



2019
ANNUAL
REPORT

COIBC

OFFICE OF THE CONFLICT OF INTEREST
COMMISSIONER

COIBC

OFFICE OF THE CONFLICT OF
INTEREST COMMISSIONER

October 7, 2020

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 2019.

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,



The Honourable Victoria Gray, Q.C.
Commissioner

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COMMISSIONER'S MESSAGE

The Office of the Conflict of Interest Commissioner worked throughout 2019 to maintain the actual and apparent integrity of the Members of the Legislative Assembly (MLAs), and to enhance the public perception of the integrity of the decisions of the Legislature and its various decision-making bodies. The Office did so as the independent Office administering the *Members' Conflict of Interest Act*.

2019 was a difficult year for the Office. Commissioner Paul Fraser Q.C., who had been Commissioner for about eleven years and was much loved and admired, became ill and passed away on March 29, 2019. The Office was without a Commissioner for almost three months. During that time, the highly professional and dedicated staff maintained the Office's functions, without a Commissioner, to the extent possible. On June 20, 2019, the Honourable Lynn Smith, Q.C., became Acting Commissioner, and she continued in that role until my appointment became effective on January 6, 2020.

The work in 2019 was completed under budget, primarily because the Commissioner's position was vacant for about three months and there was a corresponding reduction in payment for the Commissioner's salary.

I am grateful to all my predecessors for their work in establishing and maintaining the confidence of the public in the integrity and independence of the Office, and the confidence of the MLAs in the ability of the Office to provide timely and helpful advice. I am particularly indebted to the Honourable Lynn Smith, Q.C. for bringing everything up to date for my arrival as Commissioner. And I am especially appreciative of the staff of the Office for their wonderful support, characteristic professionalism and knowledge, and their irrepressible sense of humour.



Hon. Victoria Gray, Q.C.
Commissioner


Despite these difficult circumstances, the Office handled its usual workload in 2019. We processed almost 210 requests for information, a few more than in 2018. Acting Commissioner Smith completed opinions that Commissioner Fraser commenced in early 2019, and released one opinion publicly in August 2019. Throughout her tenure, she provided confidential advice to MLAs and filed numerous Notices of Material Change. In the fall, Acting Commissioner Smith met with all 87 MLAs for their annual financial disclosure meetings.

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 their private interest.

Members must avoid both actual and apparent conflicts of interest, and must arrange their private affairs to prevent such conflicts from arising. Where that is not possible, they must ensure that they do not participate in decisions affecting their private interest.



Members must act in the public interest at all times, and must not use their official position for personal gain or advantage.

OTHER PROHIBITIONS



INSIDER
INFO

SECTION
4

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



INFLUENCE

SECTION
5

Members must not use their office to influence a decision, to be made by another person, to further the Member's private interest.




EXTRA
BENEFITS

SECTION
7

Members must not accept 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.

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 a result, the records contained in our Office remain confidential as part of legislative privilege.

THREE PRIMARY ROLES



DISCLOSURE PROCESS

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



ADVICE & OPINIONS

Provides confidential advice to Members about their obligations under the Act



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.

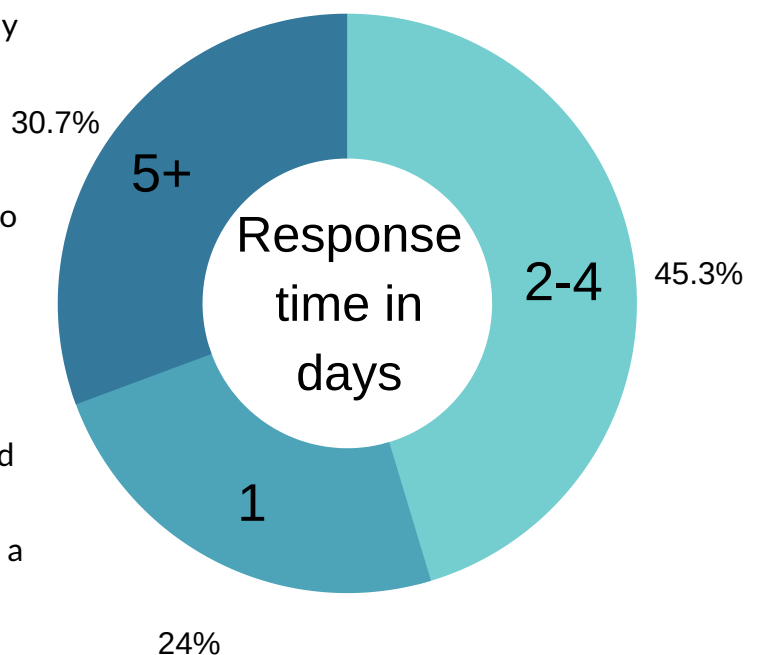
If the Commissioner determines that a Member has or may have a conflict of interest, the Commissioner can make recommendations and specify a time-frame for compliance.

Responding to Requests for Advice

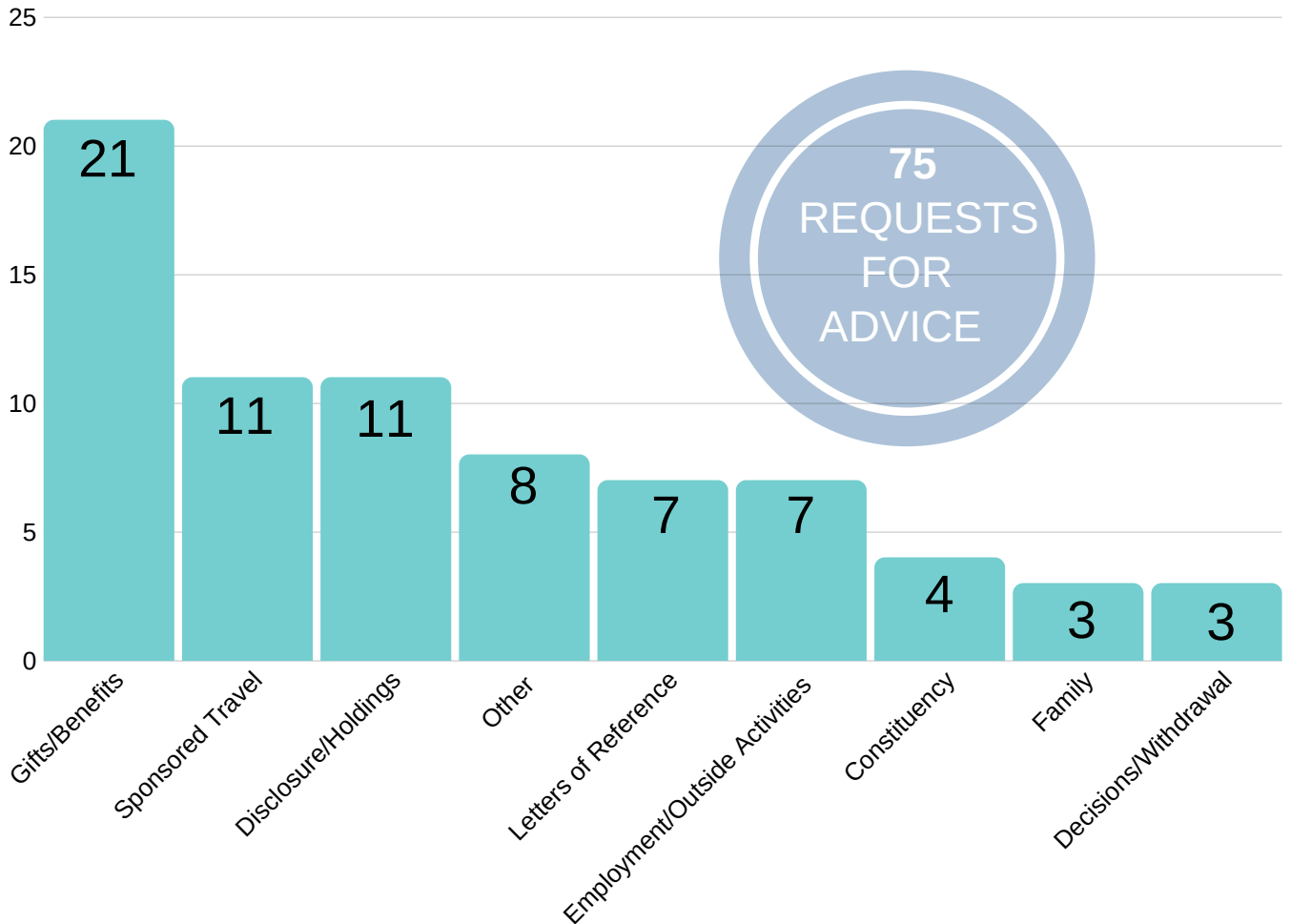
Our Office receives a great variety of requests for advice from Members and their staff.

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 2019, we responded to most requests within four business days. Compared to previous years, there were more requests which had a significantly longer response time, due to the transition from Commissioner Fraser to Acting Commissioner Smith.



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 formally 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

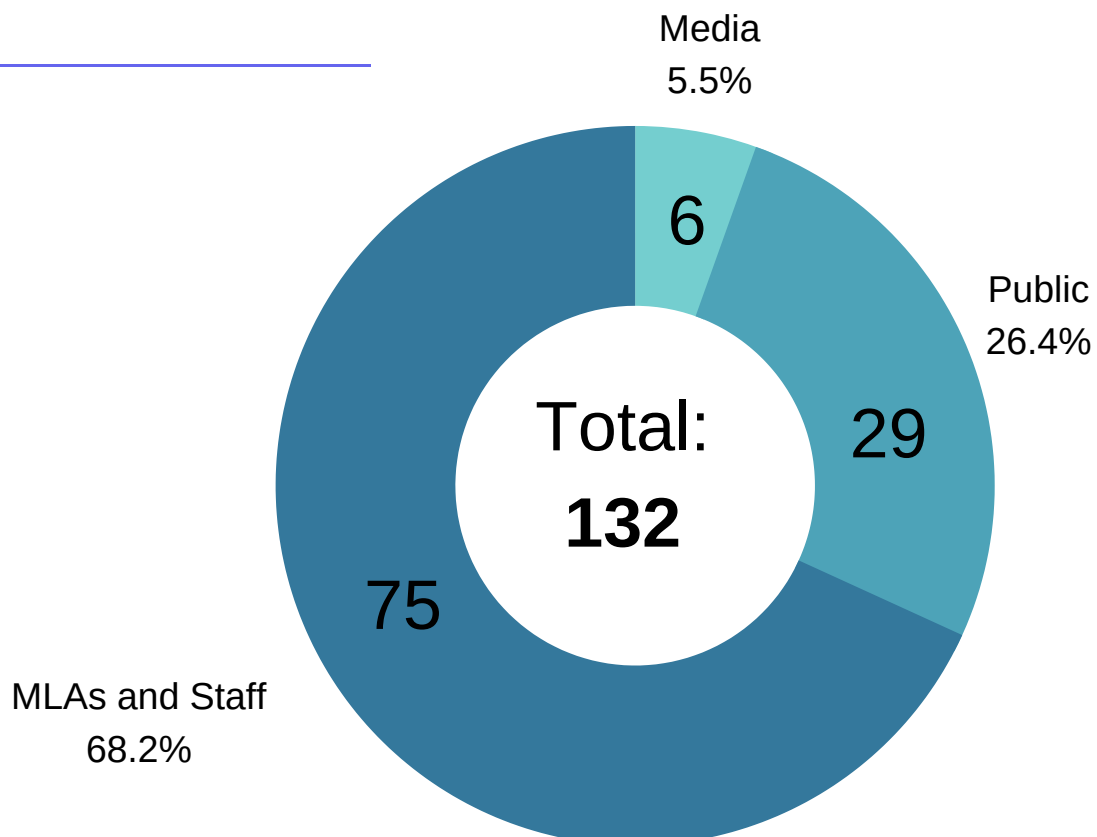
Questions involving family members primarily involve the employment activities of a spouse or child, but may include those of other family members.

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.

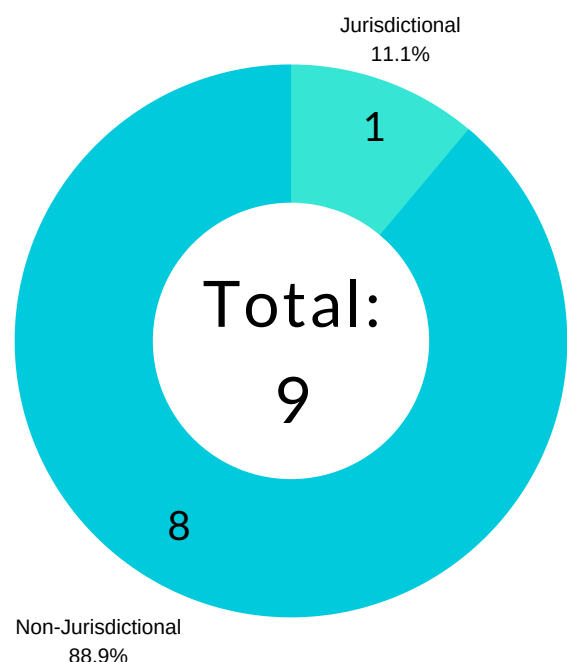
Typically, when concerns about a Member's compliance are brought to our Office, the Commissioner first gathers information informally to determine if there are reasonable and probable grounds to support the allegations. The Commissioner then determines whether to proceed to the formal inquiry stage or 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 9 requests for the Commissioner's Opinion pursuant to section 19 in 2019. Most of the requests were from the public and non-jurisdictional.

No inquiries were held in 2019.

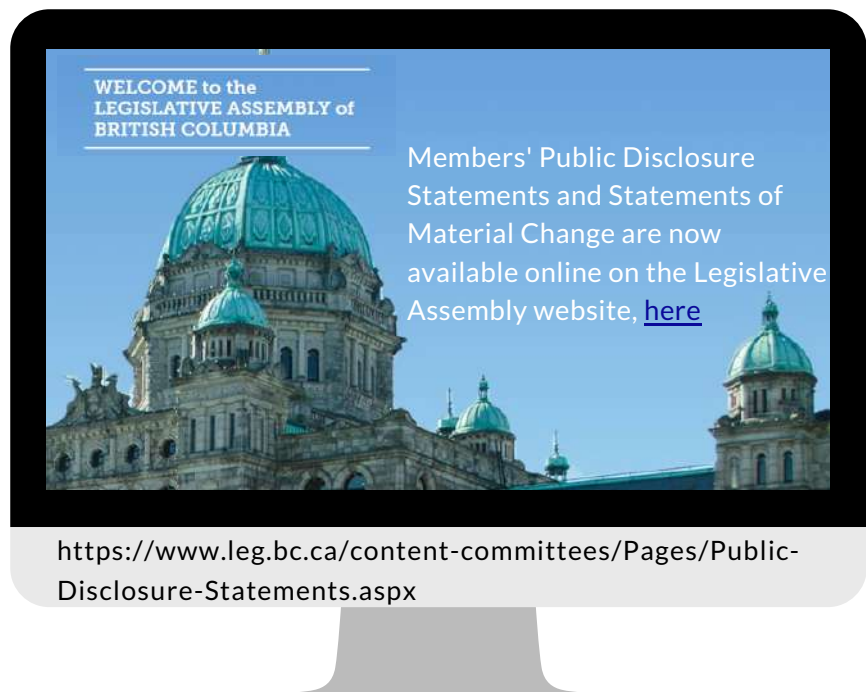


ANNUAL DISCLOSURE PROCESS

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 their spouse.

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

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 Legislative Assembly, where they are available for public inspection, in person or online.

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 2019, 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, their 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 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 MLA Kahlon's Committee participation

On February 13, 2019, MLA Ravi Kahlon requested that Commissioner Paul D.K. Fraser, Q.C. issue an Opinion pursuant to section 18(1) of the *Members' Conflict of Interest Act*. Sadly, Commissioner Fraser died on March 29, 2019, before being able to release his Opinion. On June 17, 2019, the Honourable Lynn Smith, Q.C. was appointed as Acting Conflict of Interest Commissioner, and completed the work commenced by Commissioner Fraser. Acting Commissioner Smith released her Opinion on August 14, 2019. The Opinion is available on our website, at <https://coibc.ca/publications/#Opinions>.

Background

In the fall of 2017, MLA Kahlon was appointed to the Select Standing Committee on Crown Corporations (the "Committee"), whose mandate included examining, inquiring and making recommendations on ride-sharing in British Columbia. In mid-February 2019, concerns were raised in the media and by the Official Opposition in the Legislative Assembly that Mr. Kahlon was in a conflict of interest, or an apparent conflict of interest, on the basis that his father held a taxi licence in Victoria.

After the concerns were raised, Mr. Kahlon ceased all participation in the Committee's work and asked for the Commissioner's Opinion on the matter. Members of the Liberal Caucus also asked the Commissioner to release any Opinion issued to Mr. Kahlon under section 18; or if he had not sought the Commissioner's Opinion on the matter, to provide an Opinion pursuant to section 19 of the Act. As Opinions provided to Members under section 18 are confidential, Mr. Kahlon agreed to waive confidentiality and permitted the Opinion to be publicly released.

Analysis and Findings

The work of Parliamentary Committees is restricted to consideration of matters referred to them by the Legislative Assembly. Committees are comprised of several Members from all parties, who work collaboratively to gather information from a variety of sources, including public hearings, and present their observations and recommendations in a report to the Legislative Assembly. Committees do not have the authority to make or alter legislation or cause the government to take any specific action. Neither is the government required to respond to committee reports or accept their recommendations.

There was no evidence that Mr. Kahlon had a direct or indirect financial interest in his father's taxi business. Neither was there a direct causal link between the official duties performed by Mr. Kahlon and any potential financial impact on his father. Accordingly, Acting Commissioner Smith found that MLA Kahlon was not in a conflict of interest, as there was no opportunity for him to further his private interests. Neither did an apparent conflict of interest exist, as a reasonably well-informed person would not properly perceive that Mr. Kahlon's ability to carry out his duties as a Committee member must have been affected by a desire to protect the financial interests of his father.

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 2019 Conference included actual and perceived post-employment conflicts; investigation questioning techniques; discussion of high profile inquiries from other jurisdictions; and a review of recent court decisions on parliamentary privilege. The Commissioner for the Yukon and the Northwest Territories, David Jones, delivered a heartfelt tribute to Commissioner Paul Fraser on behalf of CCOIN members past and present.



2019
Conference
Regina, SK
September 3-5

LEGISLATIVE INTERNSHIP PROGRAM

Each year, the Commissioner meets with Legislative Interns who have been selected for the BC Legislative Internship Program. In 2019, Commissioner Fraser met with the Legislative Interns on January 9.

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

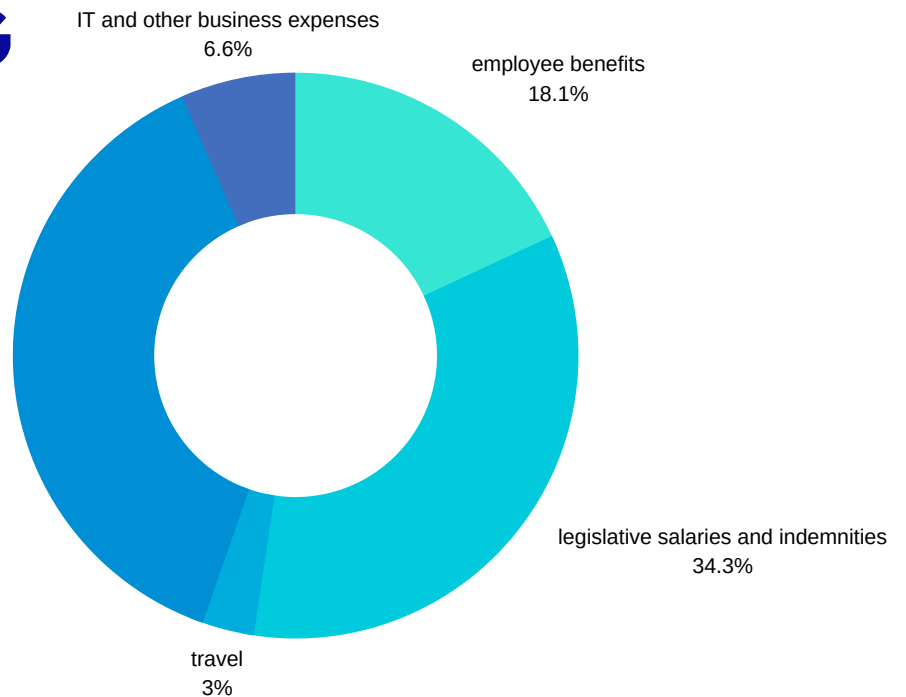
The Office is accountable for its operations through the issuance of the annual report and the annual budget presentation to the Select Standing Committee on Finance and Government Services (the "Committee").



For fiscal year 2019/20 we received a budget appropriation of \$718,000. However, the actual spending for the fiscal year was \$556,804. This was due to the Office being without a Commissioner for approximately three months; and the interim Commissioner being hired on a part-time (75%) basis.

The recommended appropriation for operating expenditures in fiscal year 2020/21 is \$734,000 with modest increases for the following two years. The recommended appropriation for capital expenditures is \$25,000 over the next three fiscal years. The most significant items in the overall budget are salaries and benefits.

OPERATING EXPENSES



The Commissioner's travel expenses are available on our website and are updated on a quarterly basis

Click [here](https://coibc.ca/commissioner/#Commissioners_Travel_Expenses) to view or go to https://coibc.ca/commissioner/#Commissioners_Travel_Expenses

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

Honourable Lynn Smith, Q.C., Acting Commissioner

The Honourable Lynn Smith, Q.C. served as Acting Commissioner from June 20 to January 5, 2020. Members and staff were grateful for her sensitivity, compassion and steady guidance during the difficult period of transition following Commissioner Fraser's death in early 2019.

Carol Hoyer, Executive Coordinator

Ms. Hoyer joined our Office in June 2018 as our 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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