JOURNEY INTO THE HEART OF THE CODE OF ETHICS AND CONDUCT: **FROM THEORY TO PRACTICE**

Report on the Implementation of the *Code of Ethics and Conduct of the Members of the National Assembly*

2015 | 2019

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2015 | 2019

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In this document, where applicable,
the masculine gender designates both women and men.

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Québec, December 2, 2019

François Paradis
President of the National Assembly
Hôtel du Parlement
1045 Rue des Parlementaires
1st floor, suite 1.30
Québec City (Québec) G1A 1A4

Mr. President:

In accordance with section 114 of the Code of Ethics and Conduct of the Members of the National Assembly (chapter C-23.1), I have the honour of presenting you with the second report on the implementation of the Code for the period from January 1, 2015, to November 15, 2019.

This report shows the way the Code is applied and the issues encountered over time. It also presents my comments and recommendations on opportunities to amend the Code.

Sincerely,

The Commissioner,

Ariane Mignolet

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Message from the Commissioner

It is my pleasure to present the second report on the implementation of the *Code of ethics and conduct of the Members of the National Assembly* (the "Code") to the National Assembly today. The purpose of this report is to share the reflections accumulated through the daily application of the Code and shed light on the challenges that have arisen through the implementation of some of its provisions.

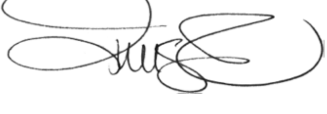
The objective of this report is not to summarize the entire Code but to show the institution's approach in applying it and to highlight the aspects that, from our point of view, require consideration or review. The period it covers—from January 1, 2015, to November 15, 2019—offered the institution many opportunities for reflection. It also abounded in unprecedented situations related to the application and interpretation of the Code.

In terms of the institution itself, I came into office during this period, on May 28, 2017, succeeding Jacques Saint-Laurent, who was the very first commissioner. We also worked on defining institutional policies, as well as creating and modernizing tools to help the clientele fulfil their obligations, such as the Statement Zone, an online solution for completing and submitting private-interest disclosure statements electronically. The development of the institution continued through the establishment of several partnerships, including the recent creation of the Réseau francophone d'éthique et de déontologie parlementaires.

In the period covered by our report, the Ethics Commissioner's first inquiry reports recommending a sanction were tabled. Moreover, the first fixed-date elections held in Québec in October 2018 led to a change in Government, which elicited many questions for months surrounding election day.

In other words, it was a productive period for the institution, and this is reflected in the report's content. The report helps embody the vision of the Ethics Commissioner, an institution that plays a central role in promoting a political culture that is respectful of the rules of conduct and ethical principles inherent to a healthy democracy, for both the Members of the National Assembly and the citizens of Québec. We hope that the content of this report provides the reader with a better idea of the issues related to the implementation of the Code and that the recommendations it offers will be heard by the legislator.

Enjoy!



Ariane Mignolet

List of Recommendations

RECOMMENDATION 1: That the Code be amended to include a requirement for Members and Cabinet Ministers to participate in training tailored to their duties within six months of the start of their term and, thereafter, at least once for each subsequent term. 28

RECOMMENDATION 2: That parliamentarians consider the benefit of making public, in a registry, certain measures taken to prevent conflicts of interest (conflict of interest screens). 31

RECOMMENDATION 3: That parliamentarians consider the benefit of establishing a consultation process for the leaders of parliamentary groups with the commissioner, in certain circumstances. 32

RECOMMENDATION 4: That parliamentarians consider the benefit of maintaining the jurisconsult's advisory services on ethics and conduct. 34

RECOMMENDATION 5: That the Code be amended to require the commissioner, after receiving a request under section 91, to conduct a preliminary review, within 15 working days, to determine whether an inquiry is warranted. 37

RECOMMENDATION 6: That the Code be amended to require the leader of a parliamentary group to be notified by the commissioner of any inquiry into a Member of their group. 38

RECOMMENDATION 7: That the Code be amended so that the National Assembly is only called on to vote on the recommendation to impose a sanction put forward in an inquiry report. 40

RECOMMENDATION 8: That the Code be amended to allow the commissioner to impose a penalty for failing to comply with certain obligations prescribed by the Code. 41

RECOMMENDATION 9: That the Code be amended to prohibit reprisals against a person who discloses information to the Ethics Commissioner or who cooperates in a verification or inquiry involving a violation of the Code and to prohibit threats of reprisals against a person to prevent them from disclosing information or cooperating in a verification or inquiry. 44

RECOMMENDATION 10-A: That the Code be amended so that it continues to apply in full to outgoing Members, with the necessary modifications, during the election period. 51

RECOMMENDATION 10-B: That the Code be amended so that section 36 continues to apply to outgoing Members during the election period. 52

RECOMMENDATION 11: That the Code be amended so that no inquiry request may be made within four months preceding polling day in a general election. 53

RECOMMENDATION 12: That the Code be amended to provide for the possibility of issuing advisory opinions to candidates, in accordance with the criteria established by the commissioner, within six months preceding polling day in a fixed-date general election or after the election is called in any other general election or by-election. **55**

RECOMMENDATION 13: That parliamentarians consider whether to include instances of harassment in the Code. **62**

RECOMMENDATION 14: That the Code be amended to allow a Member who has a private financial interest, not shared by the other Members or the general public, to participate in debates without the right to vote, if they publicly declare their interest in advance. These declarations would be recorded in the Votes and Proceedings of the sitting and the Ethic Commissioner would be responsible for keeping a public record of them. **71**

RECOMMENDATION 15: That parliamentarians consider the application of paragraph 2 of section 60 to a former Cabinet Minister who accepts an appointment as a member or board member of a State entity or who agrees to hold a job, position or any other office with a State entity. **78**

RECOMMENDATION 16: That the Code be amended so that the commissioner can authorize a Member to be a party to a contract with the Government, a department or a public body, provided that the extent of the interest or the circumstances surrounding the conclusion of the contract are not likely to lead to collusion or undue influence, under the conditions set by the commissioner. **81**

RECOMMENDATION 17: That the Code be amended to give the commissioner the discretion to authorize a contract between a private company in which a Cabinet Minister has an interest and the Government, a department or a public body, under any terms and conditions that the commissioner determines. **89**

RECOMMENDATION 18: That the Code be amended to give Cabinet Ministers 60 days from the deadline for completing their initial private-interest disclosure to comply with sections 45 and 46 of the Code. **90**

RECOMMENDATION 19: That the Code be amended to allow the commissioner to authorize the reimbursement of the costs related to the creation of a blind trust or a blind management agreement and the corresponding fees. **92**

RECOMMENDATION 20: That the rules on allowances and budgets granted by the National Assembly or attributed, in whole or in part, by parliamentarians be revised, in collaboration with the Ethics Commissioner, to ensure that they are consistent with the rules and principles set out in the Code. **103**

RECOMMENDATION 21: That an independent mechanism be established to determine the working conditions of the Members of the National Assembly. **105**

RECOMMENDATION 22: That mechanisms are put in place to promote transparency and review the use of allowances and budgets allocated to parliamentarians. **106**

Introduction

This second report on the implementation of the *Code of ethics and conduct of the Members of the National Assembly1*[1] (the "Code"), nine years after the creation of the Ethics Commissioner,[2] provides an ideal opportunity to compare the ideal sought by parliamentarians at the time the Code was adopted with the daily practice of ethics and conduct in Québec's political circles and the issues it involves.

Like the report presented in 2015 by Commissioner Saint-Laurent, this implementation report informs parliamentarians and the public about how the Code is applied and interpreted on a daily basis and describes problems experienced in this context. The various types of problems are described as shortcomings to fix, reflections to undertake or proposals for amendments.

The reflective process that led to these conclusions was not carried out in isolation. In fact, although it reflects the Ethics Commissioner's view of the rules it must apply, it also takes into consideration the comments received over the years from its clientele and from various stakeholders interested in these issues. Elected officials and members of the public have been a great source of inspiration in this work and in defining the Ethics Commissioner's policy directions in recent years.

Ethics and professional conduct in political and parliamentary circles are constantly evolving. Similar questions may be viewed differently in different places, and this diversity provides insight that is especially relevant to the implementation of the Code. For this reason, our reflection also takes into consideration the experiences of other Canadian commissioners or foreign institutions similar to the Ethics Commissioner.

Lastly, the report takes into account the complexity of Québec's parliamentary environment and the particular challenges of applying ethical principles and rules of conduct in an environment such as the National Assembly of Québec. A good understanding of the standards and principles that guide the conduct of the actors in this environment is critical for the implementation to fulfil the goals.

This report is divided into four chapters that each presents different issues related to the application of the Code. The issues are grouped into four different themes. First, the development, mandate and roles of Ethics Commissioner are described. The preventive and coercive aspects of its mission are described, as well as particular issues stemming from them, such as the need to offer more training on the Code and the possibility of conducting preliminary verifications in some cases. Second, two current topics are addressed: the first fixed-date general provincial election and the increasing concern about harassment in parliamentary environments. These two topics raised a variety of questions related to the application and interpretation of the Code and certain shortcomings in the existing mechanisms and measures. Third, issues associated with the Members' professional or other experiences are addressed. Conflicts of interest, contracts with the State, incompatibility of offices, exclusivity of duties and post-term rules are examined in that section. Finally, the fourth chapter of the report focuses more specifically on the establishment of practices at the National Assembly that foster the incorporation of ethics and good conduct. That chapter deals essentially with questions related to gifts and benefits, as well as the goods and services made available to Members in the exercise of their duties of office.

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1 Commissioner (with a capital "C") refers to the institution, whereas commissioner (with a lower-case "c") is used when referring to the person designated by the National Assembly of Québec.

2 *Code of Ethics and Conduct of the Members of the National Assembly*, CQLR, c. C-23.1 (the "Code").

This report includes 22 recommendations, several of which are invitations to further reflection. We hope it will serve as a stepping stone for the Ethics Commissioner's continued activities in its second decade. We also hope that its content, like the daily work carried out by the institution, will continue to strengthen the public's confidence in its elected officials. The public consults the Ethics Commissioner more and more often, as shown by the increasing number of requests for advisory opinions from year to year. Parliamentarians also cooperate with the application of the Code in the National Assembly, and we commend their efforts and interest in achieving greater probity in Québec's political circles.

In conclusion, it is important to note that this report does not specifically address issues related to the rules applicable to staff. Although the Ethics Commissioner is also the competent authority for the staff of Members and Cabinet Ministers, section 114 of the Code specifically requires the preparation of a report on the implementation of the Code. As the reality of the Members of the National Assembly and that of their staff may differ in some respects, in this document we have preferred to focus on the rules found in the Code, to avoid any confusion. That said, some of the comments on the Code may apply to the rules governing staff, since those rules are often similar to the ones governing the Members. For this reason, the rules of conduct for staff will be examined separately in the near future.

CHAPTER 1

THE ETHICS COMMISSIONER: BASIS OF ITS MANDATE AND ROLES

CHAPTER 1

Almost ten years after the *Code of ethics and conduct of the Members of the National Assembly* came into force, the Ethics Commissioner is still a growing and developing institution, given the importance attached to matters of integrity in the public sphere. In carrying out its mission, the institution plays two key roles, and several related issues deserve to be explored in this reflection on the implementation of the Code. This section therefore first focuses on the development of the Ethics Commissioner and its role in Québec society, where the integrity of public institutions has become a constant theme in political debate. Next, the roles carried out by the Ethics Commissioner will be described, including problems that will require special consideration in the coming years.

1.1 The Institution of the Ethics Commissioner

1.1.1 The Development of a Young Institution and Its Establishment in Québec's Political Landscape

1.1.1.1 The Creation of the Ethics Commissioner and Its Area of Jurisdiction

The adoption of Bill 48, Code of ethics and conduct of the Members of the National Assembly,[3] on December 3, 2010, led to innovations in Québec's institutional landscape. The bill called for the appointment of a new official: the commissioner of ethics. On January 6, 2011, a few weeks after the Code was adopted and came into force, the first commissioner, Jacques Saint-Laurent, came into office.

The newly created institution was entrusted with the responsibility of enforcing ethical values and principles, as well as the rules of conduct set out in the Code, which apply to the Members of the National Assembly, including Cabinet Ministers,[4] who are also subject to their own rules.[5]

The new law incorporated into a single legislative text the rules on incompatibility of duties and conflicts of interest, which were previously found in the *Act respecting the National Assembly*.[6] It also included the rules applicable to Cabinet Ministers under the *Executive Power Act*[7] and the directives adopted by the premier on conflicts of interest, gifts, donations and leaving office.[8] Several other rules set out in the Code were innovations to the body of standards applicable to Members.

The Ethics Commissioner is also responsible for applying the rules of conduct that govern the staff of the Members and House Officers of the National Assembly and those governing the staff of Cabinet Ministers. The Rules of Conduct applicable to the staff of the Members and House Officers of the National Assembly[9] (the "Rules") and the Regulation respecting the rules of conduct applicable to the office staff of ministers[10] (the "Regulation") were developed following the adoption of the Code; both texts came into force on April 30, 2013.[11]

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3 *Code of Ethics and Conduct of the Members of the National Assembly*, Bill No. 48 (presented on May 14, 2009), 1st sess., 39th legis. (Qc)

4 S. 2 of the Code.

5 *Ibid*., ss. 42 to 61.

6 *Act respecting the National Assembly*, CQLR, c. A-23.1, ss. 57 to 84, now repealed.

7 *Executive Power Act*, CQLR, c. E-18, ss. 12 to 14, now repealed.

8 These directives were adopted and updated periodically by the premier in power and applied to Cabinet Ministers and sometimes to parliamentary assistants. The most recent directives in force prior to the adoption of the Code include: *Directives aux membres du Conseil exécutif concernant les conflits d'intérêts*, September 9, 2009 (Jean Charest); *Directive concernant les règles applicables lors de la cessation d'exercice de certaines fonctions pour l'État*, October 15, 2003 (Jean Charest); *Directive concernant les cadeaux et les dons*, April 29, 2003 (Jean Charest).

9 *Rules of conduct applicable to the staff of Members and House Officers of the National Assembly*, Decision No. 1690 of the Office of the National Assembly dated March 21, 2013.

10 *Regulation respecting the rules of conduct applicable to the office staff of Ministers*, CQLR, c. C-23.1, r. 2.

11 While the Rules and Regulations are also within the jurisdiction of the Ethics Commissioner, this document focuses more specifically on the implementation of the Code, as provided under section 114.

1.1.1.2 The Last Review of the Code and the Legislative Amendments Regarding the Ethics Commissioner

On February 24, 2015, the first report on the implementation of the Code[12] was tabled in the National Assembly. The report, which was prepared by Commissioner Saint-Laurent, focused on the period from January 6, 2011, to December 31, 2014, and contained 23 recommendations. In accordance with section 114 of the Code, the report was examined by the National Assembly's Committee on Institutions.[13] The Committee's mandate ended when its report on that examination was tabled, on April 5, 2017. Several witnesses were heard as part of the Committee's work. The report showed that the Committee members expressed their agreement with at least 12 of the 23 recommendations[14] made by Saint-Laurent. Despite the Committee members' agreement with these first recommendations, however, no amendments have been made to the Code since it came into force in 2012.

Since then, two legislative amendments concerning the Ethics Commissioner have been adopted. First, on December 3, 2015, the National Assembly passed the *Act to regulate the granting of transition allowances to Members who resign during their term of office*.[15] That Act introduced amendments to the *Act respecting the conditions of employment and the pension plan of the Members of the National Assembly*.[16] By virtue of this change, a Member who resigns during the term can only receive a transitional allowance if the Ethics Commissioner determines that the resignation is "due to a serious family matter or a major health issue affecting the Member or a member of his or her immediate family."[17] This legislative amendment stemmed from a recommendation that had been made earlier by the independent advisory committee on the conditions of employment and pension plan of the Members of the National Assembly, whose report was completed in 2013.[18] The second legislative amendment, made on June 12, 2018, authorized the Agence du revenu du Québec to send the Ethics Commissioner an individual's tax data for the purpose of a verification or an inquiry.[19] These two legislative amendments did not result in amendments to the Code, however.

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12 Ethics Commissioner, *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, Québec, Bibliothèque et Archives nationales du Québec, February 2015, online: https://www.ced-qc.ca/fr/document/1269.

13 For more information on this mandate: National Assembly of Québec, "Committee on Institutions – Statutory order – Examination of the report on the implementation of the Code of ethics and conduct of the Members of the National Assembly," online: http://www.assnat.qc.ca/en/travaux-parlementaires/commissions/ci/mandats/Mandat-32363/index.html

14 Committee on Institutions, *Examination of the report on the implementation of the Code of ethics and conduct of the Members of the National Assembly – Observations and conclusions* (French only), Québec, Bibliothèque et Archives nationales du Québec, April 2017, p. 9 et seq.

15 *An Act to regulate the granting of transition allowances to Members who resign during their term of office*, SQ 2015, c. 33.

16 *Act respecting the conditions of employment and the pension plan of the Members of the National Assembly,* CQLR, c. C-52.1.

17 *Ibid.*, s. 12.

18 Independent advisory committee on the conditions of employment and pension plan of the Members of the National Assembly, *MNAs at the heart of our democracy – For a fair and equitable remuneration, Québec*, Bibliothèque et Archives nationales du Québec, November 2013, online: http://www.assnat.qc.ca/en/publications/fiche-depute-remuneration-juste.html

19 *An Act to improve the performance of the Société de l'assurance automobile du Québec, to better regulate the digital economy as regards e-commerce, remunerated passenger transportation and tourist accommodation and to amend various legislative provisions*, SQ 2018, c. 18, s. 51.

Finally, it is important to note that in November 2015, the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry (the "Inquiry Commission") presented its final report,[20] which includes many recommendations, including some that focus specifically on enhancing the legislative corpus on ethics and conduct for elected provincial officials.[21] To date, none of the Inquiry Commission's recommendations that could have resulted in amending the Code's rules has been implemented.

In summary, nearly ten years after it was adopted, the Code has not been amended, despite calls for a review of its content. Furthermore, as we will see later, the reality of parliamentary institutions also changed significantly over this period, including with the introduction of fixed-date elections in 2013.

1.1.1.3 The Appointment of the Second Commissioner and the Development of the Institution

The National Assembly appointed Ariane Mignolet as commissioner on May 28, 2017, succeeding Jacques Saint-Laurent, who served as *ad hoc* commissioner for certain inquiry reports[22] until November 30, 2017.

On April 10, 2018, the Ethics Commissioner's 2018-2022 institutional orientations[23] were tabled in the National Assembly. The orientations present the three major lines of action that guide the Ethics Commissioner's actions and foster the development of the institution: training and support, communication and the development of in-house expertise. It was the first exercise of this type for the Ethics Commissioner, and since then, several steps have been taken to implement those orientations and contribute to the organization's growth.

1.1.2 The Development and Expansion of an Institution Working to Reinforce the Integrity of the Public Sector

Now, at the end of its ninth year of existence, the Ethics Commissioner finds itself in the middle of a growth phase. Several debates have been held over recent years in Québec society to strengthen the integrity of the province's public institutions. Since the Code was adopted, numerous measures, legislative and otherwise, have been taken in Québec to reinforce the culture of ethics and integrity.

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20 *Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, Final report,* Québec, Bibliothèque et Archives nationales du Québec, November 2015, online: https://www.ceic.gouv.qc.ca/fileadmin/Fichiers_client/fichiers/Rapport_final/Rapport_final_CEIC_Integral_c.pdf. (French only)

21 These include recommendations 46, 57 and 58:

Recommendation 46: Amend the codes of ethics and professional conduct applicable to elected provincial and municipal officials and their staff to prohibit the announcement of projects, contracts or grants in the context of political fundraising events, supra, note 20, Volume 3, p. 161.

Recommendation 57: Ensure that the ethical rules applicable to ministers and their staff members prohibit the acceptance or solicitation of gifts or other benefits for a political party or for themselves, from officers or representatives of suppliers to their department or agency, or applicants for or recipients of financial assistance from their department, or their suppliers., supra, note 20, Volume 3, p. 187.

Recommendation 58: Amend the relevant statutes, regulations, guidelines or codes of ethics to prohibit all elected provincial and municipal officials and their political staff, public servants, municipal employees, and government and public administrators from accepting any gift, regardless of its nature or value, from any supplier of goods or services whatsoever, supra, note 20, Volume 3, pp. 189-190.

22 In application of section 72 of the Code.

23 Ethics Commissioner, *2018-2022 Institutional Orientations*, online: https://www.ced-qc.ca/fr/ document/1318 (French only).

This table presents some of those measures.

Year	Legislative measures to reinforce the integrity of public institutions
2010	• Adoption of the *Code of Ethics and Conduct of the Members of the National Assembly* (SQ 2010, c. 30) and creation of the Ethics Commissioner • Adoption of the *Municipal Ethics and Good Conduct Act* (SQ 2010, c. 27)
2011	• Establishment of the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry • Adoption of the *Anti-Corruption Act* (SQ 2011, c. 17) and creation of the Anti-Corruption Commissioner
2012	• Adoption of the *Integrity in Public Contracts Act* (SQ 2012, c. 25)
2015	• Adoption of the *Act to regulate the granting of transition allowances to Members who resign during their term of office* (SQ 2015, c. 33) • Adoption of the *Act to ensure mainly the recovery of amounts improperly paid as a result of fraud or fraudulent tactics in connection with public contracts* (SQ 2015, c. 6)
2016	• Adoption of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* (SQ 2016, c. 34) • Adoption of the *Act to amend various municipal-related legislative provisions concerning such matters as political financing* (SQ 2016, c. 17) • Adoption of the *Act to give effect to the Charbonneau Commission recommendations on political financing* (SQ 2016, c. 18)
2017	• Adoption of the *Act to facilitate oversight of public bodies' contracts and to establish the Autorité des marchés publics* (SQ 2017, c. 27)
2018	• Adoption of the *Act to increase the jurisdiction and independence of the Anti-Corruption Commissioner and the Bureau des enquêtes indépendantes and expand the power of the Director of Criminal and Penal Prosecutions to grant certain benefits to cooperating witnesses* (SQ 2018, c. 1) • Adoption of the *Act respecting the services available to a former Prime Minister* (SQ 2018, c. 17) • Adoption of the *Act to improve the performance of the Société de l'assurance automobile du Québec, to better regulate the digital economy as regards e-commerce, remunerated passenger transportation and tourist accommodation and to amend various legislative provisions* (SQ 2018, c. 18)

All these measures show that questions concerning integrity in public institutions have occupied a major place in political debate in Québec in recent years. The Ethics Commissioner is a prominent player in these matters, and the ongoing development of the institution is key to a more ethical, reflective and honest political life in Québec.

The growing demand for more integrity in politics creates an ever-expanding need for support for the Ethics Commissioner's clientele. As such, the institution continually focuses on finding new ways to efficiently fulfil its mission every day. For example, it is actively seeking to develop in its staff a specialization in ethics, conduct and integrity of political institutions.

In order to support the institution and reinforce the staff's skills, several actions have been taken in recent years:

- Training for professional staff was organized in collaboration with several institutional partners, including the Autorité des marchés financiers, Élections Québec, , the Lobbyists Commissioner, the National Assembly and the Institut d'éthique appliquée of Université Laval.
- More people were hired, to provide the Ethics Commissioner with a specialized prevention team and a specialized inquiry team.
- A compendium of the Ethics Commissioner's interpretations is being prepared to foster better knowledge of the Code's rules and how they are implemented.
- A network of French-language public institutions that work in the field of parliamentary ethics and conduct, the Réseau francophone d'éthique et de déontologie parlementaires, was recently created at the initiative of France and Québec. This network, which will be chaired by the commissioner for the next two years, allows for the ongoing sharing of best practices and innovations in its members' field of intervention.

Since issues related to ethics and integrity are constantly evolving, it is important for the Ethics Commissioner to base its daily efforts on monitoring and constant vigilance in order to fully accomplish the two main aspects of its mission.

The Code stipulates that in carrying out its mission, the Ethics Commissioner first plays a preventive role, in particular when it issues opinions to its clientele and provides training. Its second role is coercive, since it is responsible for conducting inquiries into possible violations of the Code.

1.2 The Ethics Commissioner's Preventive Role

The implementation of a code of ethics relies first and foremost on the knowledge and good understanding of the rules it contains. To encourage the communication of best practices that promote compliance with the Code among its clientele, the Ethics Commissioner actively guides the individuals who are subject to the Code, the Rules and the Regulation. In addition, it raises their awareness of situations that may be problematic with respect to the established normative framework.

This section will focus on the Ethics Commissioner's first role: preventing problematic situations by using various mechanisms and disseminating information about ethics and conduct in Québec's parliamentary environment. Specific issues related to performing this role will also be addressed.

1.2.1 Prevention: The Ethics Commissioner's Primary Role

Prevention, training and support constitute the Ethics Commissioner's primary mission, to ensure that a culture of integrity is maintained in the National Assembly. Several specific items in the Code support this interpretation.

The very first sections of the Code outline a series of values that Members must adhere to in the exercise of their duties. Section 6 states that the values of the National Assembly are the following:

> **(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.**

It also stipulates that the Members' conduct must be characterized by **"benevolence, integrity, adaptability, wisdom, honesty, sincerity and justice."**

The section concludes by saying that Members, consequently:

> **(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.**

Enshrining these values and ethical principles at the beginning of the Code shows that it emphasizes the importance for elected officials in the course of their actions, to always conduct themselves in a way that corresponds to expectations of them. Section 8 of the Code points out that it is important for Members to strive for consistency between their actions and these values **"even when their actions do not in themselves contravene the applicable rules of conduct."**[24] Section 9 even specifies the fundamental principles that support the Members' duties and that rely on adherence to these values: **"Members recognize that their adherence to these values is essential to maintain the confidence of the people in them and the National Assembly and enable them to fully achieve their mission of serving the public interest."**

These values and ethical principles themselves constitute a first mechanism for self-regulation on the part of elected officials and the prevention of breaches of the Code, while also reinforcing a culture of integrity at the National Assembly. More specifically, regarding the scope of this aspect of the Ethics Commissioner's role, the Code stipulates in section 65 that, **"in exercising the duties of office, the Ethics Commissioner focuses on information and prevention and maintains high standards of confidentiality, objectivity and impartiality."** That same section then states that **"in all interventions and more particularly in determining the rules of conduct applicable to Members, the Ethics Commissioner takes into account the Members' adherence to the values of the National Assembly and the principles set out in Title I."**

More explicitly, the Code includes other mechanisms to ensure appropriate support for elected officials in relation to the implementation of the ethical principles and rules of conduct it contains. It states that the Ethics Commissioner provides advisory opinions about the Code and the obligations it includes[25] and that the Ethics Commissioner may issue guidelines for the Members regarding the application of the Code.[26]

Section 88 of the Code emphasizes the importance of prevention by saying that **"an act or omission by a Member is deemed not to be a breach of this 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 this Code, so long as the facts relevant to the request were fully and accurately presented to the Ethics Commissioner."** With this immunity, the Code recognizes the importance of seeking the Ethics Commissioner's assistance when in doubt about the application of the Code's rules. It is therefore beneficial to obtain insight directly from the Ethics Commissioner's team as soon as a problematic situation arises or becomes likely.

Finally, section 90 of the Code specifies that the Ethics Commissioner **"organizes educational activities for Members and the general public on the role of the Ethics Commissioner and the application of this Code,"** which confirms the value placed on training and education in the accomplishment of the Ethics Commissioner's mission.

1.2.2 The Importance of Prevention Training

To fulfil its fundamental mission in Québec's political landscape, namely, to help reinforce the people's trust in their elected officials, the Ethics Commissioner's first role is prevention based on training. With a preventive approach and broader dissemination of the ethical principles and rules of conduct to which the Members of the National Assembly must adhere, the Members and their staff will be better informed about best practices to follow and conduct to adopt in particular situations.

24 S. 8 of the Code.

25 *Ibid.*, s. 87. See section 1.2.3 of this report for further details.

26 *Ibid.*, s. 89.

Therefore, training constitutes the primary measure by which the Ethics Commissioner can fulfil its objectives regarding prevention and awareness about the issues presented in the Code. For this reason, the Ethics Commissioner continually offers training to its clientele (Members and their staff).

Different types of training have been provided to Members of the National Assembly and their staff, divided into separate target audiences. Training has also been offered by webinar, to more easily reach the Ethics Commissioner's clientele in remote locations. Despite an expanding service offer, too few people receive training from the Commissioner. To date, midway through the 2019-2020 fiscal year, 24 elected officials have received training on the Code. For the whole of the 2018-2019 fiscal year, there were 25, and in 2017-2018, a single elected official benefited from training provided by the Ethics Commissioner.[27] This means that despite the increase in the number of Members who have taken training, too few parliamentarians are adequately informed about their ethical obligations.

This reality must be changed, because the questions related to parliamentary ethics and conduct never stop evolving. The training needs of the Ethics Commissioner's clientele in this area are therefore ongoing. Furthermore, during the training courses, some participants reveal preconceptions about ethics and conduct. As Commissioner Saint-Laurent stated in a letter sent to the members of the Committee on Institutions during the examination of the first report on the implementation of the Code:

> The Members of the National Assembly and their staff genuinely believe that they do not need training in ethics and conduct because they impose strict rules on themselves and, because of that, they are convinced that by following their own stricter rules, they are not at risk of violating the ethical obligations set out by the law. Unfortunately, this is an imperfect view of the situation in terms of the goal proposed by the Code.
>
> Ethics and conduct involve legal and administrative frameworks that can be complex. Training aims to guide the stakeholders in question, to help them recognize and understand why and in which situations they have to demonstrate prudence in the exercise of their duties.[28] [TRANSLATION]

Given the importance of having a good understanding of ethical issues in the context of the duties carried out by Members of the National Assembly and their staff, ethics training provided by the Ethics Commissioner should be taken by all newly elected officials as soon as they are elected. It is important for Members to learn the concepts related to parliamentary ethics and conduct as soon as they take office, in order to quickly develop good reflexes and help maintain a political culture where the rules of ethics and conduct are an integral part of every day. This training should focus on both the rules in effect and concrete examples of their application.

In this regard, it would be appropriate to include a requirement for new Members of the National Assembly to be trained on the rules in the Code after they have been elected. Furthermore, this training should be taken by Members of the National Assembly at least once per term, as the issues related to conduct evolve over time.

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27 The data for the previous years are unknown.

28 Letter from Jacques Saint-Laurent to the Chair of the Committee on Institutions, Guy Ouellette, February 9, 2016 [Sent to the members of the Committee on Institutions, but not tabled].

The previous report on the implementation of the Code also contained this recommendation,[29] which the members of the Committee on Institutions unanimously agreed with.[30] Concerning that recommendation, the Committee members highlighted “the importance of training adapted to each political function in the National Assembly: Cabinet Minister, Member and staff.” They also expressed the desire for the staff training to cover the rules applicable to the Members and Cabinet Ministers. Currently, the training provided by the Ethics Commissioner is specifically adapted to each client group and the staff training addresses the rules applicable to elected officials.

As the previous report on the implementation of the Code pointed out, a similar measure is set out for elected municipal officers in section 15 of the *Municipal Ethics and Good Conduct Act*: [31]

> 15. Any member of a council of a municipality who has not already participated in a professional development program on municipal ethics and good conduct must participate in such a professional development program within six months after the beginning of his or her term.
>
> The professional development program must, among other aims, encourage participants to reflect on municipal ethics and adhere to the values set out in the code of ethics and conduct, and help them acquire the competencies they need to understand and observe the rules set out in the code.
>
> Failure to participate in such a professional development program is an aggravating factor for the purposes of section 26.
>
> Within 30 days after participating in such a professional development program, a council member must report his or her participation to the clerk or the secretary-treasurer of the municipality, who in turn reports it to the council.

We therefore recommend, as did Commissioner Saint-Laurent, obligatory and continual training for the Members of the National Assembly.

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RECOMMENDATION 1
That the Code be amended to include a requirement for Members and Cabinet Ministers to participate in training tailored to their duties within six months of the start of their term and, thereafter, at least once for each subsequent term.

29 *Report on the implementation of the Code of Ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, p. 65 (Recommendation 18).

30 Committee on Institutions, supra, note 14, p. 10.

31 *Municipal Ethics and Good Conduct Act*, CQLR, c. E-15.1.0.1.

1.2.2.1 Training the Public

In addition to training the clientele, training the public is another way to raise awareness of the questions and issues related to parliamentary ethics and conduct. In this respect, section 90 of the Code stipulates that the Ethics Commissioner should organize educational activities for Members and the general public on the role of the Ethics Commissioner and the application of the Code.

Initiatives to publicize the institution and the Code have been carried out in specific contexts: presentations to foreign parliamentarians, participation in university classes and conferences, training provided to interns at the National Assembly and the House of Commons, etc.

In light of its role in the public space and the importance of prevention in ethics and conduct, the Ethics Commissioner also hopes in the coming years to offer training and education on public integrity to inform a broader audience on these issues.

Political culture that incorporates ethics and conduct relies on training a large number of stakeholders in the society, including young people. In fact, as stated by the OECD, which is interested in educating young audiences on integrity:

> Building a culture of integrity in society necessarily begins with the education of young people. The knowledge, skills and behaviours they acquire now will shape their country's future, and will help them uphold public integrity, which is essential for preventing corruption. To that end, the OECD Recommendation on Public Integrity calls on countries to raise awareness of the benefits of public integrity, to reduce tolerance of violations of its standards, and to carry out related education initiatives wherever appropriate.[32]

It will therefore be important, in the coming years, for the Ethics Commissioner to widen its communication initiatives to more diverse audiences, including activities for young people, to raise the population's awareness of questions of integrity, ethics and conduct in parliamentary environments and Québec's political life.

1.2.3 Advisory Opinions from the Ethics Commissioner: An Essential and Indispensable Tool for Members

In combination with client training, the advisory opinions issued by the commissioner constitute the first means of preventing violations of the Code and educating elected officials about the rules and ethical principles in it. This duty of the commissioner, outlined in the Code, is central and indispensable to the commissioner's mission. Under section 87, Members may request an advisory opinion from the commissioner regarding their obligations with respect to the Code. These advisory opinions are confidential. This section reads as follows:

> **87. In response to a request in writing from a Member on any matter respecting the Member's obligations under this Code, the Ethics Commissioner provides the Member with a written advisory opinion containing reasons and any recommendations the Ethics Commissioner considers appropriate. The advisory opinion must be given within 30 days after the Member's request, unless otherwise agreed by the Member and the Ethics Commissioner.**
>
> **An advisory opinion of the Ethics Commissioner is confidential and may only be made public by the Member or with the Member's written consent, subject to the Ethics Commissioner's power to conduct an inquiry and report on the facts alleged in or discovered in connection with the Member's request.**

32 OCDE, *Education for Integrity: Teaching on Anti-Corruption, Values and the Rule of Law*, 2018, online: https://www.oecd.org/governance/ethics/education-for-integrity-web.pdf, p. 9.

The advisory opinions provided to Members may be verbal or written. To allow for greater flexibility and efficiency in the process, advisory opinions may be made directly to elected officials by telephone after the applicable rules and context are analyzed. In this situation, the Members have direct access to the Ethics Commissioner's legal counsel services. The content of the advisory opinions is then recorded in the Ethics Commissioner's archives for reference. In accordance with section 87, advisory opinions may also be made in writing. For this, however, the Member must present an application in writing.

To encourage elected officials to use this procedure, section 88 of the Code states:

> **88. An act or omission by a Member is deemed not to be a breach of this Code if he or she previously requested an advisory opinion from the Ethics Commissioner and the advisory opinion concluded that the actor omission did not contravene this Code, so long as the facts relevant to the request were fully and accurately presented to the Ethics Commissioner.**

Providing advisory opinions is the foundation of the commissioner's services for the institution's clients. The practice has been well established since the founding of the institution, as illustrated by the number of applications from Members of the National Assembly for advisory opinions. It should be noted that there are often more in election years.

Year	Advisory opinions issued under section 87 of the Code	Other advisory opinions	Total
2011-2012[33]	1	89	90
2012-2013*	19	218	237
2013-2014	13	203	216
2014-2015*	32	256	288
2015-2016	23	94	117
2016-2017	36	94	130
2017-2018	14	104	118
2018-2019*	47	203	250
2019-2020 (as of November 15, 2019)	31	101	132

* Election year

33 After section 87 of the Code came into force, on January 1, 2012.

1.2.3.1 Recommendations and Measures to Take

As stated in section 87 of the Code, the Ethics Commissioner may, in the advisory opinion procedure, make any recommendations that it considers appropriate to the person who made the request. In this situation, the Ethics Commissioner often suggests that the person take preventive measures to comply more easily with the rules set out in the Code.

It has long been customary for the Ethics Commissioner to also offer templates for letters of undertaking, primarily in requests for advisory opinions related to conflicts of interest. Such a letter, signed by the person who requested the advisory opinion, may be addressed to the leader of their party, the whip, their colleagues and members of their staff. The letter describes the measures that the Member of the National Assembly will undertake to avoid placing themselves in violation of the Code.

At the federal level, under the *Conflict of Interest Act*,[34] the Conflict of Interest and Ethics Commissioner can determine the appropriate measures for a public office holder to take to comply with the stipulated rules.[35] These measures may take the form of conflict of interest screens and various types of undertakings, for example. The Commissioner has the option to make these compliance measures public by posting them in the public registry on its website, as section 51(1) of the *Conflict of Interest Act* allows it to include in the registry any document that it deems appropriate. The Conflict of Interest and Ethics Commissioner has chosen to publish the compliance measures adopted by public office holders (which includes ministers, ministers of state and parliamentary secretaries).

Likewise, with the goal of transparency, it seems appropriate for the commissioner to have the option of making public certain measures taken to prevent conflicts of interest.

RECOMMENDATION 2
That parliamentarians consider the benefit of making public, in a registry, certain measures taken to prevent conflicts of interest (conflict of interest screens).

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34 *Conflict of Interest Act*, SC 2006, c. 9, s. 2.

35 *Ibid.*, s. 29.

1.2.3.2 Advisory Opinions Requested by a Third Party

The advisory opinion mechanism provides key guidance for elected officials in the problematic situations that they may encounter from day-to-day while carrying out their duties. Typically, the Commissioner gives the advisory opinion directly to the elected official, as section 87 stipulates that the advisory opinion must be given to the Member who made the request. The section also stipulates that only the Member who requested the advisory opinion may make it public. In certain cases, however, an advisory opinion may be communicated to a third party, such as when the Member has asked a staff member to communicate with the commissioner on their behalf. Sometimes questions are forwarded by the office of the whip of the elected official's political party or by the Premier's office.[36] Giving an advisory opinion to a third party about a situation that does not concern them personally may often be difficult and should certainly not replace direct consultation on the part of the Member. When such matters are addressed by third parties to the commissioner, it is always necessary to verify the process directly with the people involved, as applicable. With the exception of advisory opinions requested by a member of their staff, the Members who are the subject of a request must also expressly consent that an advisory opinion concerning them be communicated to a third party.

At the federal level, opinions can be given directly to the Prime Minister by the commissioner: "Under paragraph 43a) [of the *Conflict of Interest Act*], the Commissioner is required to provide confidential advice to the Prime Minister, whether to respond to requests from the Prime Minister or to notify him or her of a situation that the Commissioner determines should be brought to his attention."[37]

Since certain ethical issues may be relevant to several individuals within the same parliamentary group or have an effect on the whole group, it may be appropriate, in some situations, to allow the leader of a parliamentary group to consult with the commissioner.

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RECOMMENDATION 3

That parliamentarians consider the benefit of establishing a consultation process for the leaders of parliamentary groups with the commissioner, in certain circumstances.

In conclusion, it is important to specify that when several requests for advisory opinions are presented to the Ethics Commissioner on a recurring theme, guidelines[38] can be developed on that subject, to provide guidance for the people concerned going forward. For example, guidelines were published in 2018 on the post-term rules that apply to elected officials and their staff because as October's general elections approached, the Ethics Commissioner received a high number of requests for advisory opinions on that subject.

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36 Chapter 2 deals more specifically with the issue of requests for advisory opinions made by candidates for election.

37 Canada, Office of the Conflict of Interest and Ethics Commissioner, *The Conflict of Interest Act: Five-Year Review, Submission to the Standing Committee on Access to Information, Privacy and Ethics*, January 30, 2013, online: http://publications.gc.ca/collections/collection_2013/ccie-ciec/ET5-3-2013-eng.pdf, p. 59.

38 S. 89 of the Code.

1.2.4 The Tension Between Confidentiality and the Duty to Inform

Although the Ethics Commissioner's clientele complies with the advisory opinion mechanism, certain considerations are emerging with regard to whether interpretations can be communicated in the guidance it provides from day to day.

On one hand, the confidentiality of advisory opinions issued by the commissioner is essential for the proper functioning of this preventive method. Confidentiality, as set out in second paragraph of section 87, not only protects the Member's private life but also allows comprehensive information to be collected from the people who request advisory opinions. The subjects that are covered in the advisory opinions are often delicate and personal. As the Code states in section 65, the commissioner must exercise the duties of office while maintaining high standards of confidentiality.[39]

On the other hand, to promote prevention and the communication of best practices, more initiatives are required to inform the Ethics Commissioner's clientele and the public about the way various sections of the Code have been interpreted. This process turns the rules of conduct expressed in general terms in the Code into specific practicalities.

This situation presents a unique challenge for the Ethics Commissioner. Communicating examples of interpretations would clearly help raise awareness of ethical matters and the predictability of the law but would run into the problem of communicating highly confidential information related to the advisory opinions issued.

Furthermore, it is important to ensure that publishing examples would not discourage the Ethics Commissioner's clientele from consultations because they believe that a published case is identical to their own. The context and details of each case are always unique, and it is important to clearly identify them in order to provide an advisory opinion based on the Code.

This means that the Ethics Commissioner is in a constant state of tension between the need to inform the clientele and the public and the need to uphold for the absolute confidentiality of the interpretations issued. This struggle is experienced particularly in communications with the public and the clientele. For these reasons, it is difficult for the Ethics Commissioner to use specific examples when illustrating its guidelines or, for example, in the training it offers.

1.2.5 The Jurisconsult's Role

To complement the Ethics Commissioner's work, the Code also provides for the appointment of a Jurisconsult, who is responsible for providing an advisory opinion on ethics and professional conduct to any Member who requests it.[40] The Jurisconsult's advisory opinions are not binding on the Ethics Commissioner, however.[41] The Jurisconsult also has other special areas of jurisdiction, including the reimbursement of legal costs incurred by the Members.[42]

Since both the Ethics Commissioner and the Jurisconsult can render issue opinions on the ethics and conduct applicable to elected officials, it is important to collaborate with the Jurisconsult on the interpretation of the rules stemming from the Code. That is what we have sought to do with the current Jurisconsult, Jean-Louis Baudouin. Working meetings on different topics are organized annually to share our reflections on how to interpret the Code.

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39 **65.** In exercising the duties of office, the Ethics Commissioner focuses on information and prevention and maintains high standards of confidentiality, objectivity and impartiality.

In all interventions and more particularly in determining the rules of conduct applicable to Members, the Ethics Commissioner takes into account the Members' adherence to the values of the National Assembly and the principles set out in Title I.

40 S. 108 of the Code.

41 *Ibid.*, s. 110.

42 *Act respecting the National Assembly*, supra, note 6, ss. 85.1 to 85.4.

As an advisory opinion contrary to that of the Ethics Commissioner could lead to confusion regarding the Code's interpretation, however, it is important today, nearly ten years after the Code was adopted, to examine whether it is appropriate to maintain this dual advisory opinion system. Elected officials have raised this repeatedly with the Ethics Commissioner.

Since the Jurisconsult's advisory opinion is not binding, the Ethics Commissioner, could conclude that the Code was violated in a case where the Jurisconsult claims the opposite. Furthermore, the Jurisconsult does not have access to the jurisprudence and the Ethics Commissioner's interpretations in the performance of his duties. The situation is worrisome from the point of view of both the predictability of the law and the credibility of the two institutions. In conclusion, we should point out that the consulting services of the National Assembly's Jurisconsult are almost never used today. The Jurisconsult informed us that very few advisory opinions have been requested from him in the last two years.

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RECOMMENDATION 4
That parliamentarians consider the benefit of maintaining the Jurisconsult's advisory services on ethics and conduct.

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1.3 The Ethics Commissioner's Coercive Role

The Code provides for two main enforcement mechanisms. The first, which we covered above, primarily involves issuing advisory opinions on the application of the rules in the Code to certain situations experienced by Members in the daily exercise of their duties. The Code's second enforcement mechanism, which is of a coercive nature, allows inquiries to be conducted on potential violations of the Code.

1.3.1 Conducting Inquiries

An inquiry on a potential violation of the Code can be opened either at the request of a Member[43] or on the commissioner's own initiative,[44] as specified in the following sections:

> **91. A Member who has reasonable grounds for believing that another Member has violated a provision of Chapters I to VII of Title II or a provision of Title III may request that the Ethics Commissioner conduct an inquiry into the matter.**
>
> **The request must be made in writing and set out the reasonable grounds for the belief that this Code has not been complied with. The Ethics Commissioner sends a copy of the request to the Member named in it.**
>
> **92. The Ethics Commissioner may, on the Ethics Commissioner's own initiative and after giving the Member concerned reasonable written notice, conduct an inquiry to determine whether the Member has violated this Code.**

An inquiry conducted by the commissioner is a process that has many legal, political, administrative and personal repercussions. Nine years after the Code came into force and after more than 25 inquiries, certain aspects related to inquiries and the rules governing them need to be considered.

1.3.1.1 Requests Made by Another Member and Preliminary Verifications

First, it is important to point out that the Code does not explicitly provide for the possibility of carrying out preliminary verifications before officially launching an inquiry. The concept of "verifications" is found in sections 95, 96 and 97 of the Code, but the Code does not specify what verifications involve. It may be useful, however, to carry out preliminary verifications without formally initiating the inquiry process under sections 91 and following.

The inquiry process is rigorous and entails many requirements. It is also costly in both time and resources. Currently, when an inquiry request is sent to the commissioner by a Member, the commissioner must produce an inquiry report. The commissioner has no leeway to simply carry out preliminary verifications and, if applicable, reject the request and avoid producing an inquiry report if the request is unfounded. In fact, section 95 of the Code requires the commissioner to produce a report whenever an inquiry request is made, even if the request turns out to be unfounded:

> **95. If, after a verification, the Ethics Commissioner is of the opinion that there are no grounds for a request for an inquiry, the Ethics Commissioner terminates the inquiry process and records that fact in the report on the matter. Section 98 applies, with the necessary modifications, to the report.**

43 S. 91 of the Code.

44 *Ibid.*, s. 92.

Since an inquiry report must be prepared very carefully and thoroughly, even if the inquiry is unfounded, it is always very labour-intensive and time-consuming.

Inquiries conducted on the commissioner's own initiative allow for more flexibility, since the second paragraph of section 98 specifically states that the commissioner is not required to produce a report in such a case:

> **98. Following an inquiry, the Ethics Commissioner reports without delay to the President of the National Assembly, the Member under inquiry and the leader of the authorized party to which the Member belongs. The report must include reasons for its conclusions and recommendations.**
>
> **However, if the Ethics Commissioner conducted the inquiry under section 92, no report is required.**
>
> **The President of the National Assembly lays the report before the National Assembly within the next three days or, if the Assembly is not sitting, within three days of resumption.**

The commissioner already carries out certain initial verifications before officially launching an inquiry on their own initiative. According to the Code, the commissioner must have reasonable grounds to believe that the Code may have been breached before launching an inquiry. This criterion is stated in section 91 for an inquiry request made by another Member.

In some cases, allowing for more exhaustive verifications would answer questions which, in the Code's current state, can only be clarified by launching an official inquiry. Administratively, these verifications would greatly improve the efficiency of the Ethics Commissioner. It should also be noted that the launch of an inquiry by the Ethics Commissioner leads to a significant personal impact for the people in question. Beginning with verifications would eliminate the need to carry out some inquiries when it is shown at the outset that the target situation is compliant with the Code, thereby reducing all the repercussions related to launching an inquiry. In other cases, an inquiry would be launched following preliminary verifications.

In this respect, at the federal level, under the *Conflict of Interest Code for Members of the House of Commons*, when a Member submits an inquiry request for another elected official, the commissioner carries out a "preliminary review of the request [...] to determine if an inquiry is warranted"[45] and has 15 working days to communicate, in writing, the decision of whether to conduct an inquiry. A similar procedure is also in effect for the Canadian Senate.[46]

45 Canada, House of Commons, *Conflict of Interest Code for Members of the House of Commons, Schedule 1 of the Standing Orders of the House of Commons*, codified version on October 22, 2019, online: https://www.noscommunes.ca/About/StandingOrders/SOPDF.pdf, s. 27 (3.2).

46 Canada, Senate, *Ethics and Conflict of Interest Code for Senators*, June 16, 2014, online: http://sen.parl.gc.ca/seo-cse/PDF/CodeJune2014.pdf, s. 47.

It would be advantageous in more ways than one for the commissioner to be able to carry out a more in-depth review of an inquiry request submitted by a Member. Much like a question of privilege submitted to the President of the National Assembly, this procedure would allow the commissioner to verify at the outset whether there are reasonable grounds to support launching an inquiry before embarking on the full process.

RECOMMENDATION 5

That the Code be amended to require the commissioner, after receiving a request under section 91, to conduct a preliminary review, within 15 working days, to determine whether an inquiry is warranted.

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1.3.1.2 The Nature of Inquiries

There is no doubt about the special nature of the Ethics Commissioner's inquiries in Québec's legal administrative landscape. As is the case for other Canadian commissioners with similar powers, these inquiries seek to "determine the relevant facts surrounding an alleged breach"[47] of the Code "in order to permit the Commissioner to draw conclusions and make appropriate observations or recommendations."[48] These inquiries constitute a partial delegation of the National Assembly's parliamentary privilege to discipline its members. It is also important to point out that "these investigations are not like proceedings before a court or tribunal because the Commissioner does not preside over a dispute between two adverse parties."[49]

Nevertheless, section 96 of the Code sets out certain obligations to be met during the course of an inquiry:

> **96. The Ethics Commissioner must conduct inquiries in private and with due dispatch. The Ethics Commissioner must allow the Member concerned to present a full and complete defence, including an opportunity to submit observations and, if the Member so requests, to be heard:**
>
> **(1) first, on whether the Member has violated this Code; and**
>
> **(2) after being informed of the Ethics Commissioner's conclusion and the grounds for it, on the sanction that could be imposed.**
>
> **The Ethics Commissioner must not comment publicly on a verification or inquiry but may confirm that a request for a verification or an inquiry has been received or that a verification or inquiry is under way or has been completed. The Ethics Commissioner may also state why, after a verification, the Ethics Commissioner decided not to conduct an inquiry.**

It is therefore stipulated that, initially, the inquiry will be conducted in private. Furthermore, the commissioner's inquiries are conducted with a view to confidentiality.[50] Section 96 also specifies the right to a full and complete defence for the elected official concerned.

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47 Canada, Office of the Conflict of Interest and Ethics Commissioner, "What to expect during an investigation," Fact sheet, January 2015, online: https://ciec-ccie.parl.gc.ca/en/investigations-enquetes/Pages/WhatExpect-QuoiAttendre.aspx.

48 *Ibid.*

49 *Ibid.*

50 S. 65 of the Code.

As a result, a Member involved in an inquiry can provide their observations and be heard at any stage of the inquiry. In general, after initial contact by the Ethics Commissioner, the Member in question will be heard in accordance with section 96 to determine whether he has breached the Code. Once the relevant information has been collected, the facts of the case are written up and sent to the Member for comment. Comments made at this stage are also considered to be part of the inquiry. The information obtained over the course of the inquiry is communicated confidentially to the person concerned so as to respect their right to a full and complete defence. If the analysis of the facts leads the Ethics Commissioner to conclude that the Code has been breached, the Member in question is invited to provide their observations and to be heard on the subject of the breach, as well as on the sanction that may be imposed.

The legislator has established a flexible, inquisitorial process.[51] In practice, this means that the commissioner is responsible for directing the inquiry and for playing a leadership role in the investigation of the facts and evidence. It is the opposite of an accusatory[52] and contentious[53] process that takes place in the presence of adverse parties and in which the parties take the lead, each making claims before an impartial judge who rules on the matter based on the evidence presented. This does not negate the member's right to full and complete defence, but this right must be interpreted in the context of the Ethics Commissioner's own inquiries.

In recent years, however, it has become apparent that some of the lawyers guiding people who are subject to an inquiry seem to have a poor understanding of the nature of the process, taking a more judicial view. The Ethics Commissioner intends to prepare a guide on the inquiry procedure, which will benefit the elected officials involved, as well as their attorneys, where applicable.

1.3.1.3 Sending Inquiry Notices

At the very start of an inquiry, the commissioner sends the Member in question an inquiry notice, whether the inquiry is launched on the commissioner's own initiative or the inquiry request came from another Member. At this stage, the Code does not provide for the leader of the Member's parliamentary group to be notified. This may be problematic in some respects, since an inquiry conducted by the Ethics Commissioner can have many implications for a political party. The leader of the parliamentary group should also be allowed to be notified when an inquiry is launched concerning a Member of their group.

RECOMMENDATION 6

That the Code be amended to require the leader of a parliamentary group to be notified by the commissioner of any inquiry into a Member of their group.

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51 Hubert Reid, *Dictionnaire de droit québécois et canadien*, 5th ed. revised, Montréal, Wilson & Lafleur, 2016, online: https://dictionnairereid.caij.qc.ca (JuriBistro eDICTIONNAIRE), Inquisitorial: Refers to a system of proceedings under which the judge directs the trial and play a lead role in the investigation of the facts and evidence. [TRANSLATION]

52 *Ibid.*, Contentious: Refers to trials that take place in the presence of adverse parties or judgments rendered after a challenge. [TRANSLATION]

53 *Ibid.*, Accusatory: Refers to a system of proceedings under which the parties direct the trial, each arguing its case before an impartial judge who rules on the matter on the basis of the evidence presented. [TRANSLATION]

1.3.2 The Recommendation of Sanctions by the Commissioner

An essential aspect of the inquiry process set out in the Code is the commissioner's power to recommend a sanction if the conclusion, at the end of the inquiry, is that the Code has been breached. Section 99 specifies the sanctions that the commissioner can recommend:

> **99. If the Ethics Commissioner concludes that a Member has violated this Code, the Ethics Commissioner so states in the report and, according to the circumstances, may recommend that no sanction or one or more of the following sanctions be imposed:**
>
> **(1) a reprimand;**
>
> **(2) a penalty, specifying the amount;**
>
> **(3) the return to the donor, delivery to the State or reimbursement of the value of the gift, hospitality or benefit received;**
>
> **(4) the reimbursement of any unlawful profit;**
>
> **(5) the reimbursement of the indemnities, allowances or other sums received as a Member or a Cabinet Minister while the violation of this Code continued;**
>
> **(6) a suspension of the Member's right to sit in the National Assembly, together with a suspension of any indemnity or allowance, until the Member complies with a condition imposed by the Ethics Commissioner;**
>
> **(7) the loss of his or her seat as a Member;**
>
> **(8) the loss of his or her position as a Cabinet Minister, if applicable.**

Under section 103 of the Code, if an inquiry report contains such a recommendation, the Assembly must vote on it. Under section 104 of the Code, the recommendation will be applicable if the report is adopted by two thirds of the National Assembly. Sections 103 and 104 read as follows:

> **103. At the sitting following the reply or the tabling of a committee report under section 102, or, if no reply is made or report tabled, on the expiry of the time specified in that section, the National Assembly votes, during Deferred Divisions, on the report of the Ethics Commissioner if the latter recommended the imposition of a sanction. No debate or amendments to the report are admissible. No debate or amendments to the report are admissible.**
>
> **104. Any sanction recommended in a report of the Ethics Commissioner is applicable upon adoption of the report by the National Assembly by the vote of two thirds of the Members.**
>
> **The Ethics Commissioner's power is only a power of recommendation.**

Since the Code came into force in 2010, two inquiry reports have recommended a sanction for the Member under inquiry. In each case, problems emerged as a result of the implementation of the adoption process or its aftermath.

In the first case, a report recommending the censure of a parliamentarian was tabled at the National Assembly by *ad hoc* Commissioner Saint-Laurent. The report was adopted by the Members of the National Assembly. Under section 104 of the Code, the sanction it recommended therefore became applicable. A few months after the Assembly's vote on the report, however,

the Committee on the National Assembly was mandated to hold an inquiry to verify whether the *ad hoc* commissioner had made certain comments about the Member who was the subject of the inquiry.[54]

In other words, Members of the National Assembly were asked to investigate the conduct of the person designated by the National Assembly to apply the Code that governs their own behaviour.[55] The steering committee of the Committee on the National Assembly then mandated the Jurisconsult to listen to recordings of interviews held during the inquiry, after having obtained the consent of the people implicated in the case, including the *ad hoc* commissioner and the commissioner.

In the second case where the commissioner recommended a sanction at the end of an inquiry, the report was rejected by a majority of the National Assembly's elected officials after an external legal opinion on the report was tabled by the leader of the parliamentary group forming the Government. Under the Code, however, the commissioner is the only person qualified to interpret its provisions as part of an inquiry.

In this context, it is worth remembering the importance of maintaining a balance between the Ethics Commissioner's mission, the public's trust and the rights of parliamentarians. One of the purposes of creating the Ethics Commissioner was to place the National Assembly's ethical questions in the hands of a neutral third party. The events described above do not seem to reflect the independence that is essential to the Ethics Commissioner.

We therefore believe it is appropriate to review the process of recommending a sanction if the Ethics Commissioner finds, at the end of an inquiry, that there has been a breach, since the process set out in the Code is a source of criticism and since the independence and credibility of the Ethics Commissioner can be called into question on such occasions.

A variety of mechanisms can be considered to address the problems caused by the procedure currently in force. The solution that seems the simplest to implement and that would protect the Ethics Commissioner's integrity, competence and independence in terms of inquiries would consist of stipulating that the National Assembly vote only on the recommended sanction and not on the report. In this way, the Ethics Commissioner would still have full prerogative to determine whether the Code has been breached and the Ethics Commissioner's interpretations of the Code would remain independent. This amendment would be consistent with the process already in place in the Code, since when the commissioner concludes in a report that the Code has been breached but does not recommend a sanction be imposed, the report does not have to be adopted. This amendment would also align with the National Assembly's parliamentary privilege to discipline its members.

RECOMMENDATION 7

That the Code be amended so that the National Assembly is only called on to vote on the recommendation to impose a sanction put forward in an inquiry report.

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54 National Assembly of Québec, *Votes and proceedings*, Committee on the National Assembly, 1st sess., 41st legis., May 16, 2018, p. 4626.

55 In this regard, it is interesting to note that in the first implementation report, Commissioner Saint-Laurent recommended providing a mechanism to review the exercise of the commissioner's responsibilities in the application of the Code, Rules and Regulation, *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, p. 61 (Recommendation 16). The Committee that reviewed the report "noted the recommendation, but saw it as a potential threat to the commissioner's independence." Committee on Institutions, supra, note 14, p. 9.

1.3.3 Establishing a Simplified Process

In the first report on the implementation of the Code, Commissioner Saint-Laurent recommended establishing a simplified sanction process in cases where the Members of the National Assembly fail to comply with certain obligations for which an inquiry would not be an appropriate coercive measure.[56] The Committee on Institutions welcomed that recommendation.[57]

Commissioner Saint-Laurent rightly asked what kind of measures can be taken if a Member fails to notify the Commissioner or to disclose in a timely manner a gift or their private interests or those of their family members.

The regular inquiry process is, in fact, cumbersome and costly to apply in more administrative or technical cases where, for example, a sanction could be in order for the late filing of a statement. For this type of breach, an administrative penalty would have a more appropriate dissuasive effect than launching an inquiry. The use of this kind of a penalty is allowed in Alberta[58] and at the federal level.[59]

Since this recommendation is still relevant and the members of the Committee on Institutions ruled in favour of it[60] during the examination of the previous implementation report, it seems appropriate to resubmit this amendment proposal.

RECOMMENDATION 8
That the Code be amended to allow the commissioner to impose a penalty for failing to comply with certain obligations prescribed by the Code.

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56 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, p. 69.

57 Committee on Institutions, supra, note 13, p. 10-11.

58 *Conflicts of Interests Act*, RSA 2000, c. C-23, s. 30.1.

59 *Conflict of Interest Act*, supra, note 34, s. 52.

60 Committee on Institutions, supra, note 14, p. 11.

1.3.4 Protecting Whistleblowers and Witnesses

As we stated previously, the Ethics Commissioner can launch an inquiry on a Member of the National Assembly at the request of another Member or on the commissioner's own initiative. In the latter case, an inquiry can be launched if there are reasonable grounds to believe that a Member has breached the Code. An inquiry may therefore be launched following a disclosure by a third party about a situation that appears problematic with respect to the Code. This means that a significant part of the Ethics Commissioner's monitoring work can be carried out thanks to the contributions of certain citizens and their trust in the mechanisms put in place by the Code.

Likewise, witnesses who participate in inquiries conducted by the Ethics Commissioner shed light on situations that may constitute violations of the Code. These people play a key role in the proceedings of the Ethics Commissioner's inquiries.

It is worth pointing out, however, that despite the importance for the institution's mission of the information revealed by these two categories of people, the current Québec system for protecting whistleblowers, established in recent years, does not always protect the people who make disclosures or give testimony to the Ethics Commissioner. Citizens who offer these disclosures or testimonies still have no protection against the reprisals that they may suffer following their revelations. Witnesses who participate in inquiries also have no protection from reprisals that they may face.

On the subject of protecting disclosers, Recommendation 8 in the Inquiry Commission's final report sought to introduce a general plan for protecting whistleblowers to offer them the required guidance and support, especially financially.[61] With that in mind, a number of measures have been put in place since the report was tabled, including passing the Act to facilitate the disclosure of wrongdoings relating to public bodies,[62] which came into force on May 1, 2017. The purpose of this act is to establish a protection regime against reprisals for whistleblowers who disclose wrongdoings in public bodies.

None of the measures in force to date apply to the people who interact with the Ethics Commissioner, however. In our view, this situation is a major oversight for the proper functioning of the Ethics Commissioner, whose mandate includes oversight and control functions.

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61 Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, supra, note 20, Tome 3, pp. 110-111: "In order to promote greater citizen participation in improving contractual practices related to public infrastructure, the financing of political parties linked to these practices, and the infiltration of the construction industry by organized crime, the Commission is of the opinion that a general whistleblower protection system is required. This would not only ensure the protection of all whistleblowers, but also provide them with necessary assistance and support, particularly financial. Despite the remedies available to them, whistleblowers may have to incur considerable costs to enforce their rights, particularly when dealing with large organizations that have significant financial resources and the capacity to engage in a long-term legal battle.

The Commissioners therefore recommend that the government:

Improve the whistleblower protection system to ensure:

- anonymity for all whistleblowers, regardless of the agency to which they report;
- assistance to whistleblowers in their efforts;
- financial support, when required."

62 *Act to facilitate the disclosure of wrongdoings relating to public bodies*, CQLR, c. D-11.1.

As for bodies with jurisdiction on ethical issues, a breakthrough occurred recently with the coming into force, on October 19, 2018, of amendments to the *Municipal Ethics and Good Conduct Act*. These amendments facilitate the disclosure of wrongdoings in the municipalities and provide for a protection plan against reprisals taken against disclosers.[63] While these new mechanisms are being put in place at the municipal level, no protection has thus far been provided for witnesses who wish to bring to the Ethics Commissioner's attention facts that come under its jurisdiction.

It is important to consider the possibility of protecting the identity of these witnesses, as is done in the regimes implemented by the Québec Ombudsman for public bodies and by the Commission municipale du Québec for elected municipal officials. They should be protected from reprisals carried out by a person in authority or by their employer in the form of demotion, suspension, dismissal or any disciplinary measure.

The Ethics Commissioner's role is intrinsically linked to the public's confidence in parliamentary institutions. In this regard, the public has an important role to play, by bringing potentially problematic situations to the Ethics Commissioner's attention, and this role should be officially recognized by protecting anyone who discloses information.

As regards the importance of this kind of citizen participation, the value of which is proven and considerable, Commissioner Saint-Laurent wrote, in the first report on the implementation of the Code:

> Even if citizens cannot request the Ethics Commissioner to conduct an inquiry, their contribution is essential to the Commissioner's enforcement mission. Indeed, the facts provided by the public and the media are essential information sources for the Commissioner's supervision mandate.
>
> In a variety of circumstances, citizens are the most likely to witness situations that may constitute Code violations. Therefore, they possess information that can be extremely valuable to the Ethics Commissioner's mission. In recent years, many agencies and entities have benefited from the public's collaboration to fulfill their mandate. In light of these experiences, the Ethics Commissioner's enforcement role is undoubtedly greatly enhanced when he can count on the population's support.[64]

The role of whistleblowers must be supported, since their efforts benefit the public interest and help reinforce the public's confidence in their public institutions:

> Regardless, the population and the elected officials would benefit from supporting the sense of responsibility and the courage of whistleblowers, whose prevention efforts benefit everyone. Information gathered from whistleblowers is part of the foundation of a dashboard required for any modern society. The more the population understands the very discreet and highly useful role that every person can play, the healthier and stronger the society will be and more trust will grow.[65]

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63 For more information on the scope of this protection, please refer to the website of the Commission municipale du Québec at: http://www.cmq.gouv.qc.ca/services-domaines-intervention/ethique-deontologie-municipales/faire-une-divulgation. (French only)

64 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, p. 66.

65 Letter from Jacques Saint-Laurent to the Chair of the Committee on Institutions, supra, 28.

Since a similar recommendation was presented in the first report on the implementation of the Code and it received the approval of the members of the Committee on Institutions,[66] it appears particularly important to reiterate it in this report.

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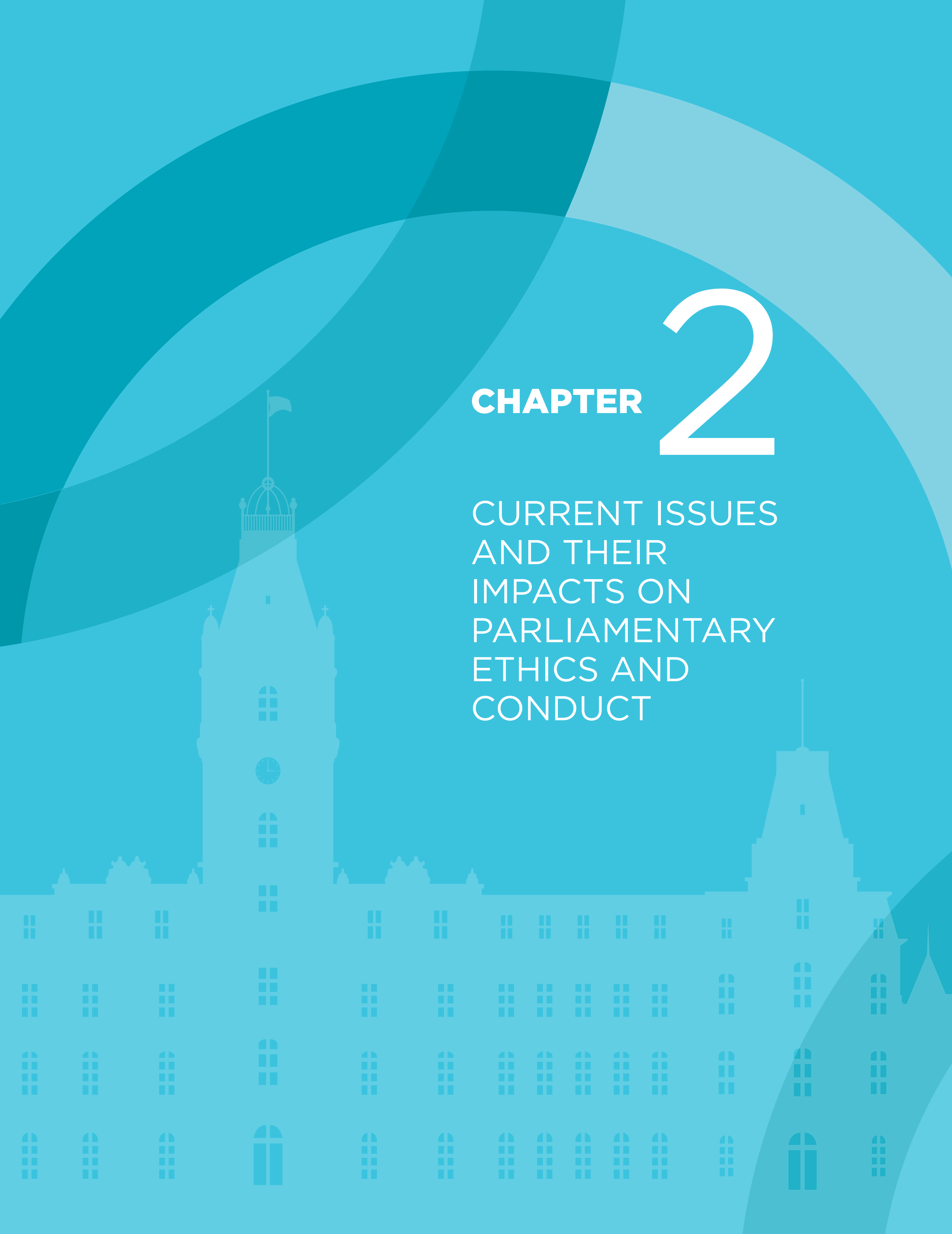
RECOMMENDATION 9
That the Code be amended to prohibit reprisals against a person who discloses information to the Ethics Commissioner or who cooperates in a verification or inquiry involving a violation of the Code and to prohibit threats of reprisals against a person to prevent them from disclosing information or cooperating in a verification or inquiry.

66 Committee on Institutions, supra, note 14, p. 14.



CHAPTER 2

CURRENT ISSUES AND THEIR IMPACTS ON PARLIAMENTARY ETHICS AND CONDUCT

CHAPTER 2

Since the Code was adopted in 2010, the reality of Québec's parliamentary system has had to evolve in multiple ways. However, two recent developments have had a significant impact on the implementation of the Code: the introduction of fixed-date provincial general elections in Québec in 2013 and the increasing concern for issues of harassment in the parliamentary sector. This concern led to the adoption of the Policy on Preventing and Managing Situations Involving Harassment in the Workplace ("Policy on Harassment") by the National Assembly in 2015. First, we will address the issues that the elections and the period surrounding them now present with regard to the Code. Second, we will address the issues that may arise when the Code and the Policy on Harassment of the National Assembly are combined.

2.1 The Code of Ethics and Conduct Put to the Test by the Electoral Timeline

The adoption of the *Act to amend the Election Act for the purpose of establishing fixed-date elections*[67] in 2013 profoundly changed the Québec election calendar. With the amendments to the Act having come into force, general elections are now held at the latest "on the first Monday of October of the fourth calendar year following the year that includes the last day of the previous Legislature."[68] The first general elections following the Act were held on October 1, 2018. It should be noted that the increased predictability of the new election calendar led to various consequences with regard to the Code. The 2018 election campaign also served as an ideal time to reflect on the effects of the dissolution of the National Assembly and on the application of the Code during this time, both for Members and Cabinet Ministers.

2.1.1 The Consequences of Fixed-Date Elections and the Dissolution of the National Assembly

2.1.1.1 The Consequences of Fixed-Date Elections

Québec's first fixed-date provincial general elections in October 2018 had a significant impact on the political sphere. For the Ethics Commissioner, the effect of the election period's new predictability was noticeable in both requests for an advisory opinion and inquiries. From a preventive standpoint, questions regarding the elections emerged at the beginning of 2018. Indeed, up to the date of the election, a significant number of requests for an advisory opinion were made on various subjects, such as participation in partisan activities and post-term rules. Even potential election candidates could ask questions. The Ethics Commissioner welcomes this "election" effect with open arms, in light of the importance granted to preventing problematic situations with regard to the Code.

Additional preliminary work will be carried out in the coming years in preparation for the next election period in 2022. Increasing awareness of the rules applicable during and after this period is crucial, especially post-term rules. Moreover, more preventive measures will need to be taken with election candidates to inform them of the obligations that may apply to them once they are elected.

In terms of inquiry requests, which can be addressed to the Ethics Commissioner, the fixed-date elections also presented challenges. We will come back to this in the next sections.

2.1.1.2 The Effects of the Dissolution of the National Assembly

The calling of an election period has several legal consequences. As previously mentioned, one of the consequences of the dissolution of the National Assembly is that it ends the legislature and, consequently, the mandate of all Members. As a result, they are no longer Members and, if they run for re-election, become candidates. Ministers continue their duties until the renewal of the Cabinet following the elections.

However, the Code does not take into consideration the rupture introduced by the election period.

67 *Act to amend the Election Act for the purpose of establishing fixed-date elections*, SQ 2013, c. 13.

68 *Election Act*, CQLR, c. E-3.3, s. 129.

Section 2 determines the scope of the Code:

> **2. This Code applies to all Members of the National Assembly ("Members"). It also applies to the members of the Conseil exécutif ("Cabinet Ministers") when carrying out their duties as Ministers.**
>
> **For the purposes of this Code,**
>
> **(1) a Cabinet Minister who has not been elected to the National Assembly, or**
>
> **(2) as far as the imposition of a sanction for a violation of this Code is concerned, a person who has ceased to be a Member is deemed to be a Member.**

Thus, a unique problem arises with regard to the Code when elections are called, as there is no provision specifying the procedure for enforcing the Code during the period following the dissolution of the National Assembly due to general elections.

The situation affects several aspects of the Code's implementation, including the effective application of the values, principles and rules of conduct prescribed by the Code during this period. There is also the issue of knowing who can submit a request for inquiry and who can use State property and services made available to the Members, ministers and their staff during this same period.

After consultation with our Canadian counterparts, it appears that the interpretation adopted in most provinces is the following: Members cease to hold office for their legislative assembly on dissolution of the legislature and are therefore no longer bound by the legislative instruments that then applied to them. This interpretation stems from the silence of these statutes on this subject.

The National Assembly's website does state the following about the effects of dissolution of a legislature:

> With dissolution, the Member's term of office ends. However, the President and Vice-Presidents remain in office and carry out their duties for the Office of the National Assembly until they are replaced or reappointed. Ministers also remain in office until their successors are designated.[69] [TRANSLATION]

Parliamentary Procedure in Québec offers additional information on the effects of dissolution of a legislature:

> Dissolution is rightly defined as the civil death of a Parliament. Once the Assembly is dissolved, an Assembly immediately loses the authority to sit and the Members cease to have a mandate. A Member's term is of the same duration as the Assembly, although Members continue to receive certain indemnities and allowances by law until the next general election. Normally, ministers remain in office until their successors are designated, even if the House has been dissolved and they have been defeated in their own ridings. The President and Vice-Presidents remain in office until they are replaced or reappointed by the new Assembly (ANA, s. 24) and carry out the duties of the Office of the National Assembly (ANA, s. 94).[70]

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69 Assemblée Nationale du Québec, *Encyclopédie du parlementarisme québécois*, online: https://www.assnat.qc.ca/fr/ patrimoine/lexique/dissolution.html, "Dissolution" (French only).

70 Michel Bonsaint (ed.), *Parliamentary Procedure in Québec*, 3rd edition, Québec, National Assembly, 2012, p. 200.

Nevertheless, Members continue to assist citizens in their riding during the election period. The issue of allowances, which will be discussed later, refers to the work of incumbent Members carried out during this period. A 2006 ruling by the Speaker of the federal House of Commons on a question of privilege explicitly addresses this issue:

> Nonetheless, as all returning members and their staff are aware, constituents do not stop requiring assistance just because Parliament is dissolved. To this end, bylaw 305 of the Board of Internal Economy permits members to continue to use their offices to serve their constituents.
>
> It might be argued, therefore, that during the election period, a member's role in assisting constituents continues, and this might include contacting government departments on behalf of their constituents.[71]

It is clear, with regard to the effects of the dissolution of a legislature, that Cabinet Ministers remain in office despite the election period until a new Cabinet is appointed. Therefore, Cabinet Ministers continue to be subject to the Code during this period for all matters relating to their duties of office. Other elected officials who continue to exercise specific functions, such as the President of the National Assembly and the Vice-Presidents, also remain subject to the Code for all matters relating to those functions.

The situation is not as clear for Members who, under constitutional and parliamentary law, cease to have a mandate once the Assembly is dissolved. In practice, they are still perceived as such and are encouraged to continue their work in their riding until election day. It would therefore be appropriate for Members to also be subject to the Code during the election period.

Some legislative tools specifically take this situation into account. In both Ontario and New Brunswick, the legislation concerning conflict of interest for elected officials explicitly refers to the election period.

In Ontario, the *Members Integrity Act*[72] clearly states in section 35 that the Act applies during election period:

> 35. This act, other than sections 30 to 34,[73] continues to apply with necessary modifications to a member of the Assembly during the period beginning with the issue of a writ under the *Election Act* for a general election and ending on polling day, if the member is or intends to be a candidate in the election.[74]

In New Brunswick, section 2 of the *Members' Conflict of Interest Act*[75] states that the Act remains applicable to Members during election period if they are reappointed:

> For the purposes of this Act, other than subsection 18(3), where a person who ceases to be a member of the Assembly by reason of the dissolution of the Assembly again becomes a member as a result of the next following election, that person is deemed to have been a member of the Assembly during the period of time the person ceased to be a member to the time the person again became a member.[76]

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71 Canada, House of Commons, *House of Commons Debates*, 1st session, 39th Parliament, Vol. 141, No. 015, May 3, 2006, p. 845 (The Speaker).

72 *Members' Integrity Act*, SO 1994, c. 38.

73 Chapter 3 discusses the exclusion of sections 30 to 34 of the *Members' Integrity Act*.

74 *Ibid.*, s. 35.

75 *Members' Conflict of Interest Act*, SNB 1999, c. M-7.01.

76 *Ibid.*, s. 2.

It should once again be noted that during an election campaign, candidates must become familiar with the rules of conduct prescribed by the Code. Indeed, the events that take place during the election campaign may place a Member, once appointed, in a conflict of interest or the appearance of a conflict of interest with regard to the Code.

In order to remedy the situation described in this section and harmonize the rules applicable to the Members and those concerning Cabinet Members, we recommend that the Code continue to apply to incumbent Members during the election period. This way, there will be no gap in its applicability over time.

RECOMMENDATION 10-A
That the Code be amended so that it continues to apply in full to outgoing Members, with the necessary modifications, during the election period.

2.1.1.3 Election Period and the Use of Allowances

Another legal consequence of the Assembly's dissolution consists of the opening of the election period within the meaning of sections 128 and following of the *Election Act*.[77] An election is held when the Government issues an order enjoining the Chief Electoral Officer to do so.[78]

From this point on, specific rules relating to electoral law, including those relating to electoral expenses, must be followed by every political party to ensure greater fairness among them during this particular period.

During this same period, however, Cabinet Ministers remain in office. As a result, they continue to benefit from State property and services related to their ministerial roles. As indicated earlier, the Code, including section 36, therefore continues to apply to them for everything related to their ministerial responsibilities.

In the case of Members whose terms are ending, a specific set of National Assembly rules is applied to them to provide continuity of service to the citizens while ensuring that the National Assembly's resources are not used for partisan purposes.

Section 104 of the *Act respecting the National Assembly* authorizes these transitional rules for the payment of allowances during the election period. The third paragraph of that section explicitly states:

> The Office may, by regulation, in the cases, on the conditions and to the extent it determines, pay the allowances or repay the expenses and other costs provided for in this section for a period, fixed in the regulation, between the day on which the seat of a Member becomes vacant or the Assembly is dissolved and the thirtieth day, or the sixtieth day as regards persons referred to in the first paragraph of section 124.1, after the day on which a poll is held to fill the vacancy or a poll is held following the dissolution of the Assembly.

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77 *Election Act*, supra, note 68.

78 *Ibid.*, s. 128.

As incumbent Members have budgets and allowances to cover remuneration and constituency office operations during the election period, it seems appropriate to ensure that these standard rules are harmonized with the Code's principles. Consequently, section 36, which states that Members must use property and services made available by the State for activities related to carrying out the duties of office, should apply to Members during this period.

This view of allowances and their use during the election period is very much in line with our previous recommendation which, if implemented, would also address the problem raised here. If this recommendation to make all the Code's provisions applicable during election periods is not retained, we recommend that section 36 of the Code remain applicable for as long as the incumbent Member is receiving allowances and budgets or using State property and services.

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RECOMMENDATION 10-B
That the Code be amended so that section 36 continues to apply to outgoing Members during the election period.

2.1.1.4 Elections and Inquiry Requests

Challenges have also come up in recent years, especially during the 2018 election, concerning the management of inquiry requests during the pre-election and election periods. One impact of fixed-date elections was apparent when a Member submitted multiple inquiry requests to the Ethics Commissioner a few weeks before the election was called. Specifically, on August 2, 2018, that Member submitted six inquiry requests concerning other elected officials and facts dating back, in some cases, more than four years.

Two inquiry requests were also submitted during the election period, when Members are no longer considered Members of the National Assembly. Those two requests were therefore rejected, specifying that the commissioner would assess the need to launch an inquiry on her own initiative in both bases.

This situation suggests that the intense political dynamics of an election can have an impact on inquiry requests. As a result, it is worth considering whether incumbent Members should be able to submit inquiry requests during elections.

Ontario offers an interesting example in this respect. That province's *Members Integrity Act*[79] states that inquiry requests cannot be submitted after the legislative assembly has been dissolved. Section 35 of that act, which was mentioned earlier and which concerns the act's continued application during election periods, includes certain exceptions to the general rule. More specifically, it states that sections 30 to 34 do not apply during an election period.

79 *Members' Integrity Act*, supra, note 72.

These four sections are the ones related to inquiries, and therefore no inquiries can be requested during the election period. In addition, inquiries undertaken at a Member's request are suspended during the election period and can only be relaunched after the election if the Member who originally submitted the request resubmits it.[80] Similarly, the election period puts an end to any inquiry requested by a Cabinet Minister.[81]

Despite this Ontario example, we do not believe it is necessary to suspend or terminate an ongoing inquiry during the election period. The public interest is indeed served when inquiries are completed diligently, but to prevent any interference in the election process, Members should be prohibited from submitting inquiry requests in the weeks prior to the election period. Notwithstanding these temporary restrictions in the Code's application, the Ethics Commissioner could still take the initiative to launch an inquiry during this period if justified by facts disclosed.

RECOMMENDATION 11

That the Code be amended so that no inquiry request may be made within four months preceding polling day in a general election.

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2.1.2 Mandatory Training for Newly Elected Officials

At the beginning of a new legislature, and especially when there is a change in government, it is essential that communications with the Ethics Commissioner's clientele be increased to effectively inform them about the Code, the Regulation and the Rules. There are still too many people starting in their new positions without being aware of these rules and the Ethics Commissioner's role.

Several commissioners who were asked to participate in an orientation session for new Members agreed that participation is very useful for increasing awareness among newly elected officials.[82] Moreover, a number of individuals trained by the Ethics Commissioner since the 42nd legislature began have voiced the opinion that training on the Code should be included in the training given to newly elected officials as soon as they take office at the National Assembly. We therefore believe that an information session about the Code should be offered to them as soon as possible after the opening of the legislature and no later than the end of the period for filing their first disclosure statement.

The sooner elected officials are informed about parliamentary ethics and conduct issues, the better equipped they will be to act in compliance with the Code's principles and rules. This first information session would therefore have a direct, positive effect on their day-to-day work.

80 *Ibid.*, ss. 31 (4.1) and (4.3).

81 *Ibid.*, s. 31 (4.8).

82 Canada, Office of the Conflict of Interest and Ethics Commissioner, *The 2015-2016 Annual Report made under the Conflict of Interest Code for Members of the House of Commons*, June 14, 2016, p. 21; Office of the Integrity Commissioner of Ontario, Annual Report 2018-2019, June 2019, pp. 4 and 8.

The same principle applies to Members who become Cabinet Members. Since they are required to follow new, stricter rules, it is important for them to be able to quickly obtain information about those rules so they can comply with the requirements in a timely way.

In keeping with our first recommendation about mandatory training for elected officials, we would like to highlight the importance of the Ethics Commissioner's participation in the orientation sessions for newly elected officials.

2.1.3 The Need to Advise Election Candidates

Another reality observed after the 2018 election was the lack of information for candidates concerning the ethical principles and rules of conduct that apply to Members and that would apply to the candidates if they were elected.

Accordingly, it appears necessary to do more outreach to inform provincial election candidates about the Code and the Ethics Commissioner in general. A partnership for this purpose is being considered with Élections Québec to ensure better distribution of information about the Code, its principles and rules and the services available to elected officials from the Ethics Commissioner.

We also want to highlight another problematic situation related to the Code's current wording with regard to provincial election candidates. As stated in section 87, only Members may submit requests for advisory opinions to the Ethics Commissioner. This means that election candidates do not have the option to contact the Ethics Commissioner if they have doubts about any incompatibility or conflicts of interest that would result from their specific situation if they were elected.

Since everyone's reality is different, each situation should be examined on the basis of the rules of conduct that would apply to the individual after the election. It is therefore important for election candidates to have the opportunity to be informed in advance about the obligations that they may ultimately be subject to. This would allow them to be fully aware of all the consequences that being elected could have on their business, professional or personal activities. Furthermore, if special arrangements would be required if they were elected, this would enable them to make those arrangements as soon as possible after taking office.

In practice, during the 2018 election period, some candidates contacted the Ethics Commissioner on their own or through the leader of the party they hoped to represent. They were informally provided with information about the obligations that would apply to them if they were elected. It would be preferable, however, to formalize this practice so that it covers all candidates who would like to take advantage of it. This would also help ensure greater awareness of the Code's principles and rules among a broader group of individuals.

This specific situation was already the subject of a recommendation in the previous report on the implementation of the Code[83] and was favourably received by the Committee on Institutions that examined it.[84]

RECOMMENDATION 12

That the Code be amended to provide for the possibility of issuing advisory opinions to candidates, in accordance with the criteria established by the commissioner, within six months preceding polling day in a fixed-date general election or after the election is called in any other general election or by-election.

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83 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, pp. 20-21 (Recommendation 1).

84 Committee on Institutions, supra, note 14, p. 9.

2.2 Parliamentarians and the Issue of Harassment in the National Assembly

Harassment has been a matter of growing importance recently and has been given considerable attention by the public. The parliamentary sector is no exception to this and has become more concerned about this issue. The public's expectations of elected officials are high. Elected officials must devote themselves primarily to the public interest[85] and their conduct must reflect citizens' requirements and trust.[86] Members must therefore comply with the highest standards in terms of integrity and respect. This is why many parliamentary communities have undertaken an analysis process leading to the adoption and implementation of measures intended to ultimately provide a work environment free of harassment.

This section focuses primarily on the issue of harassment in the National Assembly as it relates to the Code. This issue cannot be examined without referring to the *Politique relative à la prévention et à la gestion des situations de harcèlement au travail*[87] ("Harassment Policy"). We will consequently discuss the complementarity of the Code and the Policy on Harassment and propose further analysis.

2.2.1 Current Status

2.2.1.1 The Issue of Harassment with Respect to the Rules of Ethics and Conduct

The Code does not explicitly deal with the issue of harassment, but section 6 of the Code[88] describes the National Assembly's values and the ethical principles that apply to Members. For example, Members specifically agree to respect the National Assembly, its democratic institutions, other Members, public servants and citizens.[89] In addition, their conduct must be "characterized by benevolence, integrity, adaptability, wisdom, honesty, sincerity and justice."[90]

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85 Albert Mayrand, *Incompatibilités de fonctions et conflits d'intérêts en droit parlementaire québécois*, Montréal, Éditions Thémis, 1997, p. 2. (French only).

86 *Ibid.*

87 National Assembly of Québec, *Politique relative à la prévention et à la gestion des situations de harcèlement au travail*, Decision 1992 by the Office of the National Assembly, December 6, 2018, online: http://www.assnat.qc.ca/PolitiqueHP.

88 **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.

89 S. 6, para. 1 (2) and (3) of the Code.

90 *Ibid.*, s. 6, para. 2.

The Code states that there must be consistency between the Members' actions and the National Assembly's values.[91] It also states that adherence to these values is essential to maintain the confidence of the people in the Members and the National Assembly and enable them to achieve their mission of serving the public interest.[92] It is important to underscore that the values in the Code must guide Members in carrying out their duties of office.[93]

In the first report on the implementation of the Code, Commissioner Saint-Laurent indicated that the National Assembly values set out in the Code could apply in a harassment situation. If the commissioner is asked to review a Member's conduct in a harassment situation, "the Ethics Commissioner could consider the situation in accordance with the National Assembly values, if circumstances require."[94] Because the Code does not contain any specific provisions concerning harassment, "the Commissioner's means of intervention [with respect to harassment] are currently limited to the application of the National Assembly values."[95] On this matter, he stated the following:

> Rather, [the Ethics Commissioner's] analysis would focus on evidence of conduct that might constitute a violation of the values of the National Assembly under the Code, Regulation or Rules. If necessary, the Commissioner may conduct an investigation on his own initiative, under section 92 of the Code [...].[96]

Commissioner Saint-Laurent also noted that the commissioner would not be responsible for analyzing "compliance with applicable rules of labor law"[97] in a harassment situation. This point of view was recently affirmed by Senate Ethics Officer Pierre Legault in an inquiry report.[98] He defined his role by clarifying that it is not the mandate of the Senate Ethics Officer to enforce the Senate Harassment Policy. Rather, it is the employer that is responsible for applying it.

In such a situation, however, it must first be determined that the Member's harassing conduct was committed while carrying out his or her duties. The wording of section 8 of the Code seems to limit the scope of the values and ethical principles to Members carrying out their duties.[99]

In the first report on the implementation of the Code, Commissioner Saint-Laurent recommended that Members "review the relevance of providing legislation relating to harassment toward MNAs, Cabinet Ministers, or their staff."[100]

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91 *Ibid.*, s. 8.

92 *Ibid.*, s. 9.

93 *Ibid.*, s. 8.

94 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, p. 23.

95 *Ibid.*, p. 24.

96 *Ibid.*

97 *Ibid.*

98 Canada, Office of the Senate Ethics Officer, *Inquiry Report under the Ethics and Conflict of Interest Code for Senators concerning former Senator Don Meredith*, June 28, 2019, online: http://sen.parl.gc.ca/seo-cse/PDF/Meredith-Inquiry-Report_June28_E.pdf.

99 **8.** Members recognize that these values must guide them in carrying out their duties of office and determining the rules of conduct applicable to them, and be taken into account in interpreting those rules. They strive for consistency between their actions and the values set out in this Title, even when their actions do not in themselves contravene the applicable rules of conduct.

100 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, p. 24.

For its part, the National Assembly's Committee on Institutions, in its report on the examination of the previous report on the implementation of the Code,[101] made the following comment about the recommendation made by Commissioner Saint-Laurent:

> Given that the National Assembly's Policy on Preventing and Managing Situations Involving Harassment in the Workplace was adopted in June 2015, the Committee is assessing whether it is appropriate to enhance this regulatory framework. After questioning the commissioner on the matter, the Committee received a written reply on December 7, 2016.
>
> The Committee acknowledges the commissioner's reply and agrees that the goals of the recommendation have been met by the National Assembly's Policy on Preventing and Managing Situations Involving Harassment in the Workplace. However, the members would like a relevant policy to be applied by the Conseil du trésor to the employees of Cabinet Ministers. They are not subject to the National Assembly's harassment policy.[102] [TRANSLATION]

2.2.1.2 The National Assembly's Policy on Preventing and Managing Situations Involving Harassment in the Workplace

On June 4, 2015, the Office of the National Assembly adopted a policy on preventing and managing situations involving harassment.[103] It replaced the Programme relatif à la prévention et au contrôle du harcèlement et de la violence au travail (the "Program"). Whereas only the National Assembly's administrative staff were covered by the Program, the National Assembly's current Harassment Policy applies to Members and their staff, as well as administrative staff.[104]

The National Assembly's Harassment Policy does not cover ministers' staff[105] because they are not identified under the *Act respecting the National Assembly*[106] but, rather, under the *Executive Power Act*.[107] However, if a member of a minister's staff feels they are being harassed by a person elected as a Member of the National Assembly, that situation is covered by the Harassment Policy.[108] In other cases, ministers' staff are covered by the Procédure relative à la gestion de situations visées par la politique favorisant la civilité et le règlement de conflits et de situations de harcèlement of the Ministère du Conseil exécutif.[109]

It is also important to note that the Harassment Policy applies only to professional interactions between Members, Members' staff and the National Assembly's administrative staff as part of their duties, regardless of location.[110]

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101 Committee on Institutions, supra, note 14.

102 *Ibid.*, p. 13.

103 *Politique relative à la prévention et à la gestion des situations de harcèlement au travail*, supra, note 87.

104 *Ibid.*, s. 1.2.

105 *Ibid.*

106 *Act respecting the National Assembly*, supra, note 6.

107 *Executive Power Act*, supra, note 7.

108 See footnote 2 of the *Politique relative à la prévention et à la gestion des situations de harcèlement au travail* (French only).

109 *Ibid.* (French only)

110 *Ibid.* S.1.2 (French only)

Under the Harassment Policy, the primary purpose of which is to promote harmonious relations in the workplace,[111] harassment situations are handled confidentially. The Harassment Policy is a tool for preventing, raising awareness about and resolving harassment situations.

Furthermore, under section 3.1 of the Harassment Policy, the Members and administration of the National Assembly acknowledge their responsibility for adopting effective management practices in order to prevent and put a stop to psychological harassment of their respective employees. It is also appropriate to point out that section 3.2 of the Harassment Policy refers to the National Assembly's values set out in section 6 of the Code. This section of the Harassment Policy also reiterates that Members must uphold the value of respect. The adoption of this policy represents a step forward in the National Assembly's commitment to ensuring a workplace free of harassment.

2.2.1.3 The Coexistence of the National Assembly's Policy and the Code in the Context of Harassment: Pursuing Different Objectives

It is important to reiterate that the commissioner is not responsible for applying and interpreting the National Assembly's Harassment Policy. The commissioner's role is limited to interpreting and applying the Code. It should be noted that the Harassment Policy confirms that the political and administrative authorities are committed to making the National Assembly a healthy, harmonious workplace free of harassment.[112] The main objective in adopting the Harassment Policy was to ensure that the work environment at the National Assembly was free of harassment.

The Code's objective is quite different. Its objective is to serve as a model, primarily by making elected officials' adherence to its ethical principles and values a fundamental condition for maintaining public trust in the Members and the National Assembly.[113]

With regard to harassment, the Harassment Policy and the Code coexist but do not pursue the same objectives. They are two separate but complementary frameworks. The Code's mechanisms cannot replace those of the Harassment Policy, and vice versa. The Code and the Harassment Policy could therefore apply concomitantly to the same situation and the same facts. The Harassment Policy establishes the National Assembly's duty, as an employer, to provide a workplace free of harassment.

Senate Ethics Officer Pierre Legault discussed this very issue of complementarity between the Ethics and Conflict of Interest Code for Senators[114] and the Senate Harassment Policy[115] in the *Inquiry Report under the Ethics and Conflict of Interest Code for Senators concerning former Senator Don Meredith*.[116] During that inquiry, the Senate Ethics Officer was mandated to determine whether Senator Don Meredith had violated sections 7.1(1) and (2) and 7.2 of the Ethics and Conflict of Interest Code for Senators, following allegations of abusive behaviour including harassment, sexual harassment and abuse of authority.

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111 *Ibid.*, s. 4.

112 *Ibid.*, s. 1.1.

113 **9.** Members recognize that their adherence to these values is essential to maintain the confidence of the people in them and the National Assembly and enable them to fully achieve their mission of serving the public interest.

114 *Ethics and Conflict of Interest Code for Senators*, supra, note 46.

115 Canada, Senate, *Senate Policy on the Prevention and Resolution of Harassment in the Workplace*, June 11, 2009, online: https://sencanada.ca/content/sen/committee/402/inte/rep/rep08jun09-e.pdf.

116 *Inquiry Report under the Ethics and Conflict of Interest Code for Senators concerning former Senator Don Meredith*, June 28, 2019, supra, note 98.

The Senate Ethics Officer indicated that his mandate was "limited to the interpretation and application of the Ethics and Conflict of Interest Code for Senators."[117] He specified that the *Ethics and Conflict of Interest Code for Senators* does not explicitly refer to harassment, sexual harassment and abuse of authority. However, this type of behaviour could fall within the ambit of sections 7.1 and 7.2 of the Code, which "prohibit conduct that is unbecoming of a Senator and impose a positive obligation on Senators to behave with dignity, honour and integrity and to uphold the highest standards of dignity inherent to the position of Senator."[118] The Senate Ethics Officer noted nonetheless that a "breach of Senate policy is therefore relevant" because that policy refers to "universal principles"[119] "that are well-rooted in the law and in policies all across the public and private sectors."[120]

2.2.2 Continuing the Reflection on Harassment in the National Assembly

The issue of harassment in the parliamentary sector is central to current concerns, especially with respect to the requirements for Members' conduct. Members are required to conduct themselves in keeping with rigorous ethical standards and citizens' expectations, in order to maintain public confidence. They must act in compliance with the requirements for the public office they hold and uphold the highest standards of integrity and respect.

In light of this, we encourage Members to continue to examine certain issues related to harassment in the parliamentary context.

2.2.2.1 A Specific Legislative Provision Concerning Harassment

The Code does not contain any specific provisions about harassment. For this reason, the commissioner cannot rely on a legislative provision concerning harassment in exercising her duties. The commissioner could conclude, however, that the Code has been breached on the basis of the National Assembly's values, particularly those related to respect, benevolence, integrity and adaptability. The commissioner's jurisdiction with respect to harassment is therefore relatively limited. This is why the Members could consider the possibility of adding a specific provision about harassment to the Code,[121] as some municipal codes of ethics have.

In addition, the Members could consider adopting a code of conduct that expressly commits to respect and apply the value of respect and to prohibit any conduct considered to be harassment, as Canada's House of Commons and the United Kingdom's Parliament have done.

At the federal level, Appendix II of the Standing Orders of the House of Commons[122] includes the Code of Conduct for Members of the House of Commons: Sexual Harassment, an amendment that came into effect on December 3, 2015. The Code of Conduct applies specifically to alleged sexual harassment among Members.[123] Under section 11, Members formally commit to "contributing to a work environment free of sexual harassment." They must sign a written pledge to that effect in the form set out in Appendix I of the Code of Conduct.

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117 *Ibid.*, p. 15.

118 *Ibid.*

119 *Ibid.*

120 *Ibid.*

121 For example, see *By-law 18-010, Code of Ethics and Conduct of City Council and Borough Council Members*, Montréal City Council, adopted February 19, 2018, online: http://ville.montreal.qc.ca/pls/portal/docs/PAGE/prt_vdm_FR/MEDIA/DOCUMENTS/code_ethique_elus_en.pdf, s. 30; *Règlement numéro L-12553 concernant le Code d'éthique et de déontologie des élus de la Ville de Laval et de leurs employés politiques*, Ville de Laval, adopted February 6, 2018, online: https://www.laval.ca/Documents/Pages/Fr/Citoyens/reglements/reglements-codifies/reglement-l-12553.pdf (French only), s. 6.

122 *Standing Orders of the House of Commons*, supra, note 45.

123 *Ibid.*, Appendix II, s. 3.

For its part, the United Kingdom's Parliament recently studied the issue of harassment and made a commitment to establish and maintain a parliamentary sector free from harassment, bullying and sexual misconduct. In July 2018, the United Kingdom House of Commons agreed to implement an *Independent Complaints and Grievance Scheme*[124] for harassment, bullying and sexual misconduct. The British House of Commons also added a new Behaviour Code for Parliament[125] to its Code of Conduct. The Behaviour Code stipulates that no acts of harassment, bullying or sexual misconduct will be tolerated. Anyone who believes they have been subject to such acts can contact the Independent Sexual Misconduct Advice Service and the Independent Bullying and Harassment Reporting Service. The Behaviour Code also asserts that all unacceptable behaviour will be dealt with seriously, independently and with effective sanctions. Furthermore, the Code of Conduct for members of the House of Lords includes the latest version of the United Kingdom Parliament Behaviour Code.[126]

2.2.2.2 The General Conduct Adopted by Members

As mentioned earlier, the commissioner's jurisdiction in a situation of harassment would be limited to determining whether a Member had violated the National Assembly's values and ethical principles, but only if the incident occurred in the exercise of the duties of office.

In light of this, the Members could consider expanding the Code's scope of application in relation to harassment to cover conduct that does not strictly fall within a Member's duties of office. The Members could make a commitment to uphold the National Assembly's values and ethical principles at all times—that is, in their general conduct—in order to maintain public confidence and meet the highest standards of integrity, respect and dignity. This concept is, in fact, enshrined in many professional codes. It may be appropriate to consider whether an elected official's conduct outside the duties of office could have a negative impact on the National Assembly as a whole when that conduct does not reflect the values and ethical principles set out in the Code.

This was the approach chosen by the Senate of Canada. The *Ethics and Conflict of Interest Code for Senators* does not specifically address harassment, but some of its provisions outline ethical principles that encourage good general conduct on the part of Senators. In particular, section 7.1 of the code requires Senators to "behave with dignity, honour and integrity and to uphold the highest standards of dignity inherent to the position of Senator"[127] and to "refrain from acting in a way that could reflect adversely on the position of Senator or the institution of the Senate,"[128] thereby addressing the Senators' "general conduct." In contrast, section 7.2 of the Ethics and Conflict of Interest Code for Senators, which states that Senators must perform their role as Senator with "dignity, honour and integrity,"[129] applies to Senators' conduct in carrying out their parliamentary duties and functions. Consequently, a Senator whose general conduct leads to a situation of harassment could be violating sections 7.1(1) and (2) of the *Ethics and Conflict of Interest Code for Senators* by not upholding the highest standards of dignity inherent to the position of Senator and by not refraining "from acting in a way that could reflect adversely on the position of Senator or the institution of the Senate."

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124 United Kingdom Parliament, *Cross-Party Working Group on an Independent Complaints and Grievance Policy, Report,* February 8, 2018, online: http://qna.files.parliament.uk/ws-attachments/838704/original/Working%20Group%20on%20an%20Independent%20Complaints%20and%20Grievance%20Policy.pdf.

125 United Kingdom Parliament, *Behaviour Code*, online: https://www.parliament.uk/documents/lords-committees/privileges/UKParliamentBehaviourCode.pdf.

126 United Kingdom, House of Lords, *Code of Conduct*, online: https://www.parliament.uk/documents/lords-commissioner-for-standards/HL-Code-of-Conduct.pdf, p. 39.

127 *Ethics and Conflict of Interest Code for Senators*, supra, note 46, s. 7.1 (1).

128 *Ibid.*, s. 7.1 (2).

129 *Ibid.,* s. 7.2.

In the inquiry report dated March 9, 2017, concerning Senator Don Meredith,[130] Lyse Ricard, the Senate Ethics Officer at that time, concluded that the Senator's conduct had breached section 7.1 of the Ethics and Conflict of Interest Code for Senators. That provision was examined in the context of the sexual relationship between Senator Don Meredith and "a teenage girl over a period of two years." [131] In her analysis, the Senate Ethics Officer showed that the provision in question "does not limit the scope of its application to Senators' fulfillment of their parliamentary duties," [132] but instead "encompasses all conduct of a Senator." [133]

In addition, in the inquiry report dated June 28, 2019, concerning former Senator Don Meredith,[134] Senate Ethics Officer Pierre Legault concluded that the Senator had breached sections 7.1 and 7.2 of the *Ethics and Conflict of Interest Code for Senators* in situations involving harassment, sexual harassment and abuse of authority even though some of his conduct did not occur in the workplace or when carrying out his parliamentary duties and functions.

It should be noted that in its recent report on modernizing the anti-harassment policy of the Senate of Canada,[135] the Subcommittee on Human Resources recommended that the scope of the Senate's policy be broadened to cover "behaviours that extend beyond organizational time and space boundaries."[136]

2.2.2.3 Informing the Commissioner about a Substantiated Complaint Involving Harassment

Lastly, we would also like to encourage the Members to consider the recommendation from the Subcommittee on Human Resources in its recent report on modernizing the anti-harassment policy of the Senate of Canada.[137] It suggests that the Senate Ethics Officer should be notified when a harassment complaint is made against a senator.[138] It may be appropriate for the Ethics Commissioner to be notified of any substantiated complaint made against a Member under the National Assembly's Harassment Policy.

In light of the above, and considering the very different objectives of the Harassment Policy and the Code, we encourage the legislature to consider the opportunity of including a provision on harassment in the Code.

RECOMMENDATION 13

That parliamentarians consider whether to include instances of harassment in the Code.

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130 Canada, Office of the Senate Ethics Officer, *Inquiry Report under the Ethics and Conflict of Interest Code for Senators concerning Senator Don Meredith*, March 9, 2017, online: http://sen.parl.gc.ca/seo-cse/PDF/Inquiry_Meredith2017-e.pdf.

131 *Ibid.*, p. 1.

132 *Ibid.*, p. 5.

133 *Ibid.*, pp 5–8.

134 *Inquiry Report concerning former Senator Don Meredith*, June 28, 2019, supra, note 98.

135 Canada, Senate, *Modernizing the Senate's Anti-Harassment Policy: Together Let's Protect our Healthy Worklife*, Report of the Subcommittee on Human Resources, February 2019, online: https://sencanada.ca/content/sen/committee/421/CIBA/Reports/CIBA_37rpt_e.pdf.

136 *Ibid.*, p. *xii*, Recommendation 16 – Notifying the Senate Ethics officer

137 *Modernizing the Senate's Anti-Harassment Policy Together Let's Protect our Healthy Worklife*, supra, note 135.

138 *Ibid.*, p. *xii*, Recommendation 16 – Notifying the Senate Ethics officer

CHAPTER 3

EXPERIENCE AND INFLUENCE IN POLITICAL LIFE IN QUÉBEC

CHAPTER 3

The implementation of the Code in the past nine years also requires us to assess the impact and significance of personal and professional experience in political life. The main provisions of the Code govern conflicts of interest in various ways and can sometimes make elected officials' previous or current experiences incompatible with their duty to represent the people. Needless to say, as public office holders, Members are expected to serve the public interest, and not personal or private interests. However, some obligations under the Code can create situations that are difficult for them to reconcile and that have undeniable consequences on their daily work as Members.

3.1 Experience in the Context of Political Life

3.1.1 Conflicts of Interest

Everyone has various interests that come into contradiction with each other on a daily basis. A conflict of interest is a factual situation, but it is not an irreversible issue:

> A conflict of interest is not a violation per se, but a situation that could potentially result in a violation. There is a risk that a person who has the obligation to serve and promote the interest of others will fail in his or her duty and, rather, serve his or her personal interest.[139] [TRANSLATION]
>
> As all public officials have legitimate interests which arise out of their capacity as private citizens, conflicts of interest cannot simply be avoided or prohibited, and must be defined, identified, and managed.[140]

The OECD defines a conflict of interest as "a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities."[141]

According to Albert Mayrand, an individual who has a contractual or legal obligation to act in the best interest of others is in a conflict of interest where he or she is placed in a situation in which he or she could be inclined to fail to fulfil that obligation by serving his or her personal interest.[142]

With regard to conflicts of interest, the Code sets a high standard for Members because of the unique nature of their office. They must place the public interest above their personal interests: "As public officers, they have a fiduciary relationship with the citizens on whose behalf they act and they are entrusted with responsibility to protect and uphold the common interests of the citizens. In other words, they must put the public interest above all others."[143] Many conflict of interest situations are therefore prohibited under the Code in order to enforce this principle.

3.1.1.1 General Rules Concerning Conflicts of Interest

Generally, the Code prohibits Members from placing themselves in situations where their private interests may impair their independence of judgment in carrying out their duties of office.[144] In addition, they must not further their private interests or those of a family member (spouse or dependent children), or improperly further another person's private interests,[145] including a legal person. Members must not use, communicate or attempt to use or communicate information obtained in the exercise of their duties of office that is not available to the public so as to further their own or another person's private interests.[146] Members are also prohibited from being party to a contract with the Government, a department or public body, except under exceptional circumstances (section 18 of the Code).

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139 A. Mayrand, supra, note 85, p. 29.

140 OECD, *Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service*, 2019 (adopted in May 2003), Annex, online: https://legalinstruments.oecd.org/public/doc/130/130.en.pdf, p. 6.

141 *Ibid.*

142 A. Mayrand, supra, note 85, p. 28.

143 Commonwealth Parliamentary Association, *Recommended Benchmarks for Codes of Conduct applying to Members of Parliament*, February 2016, p. 4.

144 S. 15 of the Code.

145 *Ibid.*, s. 16.

146 *Ibid.*, s. 17.

Specifically, sections 15 to 18 stipulate the following:

> **15. A Member must not place himself or herself in a situation where his or her private interests may impair independence of judgement in carrying out the duties of office.**
>
> **16. When carrying out the duties of office, a Member must not:**
>
> **(1) act, attempt to act or refrain from acting, so as to further his or her private interests or those of a family member or non-dependent child, or to improperly further another person's private interests; or**
>
> **(2) use the position of Member to influence or attempt to influence another person's decision so as to further the Member's private interests or those of a family member or non-dependent child, or to improperly further another person's private interests.**
>
> **17. A Member must not use, communicate or attempt to use or communicate information obtained in or in connection with the carrying out of the duties of office that is not generally available to the public so as to further the Member's or another person's private interests.**
>
> **18. No Member may, directly or indirectly, be party to a contract with the Government or a department or public body.**
>
> **However, a Member may**
>
> **(1) have interests in an enterprise that is party to such a contract, subject:**
>
> **a) in the case of an enterprise whose securities are not listed on an exchange and for which there is no published market, to informing the Ethics Commissioner as soon as the Member becomes aware of the contract and to the Ethics Commissioner authorizing the Member to retain the interest, on the conditions specified by the Commissioner, such as the creation of a blind trust managed by an independent trustee or the establishment of a blind management agreement with an independent mandatary; and**
>
> **b) in the case of any other enterprise, to collusion or undue influence being unlikely given the extent of the interests or the circumstances in which the contract is made;**
>
> **(2) receive a loan, a reimbursement, a grant, an indemnity or any other benefit from the Government or a department or public body under any Act, regulation or program; and**
>
> **(3) hold securities issued by the Government or a public body on the same terms as are applicable to all.**

Sections 22, 23 and 24 explicitly state that Members who find themselves in an unforeseen conflict of interest must put an end to the situation within 60 days.

> **22. A Member whose election places him or her in a conflict of interest situation must inform the Ethics Commissioner without delay and put an end to that situation within 60 days, unless a different compliance period is set by the Ethics Commissioner.**
>
> **23. A Member placed in a conflict of interest situation during his or her term by the operation of an Act or by entering into a marriage, civil union or de facto union or by accepting a gift, a legacy or the office of liquidator of a succession must inform the Ethics Commissioner without delay and put an end to that situation within 60 days unless a different compliance period is set by the Ethics Commissioner.**
>
> **24. A Member placed in a conflict of interest situation without his or her knowledge or against his or her will must inform the Ethics Commissioner without delay and put an end to that situation within 60 days after becoming aware of it, unless a different compliance period is set by the Ethics Commissioner.**

Based on the general impression given by these sections, Members must put an end to any situation that is problematic under the Code as soon as possible, with the guidance of the commissioner. Members are therefore advised to contact the commissioner whenever they feel that the rules on conflicts of interest could apply to their situation.

The sections pertaining to conflicts of interest go hand in hand with the obligation for elected officials to disclose their interests. Sections 37 to 40 and 51 to 55 of the Code stipulate that Members of the National Assembly must file a disclosure statement with the commissioner concerning their private interests and those of their family members immediately after their election and annually thereafter. Disclosure statements allow the commissioner to verify that elected officials are properly managing any conflicts of interest and upholding the provisions of the Code. Summaries of the disclosure statements are made public on the Ethics Commissioner's website, in accordance with sections 40 and 55 of the Code.

Sections 45 to 49 set out specific rules on conflicts of interest that apply to Cabinet Ministers only. Some of these rules are described in greater detail in the next section of this chapter.

3.1.1.2 Section 25 of the Code

There is another section of the Code that is worth considering for the purpose of this reflection on conflicts of interest: Section 25, which prohibits a particular type of conflict of interest and applies only in very specific situations. This section reads as follows:

> **25. A Member who knowingly has a private financial interest, not shared by the other Members or the general public, in a matter that is being discussed in the National Assembly or a committee of which he or she is a member must, if present, publicly and without delay declare the general nature of the interest and withdraw from the meeting or sitting without participating in debate or voting on the matter.**
>
> **The Member must also inform the Secretary General of the National Assembly and the Ethics Commissioner.**

Therefore, a Member who has private financial interests in a particular field, such as the agricultural or manufacturing sectors, is not allowed to discuss in the House any matter related to the industry in which he or she has interests. Several of the commissioner's inquiry reports have addressed this matter[147] and the first report on the implementation of the Code also raised issues related to this section.[148] In that report, Commissioner Saint-Laurent brought up the former section 62 of the *Act respecting the National Assembly*,[149] which was repealed when the Code came into force and on which the current wording of section 25 is based. The former section 62 read as follows:

> **62. A Member having a direct personal financial interest distinct from that of the other Members or the general public in a matter before the Assembly or a committee or subcommittee must publicly declare the interest before speaking or voting on the question.**
>
> **However, he is not bound to make the declaration if he abstains from speaking and voting on the question.**

As Commissioner Saint-Laurent put it at that time:

> Section 62 did not prohibit a Member who had a direct private financial interest distinct from that of other MNAs or the general public to participate in a debate on the issue. The *Act respecting the National Assembly* required the MNA to publicly declare his interest. However, contrary to what is now prescribed by the Code, he could take part in the debate and even vote on the issue.[150]

With the wording of the former section in mind, the commissioner recommended that section 25 of the Code be amended so that Members with a private financial interest could take part in debates without exercising the right to vote, provided that they had disclosed the interest in question beforehand.

The examination of the first report on the implementation of the Code by members of the Committee on Institutions revealed that the Members had reservations about the recommendation originally proposed by Commissioner Saint-Laurent.[151] They were concerned that it might be a step backwards. They also asked that the training offered to Members about the Code clearly define the concept of distinct private financial interest.

The commissioner's jurisprudence over time has led to a definition of the concept of unshared private financial interest that is mentioned in section 25. First, a private interest must be the elected official's own personal private interest and it does not necessarily have to involve any financial aspect. This private interest may also be affected by the context and the specific circumstances.

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147 Ethics Commissioner, *Rapport d'enquête au sujet de madame Sylvie D'Amours, députée de Mirabel*, December 1, 2014; Ethics Commissioner, *Rapport d'enquête au sujet de monsieur Yves Bolduc, ministre de l'Éduation, du Loisir et du Sport, ministre de l'Enseignement supérieur, de la Recherche et de la Science et député de Jean-Talon jusqu'au 26 février 2015*, July 29, 2015; Ethics Commissioner, *Rapport d'enquête au sujet de monsieur Jacques Daoust, ministre des Transport, de la Mobilité durable et de l'Électrification des transport et député de Verdun, jusqu'au 19 août 2016*, August 29, 2016; Ethics Commissioner, *Rapport d'enquête au sujet de monsieur Gaétan Barrette, ministre de la Santé et des Services sociaux, et député de La Pinière*, September 25, 2017.

148 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, pp. 32 et seq. (Recommendation 4).

149 *Act respecting the National Assembly*, supra, note 6.

150 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, p. 36.

151 Committee on Institutions, supra, note 14, pp. 14-15.

Second, in addition to being private, an unshared private financial interest must be financial. It must be an interest that has pecuniary, economic or monetary value. This financial interest must be present or reasonably foreseeable. Therefore, any purely hypothetical or prospective interest cannot constitute a financial interest under this provision. Finally, this section specifies that private financial interests cannot be shared by the other Members or the general public. Any interest or matter of general application is therefore set aside. The determination of what distinguishes a particular interest of a Member of the National Assembly from that of other Members or the general public requires an analysis based on circumstance.

Furthermore, because of the effect of section 25 on the freedom of speech of elected officials, it was determined that it should be given a restrictive scope. Nevertheless, the implications of this section are often not well received, by either Members or their constituents. A candidate's social, professional or entrepreneurial profile is widely promoted during an election period. Once a candidate is elected, that profile could be a critical foundation for their actions. Constituents also sometimes expect a Member to act as a spokesperson for the segment of the public that they represent through their social, professional or entrepreneurial profile.

We would like to address this issue again in this report, because there is room for further reflection. Section 25 prevents these elected officials from expressing themselves during discussions in which their contribution is expected, by both their political party and their fellow citizens. Despite the findings of the Committee on Institutions report, many elected officials have told us that they are opposed to this section and its effects.

At the same time, some bills that contain multiple principles pose a real problem for the application of section 25. To comply with the letter of section 25, a Member in a situation covered by section 25 would have to withdraw from all stages of the examination of the bill, even if their interest only concerns a few sections of the bill.

In light of all these factors, we want to raise this problematic issue, as Commissioner Saint-Laurent did in 2015. We recommend that Members with a private financial interest that is not shared by the other Members or the general public in a matter that is being discussed by the National Assembly or a committee they belong to retain the right to take part in the parliamentary debates as long as they publicly declare their interest but that they not have the right to vote on the matter.

It is important to point out that if this amendment is passed, it will not be a step backwards in the pursuit of the Code's objectives. It seeks to strike a better balance between the parliamentarians' privilege of freedom of speech, the expectations of their constituents and the transparency required to prevent the risk of conflicts of interest. Currently, knowing it will be impossible to speak, Members who find themselves in a situation governed by section 25 simply avoid showing up for debates. As a result, they do not have to publicly state their interest. Allowing Members to express their views on an issue after declaring their interest would therefore lead to greater transparency for the benefit of citizens. Moreover, for the public to be better informed overall, we believe it is appropriate to expand the public nature of the disclosure statements made under this section.

As is the case in parliamentary conduct regimes that have chosen to publish similar disclosure statements,[152] we think it would be appropriate for all public disclosure statements of conflicts of interest made under section 25 to be recorded in the minutes of the meeting and communicated to the Ethics Commissioner by the National Assembly.

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152 In France, for example, parliamentary assemblies must determine "methods for keeping a public registry identifying the cases in which a member of this assembly has considered that he should not participate in their work due to a situation of conflict of interest [...]" (*Ordinance no. 58-1100 from November 17, 1958, on the operation of parliamentary assemblies*, section 4c).

These disclosure statements should then be compiled in a public registry administered by the Ethics Commissioner. Such a mechanism would promote transparency by allowing citizens to be informed about the interests held by elected officials and the context in which they are held.

RECOMMENDATION 14

That the Code be amended to allow a Member who has a private financial interest, not shared by the other Members or the general public, to participate in debates without the right to vote, if they publicly declare their interest in advance. These declarations would be recorded in the Votes and Proceedings and the Ethic Commissioner would be responsible for keeping a public record of them.

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3.1.2 Exclusivity of Duties and Incompatibility of Offices

Issues related to the experience of elected officials may also be raised with respect to the rules concerning the incompatibility of offices, which apply to Members, and those concerning the exclusivity of duties, which apply to Cabinet Ministers.

3.1.2.1 Incompatibility of Offices for Members

During the first nine years of the Code's implementation, a few situations provided the opportunity to consider the existing rules on incompatible offices. While the Code stipulates that Cabinet Ministers cannot hold other offices, the rule for Members is much more flexible. With the exception of certain situations specified in the Code, Members can continue to hold other posts in addition to their duties of office. Generally speaking, it is possible for them to carry on other activities, paid or unpaid, in addition to their work as a Member, as long as they comply with the other principles and rules in the Code.

Sections 10 to 14 of the Code relate to the rules on incompatibility of offices that apply to Members. They read as follows:

> **10. The office of member of a municipal council or a school board is incompatible with the office of Member.**
>
> **11. Employment, a position or any other post to which remuneration or a benefit in lieu of remuneration is attached is incompatible with the office of Member if it is held with**
>
> **(1) the Government or one of its departments or a public body;**
>
> **(2) the Government of Canada, the government of another province or of a territory, or a department or agency of such a government, except the regular Armed Forces or the Reserve;**
>
> **(3) a foreign country; or**
>
> **(4) an international non-profit organization.**
>
> **However, being a Cabinet Member is not incompatible with the office of Member.**

> **This section does not prohibit engaging in remunerated teaching activities or practising a profession within a body referred to in subparagraph b of paragraph 1 of section 5, subject to the Member having informed, and obtained permission from, the Ethics Commissioner.**
>
> **12. The post of director or officer of a legal person, partnership or association engaged in professional, commercial, industrial or financial activities is incompatible with the office of President of the National Assembly.**
>
> **13. A Member who, when elected, holds an incompatible office or post within the meaning of section 10 or 11 must resign from that office or post before taking the oath of office.**
>
> **If a post incompatible with the office of Member devolves on a Member during his or her term, the Member must resign from one or the other within 30 days. Meanwhile, the Member is barred from sitting in the National Assembly.**
>
> **14. A Member must not engage in lobbying within the meaning of the *Lobbying Transparency and Ethics Act* (chapter T-11.011).**
>
> **However, this section does not prohibit any activities normally engaged in by Members acting in their official capacity.**
>
> **In determining whether a Member has engaged in lobbying, the Ethics Commissioner must consult the Lobbyists Commissioner.**

Therefore, Members may not hold concurrent elective offices and cannot sit on a municipal council or school board. In addition, Members are not allowed to hold remunerated employment with a provincial, territorial or federal government or any of its departments and public bodies. Members cannot engage in lobbying activities as defined by the Lobbyists Commissioner. Due to the particular duties of the office, the President of the Assembly cannot serve as a director or officer in a business.

As Albert Mayrand explains:

> A Member is prohibited from simultaneously holding two offices in certain cases where the two employers or principals may have opposing interests; the Member's neutrality would be doubtful in this instance, since whoever serves two masters at the same time could benefit from furthering one's interests to the detriment of the other. The main reason why two offices are considered incompatible is that the two employers may sometimes have opposing interests and that the person holding these two offices could lack impartiality; the Member's own interests would encourage them to favour one of the principals or employers at the expense of the other.[153] [TRANSLATION]

In the last few years, public debates have been held on whether Members can hold another office when their primary responsibility is to serve as a Member of the National Assembly.

153 A. Mayrand, supra, note 85, p. 5.

In his first report on the implementation of the Code, Commissioner Saint-Laurent encouraged that the Members of the National Assembly to "evaluate, in light of ethical principles and rules of conduct established by the Code, the relevance of maintaining the possibility for MNAs to simultaneously hold more than one post or office."[154] In response, the members of the Committee on Institutions stated that it would be advisable for the National Assembly to establish guidelines governing the exercise of multiple posts or offices by Members.[155] They questioned the meaning of the term "post or office," however, and pointed out that some professional orders require their members to practise with a particular frequency in order to retain their rights.[156] Despite this exchange between the commissioner and Committee, the rules for the incompatibility of offices have not been changed or even been discussed.

While this debate is entirely relevant, we do not wish to make a firm recommendation to review the rules regarding incompatible offices. Giving Members the opportunity to continue performing certain duties seems to us to provide balance among the importance of having people with diverse experiences in the National Assembly, the risk of professionalizing elective offices, the lack of long-term certainty of serving as a Member and the Members' need to maintain a bridge with their working life once their term is over. We should also be wary of the effect that an overly strict rule on the incompatibility of offices could have on potential candidates for the National Assembly.

Subject to compliance with the rules concerning incompatible offices and other provisions of the Code, including those related to diligence and conflicts of interest, a Member may, in principle, hold another post or office while performing their duties of office. Section 26 of the Code does stipulate, however, that **"a Member who, while in office, holds another post must avoid any conflict between the duties of that post and the duties of office."** According to the Ethics Commissioner's jurisprudence, the public office that the Member holds implies that their actions and decisions must be guided by the public interest and the common good.[157] Therefore, Members must always set aside interests related to an office held in parallel with their duties as a Member of the National Assembly.

In closing, we want to point out that the term "post or office" should be interpreted broadly and not restricted to the sense of professional position or job. It has been recognized that a Member can continue to carry out duties in a business, practise law or medicine, publish columns or books and carry out certain honorary duties with organizations, etc.

3.1.2.2 Exclusivity of Duties for Cabinet Members

The situation is completely different for Cabinet Members. As mentioned earlier, under the Code, Cabinet Members are strictly forbidden to hold any other post or office, including serving as a director or officer in a business or association:

> **43. Cabinet Ministers must devote themselves exclusively to the duties of office. No Cabinet Minister may, for example, hold the post of director or officer of a legal person, partnership or association.**

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154 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, p. 28.

155 Committee on Institutions, supra, note 14, p. 14.

156 *Ibid.*

157 Ethics Commissioner, *Rapport d'enquête du Commissaire ad hoc à l'éthique et à la déontologie au sujet de monsieur Claude Surprenant, député de Groulx*, November 20, 2017, p. 33.

This rule is generally well understood by the people in question. The concept of exclusivity of duties existed long before the Code came into force and appeared in the guidelines on conflicts of interest adopted by the premier.[158] The exclusivity of duty rule also applies to Members who are authorized to sit in the Cabinet, namely the chief government whip and the government caucus chair, under section 42 of the Code.

This restriction is essential to ensure that Cabinet Ministers devote themselves exclusively to their government duties, but it is interpreted by the Ethics Commissioner with some latitude. During the debates on the first version of section 43[159] in Bill 48,[160] the legislator specified that it was not intended to prohibit Cabinet Ministers from engaging in activities, but rather to ensure they do not carry out a duty that would distract them from their duties as ministers.

While performing other duties or activities related to a profession is not permitted within the meaning of section 43 of the Code, some activities, such as volunteering or writing, could be carried out by Cabinet Ministers without affecting their ministerial office.

For example, in the Ethics Commissioner's interpretation, some directorships could be held by a Cabinet Minister without affecting their duties of office. A minister could be the director of a wealth management corporation of which he or she is the sole shareholder and director, if the corporation has been declared to the Ethics Commissioner and the corporation's holdings are regarded as being the minister's holdings for the application of the conflict of interest rules.[161] It is important to specify that all particular situations that may be authorized by the Ethics Commissioner must be assessed case by case, based on the context.

It should also be noted that several provinces expressly authorize Cabinet Ministers to manage their private financial interests, despite the exclusivity of duty provisions that also apply to them.

In British Columbia, section 9 of the M*embers' Conflict of Interest Act*[162] sets out very broad rules with regard to incompatible offices for Cabinet Ministers. In paragraph 5, however, it provides a specific exception for the management of private financial interests.[163]

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158 This rule stated that Cabinet Ministers must, as soon as possible after their appointment and for the entire duration of their term, put an end to all professional, commercial or business activities that could be a source of a conflict of interest or prevent them from devoting all their time to their duties. The rule was found in both the 2009 guidelines and those adopted in 1977 by René Lévesque. See Directives aux membres du Conseil exécutif sur les conflits d'intérêts, September 9, 2009 (Jean Charest), and *Directive du premier ministre aux membres du Conseil exécutif concernant les conflits d'intérêts*, January 12, 1977 (René Lévesque).

159 Sections 37 and 38 of Bill 48.

160 Bill 48, supra, note 3.

161 This means that if the assets of the management corporation consist of financial products that cannot be held directly by the Cabinet Minister, the accounts of that corporation must be held under a power of attorney or in a blind trust, in accordance with section 45 of the Code. Furthermore, the corporation would be strictly prohibited from having contracts with the government, in accordance with section 46 of the Code.

162 *Members' Conflict of Interest Act,* RSBC 1996, c. 287.

163 **9.** (1) A member of the Executive Council must not

(a) engage in employment or in the practice of a profession,

(b) carry on a business, or

(c) hold an office or directorship other than in a social club, religious organization or political party if any of these activities are likely to conflict with the member's public duties.

[...]

(5) **For the purposes of this section, the management of routine private financial interests does not constitute carrying on a business.** (emphasis added)

In Alberta, section 21 of the *Conflicts of Interests Act*[164] offers a similar framework. It also provides an exception to the exclusivity of duty rule that allows the commissioner to approve a particular situation.[165]

In Prince Edward Island, section 19 of the *Conflict of Interest Act*[166] likewise states that a minister may not engage in commercial activities through a partnership or sole proprietorship, but the fourth paragraph of the section specifies that the routine management of private financial interests does not constitute a commercial activity.[167]

Lastly, the Northwest Territories' *Legislative Assembly and Executive Council Act*[168] states in section 81 that the day-to-day management of private financial interests does not constitute an incompatibility of offices with ministerial duties.[169]

As we can see from these other provincial statutes, the management of a minister's private financial interests may be consistent with the exclusivity of duty rule if all conflict of interest rules are met with regard to those private interests. This situation requires ongoing guidance from the Ethics Commissioner, however, and the private interests in question must be fully disclosed to the Ethics Commissioner in advance.

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164 *Conflicts of Interests Act*, supra, note 58.

165 **21.** (1) A Minister breaches this Act if, after the expiration of the relevant period referred to in section 22, the Minister

(a) engages in employment or in the practice of a profession,

(b) carries on a business, or

(c) holds an office or directorship other than in a social club, religious organization or political party,

that creates or appears to create a conflict between a private interest of the Minister and the public duty of the Minister.

(2) Subsection (1) does not apply if the Minister has disclosed the material facts to the Ethics Commissioner and if,

(a) prior to the expiration of the relevant period referred to in section 22,

the Ethics Commissioner is satisfied that the activity will not create or appear to create a conflict between a private interest of the Minister or of a person directly associated with the Minister and the performance of the Minister's public duty, and in the case of a business, the Ethics Commissioner is satisfied that the business will be carried on by way of a management arrangement in which

(A) the Minister will be precluded from participating in discussions about matters that could affect a private interest of the Minister or of a person directly associated with the Minister, and

(B) the Minister will be precluded from voting on matters that could affect a private interest of the Minister or of a person directly associated with the Minister,

or

(b) after the expiration of the relevant period referred to in section 22, the Minister commences an activity with the prior approval of the Ethics Commissioner on the conditions set out in subsection (2)(a)(i) and (ii).

(3) An approval given by the Ethics Commissioner under subsection (2) may be given subject to any conditions determined by the Ethics Commissioner.

(4) For the purposes of this section,

(a) **the management of routine personal financial interests does not constitute carrying on a business**, and

(b) maintaining qualifications in a profession or occupation as required by the profession or occupation does not constitute carrying on a business or engaging in employment or in the practice of a profession. (emphasis added)

166 *Conflict of Interest Act*, R.S.P.E.I. 1988, c. C-17.1.

167 **19.** Partnerships and sole proprietorships

(1) Subject to section 20, a Minister shall not carry on business through a partnership or sole proprietorship. […]

Personal financial interests

(4) For the purposes of this section and clause 17(b), **the management of routine personal financial interests does not constitute carrying on a business**. (emphasis added)

168 *Legislative Assembly and Executive Council Act*, SNWT 1999, c. 22.

169 **81.** (1) The Speaker or a Minister shall not, except as may be required as a duty of office,

a) engage in employment or in the practice of a profession;

b) carry on a business, **other than managing routine personal financial interests**; or

c) hold an office or directorship in any organization other than a social club, religious organization or political party. (emphasis added)

3.1.3 Post-Term Rules

The Code mainly governs conflicts of interests that arise during the term of office, but specific rules of conduct also apply to Cabinet Ministers after their term of office has ended. The Code sets out rules that govern or even limit a former Minister's actions in carrying out new functions. Post-term rules apply to former Cabinet Ministers only, and not to Members who have not served as a Minister.

Certain rules are in effect for only a two-year period, while other rules remain in effect at all times. Guidelines on the post-term rules were issued in May 2018,[170] not long before the election scheduled for October, because the Ethics Commissioner had been receiving a large number of requests on the matter.

Sections 57, 58 and 59 set out rules that govern former Cabinet Ministers at all times:

> **57. Former Cabinet Ministers must conduct themselves so as not to obtain undue benefit from their prior office.**
>
> **58. Former Cabinet Ministers must not disclose confidential information obtained in or in connection with the carrying out of the duties of office, 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 of office.**
>
> **59. Cabinet Ministers 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 office.**

Section 60 of the Code sets out restrictions that are applicable for a period of two years after the former Cabinet Member's term has ended:

> **60. Cabinet Ministers may not, in the two years after they leave office,**
>
> **(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 and with which they had official, direct and significant dealings in the year preceding the cessation in office, or accept employment, a position or any other post within such an entity; and**
>
> **(2) unless they are still Members and subject to the prohibition set out in section 14, 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 preceding their cessation in office.**

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170 Ethics Commissioner, *Lignes directrices – Règles d'après-mandat – Membres du Conseil exécutif*, May 2018, online: https://www.ced-qc.ca/fr/document/1305.

The concept of official, direct and significant dealings in that section was defined by jurisprudence established by the Ethics Commissioner. The guidelines on the post-term rules state that the dealings mentioned in section 60 should be interpreted broadly and that they refer to all types of dealings and relationships between persons and groups of persons, including legal persons. The terms "official," "direct" and "significant" must be interpreted with their usual meanings.[171] Dealings must have all those combined characteristics for the prohibition in section 60(1) to apply. In recent years, two particular issues have emerged from the interpretation of this provision.

3.1.3.1 Interventions with State Entities

A question can be raised about the interpretation of section 60 of the Code. The first subparagraph does not place any restrictions on former Cabinet Ministers holding a position in a State entity. Then, the second subparagraph limits, for two years, the ways former Cabinet Ministers can 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 preceding the end of their term in office. The restrictions in this subparagraph apply to all departments without exception. With respect to State entities, only those with which a Cabinet Minister had official, direct and significant dealings are targeted.

In the case of a former Cabinet Minister who takes a position with a State entity, we have questions about the cumulative interpretation of the two subparagraphs of section 60. Can a former Cabinet Minister who takes a position in a department intervene on behalf of that department with another department? If both subparagraphs are applied, the former Cabinet Minister can accept the position at the department because no restrictions apply in that regard. In compliance with the second subparagraph, however, the former Cabinet Minister could not intervene with any department on the new employer's behalf. The outcome of this interpretation may seem excessive in light of the objective of section 60, and it significantly limits employment opportunities for former Cabinet Ministers.

With regard to this situation, the previous report on the implementation of the Code stated the following:

> Furthermore, the Ethics Commissioner has stated that subparagraph 2 of section 60 of the Code does not apply when a Cabinet Minister resumes his prior office within a State entity and is acting on its behalf with any department or other State entity. However, he must remain vigilant and not intervene when circumstances warrant it, to comply with the other ethical obligations prescribed by the Code.[172]

Commissioner Saint-Laurent therefore concluded that if, before taking on a ministerial role, a Cabinet Minister had carried out duties with a State entity and then returned to work for that entity, the second subparagraph of section 60 would not apply. This is an exception, however. Consequently, the two subparagraphs in section 60, other than this example, are generally interpreted as being cumulative.

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171 Official dealings are those coming from a recognized or established authority. To determine whether dealings are official, it is necessary to as certain the character—the capacity—in which the persons concerned acted. Direct dealings refer to those in which the Cabinet Minister 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. 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.

172 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, p. 56.

Is this restriction too broad in relation to the public interest? A former Cabinet Minister who works for a department or public body carries out those duties to serve the public interest, not to serve a private business. It therefore seems that the restrictions in subparagraph 2 of section 60 could be adjusted in such a case.

Furthermore, it appears that the Lobbying Transparency and Ethics Act,[173] which also contains certain post-term restrictions for Cabinet Ministers, can generate a result that is completely opposite from the Code, which is very confusing for the person concerned. Under this Act, because the former Cabinet Minister who takes a position in a department or public body is still a public office holder, no such post-term restrictions apply.

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RECOMMENDATION 15

That parliamentarians consider the application of paragraph 2 of section 60 to a former Cabinet Minister who accepts an appointment as a member or board member of a State entity or who agrees to hold a job, position or any other office with a State entity.

173 *Lobbying Transparency and Ethics Act*, CQLR, c. T-11.011.

3.2 The Issue of Member Investors and Entrepreneurs

For Members who are investors or business owners, specific ethical issues are raised, including the interests held in one or more businesses and the relationships that such businesses may have with the State. The Code's goal is therefore to ensure that Members who are investors or business owners are shielded from the influence of their interests and cannot apply any pressure in that regard to the detriment of the interests of the public that they are required to serve. More specifically, the Code defines a framework for contracts between Members and the government and for interests held in private or public businesses. In the case of Cabinet Ministers, these rules also concern interests held in private businesses by members of their immediate family, including their spouse.

Although there is no doubt that a framework for this is essential, to prevent conflicts of interest and preserve public confidence in elected officials, a fair balance must be found between the framework and the dissuasive effect of overly restrictive rules of ethics. Rules that are too strict may sometimes discourage candidates from getting involved in public service because of the restrictions imposed on them and on members of their immediate family. As Albert Mayrand wrote many years ago, in an era where each spouse wants to maintain their autonomy and professional freedom, a Member's election could impose restrictions that are too disadvantageous for the Member's spouse, which would motivate the parties involved to turn their backs on either the marriage or the Member's role.[174]

Moreover, it is extremely important to share the Code's rules in advance because their application could have a major impact on candidates who are investors or business owners. This information should be distributed not only by the Ethics Commissioner but also through the political parties, which are in the best position to reach out to candidates.

3.2.1 Contracts with the Government

The Code sets out a framework for contracts concluded, either directly or through a business, between a Member and the government, a department or a public body. The issue is covered specifically in sections 18 to 21 and section 46. While sections 18 to 21 apply to all Members, section 46, which will be discussed later, specifically targets Cabinet Ministers and members of their immediate family. The principle laid out in section 18 is that contracts between a Member and the government, a department or a public body are prohibited, but in subparagraphs 1 to 3 of the second paragraph, some exceptions are allowed.

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174 A. Mayrand, supra, note 85, p. 66.

When used in the Code, the term "contract," which appears in sections 18, 19, 38, 40, 46 and 52, has a very broad meaning.[175] It refers to a contract for the supply of goods or services, a loan, a reimbursement, a grant, an indemnity or any other benefit. This interpretation originates mainly from the wording of section 18 itself, which appears below. The content of this section shows that the legislator wanted to give the term "contract" a broad meaning, as confirmed by the exceptions in the second and third subparagraphs of the second paragraph. It should be noted that these exceptions were necessary because of the broad meaning given to the term "contract," which could have undesirable results in some circumstances, such as grants or holding government bonds. Section 18 reads as follows:

> **18. No Member may, directly or indirectly, be party to a contract with the Government or a department or public body.**
>
> **However, a Member may**
>
> **(1) have interests in an enterprise that is party to such a contract, subject**
>
> **a) in the case of an enterprise whose securities are not listed on an exchange and for which there is no published market, to informing the Ethics Commissioner as soon as the Member becomes aware of the contract and to the Ethics Commissioner authorizing the Member to retain the interest, on the conditions specified by the Commissioner, such as the creation of a blind trust managed by an independent trustee or the establishment of a blind management agreement with an independent mandatary; and**
>
> **b) in the case of any other enterprise, to collusion or undue influence being unlikely given the extent of the interests or the circumstances in which the contract is made;**
>
> **(2) receive a loan, a reimbursement, a grant, an indemnity or any other benefit from the Government or a department or public body under any Act, regulation or program; and**
>
> **(3) hold securities issued by the Government or a public body on the same terms as are applicable to all.**

The goal of this framework is to ensure that a Member's interest in entering into a contract does not prevail over the interest of all citizens, to whom the Member must show loyalty under the Code.[176]

More generally, as Mayrand noted, the reason for prohibiting contracts with the government is to avoid not only conflicts of interest but also the suspicions of disloyalty that such contracts could arouse in the public that does not know the circumstances surrounding their conclusion.[177]

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175 This was evident, for example, in the parliamentary proceedings concerning the adoption of the Code: NATIONAL ASSEMBLY OF QUÉBEC, *Journal des débats de la Commission permanente des institutions*, 1st sess., 39th legis., June 3, 2010, Vol. 41, No. 81, p. 8; November 12, 2010, Vol. 41, No. 106, pp. 11-15, 19.

176 S. 6, 2nd para. (1) of the Code; A. Mayrand, supra, note 85, pp. 56-57.

177 A. MAYRAND, supra, note 85, p. 77.

3.2.1.1 Cabinet Ministers

Sections 45 and 46 govern situations where Cabinet Ministers hold interests in a public or private enterprise. It is these provisions, rather than the first subparagraph of section 18 of the Code, that apply to their situation. The second and third subparagraphs of the second paragraph of section 18 of the Code are considered to apply to Cabinet Ministers, however. The Code does not provide any other rules specifically governing Cabinet Ministers in this regard. This means that, in principle, a Cabinet Minister can personally receive a loan, reimbursement, indemnity or any other benefit from the government, a department or a public body under any act, regulation or program and hold securities issued by the government or a public body on the same terms as are applicable to all.

3.2.1.2 Contracts Personally Concluded with Certain Public Sector Entities

Contrary to the situation concerning contracts made through a private or public enterprise, the commissioner does not have any leeway to authorize a contract concluded personally by a Member that is not one of the exceptions in the second and third subparagraphs of the second paragraph of section 18 of the Code. This is why, in practice, the application of section 18 has resulted in some inconsistencies.

Members cannot enter into a contract with the government, a department or a public body, regardless of the nature and value of the contract, whereas the same contract could be authorized if it were concluded with that Member's business. Consequently, a Member who wanted to enter into a contract with a university in the Université du Québec network or with a CEGEP in order to be paid to give a speech, for example, could not do so on a personal basis but could be authorized by the commissioner if the contract was concluded by the Member's business.

It should be noted that at the federal level, ministers can enter into contracts with a public sector entity if the commissioner is of the opinion that the contract is unlikely to affect the exercise of the minister's official powers.[178] Similarly, members of the House of Commons can directly enter into such a contract if the commissioner is of the opinion that the contract is unlikely to affect the member's obligations under the code.[179]

We therefore recommend that the commissioner be permitted to authorize Members to personally enter into contracts with the government, a department or a public body.

RECOMMENDATION 16

That the Code be amended so that the commissioner can authorize a Member to be a party to a contract with the Government, a department or a public body, provided that the extent of the interest or the circumstances surrounding the conclusion of the contract are not likely to lead to collusion or undue influence, under the conditions set by the commissioner.

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178 *Conflict of Interest Act*, supra, note 34, s. 13 (1) and (3).

179 *Conflict of Interest Code for Members of the House of Commons*, supra, note 45, s. 16 (1).

3.2.2 Cabinet Ministers Who Hold Interests in Public Enterprisess

Section 45 governs interests held by a Cabinet Minister in an enterprise whose securities are listed on an exchange or for whose securities there is a published market, commonly known as a public enterprise.

This section reads as follows:

> **45. A Cabinet Minister must, within 60 days after appointment to the Cabinet or after being conferred interests in an enterprise whose securities are listed on an exchange or for whose securities there is a published market, either dispose of such interests, place them in a blind trust managed by an independent trustee or entrust them to an independent mandatary under a blind management agreement. The Cabinet Minister must also comply with any other measure or condition imposed by the Ethics Commissioner.**
>
> **However, this section does not apply in respect of an investment in an open-ended mutual fund, a guaranteed investment certificate or similar financial instrument, an interest in a pension plan, a registered retirement savings plan that is not self-directed, an employee benefit plan, a life insurance policy or similar annuity, an investment in the Fonds de solidarité des travailleurs du Québec (F.T.Q.) or Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi or any similar interest which the Ethics Commissioner considers should be excluded from the application of this section.**

The purpose of section 45 is to limit the risk that Cabinet Ministers could influence the value of their assets, such as shares held in listed enterprises, through decisions they are involved in and information they have access to through their duties. Government policies and Cabinet decisions concerning loans and grants, for example, could have an impact on the value of an enterprise's shares.[180]

The first paragraph of section 45 states that Cabinet Ministers must dispose of those interests or place them in a blind trust or under a blind management agreement. Cabinet Ministers must also comply with any other condition imposed by the commissioner concerning those interests, where applicable. However, the second paragraph of section 45 sets out various exceptions to this rule and allows the commissioner to exclude other similar interests that, in the commissioner's opinion, should not be subject to this section.

180 It is interesting to note that the corresponding federal provision that governs holding interests in public enterprises defines interests ("controlled assets") as "assets whose value could be directly or indirectly affected by government decisions or policy." S. 20 of the *Conflict of Interest Act*, supra, note 34, s. 2.

3.2.2.1 Interests in Question

Section 45 applies to interests in enterprises whose securities are listed on an exchange or for whose securities there is a published market. In the following subsections, we will describe certain interests that the Ethics Commissioner has examined more closely.

3.2.2.1.1 Holding Interests Through a Management Corporation

Unlike section 46, section 45 does not refer to interests held "directly or indirectly." Given the objective of the Code, however, the Ethics Commissioner has interpreted this section as applying to interests held directly by a Cabinet Minister as well as through an enterprise. Any other interpretation that would allow interests to be held indirectly in enterprises whose securities are listed on an exchange, through a management or holding company or any other way, could lead to a real or apparent conflict of interest situation.

3.2.2.1.2 Compensation Options

Compensation options refer to "stock options as a way to attract and keep talented employees,"[181] which are offered by some companies, including stock-listed enterprises. "These [options] are similar to regular stock options in that the holder has the right but not the obligation to purchase company stock. The contract, however, is between the holder and the company, whereas a normal option is a contract between 2 parties that are completely unrelated to the company."[182] Moreover, these options are usually subject to a delay, that is, a time prior to which the option cannot be exercised. Former employees, officers or directors who receive such options can exercise them even if they no longer hold a position with the enterprise.

These options could qualify as interests in a stock-listed enterprise. It could be complicated for a Cabinet Minister to entrust them to a mandatary or a trustee under a blind management agreement or a blind trust because they are not securities in the same way as typical shares or stock options. In addition, since the options are not traded on an exchange, there is no resale market for them. As a result, the implementation of section 45 of the Code may be problematic when such interests are involved. We therefore want to make parliamentarians aware of this issue.

3.2.2.2 Exclusions

The second paragraph of section 45 lists certain exclusions relating to investments that, in principle, are not under the control of a Cabinet Minister or for which the Cabinet Minister does not know the composition. Cabinet Ministers do not have to sell the specified investments or place them under a blind management agreement or in a blind trust.

Moreover, as mentioned earlier, any similar interests that the commissioner feels should be excluded from the application of section 45 can be added to this list. The subsection below discusses a type of interest that was removed from the application of that section of the Code.

181 Desjardins, *Why Use Options?*, online: https://www.desjardins.com/ca/co-opme/action-plans-tips/savings-investment/why-use-options/index.jsp.

182 *Ibid.*

3.2.2.2.1 “Similar Interests”

The second paragraph gives the commissioner some leeway concerning “any similar interest which the Ethics Commissioner considers should be excluded from the application of this section.” In this respect, it has been determined that an interest in an exchange traded fund (“ETF”) should not be subject to section 45 of the Code.

An ETF consists of a pool of diversified assets that is managed on a discretionary basis. In principle, investors who own units of an ETF have no influence or decision-making power over the fund’s management. Since the ETF unitholder does not exercise any control over the securities held in the fund, it was decided that ETF units are not subject to the first paragraph of section 45 of the Code. However, in situations involving sector-based ETFs as they relate to the ministerial responsibilities of a Cabinet Minister, certain measures could be required by the commissioner to prevent conflicts of interest.

3.2.3 Cabinet Ministers Who Hold Interests in Private Corporations (s. 46)

Section 46 of the Code governs interests held by Cabinet Ministers and members of their immediate family in an enterprise whose securities are not listed on an exchange or for whose securities there is no published market. This section reads as follows:

> **46. A Cabinet Minister who, either directly or indirectly, has interests in an enterprise other than an enterprise described in the first paragraph of section 45 must, within 60 days after appointment to the Cabinet or after being conferred any such interests and subject to the exception provided in subparagraph 3 of the second paragraph of section 18, see to it that the enterprise abstain from becoming, directly or indirectly, party to a contract with the Government or a department or public body.**
>
> **The first paragraph also applies, with the necessary modifications, if such interests are held by a family member of a Cabinet Minister. However, if, in the Ethics Commissioner’s opinion, there is no resulting risk of the Cabinet Minister violating this Code or of the public interest not being served, the Ethics Commissioner may, after informing the Secretary General of the Conseil exécutif, authorize contracts or certain types of contracts between an enterprise in which a family member of a Cabinet Minister has interests and the Government or a department or public body, provided that**
>
> **(1) neither the department or a public body under the Cabinet Minister’s responsibility nor the Ministère du Conseil exécutif are involved in such a contract;**
>
> **(2) the enterprise has already been a party to such contracts or types of contracts and the general conditions applicable to them remain identical, even if the department or a public body under the Cabinet Minister’s responsibility or the Ministère du Conseil exécutif is involved in the contract;**
>
> **(3) no such contract is entered into by mutual agreement between the enterprise and the Government or a department or public body;**

(4) the enterprise is not a sole source supplier with respect to such contracts or types of contracts;

(5) the Cabinet Minister concerned undertakes never to discuss, with Cabinet colleagues or any other interested person, even privately, any file even remotely connected to a contract that has been or could be made, directly or indirectly between the Government or a department or public body and the enterprise, not to exert or attempt to exert, directly or indirectly, any influence in relation to such a file and to withdraw from any Cabinet meeting or meeting of a Cabinet committee or the Conseil du trésor while such a file is being discussed;

(6) the Cabinet Minister concerned attaches to his or her disclosure statement a signed document identifying the enterprise, and stating the interests the family member holds in it; and

(7) the Cabinet Minister concerned informs the deputy minister of the department and the chief executive officers of the public bodies under the Cabinet Minister's responsibility, in writing, that there are to be no contracts between the department or such a public body and an enterprise identified in the document attached to the Cabinet Minister's disclosure statement.

In addition, the Ethics Commissioner may at any time impose any requirement the Ethics Commissioner considers appropriate, limit the contracts or types of contracts authorized or ask that authorized contracts be terminated.

Public notice of any authorization granted under this section or any change made to such an authorization must be given by the Ethics Commissioner without delay and must include the grounds for the authorization or change, the name of the enterprise, the name of the Cabinet Minister and the family member concerned, the nature of the contracts or types of contracts and the conditions imposed by the Ethics Commissioner."

A Cabinet Minister who, either directly or indirectly, has interests in an enterprise other than an enterprise described in the first paragraph of section 45 must, within 60 days after appointment to the Cabinet or after being conferred any such interests and subject to the exception provided in subparagraph 3 of the second paragraph of section 18,[183] see to it that the enterprise abstain from becoming, directly or indirectly, party to a contract with the Government or a department or public body.

Unlike a Cabinet Minister, a family member can retain an interest in a private enterprise that is a party to such a contract if the commissioner deems that there is no resulting risk of the Cabinet Minister violating this Code or of the public interest not being served and authorizes it in compliance with the conditions set out in section 46 and with any other condition that the commissioner may set.

183 **18.** No Member may, directly or indirectly, be party to a contract with the Government or a department or public body. However, a Member may

[...]

(3) hold securities issued by the Government or a public body on the same terms as are applicable to all.

3.2.3.1 Interests Held by a Minister

Section 46 does not offer any alternatives in the case of a private enterprise that enters into contracts with the government and in which a Cabinet Minister has interests, either directly or indirectly. Unless the enterprise withdraws from these contracts, the Cabinet Minister must dispose of those interests. This is an absolute rule.[184]

First, the commissioner cannot authorize the enterprise to enter into contracts with the government, a department or a public body. It should be noted that Bill 48 concerning the Code of ethics and conduct of the Members of the National Assembly[185] initially proposed the possibility of allowing the commissioner to authorize such contracts when the interest was held by a Cabinet Minister but this was subsequently abandoned.

Likewise, Bill 48 proposed the possibility that the interest held by a Cabinet Minister could be transferred to a blind trust or a blind management agreement, but this was also ultimately removed from the Code. As a result, given the very broad wording of section 46,[186] the Ethics Commissioner's interpretation is that subparagraph 1 of section 46 does not allow interests to be placed in a blind trust or under a blind management agreement when they are held directly by a Cabinet Minister. That interpretation is in fact explained in the *Note d'information – Fiducie et mandat sans droit de regard* from February 2014, which states:

> When a Cabinet Minister instead holds interests in a private enterprise whose securities are not listed on an exchange, that enterprise cannot, either directly or indirectly, enter into any contract with the government, a department or a public body, as specified in section 46 of the Code. <u>If the enterprise does business with the government, a department or a public body, the Cabinet Minister must terminate the contract or dispose of their interests. The Cabinet Minister cannot transfer them to a blind trust or a blind management agreement. The rule is absolute: there can be no contracts with the government, a department or a public body for that private enterprise.</u> When the interests in a private enterprise are held by a member of the Cabinet Minister's immediate family, section 46 of the Code lays out the applicable framework. The commissioner can also require that other conditions be met.[187] (emphasis added) [TRANSLATION]

3.2.3.2 Interests Held by an Immediate Family Member of a Minister

As mentioned earlier, a member of a Cabinet Minister's immediate family can have an interest in a private enterprise that is a party to a contract with the government, a department or a public body as long as the commissioner has authorized it under the conditions set out in the Code and under any other conditions the commissioner deems appropriate. Some of these conditions have been the subject of a particular interpretation that we will describe in the subsections below.

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184 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014* , supra, note 12, p. 52; Ethics Commissioner, *Note d'information – Fiducie et mandat sans droit de regard*, February 2014, online: https://www.ced-qc.ca/fr/document/1314, section 3.

185 Bill 48, supra, note 3, s. 41.

186 Section 46 of the Code applies to an interest held "directly or indirectly" in a private enterprise that becomes, "directly or indirectly, party to a contract with the Government or a department or public body," subject to the exception in subparagraph 3 of the second paragraph of section 18 of the Code.

187 Ethics Commissioner, *Note d'information – Fiducie et mandat sans droit de regard*, supra, note 184, section 3.

3.2.3.2.1 The Government Department or Public Body Involved

Subparagraphs 1 and 2 of the second paragraph of section 46[188] state that the contract must not involve the department or a public body under the Cabinet Minister's responsibility or the ministère du Conseil exécutif. However, if the contract involves the department or a public body under that Cabinet Minister's responsibility or the ministère du Conseil exécutif, the contract could be authorized if the enterprise concerned has already been a party to such contracts or types of contracts and the general conditions applicable to them remain identical.

3.2.3.2.2 Contracts by Mutual Agreement

Subparagraph 3 of the second paragraph of section 46 states that "no such contract is entered into by mutual agreement between the enterprise and the Government or a department or public body."[189] It was determined in this regard that a contract by mutual agreement differs from a contract obtained through a public tender process or by invitation. This type of contract is defined in the second paragraph of article 1379 of the Civil Code of Québec as "any contract that is not a contract of adhesion."[190] As Vincent Karim explains, a contract of adhesion is a contract concluded by an enterprise with a person where no negotiations are allowed. This is the case when a government or public body, following a tender process, requires all enterprises interested in the contract to comply with the terms and conditions set out in the bid specifications without the possibility of negotiating them.[191] The Conseil du Trésor has also adopted this interpretation.[192]

3.2.3.3 Obstacles to Applying Section 46

3.2.3.3.1 Existence of Contracts

For the purposes of applying section 46 of the Code, the vigilance and cooperation of the Cabinet Member in question and their immediate family are essential. They must at all times remain informed about the existence of a contract between a private enterprise in which they have a direct or indirect interest and the government, a department or a public body.

In some cases, it can be complicated to stay informed about such contracts on a timely basis. Given the very broad wording of section 46, Cabinet Ministers or family members, as applicable, must remain informed not only about contracts involving an enterprise in which they personally have interests but also about contracts involving an enterprise in which they have interests through another enterprise.

Furthermore, for an investor who has interests in a large number of enterprises, information about the existence of contracts with the government, a department or a public body may be difficult to obtain. It can therefore be challenging for Cabinet Ministers or family members to set up an adequate monitoring mechanism. For this reason, it would be appropriate to look into a way to enable the Ethics Commissioner to obtain the information directly from the enterprises concerned.

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188 S. 46, para. 2 (1) and (2) of the Code.

189 *Ibid.*, s. 46, para. 2 (3).

190 The first paragraph of article 1379 of the *Civil Code of Québec*, CQLR, c. CCQ-1991 states that "a contract of adhesion is a contract in which the essential stipulations were imposed or drawn up by one of the parties, on his behalf or upon his instructions, and were not negotiable."

191 Vincent Karim, *Les obligations*, 4th ed., vol. 1, Montréal, Wilson & Lafleur, 2015, p. 237, referring to *Gagnon c. Hydro-Québec,* [2005] no. AZ-50328292, J.E. 2005-2052 (C.S.); *Autobus Fleur de lys inc. c. Réseau de transport de la Capitale,* 2013 QCCS 4574.

192 Secrétariat du Conseil du trésor, *Modes de sollicitation*, online: https://www.tresor.gouv.qc.ca/faire-affaire-avec-letat/les-contrats-au-gouvernement/modes-de-sollicitation/.

3.2.3.3.2 Disposition of Interests

Sometimes, for various reasons, the private enterprise in which a Cabinet Minister or family member has an interest cannot withdraw from contracts with the government, a department or a public body. As mentioned earlier, under section 46 of the Code, if Cabinet Ministers cannot ensure that there is no longer a contract between that enterprise and the government, a department or a public body, they must dispose of their interest by the deadline specified in the Code, namely, 60 days after their appointment to the Cabinet or after being conferred any such interests. Unlike the situation where the interest is held by a Cabinet Minister's family member, section 46 does not offer any alternatives. In this regard, applying section 46 can be especially problematic in certain cases.

For example, in the case of family enterprises and, more specifically, small enterprises, it may be difficult for Cabinet Ministers to dispose of their interests. First, the pool of potential buyers is limited or there are limited opportunities to expand the shareholder base because of the nature of the family enterprise. It is also possible that the other people who hold interests in that enterprise do not have the financial resources to buy out the Cabinet Minister's interests. In fact, in this situation, selling the interest to a third party could lead to the possibility of denaturing the enterprise.

Moreover, because of various legal limitations, it could be complicated or even impossible to dispose of the interest within the timeframe set by the Code. An example of this would be a shareholder agreement that requires a shareholder to obtain approval from the enterprise's board of directors before shares can be transferred or that gives a right of first refusal to the co-shareholders. It can also be challenging to dispose of certain interests because of their very nature, such as debentures that represent funds loaned to an enterprise for a term that is "generally from 1 to 30 years."[193] Finally, if the private enterprise is experiencing financial difficulties, Cabinet Ministers may find it impossible to resell their interest. In conclusion, these limitations affect the liquidity of the interest held.

3.2.3.4 Opportunity for a More Flexible Rule?

When the interest is held by a member of a Cabinet Minister's immediate family, the strict approach laid out in section 46 is partly mitigated by the possibility that the commissioner can authorize the contracts. In contrast, as mentioned earlier, in the case of a private enterprise in which the Cabinet Minister has interests, either directly or indirectly, the commissioner cannot authorize the enterprise to enter into contracts with the government, a department or a public body, and nor can the Cabinet Minister place their interest in a blind trust or under a blind management agreement. They therefore have no choice other than to make sure that the enterprise avoids entering into any contracts, either directly or indirectly, with the government, a department or a public body. If this is not possible, they have to dispose of their interest in the enterprise.

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193 The Autorité des marchés financiers website states the following in this regard:

"Bonds are issued by governments and companies and represent loans granted by investors to issuers. In general, the issuer promises to pay a fixed interest rate to the investor at certain intervals and pay back a predetermined amount at maturity: the face value. [...]

Bonds can be traded at a price above or below their face value.

Corporate bonds are generally backed by specific assets. The term is generally from 1 to 30 years.

[...] Debentures are similar to bonds, except that they are not backed by specific assets."

Autorité des Marchés Financiers, *Debt Securities*, online: https://lautorite.qc.ca/en/general-public/investments/debt-securities/#c38377.

As explained earlier, it can be difficult for Cabinet Ministers to dispose of their interests, especially in the case of a family enterprise. Even for other private enterprises, additional legal limitations can make the interest disposal process more complex and time-consuming.

Moreover, in some cases, holding an interest in a private enterprise that has contracts with the government, a department or a public body is not likely to generate a conflict of interest because of the limited scope of the interest or because precautionary measures have been implemented, for example.

It is interesting to note that elsewhere in Canada, including at the federal level, the relevant rules sometimes give the commissioner and the minister concerned more flexibility. The reporting public office holder, including a minister, may have an interest in a partnership or private company that is a party to a contract with a public sector entity if the commissioner is of the opinion that the contract or interest is unlikely to affect the exercise of the minister's official duties.[194]

Similarly, in a number of provinces, ministers can hold interests in a private enterprise that is a party to a contract with the government or a public body as long as the commissioner allows it or as long as the interest is placed in a trust that meets the criteria set out in the applicable regulations.[195]

In light of what is being done in the rest of Canada and based on the Ethics Commissioner's actual experience, it seems appropriate for section 46 of the Code to be loosened, keeping in mind that the objective is to govern and prevent conflict of interest situations.

RECOMMENDATION 17

That the Code be amended to give the commissioner the discretion to authorize a contract between a private company in which a Cabinet Minister has an interest and the Government, a department or a public body, under any terms and conditions that the commissioner determines.

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3.2.3.5 Deadline to Comply with Sections 45 and 46 of the Code

Sections 45 and 46 of the Code provide a 60-day timeframe for compliance after a Cabinet Minister is appointed or granted an interest that is subject to these provisions. In practice, this time limit has been insufficient in many cases.

Under the Code,[196] Cabinet Ministers have 60 days after being sworn in to compete their first personal disclosure statement. Within that same period, Cabinet Ministers are also required to ensure that they are compliant under sections 45 and 46 of the Code, if applicable. These concurrent timeframes do not allow the Ethics Commissioner to offer sufficient support, because the information about the interests that could be problematic under the Code is only discovered when the Cabinet Ministers' disclosure statements are analyzed.

194 *Conflict of Interest Act*, supra, note 34, s. 13.

195 *Conflict of Interest Act*, supra, note 166, s. 14 (Prince Edward Island); *Members' Conflict of Interest Act*, supra, note 75, s. 9 (New Brunswick); *Members Integrity Act*, supra, note 72, s. 7 (Ontario); *Conflict of Interest Act*, RSN 1990, c. C-30, s. 8 (Newfoundland and Labrador).

196 S. 51 of the Code.

In addition, as already noted, the deadline specified in sections 45 and 46 of the Code can have a significant impact on the assets of Cabinet Ministers who are required to rapidly dispose of their interests.

At the federal level, reporting public office holders, including ministers, have 120 days after their appointment to divest their controlled assets, including publicly traded securities of corporations.[197] Within 60 days of their appointment, they must also provide the commissioner with a confidential report describing their assets, liabilities, income and activities.[198]

Consequently, we propose that the Code be amended to specify that Cabinet Ministers have 120 days to comply with sections 45 and 46, 60 days after the deadline for completing their first personal disclosure statement.

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RECOMMENDATION 18
That the Code be amended to give Cabinet Ministers 60 days from the deadline for completing their initial private-interest disclosure to comply with sections 45 and 46 of the Code.

3.2.4 Legal Instruments to Mitigate the Risk of Influence

The Code provides for two legal instruments that can be used to avoid the risk of a conflict of interest in certain circumstances: blind management agreements and blind trusts. They are outlined in sections 18 and 46.

First, pursuant to section 18 of the Code, a Member who is not a Cabinet Minister and who has an interest in a private enterprise that is a party to a contract with the government must obtain authorization from the commissioner. The commissioner's authorization may be subject to conditions, such as establishing a blind management agreement or creating a blind trust.

Second, section 45 of the Code states that Cabinet Ministers must dispose of their interests in public enterprises or place them in a blind trust or under a blind management agreement. In both these cases, the agreement and the trust create distance between the Member and the interest in question, primarily to ensure that the Members cannot exert influence or take advantage of information they have access to in order to further their private interests.

The Code does not define a blind trust or blind management agreement. For that purpose, we need to refer to general law, specifically the Civil Code of Québec, and rely on the explicit parameters set out in an information note issued in March 2014 by the Ethics Commissioner. Here are the main points:

197 *Conflict of Interest Act*, supra, note 34, s. 27 (1).

198 *Ibid.*, s. 22

- the trustee or mandatary should fulfill their duties in a fully independent and autonomous manner;
- the trustee or mandatary has full authority on the property that has been transferred;
- the prohibition to directly or indirectly exert any influence on the trustee or mandatary;
- the trustee or mandatary cannot receive, either directly or indirectly, instructions or advice from the MNA concerned, except for general instructions;
- the prohibition for the trustee or mandatary to contact the MNA for instructions or advice regarding the management of the transferred property.[199]

Although these tools are useful for preventing conflicts of interests, blind trusts and blind management agreements have certain limits. First of all, Members obviously do not automatically forget about the interests they have placed in a blind trust or blind management agreement.[200] The public may have doubts about their ability to act without taking their interests into account.

Furthermore, blind trusts or blind management agreements seem to be better suited to certain situations, such as a diversified portfolio. Placing a private enterprise in a blind trust or under a blind management agreement may not be suitable in some cases, such as sole proprietorships. In this situation, the Member would clearly know which assets are being administered by the mandatary or trustee. Moreover, even though the legislator seems to have given blind trusts and blind management agreements equal status, there are differences between these two legal instruments.

First, from a legal standpoint, the trust is a patrimony by appropriation,[201] which means it is separate from the elected official's patrimony. Members who place their interests in a trust are no longer the owners. Inversely, under a blind trust agreement, the assets managed by the mandatary are still part of the Member's patrimony and the Member retains ownership of them. Consequently, in the case of a blind trust, the separation between the elected official and the designated interests is more airtight.

Still from a legal standpoint, although blind trusts correspond fairly closely—provided certain adjustments are made—to trusts as defined in the *Civil Code of Québec*, blind management agreements have raised a number of questions among the legal advisors of Members who have used them. It is true that, in some respects, blind management agreements do not seem to correspond to the general law for mandates.[202] For example, the mandatary is required in principle to provide information to the mandator.[203] Likewise, in general, the mandator can revoke the mandate at any time.[204] These rules have to be adjusted for blind management agreements.

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199 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, p. 45.

200 Kerry Campbell, "Cabinet ministers and blind trusts: how it all works," CBC Prince Edward Island, May 15, 2019, online: https://www.cbc.ca/news/canada/prince-edward-island/pei-blind-trust-cabinet-conflict-1.5136542.

201 S. 1261 of the Civil Code of Québec; Jacques Beaulne, Droit des fiducies, 3rd ed., Montréal, Wilson & Lafleur, 2015, p. 535, para. 45.

202 Some observers view it as a contradiction in terms and say that the concept of a blind management agreement goes directly against the mandate rules set out in the Civil Code: Barette, André J., "La fiducie et le mandat sans droit de regard en droit civil québécois : une illusion ?" in Service de la formation continue, Barreau du Québec, vol. 411, *Développements récents en successions et fiducies*, Cowansville, Éditions Yvon Blais, 2016, p. 146.

203 S. 2139 of the *Civil Code of Québec*.

204 *Ibid.*, s. 2175. Section 2179 of the Civil Code of Québec allows the mandator to renounce this right under certain circumstances.

Finally, in practice, blind management agreements entail fewer legal formalities and are often less costly to set up than trusts. In the *Journal des débats* (Hansard), it appears that blind management agreements were proposed as an efficient, cost-effective solution.[205]

The Ethics Commissioner therefore intends to expand on the information note concerning blind trusts and blind management agreements and make model clauses available to Members.

3.2.4.1 Costs Incurred

Transferring interests to either a blind trust or a blind management agreement incurs costs for Members who use these methods. On this matter, we want to reiterate Recommendation 13 from the previous report on the Code's implementation. As mentioned in that report, "the House of Commons and the provinces of Ontario, Alberta and British Columbia provide that expenses related to the creation of a trust deed and the corresponding fees can be reimbursed upon request."[206]

It should be noted that the Committee on Institutions studied the report and was favourable to this recommendation, suggesting that the *Guideline on the Reimbursement of Costs Associated with Divestment of Assets and Withdrawal from Activities* issued in April 2015 by the Office of the Conflict of Interest and Ethics Commissioner of the Parliament of Canada be used as inspiration.

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RECOMMENDATION 19
That the Code be amended to allow the commissioner to authorize the reimbursement of the costs related to the creation of a blind trust or a blind management agreement and the corresponding fees.

3.2.4.2 Investment Policy

For Cabinet Ministers transferring stock-listed securities to blind trusts or blind management agreements, certain issues have arisen concerning investment policies. In particular, the Ethics Commissioner had to clarify how an investment policy, which describes the investor's financial position and outlines their investment goals, can be reconciled with the specific requirements of blind trusts and blind management agreements.

205 National Assembly of Québec, *Journal des débats de la Commission permanente des institutions*, 1st sess., 39th legis., June 2, 2010, Vol. 41, No. 80, p. 39.

206 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, p. 50.

It was determined that once Cabinet Ministers had established their investment policies, they could not modify them during their terms, thereby ensuring that the trusts or management agreements remained blind. However, if a Cabinet Minister whose assets have been placed in a blind trust or under a blind management agreement is re-elected and remains a Cabinet Minister, it seems excessive to prevent them from reviewing their investment policies between their two terms. For this reason, unless the legislator offers clarifications to the contrary, the commissioner would like to inform parliamentarians that after a first term in office, Cabinet Ministers who are re-elected and continue their ministerial positions without interruption could be authorized to review their investment policies.

Furthermore, to reconcile the concept of “blind trust” with a broker’s obligation to know their client, the Ethics Commissioner determined that brokers could periodically collect information about changes in their client’s circumstances in order to update their investor profile without allowing the Cabinet Minister to request a change in their investment policy.

CHAPTER 4

DAY-TO-DAY ETHICS AND GOOD CONDUCT IN THE NATIONAL ASSEMBLY

CHAPTER 4

The rules in the Code have an unequivocal impact on the daily lives of elected officials. As a result, they have changed their practices, both in their work in the Assembly and in their ridings. Some of the rules have been easily adopted by parliamentarians, but others require larger systemic changes and are not yet fully implemented in the day-to-day practice of Québec politics. The rules related to gifts and benefits and the use of State property and services are among these. We could also work toward a political culture in Québec that more effectively integrates ethical questions. Actors in the political and parliamentary environment must continue to develop an even stronger ethical reflex, and we will also make a few suggestions along these lines.

4.1 Gifts and Benefits Received by Elected Officials and Their Political Staff

Sections 29 to 34 of the Code set out the terms and conditions for the receipt of gifts and benefits by Members. These sections are as follows:

> **29. A Member must not solicit, elicit, accept or receive any benefit, 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.**
>
> **30. A Member must refuse or, at the first opportunity and after requesting an advisory opinion from the Ethics Commissioner, return to the donor or deliver to the Ethics Commissioner any gift, hospitality or other benefit, whatever its value, that may impair his or her independence of judgement in carrying out the duties of office, or that may compromise the Member's integrity or that of the National Assembly. If the Member refuses such a benefit, he or she so informs the Ethics Commissioner in writing.**
>
> **31. A Member who receives, directly or indirectly, a gift, hospitality or other benefit that has a value of more than $200 and chooses not to return it to the donor or not to deliver it to the Ethics Commissioner must, within 30 days, file with the Ethics Commissioner a disclosure statement containing an accurate description of the gift, hospitality or benefit received and specifying the name of the donor and the date on which and circumstances under which it was received.**
>
> **The Ethics Commissioner keeps a public register in which such statements are recorded.**
>
> **If a Member returns a thing to the donor, the Member so informs the Ethics Commissioner in writing.**
>
> **32. Section 31 does not apply to gifts, hospitality or other benefits received by a Member in the context of a purely private relationship.**
>
> **33. For the purposes of sections 30 and 31, the repeated receipt of gifts, hospitality and other benefits from the same source must be taken into account.**
>
> **For the purposes of section 31, the $200 is computed over a 12-month period.**
>
> **34. The things delivered to the Ethics Commissioner under this chapter are turned over to the Secretary General of the National Assembly. The Secretary General disposes of them as appropriate.**

In other words, Members may, in principle, accept a gift or a benefit that is offered to them, subject to certain exceptions. When assessing the acceptability of a gift or benefit that is offered to an elected official, it is important in all cases to ask why it is being offered. Its acceptability must always be assessed in light of the context in which it is being offered to the parliamentarian.

While the rules on gifts and benefits may seem simple to read, they are among the most complex to implement on a daily basis. Perceptions of this matter vary greatly from one elected official to another. When training is provided by the Ethics Commissioner, the rules on gifts and benefits are among those that elicit the most questions and discussion.

Some elected officials do not want to accept any gifts or benefits whatsoever while in office. They have a very negative perception of the consequences that these gifts could have on their duties and what the public might think about it. They would rather refuse gifts than have to report them to the Ethics Commissioner.

Other elected officials have a very narrow view of what constitutes a gift or a benefit. They feel that some of the events they attend, for which they have received an invitation as a gift, are entirely within the scope of their duties of office and that therefore they should not have to report them.

As is the case in the other provincial legislatures[207] and Canada's Parliament, the most common type of gift or benefit offered to a Member of the National Assembly is an invitation to participate in an event, such as a fundraiser for a not-for-profit organization. While a free ticket can easily be perceived as a gift, the concept of benefit can be interpreted quite broadly. At the federal level, the *Conflict of Interest Act* defines "gift or other benefit" as any amount of money, if there is no obligation to repay it, or any service or property, or the use of property or money that is given without charge or at less than its commercial value.[208] The concept of benefit included in the Code is also interpreted in this way.

4.1.1 Ownership of Assets Received

In recent years, the question as to who owns gifts received and accepted was raised with the Ethics Commissioner on a number of occasions, particularly in the pre-election or post-election period. Are these gifts related to the Member or the position held? Although they may have been offered to the Member because of the position they hold, they have always been deemed to belong to the Member and not to the position. This gives the Member the freedom to determine what happens to those gifts, while ensuring they comply with the other rules of the Code in this situation.

At the federal level and in some provinces, the rules sometimes specify who owns these gifts. The *Conflict of Interest Act* stipulates that certain gifts or benefits that have a value of $1,000 or more are forfeited "to Her Majesty in right of Canada."[209] In the Northwest Territories, any gift valued at more than $400 is deemed to be the property of the Legislative Assembly or Government and cannot be kept by the office holder at the end of their term.[210]

Therefore, in the absence of details regarding the ownership of gifts and benefits received by Members of the National Assembly, the commissioner concluded that they are the property of the Member who receives them, and that the Member is free to do as he wishes with them, in compliance with the provisions of the Code.

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207 Canada, Office of the Conflict of Interest and Ethics Commissioner, *Conflict of Interest Code for Members of the House of Commons: 2015 Review, Submission to the Standing Committee on Procedure and House Affairs*, February 19, 2015, p. 4.

208 *Conflict of Interest Act*, supra, 34, s. 2(1).

209 *Ibid.*, s. 11(3).

210 *Legislative Assembly and Executive Council Act*, supra, 168, section 86 (3).

4.1.2 In-Depth Reflection Required

As already mentioned, the sections of the Code concerning gifts and benefits allow for some latitude in their interpretation. Despite their sometimes-complex implementation, the wording of these sections is flexible and does not place too many limitations on Members in carrying out their duties of office. Some interpretive guidelines for these sections need to be defined, however, in order to provide better support for Members in their daily duties. We want to launch a major study on the issue of gifts and benefits over the next few months. It will allow us to clarify the interpretation given to sections 29 and subsequent of the Code. A comprehensive review of current guidelines on gifts and benefits[211] is planned. A number of stakeholders will be involved in this process, and first to be heard will be the Members of the National Assembly.

The current guidelines on gifts and benefits were developed in May 2012, very shortly after the Code came into force. These guidelines set out several specific policy directions for gifts and benefits to declare, but customs related to ethics and professional conduct in political circles have since evolved. Moreover, elected officials are increasingly aware of the importance of disclosures and transparency. It is also important to continue to change perceptions about both the acceptance and the publication of gifts and benefits.

When the specific policy directions and exceptions in the guidelines are reviewed, some of them will be assessed. For example, the exclusion from disclosure for gifts received in exchange for grants obtained under the Soutien à l'action bénévole program[212] will have to be analyzed. The exclusion of normal and customary signs of courtesy, protocol or hospitality will also be reviewed. Many of the concepts they contain can be difficult to differentiate from one another. The study will also provide the opportunity to assess whether, as is the case at the Federal level[213] and in other provincial governments, it would be appropriate to introduce detailed regulations concerning travel paid for by third parties that some Members of the National Assembly may receive.

Until this study is completed, we invite elected officials to declare gifts and benefits received that have a value of $200 or more, regardless of their origin and the context in which they were received,[214] since the Code itself does not make specific distinctions. After the study, new guidelines on gifts and benefits will be published. A support guide for elected officials and their staff will also be produced to help them more effectively apply the rules on gifts and benefits in the course of their duties.

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211 Ethics Commissioner, *Lignes directrices – Dons, avantages et marques d'hospitalité*, May 2012, online: https://www.ced-qc.ca/fr/document/1304.

212 It should be noted, however, that we have already received many disclosure statements from elected officials relating to gifts and benefits received from organizations that received funding through the Soutien à l'action bénévole program.

213 *Conflict of Interest Code for Members of the House of Commons*, supra, 45, section 15; *Conflict of Interest Act*, supra, note 34, section 12.

214 With the exception of gifts received in the context of a purely private relationship, which are not subject to such statements, as set out in section 32 of the Code.

4.2 Aiming for Better Balance Between Practice and Ethics at the National Assembly

A study should also be undertaken on the allowances received by Members and their working conditions, to align with the Code. The Ethics Commissioner wants to encourage the development of daily practices in the National Assembly in alignment with the Code. In accordance with its provisions, property and services made available to elected officials by the State must be used by them responsibly and diligently.

4.2.1 Allowances and Budgets Available to Members and Their Oversight

A number of allowances and budgets are made available to elected officials by the National Assembly in the exercise of their duties of office. These allowances and budgets have different legislative and decision-making sources.[215] For more information on this subject, please consult the allowances and indemnities section of the National Assembly website.[216]

With respect to budgets and allowances elected officials receive, the Code explicitly stipulates that State property and services made available to them by the State are only to be used for activities related to the exercise of their duties of office. The section reads as follows:

> **36. A Member uses, and allows the use of, State property, including property leased by the State and services made available to the Member by the State, for activities related to the carrying out of the duties of office.**

This section requires the budgets and allowances available to the Member to be used responsibly in the exercise of their duties. The commissioner has the jurisdiction to assess whether the resources allocated to an elected official have been used in the exercise of their duties of office. It was determined, for example, in previous reports from the Ethics Commissioner, that the budgets made available to a Member to pay for staff cannot be used for partisan purposes.[217]

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215 Including the *Act respecting the conditions of employment and the pension plan of the Members of the National Assembly* supra, note 16, the *Act respecting the National Assembly*, supra, note 6, the *Regulation Respecting Members' and House Officers' Allowances and Research and Administrative Support Funding*, Decision No. 1603 by the Office of the National Assembly, November 10, 2011, etc.

216 National Assembly of Québec, *Indemnities and Allowances*, online: http://www.assnat.qc.ca/en/abc-assemblee/fonction-depute/indemnites-allocations.html.

217 Ethics Commissioner, *Rapport au sujet de madame Carole Poirier, whip en chef de l'opposition officielle et députée d'Hochelaga-Maisonneuve*, 8 novembre 2017; Ethics Commissioner, *Rapport au sujet de monsieur Donald Martel, whip du deuxième groupe d'opposition et député de Nicolet-Bécancour*, 16 novembre 2017; Ethics Commissioner, *Rapport au sujet de monsieur Claude Surprenant, député de Groulx*, 30 novembre 2017; Ethics Commissioner, *Rapport au sujet de madame Christine St-Pierre, ministre des Relations internationales et de la Francophonie et députée d'Acadie, de madame Lise Thériault, vice-première ministre, ministre responsable des Petites et Moyennes Entreprises, de l'Allègement règlementaire et du Développement économique régional et députée d'Anjou-Louis-Riel, de monsieur Pierre Arcand, ministre de l'Énergie et des Ressources naturelles, ministre responsable du Plan Nord et député de Mont-Royal, de monsieur Sébastien Proulx, ministre de l'Éducation, du Loisir et du Sport, ministre de la Famille et député de Jean-Talon, de monsieur Jean D'Amour, ministre délégué aux Affaires maritimes et député de Rivière-du-Loup–Témiscouata et de monsieur Yves Bolduc, ex-ministre de l'Éducation, du Loisir et du Sport, ex-ministre de l'Enseignement supérieur, de la Recherche et de la Science et ex-député de Jean-Talon*, 8 novembre 2017.

In addition to the budgets and allowances made available to them by the National Assembly, Members are responsible for allocating other budgets. For example, each Member has funding under the Soutien à l'action bénévole program administered by the Ministère de l'Éducation et de l'Enseignement supérieur. The purpose of this program is to provide financial assistance to organizations working to meet the needs of their community in the areas of recreation, sport or community action.[218] Discretionary budgets are also available for Cabinet Ministers to fund organizations and initiatives of their choice.

In the context of the use of these various budgets and allowances, including those provided by the National Assembly, elected officials must ensure that they comply with all the ethical rules set out in the Code, including those concerning conflicts of interest. These budgets and allowances are administered in the exercise of their duties of office. As such, elected officials cannot, for example, use these funds to further their private interests or those of a member of their immediate family or, inappropriately, those of any other person.

In recent years, a great deal of work has been done by both the Ethics Commissioner and the National Assembly to make elected officials aware of these issues and to encourage them to pay particular attention to the use of State property and services. In May 2017, the National Assembly passed the *Lignes directrices portant sur les budgets et allocations versés par l'Assemblée nationale aux députés et aux titulaires de cabinet pour l'exercice de leurs fonctions parlementaires*.[219] These guidelines specify how budgets and allowances paid by the National Assembly can be used by elected officials. They restate the general principle underlying the allocation and use of funds and allowances paid by the National Assembly, namely that they are intended to support Members and cabinet holders in the exercise of their duties of office. They reiterate that these funds cannot be used for other purposes. They also invite Members to distinguish between activities and functions related to their duties of office and those related to the party. Furthermore, they clarify some non-compliant uses of the National Assembly's resources, including that money allocated by the National Assembly may not be used in any way to further the private interests of the Member or their family or in a variety of partisan activities. In addition to adopting these guidelines, which are appended to the *Guide du député de l'Assemblée nationale du Québec*,[220] more awareness needs to be raised directly with elected officials on the use of budgets and allowances.

The allowances granted by the National Assembly should also be studied, since most of the rules governing them have not been reviewed since the Code came into force. For example, currently, there is nothing to prevent an elected official from keeping the profit from the sale of a home acquired using their housing allowance, but section 16 of the Code expressly prohibits elected officials from furthering their private interests or those of their immediate family.

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218 Ministry of Education and Higher Education, *Programme Soutien à l'action bénévole*, online: http://www4.gouv.qc.ca/fr/Portail/citoyens/programme-service/Pages/Info.aspx?sqctype=sujet&sqcid=371.

219 National Assembly of Québec, *Guide du député de l'Assemblée nationale du Québec*, 42nd legislature, October 2018, Schedule G.

220 *Ibid.*

We believe that a review of the rules of the Office of the National Assembly on allowances and budgets should be considered, taking into account all the rules set out in the Code. This review would ideally be carried out in collaboration with the Ethics Commissioner to ensure that the rules are consistent with the principles set out in the Code. The goal of this process is to strive for consistency among the various rules that apply to elected officials in their duties of office, in order to facilitate understanding and implementation. A similar examination and awareness effort should be carried out with the various authorities responsible for administering a particular budget that is allocated by a Member of the National Assembly.

Furthermore, the cooperation between the National Assembly and the Ethics Commissioner must continue to evolve. Elected officials frequently contact the Ethics Commissioner on the advice of the administrative staff of the National Assembly when a situation raises ethical questions. This cooperation between the two institutions is desirable and necessary.

RECOMMENDATION 20

That the rules on allowances and budgets granted by the National Assembly or attributed, in whole or in part, by parliamentarians be revised, in collaboration with the Ethics Commissioner, to ensure that they are consistent with the rules and principles set out in the Code.

R 20

4.2.2 An Independent Committee on Working Conditions

In 2013, an independent committee was created, chaired by former Justice Claire L'Heureux-Dubé, to reflect on the indemnities and allowances related to the office of Member as well as other matters. Two years later, Bill 79, *An Act to give effect to the report of the L'Heureux-Dubé independent committee and to introduce the conditions of employment of the Members of the National Assembly as of the 42nd Legislature*,[221] was tabled by the government. Bill 79 included a number of amendments to the rules on indemnities and allowances available to elected officials. In particular, it proposed that the transition allowance available to a Member who resigns be calculated based on employment, professional, business and retirement income and disability insurance benefits declared to the Ethics Commissioner. It also set out changes to the terms of repayment for housing costs available to the Members and included a declaration of principal residence with the Ethics Commissioner. The bill was not debated, however, and died on the order paper.

Commissioner St. Laurent's first report on the implementation of the Code outlined the work of the independent advisory committee.[222] The commissioner offered reflections on the risk of conflict of interest for Members arising from the fact that they were determining their own working conditions, including compensation and allowances:

221 *An Act to give effect to the report of the L'Heureux-Dubé independent committee and to introduce the conditions of employment of the Members of the National Assembly as of the 42nd Legislature*, Bill no. 79 (introduced on November 12, 2015), 1st sess., 41st legis., Québec.

222 Independent advisory committee on the conditions of employment and pension plan of the Members of the National Assembly, supra, note 18.

In June 2013, the Office of the National Assembly mandated an independent advisory committee to investigate the conditions of employment and the pension plan of MNAs and Cabinet Ministers.

In November 2013, after careful deliberation, this committee made several recommendations with consideration to the importance of the office of MNAs and their essential role in maintaining a healthy democracy.

In accordance with the *Act respecting the conditions of employment and the pension plan of the Members of the National Assembly* (chapter C-52.1), initially adopted in 1982, MNAs determined their conditions of employment, including their remuneration, transitional allowances and pension plan, in addition to giving certain powers to the Office of the National Assembly.

In their report of November 2013, the members of the independent advisory committee stressed the importance of assigning an independent authority to determine the conditions of employment of Members.

The same conclusion should be drawn under the rules of conduct prescribed by the Code. In fact, the appearance of conflict of interest is difficult to dismiss when Members of the National Assembly determine their own remuneration and other employment conditions, through legislative powers delegated to them by the people.

“15. A Member must not place himself or herself in a situation where his or her private interests may impair independence of judgement in carrying out the duties of office.”

In the case of a person who engages on their own account in professional, commercial or industrial activities, it goes without saying that they may set their own conditions of employment and their remuneration, paid from resulting assets or income. However, in the case of MNAs, the same observation seems difficult to sustain. With regard to public funds, we cannot rule out the possibility that a reasonably well-informed person may question the existence of a conflict of interest when Members determine their own conditions of employment and remuneration, whatever they may be.

Under the Code, there must be no doubt whatsoever in the public’s mind regarding a potential conflict of interest in determining the conditions of employment and remuneration of MNAs. In this regard, the committee’s report suggests ways to ensure the independence of the process. The Ethics Commissioner does not rule on the amount of the remuneration or allowances. However, in my opinion, it is important to implement immediate steps to eliminate the risk of a conflict of interest when determining conditions of employment and remuneration for Members of the National Assembly.

In this regard, I support Recommendation 31 of the independent advisory committee, which states that the National Assembly should consider the establishment of a permanent independent committee with decision-making powers in terms of MNA employment conditions the Assembly should also define the mandate of this committee, the appointment process of members and the operating rules to ensure its independence and authority.

> At this point, Members of the National Assembly must commit to establishing an independent process, within a peremptory timeframe decided by them.[223]

An *Act to amend the Act respecting the conditions of employment and the pension plan of the Members of the National Assembly following the adoption of certain fiscal measures by the Parliament of Canada*,[224] passed in June 2019, raised the same criticism. In the current circumstances, the elected officials are still the people proposing and setting their own working conditions. This inevitably places them in a conflict of interest. Providing an independent mechanism in this regard would comply fully with the ethical rules set out in the Code, as pointed out by Commissioner Saint-Laurent, and strengthen the citizens' trust in their elected officials.

RECOMMENDATION 21

That an independent mechanism be established to determine the working conditions of the Members of the National Assembly.

R 21

4.2.3 Encouraging the Transparency and Review of Budgets and Allowances

On another topic, we would like to suggest that it would be wise to study the publication and review of the allowances and budgets available to Members of the National Assembly of Québec.[225] In the majority of legislative assemblies in Canada,[226] it is possible to find public expense reports for parliamentarians, for both the constituency and for travel-related expenses. Some legislative assemblies, such as the one in British Columbia, even directly publish receipts provided by officials elected to the Legislative Assembly to justify the reimbursed expense.[227]

Some legislative assemblies have also instituted independent review mechanisms for these expenses. In Ontario, for example, the integrity commissioner reviews the expenses of ministers, parliamentary assistants, opposition party leaders and their staff. Expenses that are subject to this review are also made public online. This is also the case for the expenses of all elected members of the Legislative Assembly of Ontario.

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223 *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly, 2011-2014*, supra, note 12, pp. 37-38.

224 *An Act to amend the Act respecting the conditions of employment and the pension plan of the Members of the National Assembly following the adoption of certain fiscal measures by the Parliament of Canada*, SQ 2019, c. 10.

225 We should note that the expense reports of Cabinet Ministers are already available on their respective department's sites, but the portion of expenses related to their status as Members of the National Assembly is not made public.

226 Public expense reports such as these have been found on the websites of the House of Commons and Senate and the legislative assemblies of Ontario, Alberta, British Columbia, Manitoba, Saskatchewan, Prince Edward Island, New Brunswick and Nova Scotia. Detailed references can be found in the bibliography at the end of this report.

227 The quarterly reports and receipts provided can be viewed directly on the website of the Legislative Assembly of British Columbia. See Legislative Assembly of British Columbia, Accountability, online: https://www.leg.bc.ca/learn-about-us/accountability.

The models used by provincial legislatures and the federal parliament offer interesting examples. Publishing the expenses of elected officials and offering greater transparency concerning the use of allowances would clearly also improve the citizens' trust. Instituting this system would also promote equity among all parliamentarians and encourage them to be more rigorous in the use of their allowances and budgets, and the goal of section 36 of the Code would be strengthened by greater transparency in this area. When more details are available on the use of allowances, it makes it easier to demonstrate that they are related to carrying out a Member's duties of office. Furthermore, in the event of doubt, such a system would encourage elected officials to contact the Ethics Commissioner to ensure that their use of their allowances is compliant with the Code, knowing that it will be made public.

In the French National Assembly, since 2017, the rule has been that the Compliance Officer of the National Assembly can audit[228] any expense covered directly by the Assembly and receive, from the services of the National Assembly, all documents justifying why it should be covered.[229] The Compliance Officer can also review expenses incurred using the advances paid to the Members on a monthly basis.[230] The Compliance Officer's powers of audit are carried out in two ways: at the end of the fiscal year, on all the Member's accounts, and during the fiscal year, at any time, on expenses charged by the Member from to their advance.[231] All the Members are subject to a review by the Compliance Officer at least once per parliamentary term: The annual review is arranged in such a way that all members are randomly audited at least once during the same parliamentary term, by survey or sampling.[232]

Finally, we would also like to bring to the attention of Québec parliamentarians the Independent Parliamentary Standards Authority ("IPSA") model adopted in the United Kingdom. The IPSA is a public agency that is fully independent of the parliament and government[233] and that provides full transparency for allowances and indemnities available to elected officials. It is responsible for setting the salaries and pension benefits for parliamentarians, as well as the budgets and allowances available to them to carry out their duties of office. It also ensures that the use they make of the amounts they receive complies with the applicable rules. Finally, it controls the allocation and use of allowances during election periods. This system, which to date has no equivalent in Canada, is nevertheless worthy of interest in the quest for greater transparency and better control over the budgets and allowances available to the elected officials of the National Assembly.

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RECOMMENDATION 22

That mechanisms are put in place to promote transparency and review the use of allowances and budgets allocated to parliamentarians.

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228 French National Assembly, *Arrêté du Bureau no 12/XV du 29 novembre 2017 relatif aux frais de mandat des députés*, s. 3, para. 1.

229 *Ibid.*

230 *Ibid.*, para. 2.

231 *Ibid.*, para. 3.

232 *Ibid.*, para. 4. With respect to the requirement to control parliamentary expenses, see also Agnès Roblot-Troizier, *Un nouvel élan pour la déontologie parlementaire – Rapport annuel remis au Président et au Bureau de l'Assemblée nationale les 14 and 30 janvier 2019, en application de l'article 80-3 du Règlement de l'Assemblée nationale*, January 14 and 30, 2019, pp. 33-35.

233 *Independent Parliamentary Standards Authority*, online: https://www.theipsa.org.uk/.

4.3 Toward a Political Culture that Incorporates Ethics and Good Conduct

In addition to the changes that should be made to public policies on transparency, ethics and conduct, it is also important to examine and work toward the development of a political culture centred on the idea that ethics and good conduct have become indispensable in the lives of elected officials. This renewed political culture would allow them to easily adhere to these standards in the context of activities related to their duties of office.

To fully understand why ethical principles and standards must be at the heart of the parliamentarians' mission, Members must be perceived to have ethical duties. In particular, they must act in the public interest, not in their own interest. This principle is at the heart of the responsibilities of the Members of the National Assembly.

To develop a political culture that is more in line with this idea, everyone who deals with elected officials must be made aware of the ethical issues and ethical standards set out in the Code. Finally, this renewed political culture should emphasize the values at the heart of the Code and its effective implementation.

4.3.1 Mandatory Training for People Who Work with Elected Officials

Members of the staff of elected officials and Cabinet Ministers are already subject to rules of ethics and conduct, and people who deal with political actors are increasingly aware of the importance of ethics and conduct. For example, some political parties have their own code of ethics.

More work remains to be done in this area, however. It might be beneficial to implement mandatory training for employees of the National Assembly and senior civil servants who work with ministers and their staff, to more effectively guide them to the Ethics Commissioner when issues covered by the Code may be in play. Ethics and professional conduct must be incorporated into all spheres of elected officials' responsibilities, and they must benefit from the best possible support in this regard.

It would also be appropriate to conduct more communication initiatives with the public and with people interested in the political sphere, in general, to inform them about the Ethics Commissioner, its qualifications and what it can do. The citizens' expectations should also take into consideration the Ethics Commissioner's specific role in Québec's political landscape. The Ethics Commissioner should become the focal point for all ethical issues related to Québec's parliamentary life and its mission should be shared as widely as possible. It is up to the Ethics Commissioner to continue to do this, with support from stakeholders in the political community.

4.3.2 Clarifying Ethical Values and Principles

The Code is unique in that it is not just a code of ethics. It outlines values and ethical principles of general application that support the interpretation of the rules of conduct, but that also allow us to go beyond these rules in its implementation. When the Ethics Commissioner is called upon to give an opinion, the values and ethical principles can exceed the text of the Code and encourage the people in question to reflect.

The values set out in the Code must serve at all times as a reference for Members and guide them in carrying out their duties of office.

> **6. The values of the National Assembly are as follows:**
>
> **(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.**
>
> **7. Members embrace the values set out in this Title.**
>
> **8. Members recognize that these values must guide them in carrying out their duties of office and determining the rules of conduct applicable to them, and be taken into account in interpreting those rules. They strive for consistency between their actions and the values set out in this Title, even when their actions do not in themselves contravene the applicable rules of conduct.**
>
> **9. Members recognize that their adherence to these values is essential to maintain the confidence of the people in them and the National Assembly and enable them to fully achieve their mission of serving the public interest.**

These values and ethical principles form the backbone of the Code and give meaning to the rest of the ethical obligations it sets out. To facilitate understanding, it may be appropriate to clarify and contextualize these values and principles. Since values are flexible, dynamic concepts and since Members themselves help define them, their application criteria cannot be decided unilaterally by the Ethics Commissioner. Once this exercise is completed, a guide could be developed to help elected officials incorporate these principles and values into their day-to-day decision-making.

To support the development of a political culture that incorporates ethics and professional conduct, the values and ethical principles in the Code must be brought to the forefront of the thinking of elected officials and the people who deal with them. For this reason, it is important for the Ethics Commissioner to maintain connections with many stakeholders, such as academic researchers and networks of ethics commissioners, each of whom can offer a unique contribution to the examination of how to more fully incorporate ethics and values into the daily lives of elected officials. The ideals of ethics and professional conduct are constantly evolving and cannot be practised in isolation, without outside influence or without consideration of the context.

Beyond the question of whether or not the rules of the Code allow a particular action, we need to determine whether that action upholds the values and ethical principles. Incorporating this simple question into the daily lives of elected officials will allow them to expand the scope of their ethical reflections in the course of their actions.

Conclusion

At the end of this journey into the implementation of ethics and conduct with the Members of the National Assembly of Québec, we were able to present interpretations and shed light on various issues related to the day-to-day application of the Code. The exercise has not been exhaustive, but it has revealed the issues that are raising the most important questions at this time.

As ethics and professional conduct are continually evolving, this work has also demonstrated the full importance of preparing this implementation report. Nine years after the Code came into force, we can see the progress the parliamentary community has made in this regard. Through this exercise, we were also able to identify some avenues for exploration. The reflexiveness this report allows is certainly a benefit for achieving our mission, since it provides a unique opportunity to communicate our vision of ethics and professional conduct to parliamentarians and citizens.

This report also puts a number of findings into perspective, including the need for and relevance of an institution such as the Ethics Commissioner. Supporting the Members of the National Assembly on a day-to-day basis is a privilege and a great responsibility, given the fundamental role they play at the heart of our democracy. The Ethics Commissioner helps strengthen their efforts to improve society by assuring citizens that they are acting in accordance with the rules of conduct and ethical principles set out in the Code.

Finally, this report demonstrates that the institution must continue to develop and to protect its independence, which is the only guarantee of the citizens' confidence in the process. There is a fine balance to be maintained—in terms of ethics, transparency and probity—between the general public's expectations of their elected officials and the flexibility those officials need to carry out their duties of office. It takes an institution like the Ethics Commissioner to nurture and maintain that balance.

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