POST-TERM RULES
POLITICAL STAFF MEMBERS

GUIDELINES

May 2018

These guidelines are intended to inform certain political staff members who are leaving their position, or who are making efforts to take up a new position, of the post-term rules.[1] They outline the key elements that must be taken into consideration in this context.

> These guidelines were produced for reference only. For any questions on a particular situation, it is recommended that you seek advice from the Ethics Commissioner (hereinafter "Commissioner"). Each situation pertaining to the post-term rules is different and must be assessed on a case-by-case basis, taking into account the responsibilities assumed and the nature of relationships with third parties.

Who are these guidelines for?

For staff members who are leaving their position or who are making efforts to take up a new position. For the purposes of these guidelines, "**staff members**" are:

- Office staff of Ministers.[2]
- Certain office staff of Members and House Officers of the National Assembly,[3] including:
  - office staff of the Government's parliamentary leader;
  - office staff of the Chief Government Whip;
  - staff hired to assist a government party for research and support purposes;
  - staff of the Member who is Chair of the Government Caucus.

In all cases, support staff are not subject to the post-term rules.

1 The rules also apply to former office staff of Ministers under the *Lobbying Transparency and Ethics Act* (CQLR, chapter T-11.011). For more information on these rules, we invite you to consult the Commissioner of Lobbying.

2 Subject to the *Regulation respecting the rules of conduct applicable to the office staff of ministers* (CQLR, chapter 23.1, r. 2.).

3 Subject to the *Rules of conduct applicable to the staff of Members and House officers of the National Assembly* (Office of the National Assembly, decision n° 1690, March 21, 2013).

Which rules must be considered?

When a staff member leaves his or her position, the *Regulation respecting the rules of conduct applicable to the office staff of ministers* (hereinafter "Regulation") and *the Rules of conduct applicable to the staff of Members and House officers of the National Assembly* (hereinafter "Rules") set out a number of post-term rules. Some rules are applicable at all times (1) while others cease to apply after a period of one year (2). Moreover, certain rules are applicable when staff members make efforts to take up a new position (3).

Former staff members are also urged to take into consideration the values of the National Assembly[4] as well as the rules governing conflicts of interest[5] at all times. Together, these standards help maintain public confidence in democratic institutions.

It is also appropriate for former staff members to notify all new employers of the post-term rules applicable under the circumstances.

The relevant legislative and regulatory provisions are appended hereto.

1. Rules applicable at all times

Former staff members must comply with the following rules at all times:

a) Conduct themselves so as not to obtain undue benefit from their prior position. (Section 23 of the Regulation / Section 22 of the Rules)

To understand what constitutes an undue benefit, it is important to consider how the situation might be different if the staff member had not previously held that position. The benefit might be an advantage, a favour, a preference, a privilege, a profit or something useful that may or may not have economic value. For a benefit to be considered undue, it must violate the rules and the established practices.

4 Sections 4 and 5 of the Regulation, 3 and 4 of the Rules and 6 of the *Code of ethics and conduct of the Members of the National Assembly* (CQLR, chapter C-23.1).
5 Sections 6 and 7 of the Regulation, and 5 and 6 of the Rules.

Here are a few ideas to consider in that context:

- Is my previous position directly linked to the employment offer?
- Could I obtain an unreasonable benefit from previous connections or from my knowledge of issues or situations that were not made public?
- Could my hiring be perceived by a reasonably well-informed individual as a reward for favours received or in return for support?

b) Not disclose confidential information or give advice based on information not available to the public. (Section 24 of the Regulation / Section 23 of the Rules)

Former staff members may not disclose confidential information or give advice to any person based on information not available to the public, obtained in or in connection with the carrying out of those duties.

However, the purpose of sections 24 of the Regulation and 23 of the Rules is not to prevent former staff members from using the expertise and experience acquired from their position, such as how the Government of Québec generally operates, or their knowledge of the decision-making process.

c) Not act for or on behalf of anyone else in the same proceeding, negotiation or other transaction in respect of which they have acted. (Section 25 of the Regulation / Section 24 of the Rules)

Former staff members may not act for or on behalf of anyone else on a matter in which they have acted.

The term "**proceeding**" does not strictly refer to a legal proceeding, but also to all administrative steps that can lead to a government decision.

2. Rules applicable for one year

In addition to the rules applicable at all times, former staff members may not, in the year after they leave their position,

a) accept a position or any appointment to a board of directors or as a member of any body, agency, enterprise or other entity that is not a State entity and with which they had official, direct and significant dealings in the year prior to their leaving the position. (Section 26(1) of the Regulation / Section 25(1) of the Rules)

The Regulation and the Rules stipulate that former staff members may not accept a position in the year after they leave their position in any body, agency enterprise or entity that is not a **State entity**[6] with which they had **official, direct and significant dealings**[7] in the year prior to their leaving the position.

Consequently, for a period of one year after their leaving the position, every position or appointment considered must be assessed according to its own specific circumstances. If necessary, former staff members should be able to establish that there have been no official, direct and significant dealings with a body, agency, enterprise or other entity in the year prior to their leaving the position.

In this regard, the assessment made for each situation should consider the point of view of a reasonably well-informed individual in the circumstances.

In contrast, if former staff members intend to take up a position within the State entity, they may do so as soon as they leave the position, subject to the rules applicable at all times (part 1).

6 To find out which persons, agencies, bodies or institutions are considered State entities, please consult the glossary in Appendix 1 of these guidelines.

7 For a definition of the expression "official, direct and significant dealings," please consult the glossary in Appendix 1 of these guidelines.

b) Intervene on behalf of anyone else with any department or other State entity with which they had official, direct and significant dealings in the year prior to their leaving the position. (Section 26(2) of the Regulation / Section 25(2) of the Rules)

In interpreting this section, the term "**intervene**" must be given its usual meaning of "to try to convince," "to become involved intentionally in a situation to alter its course." Interventions must be targeted and apply to a specific issue. The term "**anyone**" applies to any person, including an employer, but excludes former staff members.

3. Serious effort to take up a new position[8]

Furthermore, when a staff member makes or participates in any serious effort to take up a position or accept an appointment after leaving his or her position, the staff member must inform the Ethics Commissioner in writing of these efforts.

This rule applies not only to efforts leading to an employer-employee relationship, but also to efforts that could, among other things, result in a partnership or the signing of a service contract. These efforts may be verbal or written and could be deemed serious if, for example, they have gone beyond the preliminary discussion phase to touch on important points such as compensation, benefits or vacation.

Consulting the Office of the Ethics Commissioner

You can consult the Office of the Ethics Commissioner on a confidential basis on questions involving a personal situation or for more information on the application of ethics values and principles, as well as ethics rules.

By email: info@ced-qc.ca
By telephone: 418-643-1277

By mail:
1150, rue de Claire-Fontaine
7th floor, suite 710
Québec (Québec) G1R 5G4

8 Replaces the November 2015 guideline applicable to Minister's staff regarding job searches.

APPENDIX 1

Glossary

"State entity"[9]

The persons, agencies, bodies or institutions that are considered "State entities" within the meaning of the Code are:

- **any public body or government agency within the meaning of the *Auditor General Act* (chapter V-5.01)[10] such as:**
  - public bodies (56(1)), including:
    - a department and persons designated by the National Assembly to perform duties that come under the National Assembly;
  - government agencies (56(1)), including:
    - the Autorité des marchés financiers, Hydro-Québec and any subsidiaries, Investissement Québec and any subsidiaries, Transition énergétique Québec;
- **education sector institutions, such as:**
  - the Université du Québec and its constituent universities, research institutes and superior schools (56(2));
  - a university-level institution (56(3));
  - a general and vocational college (56(4));
  - a school board (56(5));
  - a school board in Cree, Inuit and Naskapi territories (56(5));
  - an accredited private institution (56(6));
  - any other educational institution (56(7));
- **health sector institutions, such as:**
  - a public or private institution that is a party to an agreement (56(8));
  - an institution for Cree Native persons (56(9));

9 Section 56 of the Code.

10 For a comprehensive list of entities, please visit the Auditor General of Québec's website at the following address: https://www.vgq.qc.ca/Fichiers/Organisation/fr/divers/fr_Principales_Entites.pdf (French only)

- **municipal sector bodies, such as:**
  - a municipality (56(10));
  - a mandatory body of the municipality (56(10));
  - a supramunicipal body, including a metropolitan community and a regional county municipality (56(10));
  - the James Bay Regional Administration and any delegate organization referred to in section 126.4 of the *Municipal Powers Act* (chapter C-47.1) (56(11));
- **any non-profit agency referred to in paragraph 4 of section 4 of the *Lobbying Transparency and Ethics Act* (chapter T-11.011), such as:**
  - non-profit agencies established for the purpose of managing and providing financial support for activities of a public nature out of funds originating principally from the Government, without itself delivering products or services to the public (56(12)).

"Official, direct and significant dealings"

The dealings mentioned in sections 26 of the Regulation and 25 of the Rules have a broad interpretation. They refer to all forms of ties and relationships between persons or groups of persons, including legal persons.

The terms "official," "direct" and "significant" must be interpreted with their usual meanings.

Dealings must have all those combined characteristics for the prohibition to apply.

- **Official** dealings are those coming from a recognized or established authority. To determine whether dealings are official, it is necessary to ascertain the character—the capacity—in which the persons concerned acted. In general, these dealings are tied to government activities and can lead to formal, and sometimes legal, actions and decisions with a government authority.
- **Direct** dealings refer to those in which the staff member takes part personally or through another person acting on their instructions.
- **Significant** dealings are those that are material, essential, serious or of great interest or that have an importance, role, interest or possible consequences that are considerable. Dealings can be significant for only one of the parties involved. Furthermore, to evaluate the significance of the dealings, it is useful to focus on the scope of the case or how the relevant entity is affected by the purpose of the dealings. Were the dealings part of negotiations or a decision-making process, for example? The significance and the nature of the information obtained are elements that could be considered when evaluating the significance of a dealing.

  The frequency of dealings is also an element to be considered when determining whether they were significant. However, a single dealing could be deemed significant, if it involves a major issue, for example.

Code of ethics and conduct of the Members of the National Assembly (CQLR, chapter C-23.1)

VALUES AND ETHICAL PRINCIPLES

6. The following are the values of the National Assembly:

1° commitment to improving the social and economic situation of Quebecers;

2° high regard for and the protection of the National Assembly and its democratic institutions; and

3° respect for other Members, public servants and citizens.

The conduct of Members must be characterized by benevolence, integrity, adaptability, wisdom, honesty, sincerity and justice. Consequently, Members

1° show loyalty towards the people of Québec;

2° recognize that it is their duty to serve the citizens;

3° show rigour and diligence;

4° seek the truth and keep their word; and

5° preserve the memory of how the National Assembly and its democratic institutions function.

POST-TERM ISSUES

56. For the purposes of this chapter, "State entity" means any of the following persons, agencies, bodies or institutions:

1° any public body or government agency within the meaning of the *Auditor General Act* (chapter V-5.01);

2° the Université du Québec and its constituent universities, research institutes and superior schools within the meaning of the *Act respecting the Université du Québec* (chapter U-1);

3° any university-level institution referred to in paragraphs 1 to 11 of section 1 of the *Act respecting educational institutions at the university level* (chapter E-14.1), other than those mentioned in paragraph 2;

4° any general and vocational college established under the *General and Vocational Colleges Act* (chapter C-29);

5° any school board governed by the *Education Act* (chapter I-13.3) or the *Education Act for Cree, Inuit and Naskapi Native Persons* (chapter I-14) or the Comité de gestion de la taxe scolaire de l'île de Montréal;

6° any private institution accredited for purposes of subsidies under the *Act respecting private education* (chapter E-9.1);

7° any other educational institution more than half of whose expenditures are provided for in the budgetary estimates tabled in the National Assembly otherwise than under a transferred appropriation;

8° any public or private institution that is a party to an agreement referred to in the *Act respecting health services and social services* (chapter S-4.2);

9° the regional council established under the *Act respecting health services and social services for Cree Native persons* (chapter S-5);

10° any municipality or any body referred to in sections 18 or 19 of the *Act respecting the Pension Plan of Elected Municipal Officers* (chapter R-9.3);

11° the James Bay Regional Administration and any delegate organization referred to in section 126.4 of the *Municipal Powers Act* (chapter C-47.1); and

12° any agency described in paragraph 4 of section 4 of the *Lobbying Transparency and Ethics Act* (chapter T-11.011).

Auditor General Act (CQLR, chapter V-5.01)

OBJECT AND INTERPRETATION

3. For the purposes of this Act, a public body includes the Government, the Conseil exécutif, the Conseil du trésor and a government department.

The Lieutenant-Governor, the National Assembly, the Public Protector, any person designated by the National Assembly to perform duties that come under the National Assembly whose personnel is, by law, appointed in accordance with the *Public Service Act* (chapter F-3.1.1), and any body to which the National Assembly or a committee thereof appoints the majority of the members, are classed as public bodies for the purposes of this Act.

4. For the purposes of this Act, a government agency includes any agency, other than a body mentioned in section 3, which is instituted by or in accordance with an Act, or by a decision of the Government, the Conseil du trésor or a minister and which meets one of the following conditions:

1° all or part of its appropriations for operating purposes are provided under that heading in the budgetary estimates tabled in the National Assembly;

2° its employees are required by law to be appointed in accordance with the *Public Service Act* (chapter F-3.1.1);

3° the Government or a minister appoints at least half of its members or directors;

4° more than 50% of the voting shares of its capital stock are part of the domain of the State or are owned by a public body or by another government agency.

The Public Curator is considered a government agency for the purposes of this Act.

Lobbying Transparency and Ethics Act (CQLR, chapter T-11.011)

PURPOSE AND APPLICATION

4. The following persons are considered to be public office holders for the purposes of this Act:

[...]

4° persons appointed to a non-profit agency established for the purpose of managing and providing financial support for activities of a public nature out of funds originating principally from the Government, without itself delivering products or services to the public, as well as employees of any such agency;

[...]

Regulation respecting the rules of conduct applicable to the office staff of ministers (CQLR, chapter C-23.1, r. 2)

VALUES AND ETHICAL PRINCIPLES

4. Office staff adhere to the values of the National Assembly stated in section 6 of the Code.

5. Office staff recognize that these values must guide them in carrying out the duties of their position and in determining the rules of conduct applicable to them, and be taken into account in interpreting this regulation. They strive for consistency between their actions and the values of the National Assembly, even when their actions do not in themselves contravene the applicable rules of conduct.

CONFLICT OF INTEREST

6. In the exercise of their functions, office staff may not

1° place themselves in a situation where there is a conflict between their private interests and the duties of their position;

2° act, attempt to act, or refrain from acting, so as to further their private interests or those of a family member, or to improperly further another person's private interests; or

3° use their position to influence or attempt to influence another person's decision so as to further their private interests or those of a family member, or to improperly further another person's private interests.

7. Office staff may not use, communicate or attempt to use or communicate information obtained in or in connection with the carrying out of the duties of their position that is not generally available to the public so as to further their or another person's private interests.

POST-TERM ISSUES

23. Former office staff must conduct themselves so as not to obtain undue benefit from their prior position.

24. Former office staff must not disclose confidential information obtained in or in connection with the carrying out of the duties of their former position, and must not give advice to any person based on information not available to the public, obtained in or in connection with the carrying out of the duties.

25. Office staff who acted in connection with a proceeding, negotiation or other transaction may not act for or on behalf of anyone else in the same proceeding, negotiation or other transaction after leaving their position.

26. Office staff may not, in the year after they leave their position,

1° accept any appointment to a board of directors or as a member of any body, agency, enterprise or other entity that is not a State entity within the meaning of section 56 of the Code and with which they had official, direct and significant dealings in the year preceding their leaving the position, or accept employment, a position or any other post within such a body, agency, enterprise or entity; or

2° intervene on behalf of anyone else with any department or other State entity within the meaning of section 56 of the Code and with which they had official, direct and significant dealings in the year prior to their leaving the position.

Rules of conduct applicable to the staff of Members and House officers of the National Assembly (Office of the National Assembly, decision n° 1690, March 21, 2013)

VALUES AND ETHICAL PRINCIPLES

3. Staff members adhere to the values of the National Assembly stated in section 6 of the Code of ethics and conduct of the Members of the National Assembly.

4. Staff members recognize that these values must guide them in carrying out the duties of their position and in determining the rules of conduct applicable to them, and be taken into account in interpreting these rules. They strive for consistency between their actions and these values, even when their actions do not in themselves contravene the applicable rules of conduct.

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1° place themselves in a situation where there is a conflict between their private interests and the duties of their position;

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24. Staff members who acted in connection with a proceeding, negotiation or other transaction may not act for or on behalf of anyone else in the same proceeding, negotiation or other transaction after leaving their position.

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1° accept any appointment to a board of directors or as a member of any body, agency, enterprise or other entity that is not a State entity within the meaning of section 56 of the Code of ethics and conduct of the Members of the National Assembly and with which they had official, direct and significant dealings in the year preceding their leaving the position, or accept employment, a position or any other post within such a body, agency, enterprise or entity; or

2° intervene on behalf of anyone else with any department or other State entity within the meaning of section 56 and with which they had official, direct and significant dealings in the year prior to their leaving the position.