

SUMMARY

BACKGROUND

The present inquiry was conducted on the initiative of the Commissioner after information from the Unité permanente anticorruption regarding the use of the housing allowance paid by the National Assembly to the Member for Brome-Missisquoi (hereinafter the “Member”) was brought to her attention. The purpose of the inquiry was to determine whether any breaches had been committed under section 6 of the *Code of ethics and conduct of the Members of the National Assembly* (hereinafter the “Code”) during the period from December 8, 2010, to December 31, 2011, and under sections 6, 16, 36, and 41 of the Code from January 1, 2012.

Title I of the Code regarding values and ethical principles came into force on the day of his sanction, that is December 8, 2010. The rules of conduct that apply to all Members, which include sections 16, 36, and 41, came into force on January 1, 2012.

FACTS

The Member received an allowance to cover his housing costs in the city of Québec under section 74 of the *Règlement sur les allocations aux députés et aux titulaires de cabinet et sur les sommes versées à des fins de recherche et de soutien* [French only] (Rule regarding allowances for Members and Cabinet Ministers given for research and support purposes) adopted by the Office of the National Assembly. Between January 1, 2012, and December 15, 2015, the amount of the allowance received went from \$1,200 to \$1,267.

The Member rented an apartment on Rue Aberdeen between February 1, 2009, and May 15, 2012. The apartment had 3 bedrooms and the rental fee was \$1435 per month. The Member’s daughter, her spouse, and their child lived at this address, but did not appear on the lease and did not pay rent. One room of this dwelling was exclusively reserved for the Member.

On March 5, 2012, the Member’s daughter and her spouse bought a condominium on Avenue de Bienville. The Member then signed a lease with his son-in-law to rent the former the 2-bedroom dwelling in its entirety for \$1,300. The lease, effective May 16, 2012, is signed by the Member and his son-in-law and does not mention the name of the Member’s daughter. This rented dwelling remains the residence of the Member’s daughter and his son-in-law. Additionally, there is no room reserved exclusively for the Member who, during his stays in the city of Québec, sleeps in his grandchild’s room. The lease ended on December 15, 2015, following the sale of the condominium. From this date forward, the Member stayed in a hotel while in Québec City.

In the Member’s private-interests statements for 2014 and 2015, only his son-in-law appears as the landlord and the civic number of the dwelling is not mentioned.

PRELIMINARY REMARKS

Before undertaking an analysis of applicable law based on the facts, the Commissioner hears arguments raised with regard to her competence, impartiality, the Member's independence, his right to a full and complete defence, and the confidentiality of the inquiry.

ANALYSIS OF APPLICABLE LAW

Prohibition on furthering of interests (section 16)

Under section 16 (1) of the Code, it must be determined whether, when carrying out the duties of his office, the Member furthered the interests of his daughter and, improperly, those of his son-in-law.

The Code purely and simply prohibits the Member from furthering the interests of members of his immediate family or his non-dependent child. Nonetheless, the Code is not to be interpreted as prohibiting work/family reconciliation. Indeed, when interpreting the provisions of the Code, it is essential to be reasonable and to take into account the reality of Members, who are often forced to be away from their family home. Subject to other circumstances, a Member who houses his spouse or dependent child in the city of Québec for the purpose of pursuing an education would not be in breach of section 16 of the Code. Likewise, a Member who shares his dwelling with his non-dependent child, provided that they proportionately share the costs of occupying the dwelling, would not be in breach of section 16 of the Code.

In this case, however, the Member's daughter and son-in-law are of legal age and financially independent; they had been working full-time for several years. In addition, they had also formed their own family unit, since they were parents of a child. This situation goes well beyond the normal framework of work/family reconciliation.

After analyzing the facts, it can be concluded that the interests of the Member's daughter were first furthered when she was housed free of charge on Rue Aberdeen. Her interests were also furthered during the period that the Member rented the dwelling on Avenue de Bienville.

With regard to the Member's son-in-law, he falls under "another person" in accordance with section 16 of the Code. Therefore, improperly furthering his interests is prohibited. The expression "improperly" has been interpreted as meaning excessively, unjustifiably, unreasonably, or even in an illegal manner. In addition, the fact that the Member and his son-in-law are in-laws is a factor that must be considered when determining the improper nature of the way interests are furthered.

In this case, in addition to benefiting from free housing on Rue Aberdeen, the son-in-law received from the Member excessive and unreasonable rent for the dwelling on Avenue de Bienville. Furthermore, the amount of the mortgage assumed by the Member's son-in-law was almost entirely covered by the rent received from the Member. In these circumstances, it can be concluded that the interests of the Member's son-in-law were improperly furthered.

For these reasons, it is determined that the Member committed a breach of section 16 (1) of the Code.

Use of State Property and Services (section 36)

Under section 36 of the Code, it must be determined whether the Member made irregular use of State property and services.

In the context of section 36, the concept of State property and services is linked to that of public funds. Thus, it is the allowance designed to cover housing costs incurred by Members when in the city of Québec to carry out their duties that leads to the application of section 36. To constitute a breach of section 36, the Member must make irregular use (use that is not “normal”) of State property and services.

Use of State property and services that, as in this case, furthers interests contrary to section 16 of the Code certainly does not constitute normal use of this property and these services. In these circumstances, the allowance was certainly used to house the Member while he was in the city of Québec, but the Member first used it to house his non-dependent child and his son-in-law on Rue Aberdeen and then to make them a significant financial contribution while they were living on Avenue de Bienville.

For these reasons, the Commissioner concludes that the Member committed a breach of section 36 of the Code.

Acts Contrary to The Code (section 41)

Under section 41, it must be determined whether the Member misled or attempted to mislead the Commissioner in the exercise of his functions by not disclosing that the landlord of the dwelling that he rented on Avenue de Bienville was his son-in-law and that the daughter was also an owner, and by giving incomplete information in his declaration of interests regarding this dwelling for 2014 and 2015.

To determine a breach, there must be preponderant, convincing proof that is not possible to fully ascertain with regard to this aspect of the inquiry. Indeed, the Commissioner does not have sufficiently detailed proof with regard to the exchanges that took place between Commissioner Saint-Laurent and the Member.

For these reasons, and in this particular context, it cannot be concluded that the Member attempted to mislead the Commissioner within the meaning of section 41 (3) of the Code.

Values of the National Assembly (section 6)

This Member’s actions related to the use of his allowance for housing costs are deemed contrary to the values of the National Assembly and to the ethical principles of the Code. In this case, he used his housing allowance from public funds to house his non-dependent child and his son-in-law, and then to pay them rent for several years. Furthermore, with regard to the dwelling on Avenue de Bienville, the information obtained as part of the present inquiry reveals that the lease, based on which the Member was allocated a housing allowance, was not consistent with the reality. In addition, he never reported this situation to the

Commissioner, notably through his declaration of personal interests. Under the circumstances, the Member did not act with integrity, wisdom, honesty, sincerity, justice, and discipline.

The Commissioner therefore concludes that the Member's conduct was not consistent with the values of the National Assembly outlined in section 6 of the Code.

CONCLUSION

The Commissioner concludes that the Member committed a breach of sections 6, 16, and 36 of the Code. However, the Member did not commit a breach of section 41 of the Code.

RECOMMENDATION REGARDING A SANCTION

Given the breaches identified and considering the extent of the period during which the breaches persisted, the Commissioner concluded that a sanction should be imposed on the Member. His actions regarding the use of his allowance for housing costs were not of a nature to inspire the people's confidence in Members of Parliament and the National Assembly, given that it was also a matter of public funds.

In this case, given the Member's breaches involving improper use of public funds, it is appropriate that the sanction reflect the irregular use of these funds and the resulting overpayment.

In these circumstances, the Commissioner recommends that a penalty be imposed on the Member in accordance with paragraph 2 of section 99 of the Code. The amount of this penalty corresponds to the difference between the allowance received and the rental value established by the Service de l'évaluation de la Ville de Québec for the room occupied by the Member in each of the dwellings and for the periods in which breaches of the Code were found.

The amount of \$250 per month is deducted from this amount to take into account the expenses that the Member could have claimed in the event that the rent he paid did not reach the maximum allowance amount he was entitled to. This amount of \$250 does not include the cost of electricity and telephone services, which are already considered in the assessment of the rental value.

Based on the foregoing, the recommended penalty totals \$24,443.63.

GENERAL RECOMMENDATIONS

A review of the rules of the NAO regarding allowances must be envisioned taking into account the Code so that there is no discrepancy between these two texts. Given that we are at the threshold of a new legislature, it seems to be the ideal moment for such a revision to take place. To this end, the Commissioner offers her full support to members of the NAO.

It is also beneficial to remind members of the National Assembly that they must demonstrate transparency to the Ethics Commissioner with regard to the use of the allowances they receive, and that it is always more prudent to seek advice regarding their situations.

Furthermore, it should be noted that according to section 107 of the Code, “[any] sum of money collected under this Code is paid into the Consolidated Revenue Fund.” In the Commissioner’s opinion, modification of this provision should be considered so that in the event that, as is the case here, the sums come from the National Assembly, they can also be returned to it given the separation of powers.