variety of situations that typically arise for Members when offered gifts or personal benefits. The examples are provided for illustrative purposes only and are not exhaustive. If you are in any doubt about your obligations under the Act, you should request the Commissioner's advice about your specific situation.

TABLE OF CONTENTS

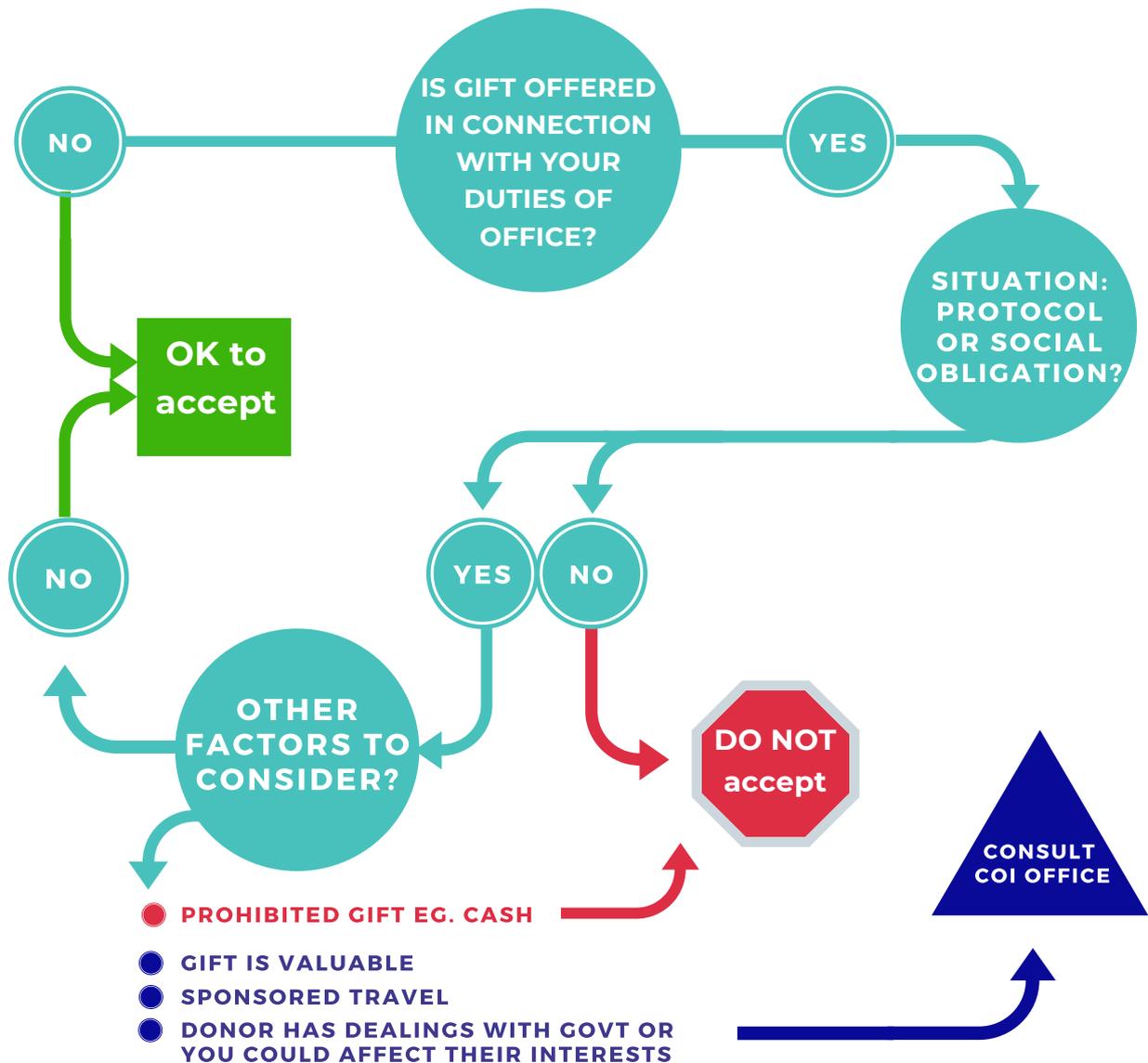
Flowchart	1
Legislation	2
Overview	3
Gifts from lobbyists	4
Thank you gifts	5
Gifts from constituents	6
Accepting gifts on behalf of the Province	7
Returning or donating gifts	8
Meals and hospitality	9
Events	10
Sponsored travel	11
Fees and prizes	12
Passes and memberships	13
Friends and family	13

QUESTIONS?

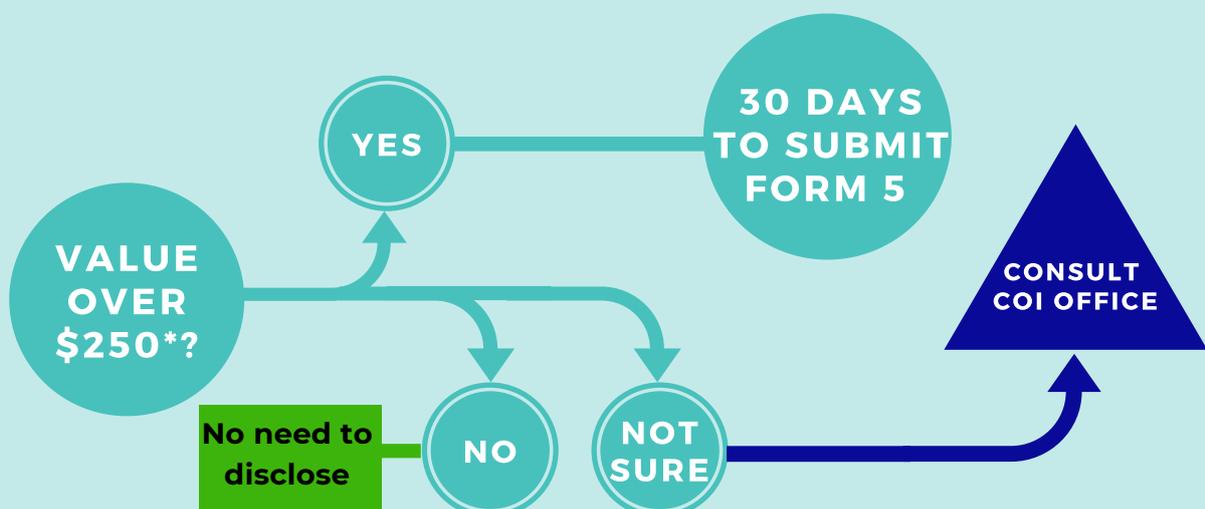
For more information, visit our website www.coibc.ca or contact us at:

Office of the Conflict of Interest Commissioner
250-356-0750
conflictofinterest@coibc.ca

STEP ONE: CAN THE GIFT BE ACCEPTED?



STEP TWO: DOES THE GIFT NEED TO BE DISCLOSED?



*value of individual gift or total of multiple gifts from same donor in 12 month period

Gifts or personal benefits include:

- **Money** in any form (e.g. cash, cheque, gift card) if there is no obligation or expectation to repay it
- **Consumer goods** such as books, flowers, artwork, furniture or wine
- The **use of property** or facilities such as vehicles, offices, houses, cottages or sports facilities, at a reduced rate or no cost
- **Services** such as dry cleaning or a haircut, at a reduced rate or no cost
- **Membership** in a club or other organization, such as a golf or tennis club, at a reduced rate or no cost
- **Meals** paid for by another individual or organization
- **Hospitality** provided by another individual or organization (e.g. complimentary food and beverages served at a reception)
- An **invitation or tickets** to attend an event, such as a dinner, reception, sports match, conference, gala, concert, play or fundraiser, at a reduced rate or no cost
- **Sponsored travel** such as airfare, taxi or other ground transportation and accommodation paid for in whole or in part by a third party

The rules for accepting and disclosing gifts and personal benefits are set out in **section 7** of the Act.

The **rule** that Members are prohibited from accepting gifts or personal benefits reflects the underlying principle of the Act, i.e. that Members should not use their public office to further their private interests. Members are not entitled to receive extra “perks” by virtue of their position as MLAs, and gifts cannot be used to influence Members.

The **exception** recognizes that Members are frequently required, as part of their official duties, to attend a variety of events and participate in activities where complimentary hospitality is provided, or gift-giving is customarily part of the proceedings. In such cases, it is reasonable and appropriate for Members to accept gifts and benefits that are proportionate to the occasion.

The requirement for **disclosure** ensures transparency.

PRINCIPLES BEHIND SECTION 7

Members’ Conflict of Interest Act

Accepting extra benefits

- 7 (1) 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.
- (2) Subsection (1) does not apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.
- (3) If a gift or personal benefit referred to in subsection (2) exceeds \$250 in value, or if the total value received directly or indirectly from one source in any 12 month period exceeds \$250, the member must immediately file with the commissioner a disclosure statement, in the form prescribed by the regulations, indicating
 - (a) the nature of the gift or benefit,
 - (b) its source, and
 - (c) the circumstances under which it was given and accepted.



When determining whether to accept a gift, the starting point is NOT the value of the gift. Just because a gift is valued under \$250, does not mean it can be accepted. This is the threshold for disclosure purposes, not acceptability. Anytime you are offered a gift, you must first consider whether it meets the **exception** set out in the Act. If it does not, or if there are other factors that might suggest the gift has been given in order to influence you or is otherwise inappropriate, the gift must be declined or returned to the donor.

RULE

Members are **prohibited** from accepting a fee, gift or personal benefit connected, directly or indirectly, with the performance of their duties of office

EXCEPTION

Members may accept a gift or personal benefit that is received as an incident of the **protocol or social obligations** of office

INCIDENT OF PROTOCOL



SOCIAL OBLIGATION

A situation where a Member attends an event, meeting, conference or official visit and receives a gift from

- a representative of another level of government as a gesture of goodwill between the two governments; or
- a member of a cultural or social group which traditionally offers gifts to express gratitude or to commemorate the Member's participation.

A gift or benefit offered as a matter of gratitude or courtesy appropriate to the occasion, most usually where a Member attends an event and:

- has a role (e.g. to bring greetings, present an award, speak, etc); or
- does not have a role but the attendance of the Member is normally expected (e.g. charity fundraisers, opening ceremonies, etc).

OTHER FACTORS

Even if the situation fits the exception, there may be other reasons to decline the gift. Exercise caution if it could appear that a gift is being offered in order to influence you e.g.:

- the donor has official dealings with the government or has interests that might be affected by a decision you could be called upon to make;
- the gift seems disproportionately valuable in the circumstances

Certain gifts are prohibited (e.g. cash) or may require pre-approval from the Commissioner (e.g. Sponsored Travel).



If it does not fit the exception, or if other factors suggest the gift might be inappropriate, **do not** accept the gift.

DISCLOSURE

Gifts or personal benefits worth more than **\$250** must be disclosed within 30 days using **Form 5**, available on our website.

Form 5



All gifts disclosed will appear on your annual Public Disclosure Statement.

Gifts from lobbyists

Members should be particularly cautious when offered a gift by a lobbyist, as a perception may arise that the gift is being offered to influence them or secure preferential access or treatment for their client. Members should also be aware of the new gifts rules that govern lobbyists.

As of May 4, 2020, the **Lobbyists Transparency Act** (LTA) and the Lobbyists Transparency Regulation will come into force. Members of the Legislative Assembly are included in the definition of "public office holders" under the LTA.

Prohibition: The LTA **prohibits** a lobbyist from giving or promising to give, directly or indirectly, any gift or other benefit to any public office holder the lobbyist is lobbying.

Exception: A gift is only acceptable if it meets **both parts** of the two-part test in the LTA (the "exception test") set out below:

LTA EXCEPTION TEST

The gift or benefit is given or promised under the **protocol or social obligations** that normally accompany the duties and responsibilities of office of the public office holder;



The total value of the gifts given or promised to the public office holder by the lobbyist in accordance with protocol or social obligations over any given 12-month period is **less than \$100**

Reporting: The LTA requires that **ALL** gifts given or promised to be given by a lobbyist to **ALL** public office holders must be declared by the lobbyist, even if the lobbyist is not lobbying the public office holder to whom the gift is given.

NOTE

Even if you are not required to disclose a gift received from a lobbyist under the *Members' Conflict of Interest Act* (i.e. it is under the \$250 threshold), the information will still be disclosed publicly because the lobbyist has a separate obligation under the LTA to report that it was given to you.



More information and guidance on the provisions of the LTA related to gifts are available from the Office of the Registrar of Lobbyists for British Columbia. (see <https://www.lobbyistsregistrar.bc.ca/publications/>)

Thank you gifts

Typically, Members are presented with a gift in the context of a ceremony or event where it is customary for organizers to present speakers or special guests with a token gift as an expression of gratitude. However, the entire context should be considered to ensure it is appropriate to accept the gift.

OTHER FACTORS

Gifts of more than a nominal value ought to be considered in light of the circumstances and the donor's relationship with the Member's particular role, and public perception. If the gift seems to be disproportionately generous in the circumstances, or if the donor may have dealings with the government, it may appear that the donor is attempting to influence you. Gifts given outside an official setting are generally not acceptable.

Example 1: After delivering a speech at a local service club, you are presented with a tote bag and mug as a thank you.



You may accept the gift because such modest tokens of appreciation are within the normal expression of courtesy in the circumstances.

Example 2: After extending greetings on behalf of the Province to delegates attending a resource development conference, you are presented with a gold watch valued at \$1,500.



You should return the gift. Such a valuable, luxury item exceeds what is considered appropriate as a gesture of appreciation for your attendance.

Example 3: You have been invited by a First Nations community to attend a ceremony to celebrate National Indigenous Peoples Day. As part of the ceremony, you are presented with a silver bracelet designed by a local artist valued at \$275.



Such gift-giving is a common expression of First Nations' custom and fits the "protocol" exception. You may accept the bracelet and must disclose it within 30 days because its value is over \$250.

Example 4: At the end of a meeting in your office with a stakeholder group to discuss proposed changes to a regulatory regime, the stakeholder group gives you a pen and pencil set valued at \$50 to thank you for meeting with them.



You may not accept the gift. Gifts are not normally exchanged as a matter of courtesy in routine business meetings and the exception does not apply.

Gifts from constituents

Constituents may wish to give you a gift to express thanks or as a gesture of goodwill from the community. Members must be mindful of the circumstances to ensure such gifts are appropriate and exercise caution if it may appear the constituent is attempting to obtain preferential treatment.



Gifts from constituents of nominal value (under \$50) that are offered in connection with a particular constituency event or special occasion where gift-giving is customary may fit the exception (e.g. cultural or religious holiday, constituency open house).

Gifts that can be shared or appreciated by anyone visiting your office (e.g. box of chocolates, coffee table book, small plant, modest floral display) are generally acceptable. Valuable items, or gifts such as alcohol or concert tickets that can only be enjoyed only by the Member, are generally not appropriate to accept.

Example 1: Soon after being elected and setting up your constituency office, you hold an open house to introduce yourself and your staff to the community. A local business delivers a welcome card and a bouquet of flowers worth \$25.



You may accept. It is customary for such modest gestures of goodwill to be offered from the community in the circumstances.

Example 2: After providing information to a constituent who required assistance to apply for a government benefit, you are offered a 20% discount at the constituent's dry cleaning business as a thank you.



The reduced rate for services is a personal benefit that falls outside the exception. It is part of your role as a Member to assist constituents to navigate the "maze" of government. You may not accept the discount.

Example 3: A constituent visits your office to extend greetings on the feast of Diwali and drops off a small box of traditional sweets.



You may accept. Such gifts are typically offered in conjunction with this holiday and your acceptance demonstrates respect for the constituent's cultural traditions.

Example 4: A constituent whom you know slightly from various community events gives you a bottle of wine for your birthday.



It appears that the gift has been given to you in connection with your official role, as such gift giving between acquaintances is not expected or typical. It does not fit the exception as the occasion is personal rather than public. The exception does not apply and you may not accept the gift.

Accepting gifts on behalf of the Province

Certain gifts that are valuable and not personal in nature are often more appropriately accepted "on behalf of the Province" and do not need to be disclosed.

Members, especially Ministers, may be offered gifts of substantial value that are not personal in nature, such as a sculpture or other artwork, most often in the context of the protocol exception. It could be more appropriate for such gifts to be kept in a government or Ministry office. In such cases, the gift is not considered a gift to the Member personally and does not need to be disclosed. However, Members should ensure that a proper record of such gifts is maintained and must not remove such gifts at the end of their term.



NOTE

The acceptability test still applies. If a gift does not meet the exception, it cannot be accepted on behalf of the Province.

If a Member wishes to display a gift in their office but intends to keep the gift at the expiry of their term, the gift must be disclosed within 30 days of receipt.

Example 1: A city in your constituency recently established a sister-city relationship with a foreign municipality. As part of a welcoming ceremony, a representative from the sister city government presents you with a piece of artwork worth \$5,000.



You may accept the gift as it fits the "protocol" exception, but given the nature and value of the gift, it may be more appropriate to accept it on behalf of the Province and permanently keep it in a government or Ministry office.

Example 2: While on a trade mission to Asia, your government hosts present you and the other delegates with a commemorative coin valued at \$300. You would like to display it in your office until the expiry of your term.



You may accept the gift as it fits the "protocol" exception. As you intend to keep the coin and it is valued at over \$250, you must disclose within 30 days of receipt.

Example 3: While on the same trade mission, you tour a manufacturing facility. At the end of the tour, a company executive presents you with a silver tea set worth \$200. You would like to accept it on behalf of the Province. You do not intend to keep it at the expiry of your term.



There is no "incident of the protocol or social obligations of office", as the donor is a corporate entity and only a token gift (e.g. key chain) would typically be presented to participants in the circumstances. You may not accept the gift on behalf of the Province because the exception does not apply.

Returning or donating gifts

If you are offered a gift that does not meet the exception, you must decline or return it to the donor. Regardless of the gift's final disposition, you are still the original and intended recipient and the same rules for acceptability and disclosure apply.

RETURNING GIFTS

If you accept a gift and realize later that you should not have done so, you should immediately return it with a note of explanation to the donor. You may not give, redirect or donate an unacceptable gift to someone else, such as a family member, employee, constituent or registered charity.

Only gifts that meet the exception may be donated e.g. to a local charity or community group. If the donated gift's value is over \$250, it must be disclosed. You may not ask for or claim a tax receipt for donating a gift because this would amount to a monetary benefit to you.

DONATING GIFTS

Example 1: A local business delivers a large gift basket containing fruit, chocolates and various snacks to your home. You estimate the value at \$150. You would like to donate the basket to a local youth centre.



The gift does not meet the exception, as there is no incident of protocol or social obligation involved. Regardless of its value and final disposition, you may not donate the gift because it is not appropriate for you to accept it in the first place. The gift should be returned.

Example 2: While on a trade mission in Japan, you receive a doll set valued at \$350 from the regional government hosts. You would like to donate the gift to a Japanese cultural centre in your community.



The gift may be accepted as an incident of protocol. You may donate the gift if you wish, but you must still disclose it because you are the original recipient of the gift and it is valued at over \$250. You may not claim any tax benefit for the donation.

Sample wording when a gift must be declined or returned

Thank you for the [description of gift] which I received on [date]. As a Member of the Legislative Assembly, I am bound by the provisions of the *Members' Conflict of Interest Act* (the "Act") which prohibits Members from accepting a fee, gift or personal benefit, except compensation authorized by law, that is connected directly or indirectly with the performance of their duties of office. There is an exception for gifts or personal benefits received as an incident of the protocol or social obligations that normally accompany the responsibilities of office.

I appreciate your kind gesture and recognize that you offered the gift in good faith. However, as it does not appear that the exception applies, I am unable to accept the gift. Therefore, in order to comply with my obligations under the Act, I am respectfully returning the gift to you.

Meals and hospitality

Meals and other modest hospitality (e.g. complimentary refreshments) may generally be accepted if typically offered as a courtesy in the circumstances.

Example 1: You have been invited to give greetings on behalf of the Government to delegates attending a conference for teachers and other education professionals. You sit on the Select Standing Committee on Education. Breakfast is provided.



You may accept the complimentary breakfast. You have an official role at the event, and such modest hospitality is customary and appropriate in the circumstances.

Example 2: You are a parliamentary secretary and directly involved in consultations with industry groups. A lobbyist for an industry stakeholder asks if you are available to meet for lunch at a restaurant and offers to pay for the meal.



You may not accept this meal as it does not fit the exception. If time pressures make it difficult to schedule a meeting during regular office hours, you should pay for your own meal. Members are allocated *per diems* for such legitimate business expenses.

Example 3: A professional association has asked you to meet with their staff to review proposed changes to the association's governing legislation. The meeting runs over the lunch hour, and sandwiches and coffee are brought in.



You may accept the complimentary meal as in the circumstances, providing modest refreshments during a "working lunch" is a reasonable courtesy to extend to you.

Example 4: A trade union has issued an open invitation to Members of all parties to an information session, which includes a reception where complimentary light refreshments and alcohol will be served. The union engages in lobbying activities.



Members' duties include meeting with constituents and stakeholder groups to better understand their concerns. Invitations to events intended to raise awareness of issues where standard hospitality is provided and are widely attended are generally acceptable.

Example 5: A large corporation that is regulated by the Province is hosting its staff holiday party at a luxury hotel and has invited you to attend.



You may not accept the invitation because attending private, corporate events is not considered part of your social obligations of office. Moreover, given the donor's dealings with the government, the gift could be seen as an opportunity to lobby or attempt to influence you in some future decision you may be called upon to make.

Events

Invitations or tickets to sporting, artistic, cultural or charitable events may generally be accepted if you are performing an official duty or function, or where your attendance fulfills a social obligation. This courtesy may reasonably extend to your guest.

Example 1: You have been offered a VIP pass for you and your spouse by the organizing committee to a major international sporting event. The Province has provided some funding for the event.



You may accept the pass as your attendance is considered part of the social obligations of office. The visible presence of elected representatives at such events reflects the Province's support of significant sporting and cultural events held in British Columbia. Often such passes are not available to the public and the value is unknown. In such cases, the value may be disclosed as "no commercial value".

Example 2: The CEO of a corporation offers you tickets in the company's box suite for the same sporting event as above.



You may not accept the tickets. Box suites afford the guests a level of privacy that is contrary to one of the underlying purposes of the "social obligation" exception, i.e. to publicly show your support for local or provincial events. The level of luxury and exclusivity also suggest that attendance is more of a "perk" than the *bona fide* fulfillment of a social obligation. Moreover, there may be a perception that the invitation has been extended primarily for lobbying purposes.

Example 3: A charity in your constituency has invited you and your spouse to its annual gala fundraiser. The tickets are being sold to the public for \$150 each, of which \$100 is tax-deductible. You do not have a role at the event.



You may accept the tickets as the your attendance shows support for the organization and is considered a social obligation. Although the total cost of the tickets is over \$250, the total value of the benefit received is only \$100. Accordingly, you do not need to disclose. You may not claim the tax credit.

Example 4: A local charity is holding a golf tournament as a fundraiser. A corporate donor offers to cover your entry fee of \$200.



If you wish to participate, you should pay your own entrance fee. To meet the exception, the invitation would normally need to be extended by the charity whose event you are attending as a social obligation, rather than by a third party.

Example 5: A Chinese cultural association has invited you and several other elected representatives in the region to attend a banquet celebrating the Lunar New Year. The event is not in your constituency.



You may accept the invitation, as attending various cultural events and celebrations is one of the social obligations of office. Members may attend events outside their constituency if the event is regional or provincial in nature,

Sponsored travel

"Sponsored travel" means travel on a commercial, non-commercial or private aircraft and includes any other travel-related expenses (e.g. taxi, accommodation) paid for in whole or in part by a third party. Sponsored travel should be pre-approved by the Commissioner and the final value received disclosed within 30 days of returning.

NOTE

Acceptable sponsored travel includes taking part in a genuine fact-finding tour, or speaking at conferences, public events, forums and the like, where Members' experience as elected officials would offer valuable perspectives. A genuine fact-finding tour is one which allows the Member to become better informed regarding subject matters closely related to their official duties. The Member's participation should serve a public purpose rather than a private one.

Example 1: You are a female MLA and have been invited to speak on the topic of challenges facing women in politics at a national symposium in Ottawa. The organizers have offered to cover your airfare and hotel expenses.



You may accept the organizers' offer. Your perspective as an elected representative is a valuable one and it is customary for organizers of such events to cover the expenses of their guest speakers.

Example 2: A foreign government has invited you and your spouse to take part in a tour of its capital city. The itinerary includes tours of several tourist attractions and receptions with government representatives and local business leaders. All expenses, including airfare, meals, and accommodation will be covered.



While there may be some benefit to building international relationships, this appears to be more of a "jaunt". The onus is on the Member to demonstrate that there is a valid public purpose to participating and the trip is not primarily for personal enjoyment.

Example 3: An eco-tourism company in your constituency invites you to take part in a wildlife viewing trip. The only way to reach the remote area is by helicopter chartered by the company.



Participating in the tour serves a valid public purpose if it allows you to become more informed about an important industry in your constituency. You may accept the sponsored travel as there is no other practical transportation option.

Example 4: You have been invited to attend an economic development conference in Calgary that will be attended by elected representatives from across the country and companies from a variety of sectors. A large multi-national company has offered you a seat on a flight from Vancouver to Calgary on its corporate jet.



You may not accept the private flight. There are many commercial transportation options available. If you wish to attend the conference, you should go through the regular government or constituency approval process for claiming business travel expenses.

Fees

Cash or a cash equivalent (e.g. cheque, gift card, honorarium) is considered a fee and therefore not acceptable under any circumstances, unless unrelated to the performance of the Member's duties.

Example 1: After speaking at a local community event, the organizers publicly present you with a thank you card. When you open the card later, you discover that \$200 in cash has been enclosed.



Although the circumstances fit the "social obligations" exception and the value is under \$250, this is considered a fee connected with the performance of your duties of office and you are prohibited from accepting it. The cash must be returned (either in person or by a trusted employee).

Example 2: Before you became an MLA, you had a successful career as a professional photographer. You have been asked by an amateur photography club to teach a one-day workshop on nature photography. The club has offered you a \$300 honorarium and expressed interest in scheduling additional workshops.



Members are not prohibited from engaging in outside employment or business activities, unless they are members of the Executive Council. As teaching the workshop is not related to your MLA duties, you may accept the honorarium and do not need to submit a Gifts Declaration Form. You do not need to submit a Material Change Form or include the payments as a source of income on your annual disclosure statement, unless you decide to teach more workshops and your income from that source exceeds \$1,000 in a 12-month period.

Prizes

A prize awarded to you in the course of fulfilling your official duties (e.g. door prize, raffle, social media draw/contest) may not be accepted.

Example 1: While attending the Annual General Meeting of a non-profit in your constituency, your name is drawn to win a gift basket worth \$100.



As you are attending the event in your role as the local MLA, you may not accept the prize and should decline.

Example 2: Your name is drawn to win \$350 in the 50-50 draw at a fundraising event for your daughter's hockey team.



As you are at the event in a purely personal capacity and purchased the ticket yourself, you may accept the prize and do not need to disclose it.

Passes and memberships

Complimentary passes and memberships may only be accepted if they primarily serve a public rather than a private purpose.

Example 1: The local golf and country club offers you a complimentary membership for you and your spouse, valued at \$1,500 annually.



You may not accept the membership. Complimentary passes or memberships to private facilities intended for personal recreational enjoyment do not fit the exception.

Example 2: A local public art gallery offers you a VIP Pass that provides free admission for you and a guest throughout the year. The offer has been extended to all local MLAs. This type of pass is not available to the public.



You may accept the pass. In cases where the donor is a public institution, a Member's use of the facility is considered a "marketing tool" for the institution and serves a valid public purpose. As the value is unknown, the gift should be disclosed as having "no commercial value".

Friends and family

Gifts of a purely personal nature are not subject to the gifts rule unless it appears that the gift might have been given in order to influence you.

Gifts received by members of your family are not subject to the Act unless they might be an indirect gift to you.

Example 1: You are on friendly terms with your neighbours, who own an automobile repair shop. For several years, and prior to your election as an MLA, they have been giving you a 10% "friends and family" discount on your services.



You may continue to accept the discount. There does not appear to be any connection between the offer of the benefit and your official duties or functions.

Example 2 Your son's volunteer soccer coach, with whom you are on friendly terms but who is not a person you socialize with, owns a business that is applying for a provincial licence. You are the minister responsible for overseeing the licence approval process. The coach gives your son tickets to a pop concert valued at \$175 each.



You should return the tickets as the gift seems to be out of character with the nature of the relationship and it could appear that the gift has been given to your son in an attempt to influence you.



COIBC

OFFICE OF THE CONFLICT OF INTEREST COMMISSIONER

First Floor - 421 Menzies Street
Victoria BC V8V 1X4

conflictofinterest@coibc.ca
www.coibc.ca