



2022
ANNUAL
REPORT

COIBC

OFFICE OF THE CONFLICT OF INTEREST
COMMISSIONER

The Office of the Conflict of Interest Commissioner is located on the territory of the lək'wəŋən peoples. We give gratitude to the lək'wəŋən peoples of the Songhees and Esquimalt Nations on whose traditional territory we work and whose historical relationship with the land continues to this day. The Songhees and Esquimalt Nations have always had a profound relationship with this land and a deep connection that continues today and into the future. We are grateful for their enduring stewardship, and for sharing their wisdom and homeland with us.

Hay'sxw'qa si'em.

COIBC

OFFICE OF THE CONFLICT OF
INTEREST COMMISSIONER

July 13, 2023

Honourable Raj Chouhan
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 2022.

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 blue ink, appearing to read "Victoria Gray".

The Honourable Victoria Gray, K.C.
Commissioner

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COMMISSIONER'S MESSAGE

The primary focus of the work of the Office of the Conflict of Interest Commissioner is to ensure that Members of the Legislative Assembly do not use their public office to further their private interest, or appear to do so. This work serves to preserve the public's confidence in our elected representatives and the institution of government as a whole. This mandate is addressed in three ways.



Hon. Victoria Gray, K.C.
Commissioner

First, all Members must disclose their financial circumstances on an annual basis, and the circumstances of certain family members and corporations. I also meet with each Member annually to review their disclosure statements and review their obligations under the *Members' Conflict of Interest Act* (Act). The information is then summarized in a Public Disclosure Statement (PDS) that is accessible through the Office of the Clerk's website. Throughout the year, Members are required to report any material changes to their PDS, so that the financial information is kept current. This transparency enables the public to consider whether Members' ability to perform their official duties may be affected by their financial interests.

Second, the Act permits Members to seek my confidential opinion on their compliance with the Act. If I conclude, for example, that a Member will not be in a conflict of interest in a certain situation, that opinion will be binding. As a result, the Member can avoid conflicts of interest and act with confidence on the basis of my advice.

Traditionally, my office has received approximately 75 to 80 requests annually from Members for advice. However, since 2021, we have noted an increase in the number of requests. In 2021, we received 138 requests and in 2022, we received 113. I consider this trend a good thing, as I believe it reflects a culture of concern about conflicts of interest and an awareness that there is significant scrutiny by the press of politicians nationally. Most requests come directly from Members, but sometimes they come through Constituency Assistants or Caucus Chairs. Most advice is confirmed in writing.

Third, I can be asked to investigate complaints that a Member has contravened the Act. Requests for my opinion can be made by Members of the Legislative Assembly, members of the public, Cabinet, and the Legislative Assembly itself.

In June 2022, I received a request from an MLA to investigate the conduct of the Honourable Josie Osborne, then Minister of Land, Water and Resource Stewardship. The MLA alleged that Minister Osborne was in a conflict of interest in three instances, and improperly used her office to further her private interest in one instance. I concluded that Minister Osborne had not breached the Act as alleged. The Report is summarized on page 9 and the full report is available on our website at <https://coibc.ca/publications/#Opinions>.

There have not been any changes in the role or mandate of my office. About a decade ago, a legislative committee recommended some changes, but none of them have been implemented. As a result, the work has not changed for over a decade, except in reaction to things like the COVID-19 pandemic.

Our allocated budget for the 2022/23 fiscal year was \$754,000, but actual spending was \$627,647 (\$126,353 under budget). As in the previous few years, these savings are largely accounted for in the reduction of travel expenses and no outside contracts being required to support inquiries. The investigation into Minister Osborne's conduct did not require additional resources (e.g. outside legal counsel) to complete. I was able to come to my decision based on documentation and written responses to questions. It did not require the expenditure of any funds beyond the regular funding of my Office.

It has been my honour to serve as Commissioner for over three years, and I thank the Members for their ongoing cooperation and engagement. It has been my delight to work with the staff of the Office, who are experienced, professional, good-natured, cooperative, creative, and fun.


A handwritten signature in blue ink, appearing to read "Michael Gray", with a large, stylized flourish at the end.

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.

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 their private interests.



INFLUENCE

SECTION
5

Members must not use their office to influence a decision, to be made by another person, to further their private interests.




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 their 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

INFORMATION AND ADVICE

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

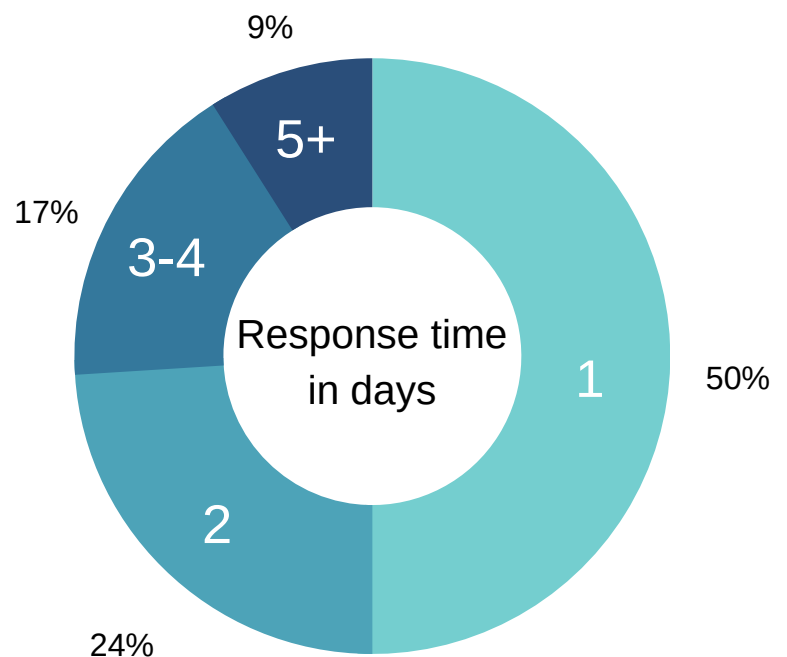
Under section 18 of the Act, Members may request that the Commissioner provide a formal written opinion on a conflict of interest matter. They are encouraged to do so if in any doubt about their obligations. This advice remains confidential unless the Member decides to release it. The Commissioner is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

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.

We are able to respond to most requests for advice or information within 2 business days. It may take longer to provide a final response if the matter is more complex, as research and further communication with the Member may be required.

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).



Members ask the Commissioner for advice on a wide variety of issues, most of which fall under the following categories:

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.

Disclosure/Holdings

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

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.

Family

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

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).

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

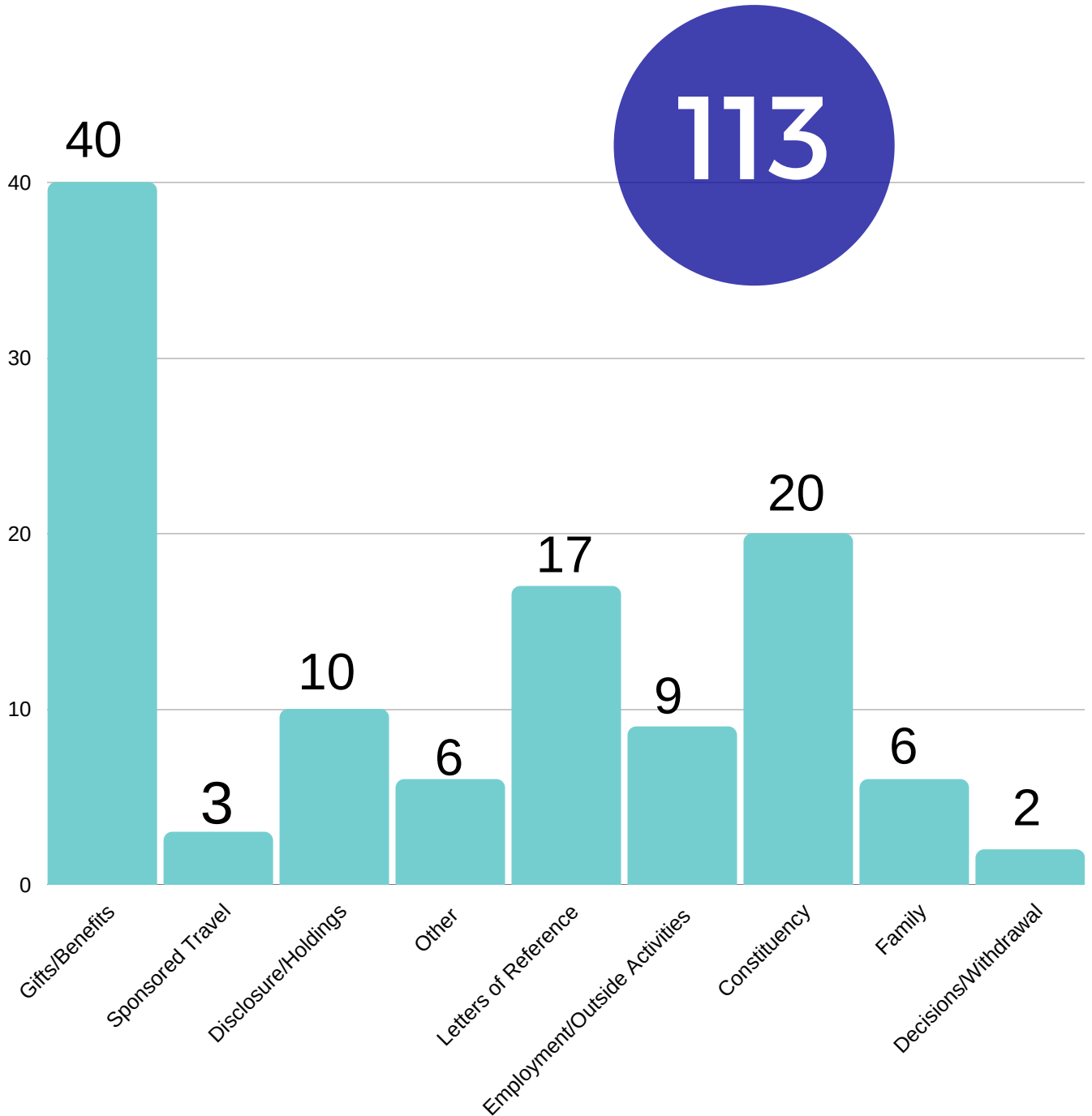
Sponsored Travel includes any travel and related expenses paid for in whole or in part by a third party. Members should seek approval from the Commissioner before accepting such offers.

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.

REQUESTS FROM MEMBERS FOR ADVICE

Traditionally, our office has received between 75-80 requests per year. In 2022, we received 113 requests for advice. Although there was a slight decrease in requests compared to 2021 (137 requests), the general trend is that requests for advice are increasing year over year.



ALLEGATIONS CONCERNING MEMBERS

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

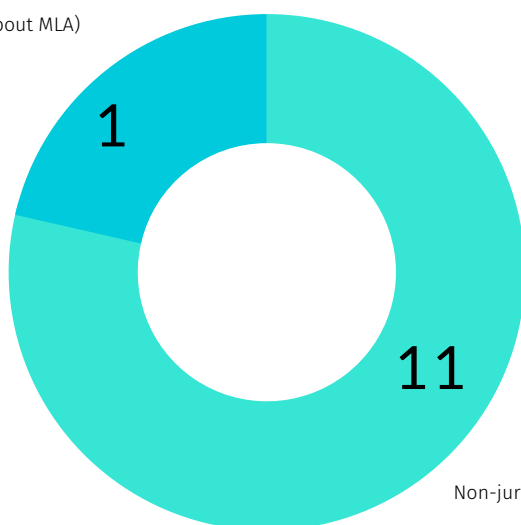
Under section 19 of the Act, the Commissioner may provide an Opinion about a Member's compliance with the Act or section 25 of the *Constitution Act* in response to a request from a member of the public, a Member of the Legislative Assembly or Executive Council, or the Legislative Assembly itself.

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 shall be 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

Non-jurisdictional (about MLA)
21.4%



Non-jurisdictional (not about MLA)
78.6%

Our Office received 12 requests for the Commissioner's Opinion pursuant to section 19 in 2022. The majority of requests were non-jurisdictional. One complaint, made by a Member against another Member, was investigated.

The Commissioner's Opinion was issued on August 30 2022, and is summarized on the next page.

OSBORNE OPINION

In January 2022, the Honourable Josie Osborne, then Minister of Land, Water and Resource Stewardship, took part in a decision of the Treasury Board to allocate \$15 million in continued funding for watershed protection projects. She later participated in a public event announcing that the funding would be administered to project partners through MakeWay Foundation.

In June 2022, an MLA requested the Commissioner's opinion on whether the Minister had breached the Act. The complainant MLA noted that the Minister's spouse had sold land and an associated business to MakeWay only a few months before the Treasury Board decision, and MakeWay had lobbied the Minister in the months leading up to the announcement. It appeared to him that the MakeWay funding decision was a *quid pro quo* for MakeWay's purchase of the Minister's spouse's property. The complainant MLA therefore believed that the Minister was in an apparent conflict of interest and may have used her office to influence a decision that would further her private interest.

The Commissioner reviewed the evidence submitted by the complainant, the Minister and other sources, including Treasury Board. The documentation indicated that the Minister's spouse sold the property for fair market value to MakeWay Society, which is affiliated with MakeWay Foundation, but is a separate legal entity. The Minister's spouse also had a modest contract for one year to provide advisory services to the business associated with the property. There was no evidence to suggest that the sale or contract were contingent upon or connected in any way with the watershed funding decision.

The evidence also supported the Minister's assertion that she had not taken part in any decision-making process involving MakeWay. At the time the Treasury Board approved the watershed protection funding, it was not known or anticipated that MakeWay would be the funding partner. That decision was made at a later date by Ministry of Environment and Climate Change (MECCS) staff, and approved by the MECCS Minister. The lobbying activities identified by the complainant MLA were in fact with partner agencies associated with MakeWay, and did not involve representatives of MakeWay or discuss matters related to the watershed protection funding.

The Commissioner was satisfied that the Minister had not acted improperly as alleged by the complainant MLA.

The full report is available on our website at <https://coibc.ca/publications/#Opinions>.

ANNUAL DISCLOSURE PROCESS

Within 60 days of being elected, and after that annually, every Member must file a Confidential Disclosure Statement (CDS) with the Commissioner, 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. Members (and their spouses if available) are required to meet with the Commissioner to review their statements.

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 at <https://www.leg.bc.ca/content-committees/Pages/Public-Disclosure-Statements.aspx>.

2022 DISCLOSURE

The Commissioner met with all Members to review their disclosure statements, with the exception of the former leader of the Opposition who vacated his seat in February 2022. Disclosure meetings took place from January to April 2022. Apart from two Members, the meetings were held virtually.

Public Disclosure Statements were filed with the Clerk of the Legislative Assembly on May 26 2022 and are available online at [Members' Public Disclosure Statements and Notices of Material Change \(leg.bc.ca\)](#).

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.

There were 90 NMCs processed in 2022, compared to 30 in 2021. The increase was primarily due to a resumption of regular disclosure requirements that were paused after the general election held in late 2020.



90
NMCs
PROCESSED

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 that normally accompany the responsibilities of office". 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.

Most gifts are received in conjunction with an official event or are gifts of sponsored travel. As events and activities have largely returned to normal after the pandemic, there was a significant increase in the number of gifts disclosed by Members compared to the previous two years.



20
GIFTS
DISCLOSED

OTHER ACTIVITIES

CONFERENCES AND MEETINGS

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. The 2022 CCOIN conference resumed in person, after two years of virtual meetings. Commissioner Gray attended the meeting in Yellowknife, Northwest Territories from September 7-9.

We are also a member of the Council on Governmental Ethics Laws (COGEL), which hosts an annual conference bringing together practitioners from the fields of conflict of interest, ethics, elections, lobbying, freedom of information and campaign finance, from both the United States and Canada.

The Commissioner meets with other Statutory Officers on occasion, and the Office participates in regular meetings with Officers and their staff to discuss matters of shared interest.

PRESENTATIONS

Each year, the Commissioner meets with Legislative Interns who have been selected for the BC Legislative Internship Program. In 2022 Commissioner Gray met with the Legislative Interns on February 7 for a presentation and lively discussion. 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.

The Commissioner presented to the Round Table Club on March 23, 2022. The Round Table Club, which has been active since 1926, is an association with a membership of approximately 80 professionals encompassing academe, business, medicine, law, and engineering. The Commissioner provided an overview of the Office and discussed recent opinions from across the country.

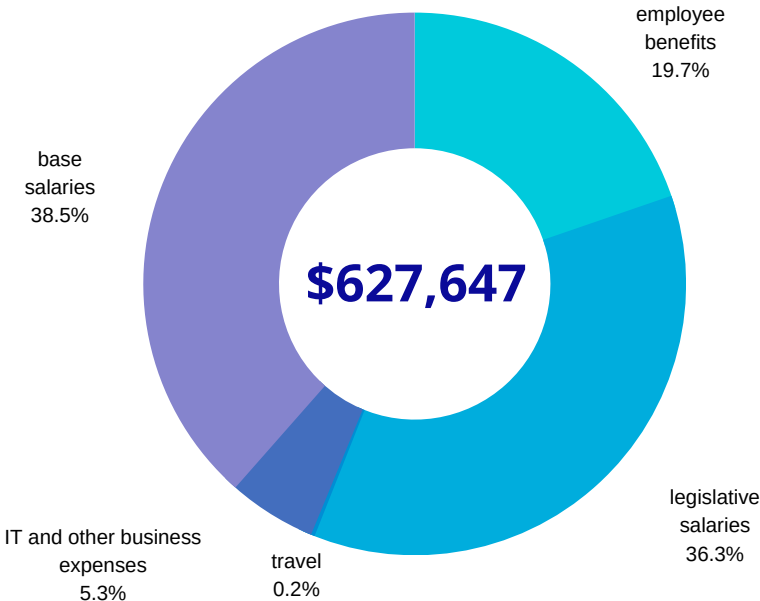
FINANCES AND ACCOUNTABILITY

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). The Commissioner met with the Committee on May 19, 2022 and October 19, 2022.

	Actual \$627,647	Budgeted \$754,000
		\$126,353

Actual expenditures for the 22/23 fiscal year totaled \$627,647, being \$126,353 under our allocated budget of \$754,000. Savings were largely accounted for by minimal travel expenses and no outside contracts awarded in 2022. The investigation conducted in late 2022 did not require additional resources (e.g. legal services).

OPERATING EXPENSES



Our operating expenses for 2022/23 were similar to previous budget years.

The most significant budget items remain salaries and benefits. Two of the three staff members are fulltime, and one works 60% time. The Commissioner works on a 75% of fulltime basis.

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.

The guidance and hard work of staff in these offices is much appreciated.

OFFICE COLLEAGUES

Angela Koutougos, Administrative Assistant

Ms. Koutougos joined the Office in September 2021. Her primary responsibility is working with the Members in the disclosure process, both for the annual disclosure and for the ongoing disclosures throughout the year. She has worked in various administrative roles with the BC Public Service over the last 20 years. Her wealth of experience, professionalism and cheerfulness are a great asset to the Office.

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.



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