



## Gifts, Hospitality and Other Benefits

### Guidelines<sup>1</sup> May 2012

#### Introduction

Sections 29 to 34 of the Code of Ethics and Conduct of the Members of the National Assembly (Code) prescribe the rules of conduct applicable to all Members of the National Assembly (MNAs) with respect to gifts, hospitality or other benefits<sup>2</sup> obtained in carrying out their duties of office, including their duties as Cabinet Minister, if applicable. Please refer to the “NOTA BENE” at the end of this document for the adaptations pertaining to the staff members of MNAs, House Officers of the National Assembly and Cabinet Ministers.

Considering that these rules of conduct may give rise to a certain number of questions, the following guidelines provide a method for analyzing the various situations that may arise, and a reference document to help MNAs decide whether to accept or refuse a gift or other benefit in view of the terms of the Code. Of course, any question relating to gifts and benefits may be put to the Jurisconsult or the Ethics Commissioner.

The guidelines will serve to examine the various facets of each gift in order to identify in a more concrete manner the exceptions or formalities that apply. The various topics proposed are meant only as a checklist for analyzing a situation.

#### Abroad

Sections 29 to 34 of the Code apply to gifts offered abroad. The exceptions, formalities and various elements to be taken into consideration are the same as for gifts offered in Québec.

#### Methodology

The method of analysis is simple: two questions must be asked, each with a number of points and certain formalities to take into consideration. Firstly, is the gift acceptable under the Code? Secondly, when must a gift that is considered acceptable be disclosed to the Ethics Commissioner?

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<sup>1</sup> Under section 89 of the Code, the Ethics Commissioner may publish guidelines for the MNAs.

<sup>2</sup> To make the text easier to read, “gift” is used in these guidelines to mean a “gift, hospitality or other benefit” referred to in sections 29 to 34 of the Code.

## **1. Is the gift acceptable under the code?**

### **1.1. General rule and exceptions**

Under the Code, MNAs and Cabinet Ministers may as a general rule accept gifts, except in the two cases mentioned in sections 29 and 30.

#### **1.1.1. First exception**

An MNA must not solicit, elicit, accept or receive any gift, whether for himself or herself or for another person, in exchange for speaking or taking a certain position on any issue, including one that may be brought before the National Assembly or a committee, as provided in section 29 of the Code<sup>3</sup>.

#### **1.1.2. Second exception**

An MNA must refuse any gift whatever its value, that may impair his or her independence of judgment in carrying out the duties of office, or that may compromise the MNA's integrity or that of the National Assembly, as provided in section 30 of the Code.

These are two formal prohibitions regarding any gift, whatever its value, offered to an MNA in exchange for intervening in any way or taking a certain position on any issue, or any gift, whatever its value, that could impair the MNA's independence of judgment or compromise his or her integrity or that of the National Assembly.

Identifying a gift that cannot be accepted because it is considered an exception under the Code requires a careful and thorough analysis of the context in which the gift is offered.

### **1.2. Exceptions—Points to consider**

There are various points to consider in relation to a gift. The goal is to define the context objectively to check whether either of the exceptions applies to the gift. If either does, the gift cannot be accepted. Use the following points in the order presented, as a checklist<sup>4</sup>.

#### **1.2.1. Reasonably well-informed person**

You should keep in mind that it may be unwise to judge a situation only from your own personal point of view. When it comes to a possible conflict of interest, for instance, the perception of the person concerned is generally not enough: it is also important to consider the opinion of a reasonably well-informed person on the appearance of a conflict of interest. In order to be objective, keep in mind that family ties, friendships or professional connections could reasonably be perceived as having a possible influence on your decisions.

You should therefore consider the situation from the viewpoint of a reasonably well informed person.

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<sup>3</sup> Section 29 of the Code is broader than the former section 63 of the Act respecting the National Assembly, which applied essentially to matters submitted to the Assembly or a committee or subcommittee.

<sup>4</sup> In addition, you can consult the Jurisconsult or the Ethics Commissioner to help you determine if something could be an exchange, or could impair your independence of judgment or compromise your integrity or that of the National Assembly.

### **1.2.2. Your responsibilities**

To determine whether the donor might be trying to have you intervene or take a certain position in return for a gift, or whether the gift might impair your independence of judgment or compromise your integrity or that of the National Assembly, think of all the different capacities in which you may act. Your overall responsibilities should be considered, not only those related to your riding, but also your role as a member of a parliamentary committee, a ministerial committee or the Cabinet.

If a connection can be made between any of your responsibilities and the gift, you should probably refuse it.

### **1.2.3. Donor's dealings with the State**

In determining whether either of the exceptions provided under the Code apply, it is also important to consider the situation of the person offering the gift. The context in which the gift is given, in particular if the donor has certain dealings with the State, may have an impact. Ask yourself the following questions:

- Does the donor have, or is it likely that the donor has, contractual ties with the Government, a government department or a public body?
- Does the donor qualify under a government program or is the donor covered by a government policy?
- Is the donor subject to a government regulation?
- Is the donor active as a lobbyist?

If the answer to any of these questions is yes, you may be well-advised to refuse the gift.

In certain cases, it is not only a matter of making sure that the gift is not offered in exchange for some intervention or some stand on an issue, or that the gift will not impair your independence of judgment or compromise your integrity or that of the National Assembly, but also of ensuring that the gift cannot be reasonably perceived as such.

### **1.2.4. Other relevant circumstances**

Even if no red flags have been raised so far, it would be wise to consider the broader circumstances of the donation of the gift, in particular with respect to the persons involved. What are their expectations? In your opinion, will a favour be expected in return?

Such reflections will help you validate decisions with a view to preserving the people's faith in MNAs and the National Assembly, and measure the risk of an exchange being expected or the possibility of an adverse effect on your independence of judgment, your integrity or that of the National Assembly.

If there is any doubt, you must consider refusing the gift.

### **1.2.5. National Assembly values**

It may be useful to refer to the values of the National Assembly to dispel any doubt concerning a gift. These values will guide you in carrying out your duties. Under section 6 of the Code, the conduct of MNAs must be characterized by benevolence, integrity, adaptability, wisdom, honesty, sincerity and justice.

### **1.2.6. Purely private relationships**

The prohibitions of sections 29 and 30 of the Code apply even if the gift is received in the context of a purely private relationship<sup>5</sup>.

Even close relations are prohibited from offering a gift to MNAs in exchange for intervening or taking a certain position or if there is any danger of impairing their independence of judgment or compromising their integrity or that of the National Assembly.

### **1.2.7. Value of the gift**

The prohibitions of sections 29 and 30 of the Code apply no matter what the value of the gift.

## **1.3. *What to do when a gift cannot be accepted***

Certain formalities must be completed when a gift cannot be accepted, depending on the course of action you choose.

In some cases, you will be able to quickly determine what the Code dictates. You may decide to refuse the gift immediately, at the time it is offered.

On the other hand, if you are invited to an activity as a guest, you could discover, once there, that the gift is not acceptable. If circumstances permit, you could explain that you must withdraw from the activity, or else pay the admission fee as the other guests have.

In other cases, you may decide not to refuse the gift at the outset, for personal reasons or simply to be polite, tactful or for diplomatic considerations. Or you may not be able to determine on the spot what the Code dictates in such circumstances. You could then take the gift and check later whether it should be refused, returned or accepted. Or you may find yourself in a position where you are unable to refuse, because the gift is a *fait accompli*.

In all such situations, it is important to remember that the Code allows MNAs to refuse a gift that is not acceptable or to return it to the donor. Below is what must be done.

#### **1.3.1. Written notice to the Ethics Commissioner**

Whatever the circumstances, if you refuse a gift because of the exceptions prescribed by the Code, you must so inform the Ethics Commissioner in writing.

#### **1.3.2. Consulting the Ethics Commissioner before returning a gift**

Under section 30 of the Code, if you cannot keep a gift you have received, you must, at the first opportunity, request an advisory opinion from the Ethics Commissioner and, depending on the case, either return it to the donor or deliver it to the Ethics Commissioner.

You may at that time inform the Ethics Commissioner of any considerations—cultural or diplomatic, in particular—that should be taken into account.

#### **1.3.3. If the gift cannot be returned**

If a gift that should not be accepted has already been received, used or consumed, it may no longer be possible to return it to the donor or deliver it to the Ethics Commissioner. This would be the case, for instance, if you attended a fundraising evening or a show.

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<sup>5</sup> See subparagraph 2.2.3 for the definition of a “purely private relationship”.

You are required to comply with the rules set by the Code with respect to refusing, returning to the donor or delivering to the Ethics Commissioner, in due time, anything you cannot accept. If it was not possible to do so because of the circumstances, the Ethics Commissioner may authorize you to determine the value of what was used or consumed and return the corresponding amount of money to the donor.

## **2. What acceptable gifts must be disclosed to the Ethics Commissioner?**

### **2.1. General rule**

You must file a disclosure statement with the Ethics Commissioner when you choose to accept a gift valued at more than \$200.

Under the Code, you may accept a gift if it is not offered in exchange for your intervening in some way or taking a certain position and if it will not impair your independence of judgment in carrying out your duties, or compromise your integrity or that of the National Assembly. However, if you receive a gift that has a value of more than \$200, you must file a disclosure statement with the Ethics Commissioner within 30 days. In the case of goods or tickets, the total value must be considered.

### **2.2. Value of the gift**

In order to determine the value of a gift, you must refer to its face value. In certain cases, however, it may be difficult to determine whether the value of a gift exceeds \$200.

If circumstances permit, you may inquire from the donor. If the market value of the gift can be verified, that price is its value. As for fundraising events, the price of the ticket is the value of the gift.

#### **2.2.1. Gifts over a 12-month period**

Under section 33 of the Code, the repeated receipt of gifts from the same source must be taken into account when determining a value of more than \$200. The amount is computed over a 12-month period. When the \$200 amount is reached for the preceding 12 months, a disclosure statement must be filed with the Ethics Commissioner. Once gifts valued at more than \$200 have been received from the same source over the preceding 12 months, all gifts subsequent from the same source must also be disclosed.

Keeping a personal register of gifts under \$200 may be helpful for that purpose.

#### **2.2.2. Substantial value**

If the value of the gift is substantial, you should, each time circumstances warrant it, consult the Jurisconsult or the Ethics Commissioner, particularly with regard to the risk of compromising your integrity or that of the National Assembly.

#### **2.2.3. Purely private relationships**

A purely private relationship is defined as the relationship you have with the people who are part of your immediate circle, including your family members and close or long-time friends. Sections 29 and 30 of the Code are applicable to gifts received in the context of such a relationship. It is important to distinguish a situation involving a purely private relationship from a situation involving a private event: a gift received in the context of a private event does not automatically mean that the gift is received in the context of a purely private relationship.

It is important to note that under section 32 of the Code, when you receive a gift in the context of a purely private relationship but neither section 29 or 30 applies, you are not required to file a disclosure statement with the Ethics Commissioner, even if the value of the gift exceeds \$200.

### **2.3. *What to do when a gift can be accepted***

Certain formalities must be completed when you accept a gift because the exceptions under sections 29 and 30 do not apply, depending on what you decide to do.

#### **2.3.1. Filing a disclosure statement with the Ethics Commissioner for gifts valued at more than \$200**

As mentioned above, if you accept a gift that has a value of more than \$200, you must file a disclosure statement with the Ethics Commissioner within 30 days. The disclosure statement must contain an accurate description of the gift, and specify the name of the donor and the date on which and circumstances in which it was received. A form is available for that purpose.

The Ethics Commissioner keeps a public register in which such statements are recorded.

##### **2.3.1.1. Giving a gift away**

Even if the Code does not provide for the situation, it could be useful to mention that you may accept a gift and choose to give it to a third person. For instance, you may give away tickets to an event that were given to you.

No matter who the final recipient of the gift is, the requirement to file a disclosure statement applies, since you initially accepted the gift. You must file a statement even if you do not benefit personally from the gift you accepted.

The Ethics Commissioner enters your statement in the public register.

You may not accept a receipt for income tax purposes for gifts you give to a third person, or for a gift you benefit from personally.

#### **2.3.2. Refusing a gift that could be accepted**

Even if a gift is acceptable under the Code, you may decide not to accept it. If you simply refuse a gift that you would be allowed to accept, without taking possession of it, no formalities apply.

However, if you have received the gift and decide not to accept it, the formalities that must be completed vary according to whether you return it to the donor or deliver it to the Ethics Commissioner.

#### **2.3.3. Returning a gift to the donor**

If you return a gift to the donor, even when, under the circumstances, the prohibitions of sections 29 and 30 do not apply, you must inform the Ethics Commissioner in writing as required under section 31 of the Code. No information is entered in the public register on the matter.

### **2.3.4. Delivering a gift to the Ethics Commissioner**

If you decide, for reasons of your own, to deliver a gift to the Ethics Commissioner rather than keep it or return it to the donor, the Code does not prescribe any formalities. The Ethics Commissioner will necessarily be informed when the gift is delivered to him.

## **3. Guidelines for certain situations**

### **3.1. Normal expressions of courtesy or protocol**

All MNAs receive invitations to a wide range of sports, artistic or other events, ceremonies and fundraisers. These invitations may be extended, for instance, by non-profit organizations in the riding.

If you accept an invitation and simply attend as the MNA of the riding, the rules on gifts and benefits apply. You attend the event if you are available. However, if the value of the ticket exceeds \$200, you must file a disclosure statement with the Ethics Commissioner.

If you are asked to play an official role during an event as an MNA or a Cabinet Minister, this is not considered a gift to which sections 29 to 34 of the Code apply. You are carrying out an official function that is part of your mandate, for example, delivering a speech, presenting a prize or mark of gratitude or sitting at the head table.

If you receive a symbolic gift while representing your riding at an event, you may accept the gift just as any other participant would. You are not required to file a disclosure statement with the Ethics Commissioner, unless the value of the gift exceeds \$200.

### **3.2. Abroad**

It is important to remember that the rules also apply to official missions abroad. As mentioned earlier, when the exceptions set out in sections 29 and 30 of the Code do not apply, a gift may be accepted. If the value of the gift exceeds \$200, a disclosure statement must be filed with the Ethics Commissioner.

However, sections 29 to 34 of the Code do not apply to anything you receive in another country while acting in an official capacity as Cabinet Minister or MNA.

### **3.3. Government activities**

The Government, a government department or a public body, including any government body abroad, may, on its own initiative or as a partner, organize all sorts of protocol, cultural, sports or other events. Generally, when you are invited to participate in such an event at the expense of the Government, a government department or a public body, you are acting in an official capacity. This is not a gift to which sections 29 to 34 of the Code apply and you are not required to file a disclosure statement with the Ethics Commissioner.

However, you should always make sure that your participation is in fact paid for by the Government. If the event is held in partnership with the private sector, you should check to see who is actually bearing the cost. If it is a private partner, the rules on gifts and benefits apply.

### **3.4. Charities**

MNAs may, as a rule, accept gifts from a charity in their riding, provided the exceptions set out in sections 29 and 30 of the Code do not apply. Simply file a disclosure statement with the Ethics Commissioner each time the value of a gift you receive, or of gifts you receive over a period of 12 months, is more than \$200.

If you accept an invitation extended by a charity, the guidelines set out in paragraph 3.1 apply, depending on the circumstances. For instance, after playing an official role as an MNA, there is no need to file a disclosure statement with the Ethics Commissioner.

If the value of the gift is substantial, you should, each time circumstances warrant it, consult the Jurisconsult or the Ethics Commissioner, particularly with regard to whether or not you should accept it.

If a charity is holding an event in partnership with the private sector, as is often the case, particularly with fundraising events, it is always relevant to check to see who is paying for your participation.

In all circumstances, you must take every precaution to avoid being placed, even against your will, in a situation where you would be expected to reciprocate for a gift or benefit. Similarly, you must avoid situations where the gift or benefit could reasonably be perceived as influencing you or compromising your integrity..

### **3.5. Amounts received from a political party or party authority**

It is important to distinguish between a benefit received as an advantage and a sum received from, or an expense incurred by, an authorized political party or party authority for the benefit of an MNA.

The second paragraph of section 27 of the Code clarifies the matter. As an MNA, you may be reimbursed by an authorized political party or party authority for reasonable expenses incurred in the course of a partisan activity. In such cases, the rules on gifts do not apply.

### **3.6. Participation in a draw**

An MNA may purchase a ticket to participate in a draw just as any other citizen would. Should you win a prize, you may keep it provided there is no connection with your duties. You are not required to file a disclosure statement with the Ethics Commissioner.

However, if you are representing your riding at an event and win a door prize, you might stop to consider whether you should accept it. Since you have won the prize while carrying out your duties and did not pay to participate in the event, should you accept the prize personally? Without having to file a disclosure statement, the prize not being a gift, you might consider refusing it or giving it to someone else.

### **3.7. Cash**

Gifts in the form of cash or gift certificates or in another form redeemable for cash must be refused, no matter where they come from, what the circumstances are or what amount is involved.

### **3.8. Volunteer Support Program**

Under the Volunteer Support Program, MNAs may, to the extent of the budget available to them, recommend that financial support be granted to non-profit organizations, in accordance with the prescribed conditions. The program is under the administrative responsibility of the Ministère de l'Éducation, du Loisir et du Sport, which issues the cheques to the non-profit organizations.

A great number of non-profit organizations appeal to their MNA for financial assistance as part of their fundraising campaigns or for other specific projects. Not only is the MNA approached with respect to financial assistance, but he or she is also asked to attend or participate in the related fundraising activity. An official invitation or tickets to the fundraiser are sent to the MNA along with the request for financial support, or sometimes after the financial support is awarded. Fundraisers may be organized as a soirée, a commemorative event, a luncheon or a benefit concert, the presentation of a bursary or

prize, a gala event, a dinner cruise, a cocktail party, a golf tournament followed by a dinner, a concert or a show.

So, to what extent do the rules of the Code on gifts and benefits apply when you are invited to attend, free of charge, with the person or persons of your choice, a fundraiser held by a non-profit organization that received financial assistance under the program on your recommendation.

In such circumstances, you are not considered as receiving a benefit under sections 29 to 34 of the Code. There is therefore no need to file a disclosure statement with the Ethics Commissioner.

However, you must consider the rules of conduct and the values and ethical principles of the Code when recommending financial assistance under the Volunteer Support Program. In applying the program, just as in carrying out your other duties, you may not act, attempt to act or refrain from acting so as to further your private interests or those of a family member or non-dependent child, or so as to improperly further another person's private interests, as provided for in section 16 of the Code. Again, in applying the program, you may not use your position to influence or attempt to influence another person's decision so as to further your private interests or those of a family member or non-dependent child, or to improperly further another person's private interests.

For ethical reasons, it is important not only to avoid serving anyone's personal interests, but also to make sure that your decision to support the non-profit organization cannot be perceived as serving such interests.

To that end, you must pay special attention to the non-profit organization's application in the context of your responsibilities as an MNA or a Cabinet Minister. There must be no doubt as to the appropriateness or objectivity of your decision to provide financial support to the organization.

You must also concern yourself with the proportionality between the amount granted as financial assistance and the value of the benefit you receive when participating in the fundraiser. If the value of the benefit is substantial or disproportionate, you should, each time circumstances warrant it, consult the Jurisconsult or the Ethics Commissioner, particularly with regard to the risk of compromising your integrity or that of the National Assembly.

Finally, in acting under the Volunteer Support Program or in carrying out any other responsibility, it is important to refer to the values of the National Assembly mentioned in section 6 of the Code. Your conduct must at all times be characterized by benevolence, integrity, adaptability, wisdom, honesty, sincerity and justice.

In short, you are not required to file a disclosure statement with the Ethics Commissioner for benefits received from a non-profit organization within the framework of the Volunteer Support Program. However, the rules of conduct and the values and ethical principles of the Code always apply in any dealings you may have in that context.

#### **4. Consultations and advisory opinions**

You are invited to contact the Jurisconsult or the Ethics Commissioner for information on any matter relating to gifts. Such consultations are strictly confidential.

Under section 87 of the Code, you may also submit a request in writing to the Ethics Commissioner for a written advisory opinion containing reasons and any recommendations the Ethics Commissioner considers appropriate on any matter related to your obligations under the Code.

Under section 88 of the Code, an act or omission by an MNA is deemed not to be a breach of the Code if he or she previously requested an advisory opinion from the Ethics Commissioner and the advisory opinion concluded that the act or omission did not contravene the Code, so long as the facts are the same and fully disclosed.

**Disclosure statement**

A form is available from the Ethics Commissioner for the disclosure of gifts valued at more than \$200.

A single disclosure statement can be filed for all gifts received during the previous 30 days.

## “NOTA BENE”

These guidelines apply to all MNAs and Cabinet Ministers. They also apply to the staff of MNAs, House Officers of the National Assembly and Cabinet Ministers, with the following differences:

- ◆ The Ethics Commissioner does not keep a public register of the disclosure statements filed by staff members;
- ◆ When disclosing gifts, hospitality and other benefits, staff members must use a distinct form from that used by MNAs and Cabinet Ministers;
- ◆ When refusing gifts, hospitality or other benefits, staff members are not required to inform the Ethics Commissioner;
- ◆ When reading these guidelines, the word “MNA” should be replaced by “staff member”, where applicable.

The following table shows the concordance between sections of the legislative and regulatory texts.

<i>Code<sup>i</sup></i>	<i>Regulation<sup>ii</sup></i>	<i>Rules<sup>iii</sup></i>
section 29	section 11	section 10
section 30	section 12	section 11
section 31	section 13	section 12
section 32	section 15	section 14
section 33	section 14	section 13
section 34	section 16	section 15

<sup>i</sup> Code of ethics and conduct of the Members of the National Assembly (chapter C-23.1)

<sup>ii</sup> Regulation respecting the rules of conduct applicable to the office staff of ministers (chapter C-23.1, r.2)

<sup>iii</sup> Rules of conduct applicable to the staff of Members and House officers of the National Assembly (Office of the National Assembly, decision n<sup>o</sup> 1690)

### **For further information :**

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