



ETHICS
COMMISSIONER

REPORT ON THE IMPLEMENTATION OF THE CODE OF ETHICS AND CONDUCT OF THE MEMBERS OF THE NATIONAL ASSEMBLY

2011-2014



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Québec, February 2015

Mr. Jacques Chagnon
President of the National Assembly
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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 my first *Report on the implementation of the Code of ethics and conduct of the Members of the National Assembly*, for the period extending from January 6, 2011, to December 31, 2014.

The Implementation Report for 2011-2014 summarizes the activities related to the implementation of the Code in the past three years. Since the coming into force of the Code, Members of the National Assembly have all committed, with the support of the Ethics Commissioner and the Jurisconsult, to embrace the values of the National Assembly and to observe the rules of conduct in the exercise of their functions as MNAs or Cabinet Ministers.

As requested by the Legislature, this report also includes the Ethics Commissioner's comments and recommendations on the advisability of amending the Code.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Jacques Saint-Laurent', with a stylized flourish at the end.

Jacques Saint-Laurent
Ethics Commissioner

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MESSAGE FROM THE COMMISSIONER

In the making of the first report on the implementation of the Code, I would like to first thank the Members of the National Assembly who, on December 3, 2010, unanimously adopted the *Code of ethics and conduct of the Members of the National Assembly*. I must also pay tribute to the succession of MNAs and Cabinet Ministers who have since shared a common vision of the fundamental role of ethics and rules of conduct in the exercise of their duties.

Through each constituency's elected officials, the National Assembly is the single most important institution responsible for carrying out the Government's democratic principles. When citizens of a constituency elect their representative, their votes constitute the most significant and fundamental act of a democratic society's governance. In doing so, they entrust the Members of the National Assembly with considerable power, expecting them to not only rely on their qualifications, but to also be led by the principles of honesty, objectivity and impartiality essential for the successful completion of their public mandate.

By voting, citizens place their trust entirely in the hands of their elected officials, after having taking into consideration the heavy responsibilities the latter must take on, as well as the scope of their power. This trust must be constantly maintained by the elected official through behaviour that reflects the population's expectations in matters of ethics and rules of conduct.

For this reason, the *Code of ethics and conduct of the Members of the National Assembly* is an essential tool for guiding Members of the National Assembly in their duties, while allowing the public to assess individual behaviour objectively.

As stated in the Code, in their capacity as representatives of the people of Québec, MNAs take part in the passage of legislation and in the making of regulations, exercise the National Assembly's power of supervision over the actions of the Government and its departments and agencies, assist individuals and groups who request help in their relations with the State, and participate in public debate¹. Because of these functions, the people of Québec expect Members to embrace the values of the National Assembly and to observe certain rules of conduct, including, if they are Cabinet Ministers, when carrying out their duties as Ministers².

The commitment of all MNAs to improve Québec's social and economic conditions is at the forefront of the National Assembly's values. Furthermore, their conduct must be characterized by benevolence, integrity, adaptability, wisdom, honesty, sincerity and justice³.

MNAs recognize that adherence to the National Assembly's values is essential to maintain the people's confidence in both them and the National Assembly, and to successfully achieve their public mandate⁴.

¹ First recital of the Code

² Second recital of the Code

³ Section 6 of the Code

⁴ Section 9 of the Code

They must demonstrate integrity and impartiality in the exercise of their functions, and the population should never doubt that the Members of the National Assembly, including Cabinet Ministers, serve the public interest and set aside private interests⁵.

These private interests can vary greatly and can be of an economic or financial nature, among others. For example, a Member's assets or liabilities may give the impression of influencing their duties of office. Incidentally, though well intentioned, an MNA could be associated with a sporting or non-profit organization, or with other civilian or commercial activities. This may lead a reasonable person to question the possibility of self-interest while in office. Similarly, an MNA's ties on a professional, community, ethnic, family or religious level, including family members and close friends, could constitute a private interest that may influence his independence of judgment.

The following pages feature countless situations in which the efforts of MNAs, which deserve to be recognized, have taken place through the implementation of the Code while carrying out their duties. MNAs have taken concrete actions to avoid being placed in conflict of interest situations.

This Implementation Report illustrates the significant contribution of MNAs, Cabinet Ministers and their staff in supporting the National Assembly and maintaining the population's confidence.

Thank you for your attention!



Jacques Saint-Laurent

⁵ Section 15 of the Code

1. INTRODUCTION TO THE CODE OF ETHICS AND CONDUCT OF THE MEMBERS OF THE NATIONAL ASSEMBLY

The National Assembly wished to be informed by the Ethics Commissioner regarding the first years of implementation of the Code and on the advisability of amending it, if necessary. To this end, section 114 of the Code stipulates that:

“ 114. No later than 1 January 2015 and every five years after that, the Ethics Commissioner must report on the carrying out of this Code and the advisability of amending it.

The report is submitted to the President of the National Assembly, who tables it in the Assembly within 15 days or, if the Assembly is not sitting, within 15 days of resumption. The competent committee of the National Assembly subsequently examines the report.”

This first Implementation Report will begin with a brief introduction to the Code. Subsequently, we wish to inform the reader of certain interpretations of the Ethics Commissioner over the past three years, although there is no resulting recommendation on the advisability of amending the Code. Finally, in some cases, the information relating to the interpretation of the Code, Regulation and Rules will be supplemented by interpretations and, where appropriate, a recommendation.

This report is not intended to be exhaustive, but instead invites readers to learn more on certain interpretations of general interest. We have tried to present the most significant situations in the current context, hoping it will bring awareness to the jurisprudence of recent years and to possible concerns, if any.

At the beginning of February 2014, all MNAs were asked to fill out a questionnaire on the implementation of the Code since its adoption. The questionnaire was, in fact, a checklist of various topics on which they might wish to share experiences or submit comments. We sincerely appreciated the responses that were submitted to us. They were all taken into account during the preparation of the comments and recommendations set forth in this report.

1.1 Prior to the adoption of the code

Before the adoption of the Code, the *Act respecting the National Assembly*⁶ included provisions regarding conflicts of interest, which were replaced by the rules of conduct prescribed by the Code.

These previous provisions were introduced by the Legislature in 1982, through the adoption of the *Act respecting the National Assembly*. They included sections 57 to 60 of the Act, relating to incompatibility of posts or offices, repealed by section 117 of the Code. Sections 61 to 73 of the *Act respecting the National Assembly* dealt with obligations regarding conflicts of interest. It was prohibited for MNAs to place themselves in situations where their private interest might influence them when carrying out their duties. It was also prohibited for them to directly or indirectly be party to a contract with the Government, a government department or public body. These legislative provisions were also repealed by section 117 of the Code.

The *Act respecting the National Assembly* established the office of jurisconsult. This advisor was responsible for providing a written advisory opinion on the conformity of a situation to any MNA who requested it, under the rules of conflicts of interest or of incompatibility of posts or offices. Sections 74 to 81 of the Act relating to advisory opinions were also repealed by section 117 of the Code.

Finally, sections 82 to 84 of the *Act respecting the National Assembly* allowed an MNA to file a complaint before the National Assembly against another Member for being in conflict of interest, in particular. If necessary, a commission examined the complaint and reported to the Assembly. After the legislative provisions prescribed by the new Code came into force on January 1, 2012, the complaint process under sections 82 to 84 of the *Act respecting the National Assembly* was repealed and replaced by powers delegated to the Ethics Commissioner to conduct an investigation at the request of an MNA or of his own initiative, as discussed below.

In 2010, it was unanimously agreed that the time had come for a more developed ethical framework for Members of the National Assembly, including Cabinet Ministers and their staff. At that time, the National Assembly was the only legislative assembly in Canada that had not codified its rules of conduct. Moreover, there was no independent authority responsible for regulating these rules of conduct, conducting investigations and providing reports to the National Assembly. There was also no provision under the Act that included a requirement for MNAs and Cabinet Ministers to disclose their private interests and those of their family members.

In addition to the rules of conduct prescribed by the *Act respecting the National Assembly*, Cabinet Ministers were subject to the Premier's Directives, until sections 42 to 61 of the Code came into force. The Premier's Directives imposed specific rules, considering the role of each Minister and the amount of information available to them, particularly members of the Cabinet.

⁶ 1982, Chapter 62

While these directives could vary from one Premier to another, they generally focused on the following: any potential conflicts of interest arising from private interest in any business whose securities were listed on an exchange; the prohibition of being party to a contract with the Government or a government department or public body; the confidentiality of any information brought to the knowledge of these Ministers; and finally, the post-term rules they had to commit to.

In December 2010, before the adoption of the Code, the staff of Members and House officers of the National Assembly had to comply with certain employment-related rules defined by the Office of the National Assembly. For the staff of MNAs, the Office of the National Assembly adopted the *Règlement sur la rémunération et les conditions de travail du personnel d'un député* (decision No. 1283 dated December 8, 2005), with sections 7 to 9 relating to ethical behaviour. On the same day, the Office of the National Assembly adopted the *Règlement sur la rémunération et les conditions de travail du personnel des cabinets de l'Assemblée nationale* (decision No. 1284), with sections 7 to 9 providing the same rules.

Sections 35 and 36 of the *Directive concernant le recrutement, la nomination, la rémunération et les autres conditions de travail du personnel des cabinets de ministre* (Directive 4-83 consolidated by C.T. 164805 dated 30 June 1987), adopted under section 11.7 of the *Executive Power Act* (chapter E-18), provided a framework regarding ethical behaviour for the staff of Cabinet Ministers

1.2 Adoption of the Code

Bill 48 of the First Session of the 39th Legislature was immediately perceived by Members of the National Assembly and the population as an act of the utmost importance. The *Code of ethics and conduct of the Members of the National Assembly*, which became chapter C-23.1, provided fundamental guarantees to uphold Québec's democratic process.

With this new Code, the Members of the National Assembly pledged to respect the ethical rules and principles, which they themselves defined, with the objective of maintaining public confidence in the National Assembly and its Members.

Furthermore, the Members planned to seek advice and guidance from the Ethics Commissioner and Jurisconsult, while implementing these new ethical principles and rules of conduct. MNAs also agreed that their commitment to the rules of conduct and the National Assembly's values needed to be under strict enforcement, including investigative power for the Ethics Commissioner and penalties. The various measures taken by the Legislature during the adoption of the Code are summarized below

1.3 Summary of the Code

1.3.1 National Assembly values

All Members agree to adhere to the values of the National Assembly, which must guide them in carrying out their duties of office and determining the rules of conduct applicable to them. In this regard, section 6 of the Code, which will be discussed in chapter 2.3, is the cornerstone upon which rest all other elements of the Code.

The Legislature introduced two categories of rules of conduct. The first, sections 10 to 41, describe the rules applicable to all MNAs. The second, sections 42 to 61, sets out specific rules for Cabinet Ministers.

1.3.2 Rules of conduct applicable to all MNAs

The rules of conduct applicable to all MNAs, including Cabinet Ministers, relate to incompatibility of posts or offices, conflicts of interest, gifts and benefits, and the disclosure of private interests, among others. To address potential conflicts of interest, MNAs must always preserve their independence of judgment by putting aside personal interests in favour of the common good⁷. They cannot, through influence or actions, further their private interests or those of a family member or non-dependent child, or improperly further another person's private interests⁸. Similarly, all MNAs must preserve the confidentiality of any information they obtain in the exercise of their duties⁹.

MNAs must not, directly or indirectly, be party to a contract with the Government or a department or public body. However, under specified conditions, they can have interests in a business that is party to such a contract¹⁰.

1.3.2.1 Gifts and benefits

MNAs must not solicit or receive any gift, whether for themselves or for another person, in exchange for speaking or taking a certain position on an issue. They must refuse any gift that may impair their independence of judgment or compromise their integrity. They may accept the gift only if these provisions are not applicable. However, if the value of the gift exceeds \$200, MNAs must file a disclosure statement with the Ethics Commissioner, who records these statements in a public register.

⁷ Section 15 of the Code

⁸ Section 16 of the Code

⁹ Section 17 of the Code

¹⁰ Section 18 of the Code

1.3.2.2 Attendance, state property and services

Members of the National Assembly must maintain a good attendance record while carrying out the duties of office. They may not be absent from sittings of the National Assembly for an unreasonable length of time without a valid reason¹¹. Furthermore, they must use State property, including property leased by the State and services made available to them by the State, only for activities related to duties of office¹².

1.3.2.3 Disclosure statement

Each year, MNAs and Cabinet Ministers file a statement with the Ethics Commissioner disclosing their private interests and those of their family members. This process is primarily designed to provide each Member of the National Assembly with an opportunity to take necessary steps, with the Ethics Commissioner's assistance, to avoid being placed in a conflict of interest.

The content of this disclosure statement varies for MNAs and Cabinet Ministers. In both cases, they must report income, debt, professional activities, interests in a business whose securities are listed on an exchange, and director or officer functions. Cabinet Ministers must also include all assets and liabilities, immovable property owned for personal residential use, as well as proceedings¹³.

The Ethics Commissioner prepares a disclosure summary of the private interests of each MNA, which is then made public on his website¹⁴. The same is done for Cabinet Ministers and their family members¹⁵.

1.3.3 Special rules of conduct applicable to Cabinet Ministers

Specific rules of conduct apply to Cabinet Ministers, since, in fulfilling their responsibilities, the risk of being placed in conflict of interest is greater. These rules pertain to the obligation of devoting themselves exclusively to the duties of office¹⁶. Cabinet Ministers must dispose of interests in an enterprise whose securities are listed on an exchange, or place them in a blind trust managed by an independent trustee¹⁷. They also cannot be party to a contract with the Government or a government department or public body. This prohibition extends to any private enterprise in which the Minister has an interest¹⁸.

When dealing with a conflict of interest, Cabinet Ministers must take specific measures. Section 49 of the Code requires that they inform the Ethics Commissioner and the Secretary General of the Conseil exécutif. As long as the situation remains unresolved, they must abstain from discussing with colleagues, even privately, any file even remotely connected to the interest concerned, exerting or attempting to exert, directly or indirectly, any influence in relation to such a file, or request that relevant information be brought to their attention.

¹¹ Section 35 of the Code

¹² Section 36 of the Code

¹³ Sections 38 and 52 of the Code

¹⁴ Section 40 of the Code

¹⁵ Section 55 of the Code

¹⁶ Section 43 of the Code

¹⁷ Section 45 of the Code

¹⁸ Section 46 of the Code

1.3.3.1 Post-term rules

Post-term rules apply to Cabinet Ministers, but not to MNAs. Former Cabinet Ministers must conduct themselves so as not to obtain undue benefit from their prior office. They 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 this information. They may not act in relation to proceedings, negotiations or other transactions in which they have served as Cabinet Minister. Finally, in the two years after leaving office, they may not accept specified nominations, or intervene on behalf of anyone else in specified circumstances¹⁹.

1.3.4 Administration and enforcement

These ethical principles and rules of conduct would not have had the same importance or the same recognition if the Members of the National Assembly had not included administration and enforcement measures in the Code.

Through the approval of two thirds of its Members, the National Assembly appoints an Ethics Commissioner, who may not be a Member, to oversee the application of the Code, to provide advisory opinions and any recommendations he considers appropriate, and to conduct inquiries²⁰.

Following an inquiry, the Ethics Commissioner immediately reports to the President of the National Assembly, to the Member under inquiry and to the leader of the authorized party to which the Member belongs²¹. The report must include reasons for its conclusions. If the Ethics Commissioner determines that the Code has been violated, he may recommend to the National Assembly that one or more of the sanctions mentioned in section 99 of the Code be imposed on the MNA. For staff members, the Rules or Regulations do not authorize the Commissioner to recommend a sanction.

The jurisconsult function was renewed by the Code²². Appointed by the Office of the National Assembly, the Jurisconsult is responsible for providing advisory opinion on ethics or professional conduct to any MNA who so requests. However, these opinions are not binding on the Ethics Commissioner²³.

1.3.5 Staff members of a Minister's, House officer's or MNA's office

The summary of the Code must also include a summary of the rules of conduct applicable to political staff. In order to replace the sections of the Office of the National Assembly's regulations to which we referred earlier, and those of Directive 4-83²⁴, the Legislature introduced provisions for the adoption of new rules of conduct applicable to staff members.

¹⁹ Sections 56 to 61 of the Code

²⁰ Sections 62, 63, 87, 91 and 92 of the Code

²¹ Section 98 of the Code

²² Section 108 of the Code

²³ Section 110 of the Code

²⁴ Directive 4-83 consolidated by C.T. 164805 dated June 30, 1987

Section 119 of the Code amends the *Act respecting the National Assembly* to introduce section 124.3, which delegates to the Office of the National Assembly the responsibility of unanimously adopting the rules of conduct applicable to the staff of Members and House officers of the National Assembly.

The *Rules of conduct applicable to the staff of Members and House officers of the National Assembly* were adopted by the Office of the National Assembly on March 21, 2013, and came into force on April 30, 2013.

As for section 123 of the Code, it amended the *Executive Power Act* by adding sections 11.7 to 11.10. These sections refer to rules of conduct that the Ethics Commissioner must adopt, through regulation, regarding the office staff of Ministers.

On March 27, 2013, the Ethics Commissioner published in the *Gazette officielle du Québec* the *Regulation respecting the rules of conduct applicable to the office staff of ministers*, which then came into force on the following April 30th.

In the period during which the Office of the National Assembly and the Ethics Commissioner were respectively preparing the draft rules of conduct, sections 128 and 129 of the Code provided transitional provisions to which staff members were subjected, including post-term rules for some. These transitional rules were applied for the period extending from January 1, 2012 to April 30, 2013.

It should be emphasized that the rules of conduct are established by law through: (1) the Code, intended for MNAs and Cabinet Ministers; (2) the Rules of the Office of the National Assembly for the staff of MNAs and House officers (due to the division of power and responsibility of the State's executive and legislative branches); and (3) by a Regulation established by the Ethics Commissioner for the office staff of Ministers. Though legal instruments used in the development of these ethical rules may vary for each group, the content is very similar. Along with necessary modifications, the Code, Regulation, and Rules include the same National Assembly values and the same rules of conduct. The intent is to ensure consistency between the rules of conduct, ethical principles, and National Assembly values that these people must meet while carrying out their duties. On certain occasions, they may face the same potential conflicts of interest.

The following paragraphs take into account the similarities between the rules of conduct applicable to staff members and elected officials. Situations that are specific to elected officials or staff members will be highlighted, where necessary.

1.3.6 Gradual coming into force

On the day of the Code's assent, December 8, 2010, several of its sections came into force. The Preliminary Title, which identifies the Code's purpose, applications, and some definitions; Title I, on values and ethical principles; and certain sections of Title IV on administration and enforcement, i.e. the role of Ethics Commissioner and the related administrative rules.

On July 1, 2011, a second series of sections came into force, relating to the disclosure of private interests of Cabinet Ministers and their family members. On this occasion, the Code prescribed the coming into force of sections regarding the role of Jurisconsult so that, thereafter, he could receive requests for advisory opinions from Cabinet Ministers. The latter could now send their request to the Ethics Commissioner or Jurisconsult.

On October 1, 2011, sections on the disclosure of private interests of MNAs and their family members came into force. As of that date, the Ethics Commissioner and Jurisconsult were authorized to receive requests for advisory opinions from MNAs.

Finally, on January 1, 2012, all sections of the Code not already in effect came into force²⁵. They included the chapters regarding the rules of conduct applicable to all MNAs, the specific rules applicable to Cabinet Ministers, the inquiry process, as well as amendments and transitional provisions.

On April 30, 2013, the *Rules of conduct applicable to the staff of Members and House officers of the National Assembly and the Regulation respecting the rules of conduct applicable to the office staff of ministers* came into force.

²⁵ Section 133 of the Code and Order in Council 1220-2011 of November 30, 2011

2. IMPLEMENTATION OF THE CODE SINCE ITS ADOPTION

2.1 Introduction

As mentioned above, the Implementation Report presents the experiences and challenges encountered in the Code's implementation. It provides interpretations of the rules of conduct and National Assembly values. These subject matters are examined in the order determined by the Code, from the Preliminary Title up to the end.

The Legislature begins by emphasizing the fundamental role of MNAs in the exercise of the democratic process and the importance of the responsibilities entrusted to MNAs and Ministers, for the benefit of the population. In carrying out their duties of office, the Code serves as a guide on ethics and conduct-related matters. With this new legal framework, MNAs are better able to detect potential conflict of interest and consider any questions that could be raised regarding it.

The Legislature intended that MNAs be guided by rules of ethics and conduct in order to guarantee their commitment to improving the social and economic conditions of Quebecers while in office.

2.2 Preliminary title – Purpose, application and interpretation

The Preliminary Title specifies the purpose and applications of the Code and defines certain terms. For this Title, our comments focus on the extent of the Ethics Commissioner's jurisdiction.

Section 2 specifies that the Code applies to MNAs and Cabinet Ministers.

“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.”*

INTERPRETATION:

The wording of Section 2 has led the Ethics Commissioner to clarify that the Code does not apply to a person who is not an MNA or a Cabinet Minister. Moreover, the Ethics Commissioner has no jurisdiction over acts of conduct prior to an MNA's election. For this reason, we refused to provide a written advisory opinion to a person who, before submitting her candidacy to become an MNA, wished to know what ethical obligations would apply in her situation. Although we verbally communicated the necessary information, she could not obtain a written advisory opinion from the Ethics Commissioner prior to her election.

The Ethics Commissioner lacks the authority to provide written opinions in these situations, and can only give general information regarding the Code's application. Consequently, a candidate cannot obtain the necessary advice to make a decision regarding their possible candidacy.

● **RECOMMENDATION 1:**

That the Code be amended to provide that, in the six months preceding an election, the Ethics Commissioner may, upon written request from a person who is not MNA, provide a written advisory opinion for any question concerning this person's obligations under the Code.

If this recommendation were adopted, the Ethics Commissioner's jurisdiction would extend to events prior to the election of an MNA to those who wish to obtain a written opinion before submitting their application. In contrast, when a person leaves office, section 81 of the Code provides that the Ethics Commissioner retain jurisdiction for a period of five years following the end of the person's term. This extends the Ethics Commissioner's jurisdiction to former MNAs and Cabinet Ministers.

In one instance, more than three years after a person had left office as MNA and Minister, the Ethics Commissioner began an inquiry, on his own initiative, to determine whether a violation of post-term rules had been committed. Under section 59 of the Code, we had to determine if the former Minister had agreed to act on behalf of someone else in a proceeding, negotiation or other transaction for which she had previously acted on while in Cabinet²⁶.

2.2.1 Staff members

The role of Ethics Commissioner includes responsibilities toward the political staff. Section 1.3.5 of this report indicates that the Commissioner's jurisdiction extends to members of staff under the *Rules of conduct applicable to the staff of Members and House officers of the National Assembly* and the *Regulation respecting the rules of conduct applicable to the office staff of ministers*.

²⁶ DE-05-2014

2.3 Title I – Values and ethical principles

In this Title, the Legislature states the values of the National Assembly. The legislative text presents the strongest commitments made by MNAs and members of their staff for the benefit of Québec's society. They all commit to not only improving the social and economic situation of Quebecers, regardless of the political party to which they belong, but to also preserve and honour the National Assembly and its institutions, and respect other Members, public servants and citizens. In short, they pledge to do everything in their power to contribute to the proper functioning of Québec society.

“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.”*

In the application of the National Assembly values, elected officials and their staff members have full discretion to determine what they think is appropriate in each circumstance. The values are not specific standards that should be applied in a mechanistic way. Instead, and this is key, they are written in general terms to help guide MNAs and their staff in their duties, without being an obstacle to their freedom of action. Admittedly, in the first months of the entry into force of the Code, MNAs and Ministers did not know where to stand and were unsure of what was now allowed or prohibited under the values of the National Assembly. However, they quickly understood that it was unnecessary to get lost in assumptions or theoretical questions.

In practice, these ethical principles are based on the resolve of each MNA to fully commit to supporting the public interest, maintaining independence of judgment, being effective and behaving responsibly. After publicly declaring these ethical commitments, Cabinet Ministers, MNAs and their staff must remember that the population expects them to embrace and respect the National Assembly values in the exercise of their duties.

2.3.1 Applying the values of the National Assembly

When identifying what it means to embrace the values of the National Assembly on a day-to-day basis, we cannot simply make a list of what is prohibited or permitted by the Code. The actions of individuals must be adapted to each context. However, in the absence of specific guidance in the Code, certain points of reference, such as the legal framework that applies to all citizens, can add a practical dimension.

In my functions as Ethics Commissioner, I have witnessed MNAs and their staff commit to respecting the laws and regulations that apply to them as to all citizens. Members respect this legal framework, not only for themselves but also because their position requires them to lead by example. In terms of ethics and conduct-related matters, the many requirements and standards prescribed by laws and regulations are all specific points of reference to guide the behavior of MNAs, Cabinet Ministers, and their staff.

Each Member of the National Assembly also has the privilege of providing the population with opportunities to participate in public debates. To this end, their mandate requires them to educate themselves in order to properly inform their fellow citizens. MNAs must gather relevant information and make sure to consider all the facts. They review technical and specialized information made available to them and examine expert opinions in relevant fields.

In accordance with the values of the National Assembly, the contribution of MNAs is not only unique but also essential. Through their understanding of the legal and administrative processes, they are able to support the full and detailed analysis of issues that concern citizens. Through their in-depth knowledge and analysis of each issue, MNAs, Cabinet Ministers, and staff members give citizens a voice and serve the public interest.

2.3.2 Interventions regarding harassment situations

The Cercle des femmes parlementaires has been mandated by the President of the National Assembly to create the institution's policy on sexual harassment.

In this regard, it should be noted that no provision of the Code, Rules or Regulation specifically provides for interventions by the Ethics Commissioner regarding harassment. However, if questioned on the issue by an MNA, a Cabinet Minister, or a staff member of a Minister's, House officer's or MNA's office, the Ethics Commissioner could consider the situation in accordance with the National Assembly values, if circumstances require. Under section 6 of the Code, the values of the National Assembly apply to MNAs and Cabinet Ministers. They also apply to staff members under section 3 of the Rules and section 4 of the Regulation.

In such a situation, the Ethics Commissioner would not analyse compliance with applicable rules of labor law. Rather, his 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, section 33 of the Rules or section 34 of the Regulation.

An intervention by the Ethics Commissioner under the values of the National Assembly remains a partial measure that does not correspond to the mechanisms established by labor law for similar situations. Since the Commissioner's means of intervention are currently limited to the application of the National Assembly values, the Legislature could consider introducing new legislation dealing specifically with issues of harassment towards MNAs, Cabinet Ministers, or their staff.

● **RECOMMENDATION 2:**

That MNAs review the relevance of providing legislation relating to harassment toward MNAs, Cabinet Ministers, or their staff.

2.3.3 A violation of the National Assembly values can lead to an inquiry

Under section 92 of the Code, the Ethics Commissioner can take the initiative to conduct an inquiry to determine whether an MNA has violated the Code, including the National Assembly values prescribed in Title I. However, section 91 of the Code does not allow an MNA to request an inquiry by the Commissioner regarding a possible violation of the National Assembly values.

So far, only one inquiry report, initiated by the Commissioner, examines compliance with National Assembly values by a former MNA: the inquiry report of June 7, 2012²⁷, which concluded that because of an MNA's failure to act, a violation of the values of the National Assembly had occurred.

2.3.4 Consistency

Far from being a theoretical objective, the values of the National Assembly are directly related to the duties of office. Thus, several advisory opinions issued over the last three years were based on section 8 of the Code and recommend that Members constantly keep in mind the ethical principles upheld by the values of the National Assembly. They must strive for consistency between their actions and these values, even when their actions do not in themselves contravene the applicable rules of conduct.

“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.”

INTERPRETATION:

The interpretation of the rules on gifts and benefits, which are discussed below, constitute an example of application of section 8 of the Code. Despite the fact that a gift or invitation may be acceptable under the rules of conduct, an MNA can sometimes remain uncertain as to whether to accept the gift or invitation. In keeping with the National Assembly values and section 8 aforesaid, certain gifts and invitations that are not included in the exceptions of sections 29 and 30 of the Code and that are therefore considered acceptable, have been refused or returned to the donor.

²⁷ DE-02-2012

2.4 Title II – Rules of conduct applicable to all Members

We cannot overemphasize the major impact that the rules of conduct prescribed by the Code have had on the duties of MNAs, Cabinet Ministers and staff members. Title II of the Code relates to rules of conduct applicable to all MNAs, while Title III provides special rules of conduct applicable to Cabinet Ministers. In the case of staff members, the Regulation and Rules contain rules of conduct that draw largely from the Code.

Unlike the values of the National Assembly prescribed by Title I of the Code, the rules of conduct set clear standards that must be observed, depending on the particular circumstances of each situation. These rules of conduct have the significant advantage of dispelling any questions on the extent of the obligations of MNAs, Cabinet Ministers and staff members. These clearly stated rules and specific points of reference enable individuals to counter criticism regarding any wrongfully alleged breach of ethics. Alleged violations must now be relevant with the rules of conduct and values of the National Assembly.

It is important to mention that when these rules of conduct were drafted, the Legislature emphasized the extent and importance of the functions of MNAs.

“AS, in their capacity as representatives of the people of Québec, Members of the National Assembly take part in the passage of legislation and the making of regulations, exercise the National Assembly’s power of supervision over the actions of the Government and its departments, bodies and agencies, assist individuals and groups who request help in their relations with the State, and participate in public debate;”

The following comments relate to rules of conduct for which we wanted to inform Members of the National Assembly with regards to the interpretation given to date and, in some cases, the resulting recommendations.

For Members of the National Assembly and their staff, the Code, Regulation and Rules are the most recent legislation on ethical behavior. As mentioned above, they create an ethical framework that can be applied in many different situations. In fact, the Code, Regulation and Rules must be observed in addition to the existing legislation that MNAs and their staff must respect, as must all citizens. Thus, the rules of civil, penal, criminal, fiscal, and administrative law and others continue to apply to the Members of the National Assembly and their staff, in addition to these new ethical provisions.

2.4.1 Incompatibility of posts or offices

Sections 10 to 14 of the Code specify that a Member of the National Assembly must abstain from exercising functions that are incompatible with the office of MNA. This rule is not quite the same for Cabinet Ministers, who are subject to exclusivity of duties prescribed by sections 43 and 44 of the Code.

INTERPRETATION:

Since the Code allows MNAs to hold other posts while in office, the Ethics Commissioner was asked to specify under which circumstances and on what terms these other posts may be exercised. This was the case regarding the possibility for a Member to accept a university teaching assignment, to write a column or publication, to accept an invitation to act as honorary president or chair of a commemorative or fund-raising event, to serve on the board of directors of an enterprise, to act as a representative for private sector clients, and to practice law or medicine.

For these examples, it was concluded that Members could, while in office, hold other posts, provided that they comply with the rules of conduct prescribed by the Code, particularly to avoid placing themselves in a conflict of interest situation, to avoid a conflict with the exercise of this other function, and maintain a good attendance record, as provided in section 35 of the Code.

In the Chapter on incompatibility of posts or offices, section 14 of the Code reminds MNAs that they cannot engage in lobbying activities as defined in the *Lobbying Transparency and Ethics Act* (chapter T-11.011), but it does not prohibit activities normally exercised by MNAs acting in their official capacity.

In response to questions regarding lobbying, MNAs were invited to contact the Lobbyists Commissioner to be guided on necessary measures if they are the subject of representations by third parties.

2.4.1.1 Exercise of other posts

The application of the rules of conduct on incompatibility of posts or offices confirms the previous approach, which allowed MNAs that are not Cabinet Ministers to hold another post, in addition to their office at the National Assembly.

Considering that the rules of conduct have been in force for more than three years, Members of the National Assembly could evaluate to what extent the office of MNA, which has evolved over the years, still allows to simultaneously hold another post. In practice, the legislative agenda submitted to MNAs has increased dramatically. Similarly, the scale of responsibilities is ever increasing. All MNAs would like to have more time in their duties at the National Assembly and to keep an eye on the Government, government departments and public bodies. Due to the relevance and quality of their work, MNAs are increasingly called upon to assist individuals and groups requesting their help in dealing with the State. The time available to perform other activities has decreased accordingly. Furthermore, the risk of being

placed in a conflict of interest is inevitably increased when multiple occupations are held. However, we must take into account the constraints resulting from the application of certain professional laws regarding the continued right to practice for the time during which Members serve at the National Assembly.

● **RECOMMENDATION 3:**

That the Members of the National Assembly 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.

2.4.2 Conflicts of interest

Les Sections 15 to 26 of the Code include the rules of conduct regarding conflicts of interest, applicable to all MNAs, including Cabinet Ministers. We cannot overemphasize the importance of this chapter. These fundamental rules of conduct must be strictly observed by all Members of the National Assembly, and by members of their staff under the Rules and Regulation. In fact, a significant part of the Ethics Commissioner's advisory opinions and enforcement activities involve the examination of real or apparent conflicts of interest.

In applying these rules of conduct, individuals strive to maintain their independence of judgment in the exercise of office. To this end, they must maintain clearly defined boundaries between their private interests and the duties of office. This means taking into account any interest that may influence their independence of judgment so as not to favor their private interests, those of a family member or non-dependent child, or to improperly further another person's private interests.

When analyzing their personal situation with the objective of maintaining their independence of judgment, do MNAs and members of staff have the necessary distance to correctly anticipate the potential influence of a private interest? Well-intentioned individual may sincerely believe that their private interests are not likely to influence their actions, or that if they incidentally promote their interests, it will not constitute a conflict of interest. That is not the question. A potential conflict of interest is examined by considering both the perspective of an MNA or staff member and the perspective of a reasonably well-informed person. Individuals must keep in mind the difference between their personal convictions and what could be perceived by the population in such circumstances.

When analysing these situations, one must not underestimate the difficulty of considering all relevant facts and of grasping their impact regarding a potential conflict of interest.

INTERPRETATION:

While interpreting the rules of conduct on conflicts of interest, we considered that a dispute between a Cabinet Minister and a department or public body²⁸, in the context of proceedings prescribed by law, does not place him, for this reason alone, in a situation of conflict of interest. However, under section 52 of the Code, information relating to this dispute must be listed in the Minister's disclosure statement of private interests.

In another case, we considered that a Cabinet Minister may be granted leave without pay, provided that his return with his employer is not conditional on the decision to reinstate him. Indeed, this condition could result in the Minister seeking to avoid displeasing his former employer, to ensure his return after his time in politics. If this is not the case and if no such connection exists, the former Cabinet Minister may remain on unpaid leave without being, for this reason alone, in a situation of conflict of interest. However, the Minister will retain the obligation to avoid conflicts of interest in the exercise of his office, as any Member of the National Assembly.

When analysing situations that might, at first glance, seem like conflicts of interest, Members of the National Assembly must be aware of the influence they can exert, even implicitly. For example, we have advised an MNA not to lend his name to the exposure of property belonging to him in the showroom of a business open to the public. Associating the Member's name with the business, even indirectly, could influence potential customers at the business's benefit on the basis that the MNA has put his trust in them.

2.4.2.1 Private interest

On December 5, 2014, the Ethics Commissioner filed an inquiry report²⁹ that analyzed what may constitute a private interest under the Code and provided an example of the application of section 16.

It is important to note that when applying the rules of conduct prescribed by the Code, the concept of private interest includes interest that could influence an MNA's independence of judgment, interest that could be favoured while in office, or personal and financial interest not shared by the other Members or the public. As referred to by the Code, private interest is not limited to economic or financial interest. In certain situations, analysing facts may establish that a benefit received by an MNA (or by a family member, close friend, business associate or business) favors them in a manner that constitutes a private interest. For example, a property, a benefit, an advantage, or any other interest might influence an MNA, in the duties of office, because of the importance attached to it. An MNA's strong attachment to a person or property, regardless of financial considerations, could also constitute a private interest.

The Code does not define what constitutes a "private interest." This means that the identification of a private interest requires careful consideration of the particular circumstances of each case. This analysis can lead to specific outcomes, depending on each individual's circumstances. The examination is based on facts, as they have occurred.

²⁸ A department or public body that was not under his authority

²⁹ DE-03-2014

INTERPRETATION:

The Ethics Commissioner was called upon to analyse the alleged involvement of a staff member in the decision of a Minister who, incidentally, seemed to favor a group of people. In this case, the group had used the services of a consultant who later became part of the Minister's office staff. It was alleged that this consultant, who became a political advisor, had managed to influence the Minister for the benefit of his former clients. However, based on facts, the inquiry³⁰ did not confirm these suspicions. Rather, it was shown that the measures taken by the chief of staff made sure that this new political advisor was consistently excluded from projects that could be related to his previous employment³¹.

Here are some other examples relating to rules of conduct for conflicts of interest that have been considered since the Code's coming into force.

2.4.2.2 Hiring staff members

We were consulted by MNAs on the possibility of hiring a family member among their constituency staff or office staff. The Code contains no specific provision that allows or prohibits hiring a family member. However, section 16 of the Code should be considered to assess a potential conflict of interest in hiring situations.

"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."*

INTERPRETATION:

Section 5 of the Code defines "family member" as an MNA's spouse or a dependent child of the MNA or of the MNA's spouse. Thus, under section 16 of the Code, the Ethics Commissioner determined that hiring a family member or non-dependent child benefits the private interest of the MNA and of the person hired. An MNA may not hire a family member or a non-dependent child.

There are no formal prohibitions in the Code regarding the employment of a family member that is not a member of the immediate family or a non-dependent child. Considering section 16, this is permitted, except if the MNA acts "improperly."

³⁰ DE-01-2013

³¹ Inquiry reports concerning staff members are confidential

Regarding what may constitute acting “improperly,” we explained to MNAs that every action must be analyzed individually to determine if the employment violates the rules of conduct. For example, an employment process that considers only one candidate could be an improper action if this person does not have the required skills for the position. Similarly, if the hired person is granted a substantially higher remuneration than other staff members, this could be an example of an improper action, prohibited by section 16 of the Code.

2.4.2.3 Letters of support or recommendation

The requests for advisory opinions on the interpretation of the rules of conduct regarding conflicts of interest have led to the creation of information notes distributed to all MNAs and their staff. These notes have been published on the Ethics Commissioner’s website.

For example, we were asked about the risk of MNAs being placed in a conflict of interest by agreeing to write a letter of support or recommendation for a citizen or enterprise in their constituency. This question was all the more pressing since the first recital of the Code states, as part of the responsibilities of Members, the obligation to provide assistance to individuals and groups who seek help from their MNA in their relations with the State. It is understood that when providing assistance to individuals or groups who request help, an MNA promotes their interest, and sometimes their private interest.

INTERPRETATION:

MNAs must prioritize assisting individuals and groups who request their help in their relations with the State. For anyone who is not the MNA himself, a family member or non-dependent child, the only limit prescribed by the Code for these interventions prohibits “improperly” furthering private interest. Thus, in supporting citizens and enterprises of their constituency, MNAs may freely assist them, as they must do under the Code, as long as they are not acting “improperly.”

In addition, in the information note on letters of support or recommendation³², the Ethics Commissioner states that one must abstain from such interventions in situations where a judicial or quasi-judicial process is underway.

2.4.2.4 Using the position of Member to influence

Every MNA is an agent of change and a maker and implementer of public policy. To fulfill their duties in the best interest of all, MNAs must necessarily maintain close contact with the people they represent. In fact, their first responsibility is to listen to their constituents, to understand their expectations, and to consider all points of view, even if they are different. Subsequently, they assume their fundamental role of making known and supporting the wishes of their constituents.

³² <http://www.ced-qc.ca/fr/documents/lettre-appui-reference.pdf> (French only)

Maintaining the trust of the population depends on an MNA's ability to stand up for them. With all the conviction inherent in the office entrusted to them by the people, MNAs must impose upon themselves an exemplary standard of behaviour, guided by the principles of rigour and justice. The opinions they defend must be based on facts and an accurate knowledge of the various arguments upheld by different stakeholders.

Elected officials enjoy authority and notoriety and have the potential to influence those around them. In addition, the knowledge, experience and interventions of MNAs and Cabinet Ministers support their credibility and the public's confidence. It is a privilege for every MNA to hold such influence on their fellow citizens. I therefore encourage them to remain fully aware of the scope of their actions and of their influence.

For example, in a commercial context, some citizens might be influenced by the fact that an MNA regularly visits a restaurant or a store. Under the Code, the fact that some people may visit a particular establishment because of the presence of an MNA is not an issue in itself. However, it would be entirely inappropriate if an MNA agreed to have his name or photograph used in a restaurant or store advertisement. An advertisement inviting people to visit an establishment because it is frequently visited by an MNA whose photo appears in the advertisement is not acceptable.

2.4.2.5 Social media

I believe the same reservations must exist for messages published on the Internet, especially through social media. Currently, for elected officials and their staff, keeping a cautious mindset seems less automatic when using these new means of communication.

I do not believe that MNAs should publicly express their satisfaction, particularly on the Internet, with a good, restaurant, or professional service since this could act as an incentive for citizens as if it were an advertisement. If a citizen publicly expresses their satisfaction to their friends or subscribers, it does not constitute a problem in the public perception. However, the importance of the role of MNA and Cabinet Minister and the credibility that is attached to their corresponding duties and responsibilities requires that they refrain from contributing to anything that may seem like advertisement and that could influence citizens. The credibility and integrity of their office requires caution in this regard.

The courts have a long-standing history of been called upon to intervene with traditional media to apply the principles of civil responsibility. Citizens, enterprises and journalists who spread false information or unfairly attack the reputation of individuals are penalized, sometimes severely. In keeping with the civil responsibility principles of the Civil Code of Québec and of the jurisprudence, traditional media, radio and television control information before it is released, keeping in mind the consequences of not respecting the rule of law.

Members of the National Assembly must not only respect the civil responsibility principles mentioned above, but also observe the rules of conduct and values of the National Assembly, while taking into account the importance of their duties and responsibilities in supporting the democratic process.

The acceptable range for content published in electronic media is not always clear. For social media, the jurisprudence remains modest. However, as any citizen who wishes to avoid incurring civil responsibility, elected officials should ask themselves if the information they are about to express in electronic media could be broadcasted in a newspaper, radio or television. If there remains any doubts, it might be necessary to rephrase the message or comment, or to reconsider the appropriateness of expressing it. MNAs should remain aware of the risks of improper use of social media.

Through factually sound statements and appropriate messages and comments, MNAs and Cabinet Ministers can, in my opinion, set an example and guide the population.

2.4.2.6 Contracts with the Government, a Government department or a public body

In terms of conflicts of interest, contractual relations between MNAs and the Government, a department or a public body should undoubtedly be subject to strict supervision. Section 18 of the Code states that an MNA may not personally, directly or indirectly, be party to a contract with the Government, a department or a public body. However, this prohibition contains different modalities provided by the Code. For example, when an MNA holds interests in a private enterprise³³ that has a contract with the State, the Code authorizes the Ethics Commissioner to allow the Member to preserve their interest in the enterprise, under specified conditions. If an MNA holds interest in a public enterprise³⁴, he may keep them if the contract entered into with the State does not likely enable collusion or undue influence.

INTERPRETATION:

Certain Members of the National Assembly continue various activities, including commercial ones, while in office. In this case, these commercial activities must comply with the ethical framework prescribed by section 18 of the Code. When a Member continues to run an enterprise in which he has interests, he may only enter into a contract with the Government, a department or public body in the circumstances permitted by section 18. Consequently, a Member who continues to engage in professional or similar activities must abstain from any contract with the State. In addition, the private enterprise in which the Member has interests may not carry on business with the Government, a department or public body without prior authorization from the Ethics Commissioner, under conditions specified by the latter. As for their other clients, the enterprise may continue to operate normally.

The prohibition on being party to a contract with the Government, a department or a public body does not apply in the case of a loan, reimbursement, grant, indemnity or any other benefit received by the MNA or Minister under a law, regulation or program. In addition, an MNA, like any other citizen, may continue to hold securities issued by the Government or a public body, including a municipality, on the same terms as are applicable to all.

³³ Under the Code, a *private enterprise* is any enterprise whose securities are not listed on an exchange or for whose securities there is no published market

³⁴ Under the Code, a *public enterprise* is any enterprise whose securities are listed on an exchange or for whose securities there is a published market

2.4.2.7 Remunerated professional activities

Section 18 of the Code provides that an MNA cannot receive indemnity or any other benefit from the Government, a government department or a public body except under an Act, regulation or program. This includes remuneration. Consequently, a Member who engages in a professional activity while in office cannot receive compensation from the Government, a government department or a public body.

For example, an MNA who is also a lawyer could not receive remuneration for a legal aid mandate. An MNA who practices medicine could not receive remuneration from the Régie de l'assurance maladie du Québec. For this reason, the Legislature introduced section 21 in the Code, which states that a compensation received by an MNA as part of professional or similar activities may come from the Government, a department or a public body provided that the service recipient is not the Government, a department or a public body.

“21. A Member may, in the course of professional or similar activities, receive remuneration to which he or she is entitled even if it is paid in whole or in part by the Government or a department or public body, provided that the service recipient is not the Government or a department or public body.

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.”

In some cases, the Legislature also states that MNAs engaged in professional activities may receive remuneration from a health or education institution, provided that they have notified and obtained permission from the Ethics Commissioner.

2.4.2.8 Distinct private financial interest

In the Code's chapter on conflicts of interest, the rules of conduct that apply to all Members include section 25, which provides that:

“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.”

In the context of parliamentary proceedings, this is an important provision establishing a course of action to prevent conflicts of interest. Section 25 of the Code is based on section 62 of the *Act respecting the National Assembly*, which was repealed upon the entry into force of the Code.

“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.”

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.

With the changes brought by the Code, the measure prescribed by section 25 deprives MNAs or members of a committee seized of a matter in which an MNA has a private financial interest distinct from that of other MNAs or the general public, the opportunity to hear him on a subject he knows well and to invite him to communicate his comments, given his knowledge or experience.

INTERPRETATION:

We have been consulted by several Members of the National Assembly who had questions on the application of section 25 of the Code regarding their private interests. For instance, we were asked to determine whether, in a personal situation, a private financial interest was considered a distinct private financial interest under the Code, depriving them of the opportunity of participating in a debate or voting on the matter. Actually, the circumstances of each case can lead to different conclusions. Although we cannot generalize these interpretations, it should be mentioned that the interest held by an MNA in the Fonds de solidarité des travailleurs du Québec (FTQ) was not considered a private financial interest in a debate before a parliamentary committee responsible for hearing the FTQ's representatives. Similarly, the connection kept by an MNA on a leave without pay with the educational institution that employed him was not considered a distinct private financial interest. In regards to a proposed amendment to the Civil Code of Québec, the role of curator toward one of his children was not considered a distinct private financial interest. However, after careful analysis, we concluded that a Member with interest in an enterprise could be subject to the application of section 25 of the Code for a matter discussed in the National Assembly or a committee that is related to this private financial interest and is not shared by the other Members or the general public³⁵.

In my opinion, when an MNA has publicly disclosed his distinct private financial interest, as required by section 25 of the Code, he should be allowed to take part in parliamentary debates without voting on the matter. In fact, given his expertise on the matter, an MNA who has publicly stated his distinct private financial interest should be allowed to express himself, just as any of his colleagues. Moreover, MNAs represent the people of their constituency and are responsible for giving them voice on any matter discussed by the National Assembly or its committees.

³⁵ DE-03-2014 and DE-04-2014

● **RECOMMENDATION 4:**

That section 25 of the Code be amended regarding the obligation for an MNA with a distinct private financial interest to withdraw from a meeting or sitting, so that the Member may take part in debates without voting on the matter, provided that he has disclosed his private financial interest not shared by the other Members or the general public in the matter that is being discussed in the National Assembly or a committee.

2.4.2.9 Remuneration of MNAs

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 judgment 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.

2.4.3 Gifts and benefits

Sections 29 to 34 of the Code introduce the rules of conduct regarding gifts, benefits, and hospitality offered to MNAs and Cabinet Ministers. Similar rules have been introduced for staff members under the Regulation and Rules. First, these rules of conduct determine under what circumstances a gift or benefit cannot be accepted. Then, if these prohibitions do not apply, the Legislature prescribes that a gift or benefit valued at over \$200 must be reported to the Ethics Commissioner, who keeps a public register of these statements.

Several questions were submitted to the Ethics Commissioner and the Jurisconsult regarding the definition of acceptable gifts under the Code. The Legislature prescribes that gifts, benefits, and hospitality can generally be accepted. However, when the benefit is received in exchange for intervening or taking a certain position on an issue that may be brought before the National Assembly or a committee, it is strictly forbidden for an MNA to accept it, whatever the value and origin, even from a family member. In addition, the Code prohibits MNAs to accept any gift or hospitality that may impair their independence of judgment in carrying out their duties of office, or that may compromise their integrity or that of the National Assembly, regardless of the value or origin of the gift or benefit. The MNA must simply refuse it at the first opportunity.

To guide Members when having to choose between accepting or refusing a gift, we published the *Guidelines* on February 28, 2012, adopted in accordance with section 89 of the Code. With practical examples, these *Guidelines* inform MNAs and their staff of the requirements concerning gifts and benefits. They were modified on May 30, 2012 to provide some clarifications regarding the application of the Volunteer Support Program. In June 2014, a clarification was made regarding free tickets (see Appendix 1).

So far, one hundred disclosure statements for gifts offered to elected officials have been received and published by the Ethics Commissioner. In addition, we have received ten notices for refused gifts, for which the Commissioner must be notified in accordance with section 30 or 31 of the Code.

In application of the rules on gifts and benefits, we invite Members of the National Assembly to rely on their good judgment and take into account the opinion that a reasonably well-informed person could have in the same situation. When analysing the situation, it may help to examine the ties between the donor and the State, as well as the connection with their responsibilities in the National Assembly, including as Cabinet Minister, and finally, the perception that a return might be expected. In case of doubt, it is important to remind elected official that they can refuse a gift or benefit even if it is acceptable under the Code.

When interpreting the rules of conduct on gifts and benefits, the values of the National Assembly can be very useful. For example, several MNAs have consulted us when tickets were offered to attend sporting, artistic or philanthropic events. In many cases, the exceptions of sections 29 and 30 of the Code did not apply. However, they were still unsure whether to accept. This hesitation was often caused by the high value of the tickets or the appearance of a possible influence on their duties. After our discussions, some refused to accept these free tickets. We were also called upon to analyse free trips outside of Québec that were offered to a few MNAs to give lectures. These types of activities, which allow MNAs to share their knowledge and experience, are not specifically prohibited by the Code. When the exceptions of section 29 or 30 do not apply, the reimbursement of expenses incurred when traveling abroad can be accepted. MNAs must then file a disclosure statement with the Ethics Commissioner.

INTERPRETATION:

After meeting with MNAs and their staff, we provided favorable advisory opinions on accepting gifts and benefits for different situations, including invitations to cultural and sporting events, gifts received after a speech, tickets to a concert and gifts given as a matter of protocol.

As for invitations to cocktail parties from enterprises offered to elected officials and their political staff, one must remain aware of the risk that others may perceive a desire to influence those involved, especially when an enterprise has ties with the Government, a department or a public body. For this reason, the Ethics Commissioner recommends, in keeping with the Code, Regulation and Rules, that MNAs, Cabinet Ministers and their staff remain mindful of the purpose of these events. When the purpose is connected, directly or indirectly, with the exercise of their office, the invitation could be perceived as a means to exert influence on their independence of judgment and should be declined.

In addition, we invite parliamentarians to reconsider the funding of meetings that include representatives of several legislative assemblies or several parliaments. On certain occasions, part of the cost of these meetings is paid with amounts received from enterprises or organizations sponsoring the event in different ways. In light of the participants' parliamentary or governmental responsibilities, these gifts could be perceived by a reasonably well-informed person as a way to influence elected officials. Furthermore, in some cases, there seems to be an agreement that the representatives of enterprises or organizations that contributed to financing the meeting will be invited to attend a meeting, sometimes a reception, during which they will have the opportunity to talk with attending MNAs, Ministers and Premiers.

In accordance with the rules of conduct of the Code and the values of the National Assembly, this financing method should be abandoned.

2.4.4. Attendance record

Section 35 provides that a Member may not be absent from sittings of the National Assembly for an unreasonable length of time without a valid reason. When this section came into force, circumstances at the National Assembly resulted in this ethical obligation being among the first to be the subject of an interpretation by the Ethics Commissioner, as part of an inquiry³⁶. Here are the facts behind this case.

Beginning in May 2010, a Member ceases to sit in the National Assembly after being expelled from the caucus of the political party to which he belongs. Except for two or three occasions, the MNA does not attend the National Assembly until his resignation, two years later. While no rules of conduct applied to MNA attendance in May 2010, things have changed since. When the Code came into force in December 2010, all Members pledged to embrace the values of the National Assembly, including rigor and diligence, as provided in subparagraph 3 of the second paragraph of section 6 of the Code.

On January 1, 2012, every rule of conduct of the Code has come into force, including section 35 regarding attendance, and the Ethics Commissioner's inquiry powers. Despite the entry into force of these coercive rules, the MNA continues to be absent for several months. On various occasions between February 2011 and March 2012, the Commissioner advises the Member to resume attending the sittings of the National Assembly, to no avail.

Because the Member's absence persists, the Ethics Commissioner issues on March 14, 2012, on his own initiative, an inquiry notice in accordance with section 92 of the Code. He informs the Member of his decision to conduct an inquiry to determine if a violation of the Code has been committed, in particular to section 35 relating to attendance.

INTERPRETATION:

In his report of June 7, 2012, the Commissioner determined that the actual presence of the Member at the National Assembly is necessary to meet the attendance requirements set by section 35 of the Code. Electoral division work is not sufficient. Regarding the MNA's health, the report states that a medical specialist's opinion that the MNA's absence is motivated by health reasons constitutes a valid reason to be absent from sittings of the National Assembly, within the meaning of section 35.

However, for the period prior to the entry into force of the rules of conduct on January 1, 2012, the Ethics Commissioner deferred to the values of the National Assembly, since the Member remained absent from sittings throughout 2011, during which these values applied to all Members.

After having analysed section 6 of the Code, the Ethics Commissioner indicated that a Member who is unable to attend the sittings of the National Assembly for a long period of time cannot authorize the absence himself, for an indefinite period, without taking action to try to put an end to this absence and, at the same time, he must ensure the proper exercise of any of his

³⁶ DE-02-2012

MNA functions. However, for more than a year, the MNA did not see a doctor regarding the health issues he was suffering from. He decided on his own that electoral division work was sufficient to fulfil his role as MNA. It was determined by the Ethics Commissioner that failing to initiate any action to get treatment and to rectify the situation, for over a year, violates the values of the National Assembly.

2.4.5 Use of state property and services - Loyalty programs

We were consulted about the personal use of bonus points obtained as part of a loyalty program. These bonus points or discounts can be offered by a credit card or client card issuer for lodging and travel purchases, yet the expenses of the cardholder are met by the National Assembly or the Government.

The issue raised by MNAs is relevant, as the Code does not include specific rules of conduct concerning benefits received by MNAs and personal use of bonus points obtained for expenses that are made in the exercise of their duties and that are reimbursed. The issuers of these cards include the costs of loyalty programs in the amounts paid by cardholders, for purchases of travel tickets or others. Thus, the cost of the loyalty program seems to be part of the amounts reimbursed to the cardholder for an expense incurred in the exercise of his office.

When these bonus points are not the result of a personal expense, but rather of expenses incurred by the State, it is useful to refer to section 36 of the Code, which indirectly addresses this issue and provides that a Member uses and allows the use of State property for activities related to the carrying out of the duties of their position.

“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.”

So far, the Court of Appeal’s decision on February 7, 1994 established jurisprudence in the case of *Attorney General of Québec (Conseil du trésor)* against *Laurent Brunet et al* ³⁷. In this case, the court identified different reasons that prevent the Government from unilaterally considering certain bonus points as belonging to the State, without further formalities. In principle, the Court of Appeal’s decision has had the effect of allowing personal use of certain bonus points earned in a professional context, in particular when offered by the issuer of a personal credit card or personal client card.

● RECOMMENDATION 5:

That the Members of the National Assembly review, in light of the ethical principles and rules of conduct established by the Code, the different types of loyalty programs and the value of the benefits they provide, including the possibility to make personal use of bonus points obtained in the context of a loyalty program for expenses that are related to the duties of office and are reimbursed or paid by the State, in particular when the program is offered by a retailer or a carrier.

³⁷ CAQ 200-09-000255-932

2.4.6 Disclosure statement

The disclosure of private interests prescribed by the Code consists in communicating private information confidentially to the Ethics Commissioner for prevention and counseling purposes. This recent process has raised a number of questions, and in some cases doubts on its relevance. The most frequently asked questions concern assets and liabilities, income and benefits, and interests in a business. Some MNAs have asked for clarification of the definitions of “dependent child” and “spouse.” These questions have led to interpretations from the Ethics Commissioner to determine what information should be provided by MNAs and Cabinet Ministers, for what period and, if appropriate, the required supporting documents.

Initially, additional clarifications were necessary regarding the information to be reported by MNAs and Cabinet Ministers. In the interpretation of these sections of the Code, the Ethics Commissioner drew largely from the example of other legislative assemblies in Canada. Forms were developed in three parts: for the Member of the National Assembly, his spouse, and his dependent children and those of his spouse.

Once received, disclosure statements are analysed to verify whether the information provided is sufficient and meets the Code’s requirements. This aims to identify, if necessary, elements that might require correctives recommended by the Ethics Commissioner. Following this examination, meetings with MNAs and Cabinet Ministers provide an opportunity to review the disclosed information for the fundamental purpose of preventing a conflict of interest, while considering the specific situation of each individual. Finally, a disclosure statement summary, established in application of sections 40 and 55 of the Code, is presented to the MNA or Cabinet Minister before being made public on the Internet.

The examination and preparation process of disclosure statement summaries of MNAs and Cabinet Ministers for 2013 was interrupted by the announcement of a general election on March 5, 2014. Naturally, during the election campaign, the Ethics Commissioner abstained from any meeting on the matter with MNAs and Cabinet Ministers. However, after the general election, new disclosure statements were to be filed with the Commissioner.

2.4.6.1 Offshore

No provision in the Code, Regulation or Rules specifically provides for a violation of the rules of conduct for a person who has transferred interests abroad and is subject to other tax provisions. Under the current legislation, if it were established that an MNA, a Cabinet Minister or a staff member had transferred interests abroad in order to avoid tax obligations, the Ethics Commissioner could examine the application of section 6 of the Code, regarding the values of the National Assembly, to determine whether this person has committed a Code violation. For example, could the conduct of an MNA, Cabinet Minister or staff member in such circumstances be considered contrary to the beginning of the second paragraph of section 6, which states that:

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

As part of the Implementation Report examination, the Legislature may consider the possibility of standardizing the ethical obligations of sections 38 and 52 of the Code, to indicate that MNAs and Cabinet Ministers are required to include in their disclosure statement any interest held outside of Québec.

● **RECOMMENDATION 6:**

That the Code be amended to clarify MNAs' and Cabinet Ministers' obligations regarding interests held outside of Québec.

2.4.6.2 Immovable property for personal residential use

Considering the different ethical obligations prescribed by the Code, the Ethics Commissioner must be informed not only of an MNA's home address, but also of any real right held on an immovable property, even if it is intended for personal use. The Commissioner must also be informed of the immovable property for which the MNA is tenant. This element, included in disclosure statements, should be added to section 38 of the Code, as information relating to interests held outside Québec.

● **RECOMMENDATION 7:**

That section 38 of the Code be amended to include in the required elements of MNAs' disclosure statements information on real rights held in an immovable property, regardless of use, as well as information relating to immovable property for which they are tenants.

2.4.6.3 Disclosure statement of chiefs of staff

Since April 30, 2013, chiefs of staff of Ministers and of House officers must also file a disclosure statement with the Ethics Commissioner. Analysis of these disclosure statements and meetings with the concerned chiefs of staff are performed subsequently. Unlike Cabinet Ministers, disclosure statement summaries of chiefs of staff of Ministers and of House officers are not prepared by the Ethics Commissioner. Thus, their information is not made public.

2.4.6.4 Date set to file a disclosure statement

Concerning the filing date of annual disclosure statements, sections 37 and 51 of the Code stipulate that:

***37.** Within 60 days after the notice of his or her election is published in the Gazette officielle du Québec, and annually on or before the date set by the Ethics Commissioner, a Member must file with the Ethics Commissioner a statement disclosing his or her private interests and those of his or her family members. The statement is kept at the office of the Ethics Commissioner.*

***51.** Within 60 days after being sworn in as a Cabinet Minister, and annually on or before the date set by the Ethics Commissioner, a Member must file with the Ethics Commissioner a statement disclosing his or her private interests and those of his or her family members. The statement is kept at the office of the Ethics Commissioner.*

Such a statement must be filed even if the Cabinet Minister has already filed a Member's statement under section 37."

In application of sections 37 and 51 of the Code, the Ethics Commissioner established a deadline for filing the disclosure statements of MNAs and Cabinet Ministers in an information note dated November 2013³⁸ and published on his website.

The experiences of the first four periods of disclosure statements were an opportunity to notice that, on certain occasions, MNAs had to file two disclosure statements, even though the previous twelve-month period covered by these statements might be the same, at least in part. For example, the disclosure statement of 2013 covered the period from January 1 to December 31, 2013. Following the general election of April 7, 2014, the disclosure statement of 2014 covered the period from July 1, 2013 to June 30, 2014. Thus, in an interval of less than six months, Members of the National Assembly were asked to file two disclosure statements for the same period, corresponding to the second half of 2013.

It should be noted that following the general elections of September 4, 2012 and April 7, 2014, 85 and 81 MNAs were re-elected, respectively. Members who had been re-elected were obliged to, once more, produce a statement disclosing their private interests and those of their family members, regardless of the fact that an earlier statement had recently been produced.

● **RECOMMENDATION 8:**

That the Code be amended to provide that the obligation to file a disclosure statement within 60 days of the publication of their election in the *Gazette officielle du Québec* does not apply to Members who are re-elected and expected to file their annual disclosure statement on the date set by the Ethics Commissioner under section 37 of the Code.

Considering the events of the past three years, it seems clear that the Legislature should introduce a provision regarding the declaration of a material change in an MNA's or a family member's personal situation. The Ethics Commissioner would be notified in writing, allowing him to make the necessary recommendations, where appropriate.

● **RECOMMENDATION 9:**

That the Code be amended to include a requirement for all MNAs to notify the Ethics Commissioner of any material change, as prescribed for Cabinet Ministers in section 53 of the Code.

"53. A Cabinet Minister must inform the Ethics Commissioner in writing of any material change in the information required in his or her disclosure statement within 60 days after the change occurs."

³⁸ <http://www.ced-qc.ca/fr/documents/date-limite-depot-declaration.pdf> (French only)

2.4.6.5 Disclosure summaries

The Code empowers the Ethics Commissioner to produce a disclosure summary for MNAs and for Cabinet Ministers and their family members. Published on the Ethics Commissioner's website, this summary includes information listed in section 40 of the Code for MNAs and in section 55 for Cabinet Ministers and their family members. The Ethics Commissioner may make public any other information as he sees fit. However, he has no discretionary power to remove information from a summary if he considers that making it public is not relevant, subject to what the Code prescribes in the following provisions of sections 40 and 55.

Subparagraph 1 of the second paragraph of section 40 of the Code provides that:

The summary must

- (1) *set out the nature and source of the income and benefits mentioned in the disclosure statement other than*
 - (a) *a source of income or benefits if the total of the income and benefits from that source during the 12 months before the relevant date is less than \$10,000;*
 - (b) *any other source of income or benefits that the Ethics Commissioner determines should not be disclosed;*

Subparagraph 1 of the second paragraph of section 55 of the Code provides:

With respect to the Cabinet Minister, the summary must

- (1) *state the nature and source of income, benefits, assets and liabilities other than*
 - (a) *an asset or liability with a value of less than \$10,000;*
 - (b) *a source of income or benefits if the total of the income and benefits from that source during the 12 months before the relevant date is less than \$10,000; and*
 - (c) *any other asset, liability or source of income or benefits that the Ethics Commissioner determines should not be disclosed;*

It would be appropriate to give MNAs the opportunity to inform the Ethics Commissioner of particular circumstances that he may deem useful to consider before disclosing the MNA's information. In the process of preventing potential conflicts of interest, the most important step requires MNAs to confidentially disclose to the Commissioner their personal situation and that of family members. In so far as the disclosure has been completed in a timely manner, the Ethics Commissioner could determine, under exceptional circumstances, that an information should not be made public to avoid the risk of harming those involved. I believe that this discretion would be especially useful, even necessary, when it comes to information concerning family members of Cabinet Ministers.

Should the Ethics Commissioner have discretionary power to decide not to disclose, under exceptional circumstances, information that should typically be included in a summary?

- **RECOMMENDATION 10:**

That the Code be amended to allow the Ethics Commissioner to determine the information that should not appear in a summary, when circumstances warrant.

- **RECOMMENDATION 11:**

That the Code be amended to allow Members of the National Assembly to notify the Ethics Commissioner of the reasons why they would like for selected information about themselves or family members not to be included in the summary.

2.5 Title III – Special rules of conduct applicable to Cabinet Ministers

Given their significant responsibilities and the confidentiality of the information that comes to their knowledge, special rules of conduct apply to Cabinet Ministers. They can be found in Title III of the Code, comprising sections 42 to 61. These rules must be observed in addition to the ethical framework applicable to all Members prescribed in the previous title.

2.5.1 Exclusivity of duties

Cabinet Ministers must devote themselves exclusively to the duties of office, renouncing any director or officer position, among others. As soon as possible after being sworn in, they must cease any activity other than that of carrying out their duties as Cabinet Minister.

INTERPRETATION:

Upon being sworn in, new Cabinet Ministers have sought the opinion of the Ethics Commissioner regarding their participation in a family enterprise in which they had interests or performed duties. Under the Code, they have to resign from any director or officer post in these enterprises, in order to devote themselves exclusively to the duties of office. In addition, their enterprise cannot be party to a contract with the Government or a department or public body.

2.5.2 Conflicts of interest

Among the special rules of conduct applicable to Cabinet Ministers, some pertain to conflicts of interest. Section 45 of the Code provides that Cabinet Ministers must dispose of interests in an enterprise, place them in a blind trust managed by an independent trustee, or entrust them to an independent mandatary under a blind management agreement. This ethical obligation is, however, mitigated by the second paragraph of section 45, which provides that Cabinet Ministers may hold 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 (FTQ) or Fondation, 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 the Code.

2.5.3 Blind trusts

Section 45 of the Code provides for the possibility of placing property or interests in a blind trust managed by an independent trustee or entrust them to an independent mandatary under a blind management agreement. The Ethics Commissioner must include in the disclosure summaries of Cabinet Ministers and their spouse any interest for which a blind trust or a blind management agreement has been created, as well as the name of the trustee or mandatary, among others.

Other than what is described in section 45, the Code does not specify how a blind trust should be drafted or what should provide a blind management agreement contract. In these circumstances, the general conditions of implementation of a blind trust deed or blind management agreement contract must comply with the framework set by the Civil Code of Québec. In addition, an information note³⁹ issued by the Ethics Commissioner in March 2014, regarding blind trusts and blind management agreements, specifies these conditions and provides some indications on how to proceed:

- 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.

2.5.3.1 Instructions given to a trustee or mandatary

In practice, the ethical framework established by the Code and the information note may not be sufficient, considering the difficulty of drawing up detailed rules adapted to the property of each elected official. For example, the Code and the information note do not specify the conditions to be met if the grantor wishes to give instructions that could limit or prohibit the disposition of property for which the trustee or mandatary is responsible by virtue of the blind trust or blind management agreement.

The advisory opinion requests received so far lead us to recommend to the Legislature to specify the ethical framework for instructions that MNAs may give to a trustee or mandatary, in particular if the MNA may, when entrusting his interests to an independent trustee or a mandatary, provide formal instruction not to dispose of his property. The lack of clear direction in the Code in this area could lead to confusion about what is permitted both now and in the future, with a risk of outcomes that do not correspond to the Legislature's will.

In preserving the people's confidence in MNAs and the National Assembly, it is crucial that the blind trust or blind management agreement is not rendered fictitious by instructions that could undermine the trustee's or mandatary's independence or autonomy.

³⁹ <http://www.ced-qc.ca/fr/documents/Fiducie-mandat-sansdroit-regard.pdf> (French only)

If a legislative amendment is considered, an analysis should be carried out not only from the perspective of civil law or trusts law, but also by considering the objectives being pursued by the creation of a blind trust or the establishment of a blind management agreement, in application of the Code. The Legislature will have to specify particular measures, including:

- preserving the independence of MNAs from their interests held in enterprises;
- preserving the confidentiality of information that may circulate between the enterprise, the MNA and the Government, particularly to avoid providing the enterprise a benefit over its competitors;
- ensuring that the instructions given do not further the private interests of the elected official;
- ensuring that the MNA's decisions are not taken under the influence of the interests held in public or private enterprises;
- ensuring that they are not a party, either directly or indirectly, to a contract with the Government, a government department or a public body.

In fact, the Code could be amended to clarify what investment instructions may be included in the blind trust or a blind management agreement, while respecting the objectives sought by the Legislature.

● **RECOMMENDATION 12:**

That the Code be amended to clarify the rules relating to blind trusts and blind management agreements, particularly the instructions given by a Member of the National Assembly to a trustee or mandatary.

2.5.3.2 Reimbursement of expenses

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. In Québec, there is no prescribed rule on expenses related to the creation of a blind trust or a blind management agreement contract. The same is true for fees charged by a trustee or mandatary in the exercise of their responsibilities, under the contracts they have signed.

Considering the significant responsibilities assumed by Cabinet Ministers and the privileged information of which they have knowledge in the exercise of their office, particularly as members of the Cabinet, the Legislature deemed appropriate that they not be allowed to hold interests in public enterprises. In this context, I believe that MNAs should be reimbursed for expenses related to the creation of a blind trust or blind management agreement, with the approval of the Ethics Commissioner.

● **RECOMMENDATION 13:**

That the Code be amended to provide that the Ethics Commissioner may, upon request, authorize the reimbursement of expenses related to the creation of a blind trust or blind management agreement, as well as the reimbursement of corresponding fees.

2.5.3.3 Report of the trustee or mandatary

When drawing up a trust deed or a blind management agreement contract, the transferred property must be listed and included as an appendix. The Ethics Commissioner receives a copy of the contract and the appendix. Afterwards, the Cabinet Minister no longer has access to this information. This is to ensure the confidentiality of the management of property that has been transferred to a trustee or mandatary. Therefore, it stands to reason that the Ethics Commissioner is not informed of changes regarding this property by the Cabinet Minister concerned.

However, as for any other property belonging to a Member of the National Assembly, the Ethics Commissioner's periodic examination is essential to assess the risks of being placed in a situation of violation of the Code's rules of conduct. The Ethics Commissioner must also have access to such information to ensure that the MNA has no control over the trustee or mandatary that could compromise the latter's independence in managing the Minister's property.

● **RECOMMENDATION 14:**

That the Code be amended to provide that the trustee or mandatary supplies the Ethics Commissioner, upon request, with a written report indicating the nature and value of the property managed and a list of interests that have been acquired or sold during the reporting period, or any other information or document relating to these interests.

2.5.4 Contracts with the Government, a Government department or a public body

A Cabinet Minister may hold interests in a private enterprise, if this enterprise abstains from becoming, directly or indirectly, party to a contract with the Government or a department or public body. Under section 46 of the Code, the prohibition to be party to a contract with the State is absolute. The Ethics Commissioner is not authorized to intervene in these situations.

Section 46 of the Code provides a different mechanism for a Cabinet Minister's family member who holds interests in a private enterprise that is party to a contract with the Government or a department or public body. If he considers there are no risks of the Cabinet Minister failing to meet his obligations under the Code or of the public interests not being served, the Ethics Commissioner may authorize, subject to several conditions prescribed by the Code, that the enterprise in question be party to a contract with the Government or a department or public body.

INTERPRETATION:

In the advisory opinions published on this matter, we have reiterated that the Code provides measures for enterprises in which a Cabinet Minister's family member has interests, when it is either directly or indirectly party to a contract with the Government or a department or public body. If the enterprise is not in a contract with the State, the Cabinet Minister and his family member may keep their interest, provided they be mentioned in the disclosure statement and, where applicable, that other obligations under the Code are met, including the requirement not to place themselves in a position of conflict of interest.

Based on these general rules of conduct, we also recommended that the spouse of a Cabinet Minister refrain from sitting on the board of directors of an enterprise, even if they do not hold any interest in the enterprise, if the enterprise is likely to be party to a contract with the Government or a department or public body.

Furthermore, when a Cabinet Minister's family member holds interests in a public enterprise, there are no specific conditions to be met if the enterprise enters into a contract with the Government, a government department or a public body, subject to the general rules mentioned above.

INTERPRETATION:

The Ethics Commissioner determined that a Cabinet Minister's family member should reconsider the appropriateness of holding a significant share of interests in a public enterprise, when it is party to a contract with the Government or a department or public body. A reasonably well-informed person could question the possibility that the extent of the interests and the circumstances in which the contract is entered into make collusion or undue influence likely, or might undermine the public interest.

● RECOMMENDATION 15:

That the Code be amended to provide an ethical framework when a family member of a Cabinet Minister holds interests in an enterprise whose securities are listed on an exchange or for whose securities there is a published market, to specify that if this enterprise is party to a contract with the Government or a department or public body, that the extent of the interests and the circumstances in which the contract is entered into do not enable collusion or undue influence.

2.5.5. Putting an end to conflict of interest situations

Whereas sections 22, 23 and 24 of the Code specify the circumstances under which a Member must end a conflict of interest, the special rules applicable to Cabinet Ministers add mandatory conditions when the latter find themselves in a conflict of interest situation.

Section 49 of the Code has been used extensively for preventive purposes when it comes to taking action after having identified a potential conflict of interest.

The Cabinet Minister concerned must undertake in writing to abstain, for as long as the situation is not regularized, from discussing with Cabinet colleagues, even privately, any file even remotely connected to the interest concerned, 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. In addition, the Code provides other measures intended for the department and public bodies under the Cabinet Minister's responsibility.

INTERPRETATION:

So far, among the situations for which preventive measures have been adopted under section 49 of the Code, we have given favorable opinions to Cabinet Ministers for files dealing with a municipality for which a member of the municipal council was the spouse of a Minister, for files relating to a public body in which a member of the board of directors was a Minister's family member, files dealing with a university whose secretary general was a Minister's family member, files relating to an enterprise party to a contract with the Government or a department or public body for which one of the officer was a Minister's family member, and finally, files regarding a clinic for which an officer was a Minister's family member.

Measures were strictly observed by all concerned when recommended by the Ethics Commissioner.

2.5.5.1 Office staff of Ministers

In an inquiry report⁴⁰ regarding a staff member of a Minister's office, the Ethics Commissioner recommended applying the following measures when dealing with potential conflicts of interest, in application of section 42 of the *Regulation respecting the rules of conduct applicable to the office staff of ministers*.

A staff member of a Minister's office faced with a potential conflict of interest situation, whether real or perceived (for example, regarding a file or an interest related to a prior position) must undertake in writing to abstain, for as long as the situation is not regularized, from discussing with the Cabinet Minister by which he is employed, even privately, any file even remotely connected to the interest concerned, and not to exert or attempt to exert, directly or indirectly, any influence in relation to such a file.

The chief of staff concerned must instruct his entire staff, in writing, to refrain from mentioning to this colleague any information even remotely connected to the interest concerned, and must indicate who will now handle such information and take decisions regarding these files or interests.

⁴⁰ DE-01-2013

2.5.6 Post-term rules of conduct

The special rules of conduct that apply to Cabinet Ministers include a section on post-term rules, which do not apply to MNAs. These post-term rules reiterate rules established by the Premier's Directives, which were in effect before the entry into force of the Code, under the *Executive Power Act*.

To inform former Cabinet Ministers, we prepared an explanatory document, which is presented in Appendix 2 of this report. This document features a procedure to help analyse the restrictions that must be recognized after having ceased to hold office as Minister. More specifically, after the general election of September 4, 2012 and April 7, 2014, we issued several advisory opinions related to the application of post-term rules. Several of them dealt with the application of section 60 of the Code.

“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.”*

A former Cabinet Minister may, without having to wait two years, accept an appointment or post within a State entity, the definition of which appears in section 56 of the Code. However, he cannot accept an appointment or post within a body, agency, enterprise or other entity that is not a State entity and with which he had official, direct and significant dealings in the year preceding his cessation in office.

In addition, the post-term rules include provisions that apply for as long as circumstances require. For these situations, the two-year period referred to in section 60 of the Code does not apply. They include the prohibition of obtaining undue benefit from their prior office, from disclosing confidential information obtained in or in connection with the carrying out of the duties of office, and from acting in a proceeding, negotiation or other transaction in connection with which they acted while in Cabinet.

INTERPRETATION:

We had to specify which dealings could be described as official, direct and significant all at once, within the meaning of the Code. In interpreting these terms in their usual sense, we specified that dealings could be considered “official” when in connection with what is prescribed under any act, regulation, rule, directive or contract. In other words, dealings are “official” when taking part, in one form or another, in the exercise of the office of Cabinet Minister. We determined that dealings are “direct” when they involve a Cabinet Minister or a person specifically designated by them. In this case, one must be able to establish that the Cabinet Minister has requested that we intervene on his behalf. Finally, dealings are considered “significant” when considering the effects they produce, particularly their purpose, or the connection that can be established with the object of the file.

Thus, if the former Cabinet Minister has had official, direct and significant dealings with any body, agency, enterprise or other entity that is not a State entity in the year preceding the cessation in office, he cannot accept, in the two years after leaving office, any appointment to a board of directors or as a member of any body, agency, enterprise, or accept employment, a position or any other post within such an entity.

In addition, subparagraph 2 of section 60 of the Code provides a significant restriction of the activities of a former Cabinet Minister for a transition period of two years, regardless of the employment or position held afterward. During this period, he is prohibited from dealing on behalf of another person with any department or other State body with which he had official, direct and significant dealings in the year prior to leaving the position. It should be noted that the prohibition to intervene on behalf of others applies to all government departments.

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.

2.5.6.1 Office staff of House officers and Ministers

The Regulation and Rules include post-term rules similar to those of the Code for the office staff of House officers of the National Assembly and the office staff of Ministers. However, the two-year transition period is reduced to one year.

2.5.6.2 Inquiries

Two inquiries were conducted in application of the post-term rules of conduct.

In January 2012, an inquiry request was submitted to the Ethics Commissioner regarding a former Cabinet Minister, which had accepted, in the two-year transition period after leaving office, a position from an enterprise with which it was alleged he might have had official, direct and significant dealings in the year preceding his cessation in office. The inquiry request showed that there were reasonable grounds for believing that a violation of the Code had occurred.

Since the request involved a former Cabinet Minister who had left office before the entry into force of the new post-term rules, it had to be determined whether the rules of conduct of the Code could be applied. Examination of this question led the Ethics Commissioner to conclude that the new Code applies to Cabinet Ministers who were in office at the time of its entry into force, in December 2010⁴¹.

⁴¹ DE-01-2012

INTERPRETATION:

In his inquiry report of March 28, 2012, the Ethics Commissioner determined that post-term rules of conduct applied to this former Cabinet Minister for events subsequent to January 1, 2012. In essence, the Ethics Commissioner found that no facts establishing a possible violation of the Code had been proven, since the new functions had not been exercised yet.

Another inquiry was held by the Ethics Commissioner on the application of post-term rules of conduct, this time with regard to a Minister's office staff member who had accepted a position in an enterprise for which there could have been possible official, direct and significant dealings in the year preceding the cessation in office.

INTERPRETATION:

The Ethics Commissioner's inquiry⁴² determined that the staff member had actually had dealings with representatives of the enterprise that had hired him after leaving office. However, the inquiry also found that the Minister's office had not directly and significantly been involved in handling files related to this enterprise. In fact, it appears that, if the department was consulted in dealing with a file, the office and the Minister did not intervene and were not solicited on the matter. In this case, the decision to go ahead with the case was taken by the Premier's office, and the Minister's office intervened only as an intermediary between department staff and the Minister who, ultimately, had to sign an agreement. It is therefore not enough for a staff member to be connected to an enterprise, they have to be involved in handling related files and, in addition, their involvement must influence the outcome of the file, which was not the case here.

⁴² DE-02-2014

2.6 Title IV – Administration and enforcement

Title IV defines the necessary administration and enforcement mechanisms to ensure the Code's effective implementation. The first chapter relates to administrative measures, which are described below. The following chapters contain several essential tools including the right to request an advisory opinion from the Ethics Commissioner or the Jurisconsult, the inquiry power of the Commissioner, the report he must produce and the decision rendered by the National Assembly regarding this report. First, here are some comments on administrative aspects.

Under section 74 of the Code, the National Assembly provides the Ethics Commissioner with human, physical, financial and information resource management services at no charge. For this purpose, a decision was made by the Office of the National Assembly on February 24, 2011. Through the collaboration of these services, the Commissioner's office was gradually put together.

In accordance with section 78 of the Code, the Office of the National Assembly approved, during the same sitting, the *Regulation respecting contracts of the Ethics Commissioner*⁴³.

While these administrative events were taking place, I set my sights on providing information to MNAs regarding the Code. To this end, I contacted the Leaders of each political party and several information meetings were held. MNAs wished to get my perspective, as Ethics Commissioner, on the main components of the Code, in particular the new rules of conduct. Similar information meetings were held with the staff of MNAs and Cabinet Ministers.

By the end of February 2011, with the support of National Assembly specialists, we were able to publish a variety of information for Members of the National Assembly and the public on the Ethics Commissioner's website (www.ced-qc.ca).

On April 21, 2011, the Office of the National Assembly approved the *Regulation to amend the Regulation respecting contracts of the Ethics Commissioner*. While the hiring process of the required staff was rapidly progressing, we benefited from the National Assembly's collaboration in finding and organizing the premises for the Commissioner and his staff.

In November 10, 2011, the Office of the National Assembly adopted the *Regulation authorizing the Ethics Commissioner to set aside a provision of the Public Administration Act* (Chapter A-6.01) and the *Regulation authorizing the Ethics Commissioner to set aside certain provisions of the Financial Administration Act* (Chapter A-6.001). These Regulations were adopted under sections 76 and 77 of the Code.

On March 1, 2012, the Office of the National Assembly adopted the *Regulation respecting the rules applicable to the Ethics Commissioner concerning conflicts of interest and the Regulation respecting conflicts of interest involving the jurisconsult*. These Regulations were adopted by the Office of the National Assembly in accordance with sections 71 and 111 of the Code.

⁴³ http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/C_23_1/C23_1R1.HTM

2.6.1 Administrative organization

The Ethics Commissioner's office is divided into three units whose responsibilities align with the main Titles of the Code. These units are advice and advisory opinion, registry, and verification and inquiry.

2.6.1.1 Advice and advisory opinion

The advice and advisory opinion unit is entrusted with providing the Ethics Commissioner with legal expertise regarding the rules prescribed by the Code, Regulation, and Rules as they apply to the exercise of the office of MNA, Cabinet Minister or members of staff. At the Ethics Commissioner's request, the unit provides advisory opinions to MNAs and their staff, whether the situations they submit are real or apprehended. Jurists submit legal opinions and draft advisory opinions to the Ethics Commissioner, advise and assist him and his staff in the exercise of their overall duties under the Code, Regulation and Rules. The unit provides recommendations regarding legal issues that may help improve application of the rules of conduct and ensure the quality of the Ethics Commissioner's activities. Jurists are also involved in informing MNAs and the general public on the role of Ethics Commissioner and the enforcement and administration of the Code, Regulation and Rules. These activities are carried out with the same concern for prevention and confidentiality as the Ethics Commissioner is required to show under the Code (see Appendix 3).

2.6.1.2 Registry

The registry unit receives, analyzes and reviews annual disclosure statements filed by MNAs regarding their own and their family members' private interests, to determine whether the information provided is sufficient and whether it meets the Code's requirements. The unit makes sure that MNAs' questions are answered in this regard and serves as intermediary between them and the Ethics Commissioner. In addition, the registry is responsible for drafting the forms used for disclosure statements and helps prepare the disclosure summaries. It maintains the various registers the Ethics Commissioner is required to keep and update under the Code. Records preserved in the registry are confidential and are destroyed at the time prescribed by the Code. The registry also handles media communications. It receives and analyzes media requests and advises the Ethics Commissioner on the appropriate response.

2.6.1.3 Verification and inquiry

The verification and inquiry unit is responsible for gathering information, conducting research, and analyzing the relevant facts with regard to a specific context or a potential violation of the rules of ethics. While remaining impartial and objective, the unit's main goal consists in collecting all the facts and establishing the context in which they occurred so as to be able to submit a factual report to the Ethics Commissioner. It takes part in implementing and updating the tools used for verifications and inquiries regarding the application of the Code, Regulation and Rules. For example, the Ethics Commissioner calls

on this unit to follow up on the disclosure process and, if need be, to help prevent a conflict of interest situation, whether real or apprehended. In addition, it carries out research and analysis in drawing up certain policy directions or guidelines.

2.6.1.4 Staff and budget

In fulfilling his mandate of enforcing the Code, Regulation and Rules, the Ethics Commissioner is currently assisted by a team of employees consisting of three professionals and two public officers, in addition to three other professionals providing their services on a contract basis to the verification and inquiry unit.

Budget-wise, the expenses incurred by the Ethics Commissioner's office since its creation on January 6, 2011, appear in a table attached to this report, which includes the expenditure for each fiscal year (see Appendix 4).

Under section 79 of the Code, the Ethics Commissioner released on November 6, 2012, a first Activity Report for 2011-2012, including financial statements. The Activity Report for 2012-2013 was published on September 19, 2013. Finally, on September 28, 2014, the Activity Report for 2013-2014 was tabled in the National Assembly and published on the Commissioner's website.

2.6.2 Review mechanism

The Ethics Commissioner's mandate comprises several aspects: an advisory function, normative powers in term of regulations and guidelines, and inquiry powers. In fact, the Commissioner has significant intervention means regarding the offices of MNAs, Cabinet Ministers and staff members.

The Legislature has granted full discretionary power to the Ethics Commissioner in the exercise of his functions. Aside from section 65 of the Code, which states the prescribed course of action, the application of this discretionary power is not standardized or subject to appeal or review.

“65. In exercising the duties of office, the Ethics Commissioner focusses on information and prevention and maintains high standards of confidentiality, objectivity and impartiality.”

Further thought needs to be given in the search for a balance between the extent of the powers conferred to the Ethics Commissioner and the establishment of specific monitoring and control mechanisms of his activities. Under current legislation, section 66 of the Code provides that:

“66. The Ethics Commissioner is appointed for a fixed term of five years or less. At the expiry of the term, the Ethics Commissioner remains in office until reappointed or replaced.

The Ethics Commissioner may resign at any time by giving notice in writing to the President of the National Assembly. The Ethics Commissioner may only be removed by a resolution of the Assembly approved by two thirds of the Members.”

Thus, the Ethics Commissioner's office is only subject to removal, following a resolution of the National Assembly approved by two thirds of Members, or if any sanction recommended in a report of the Ethics Commissioner is not adopted by two thirds of Members, as provided in section 104 of the Code.

The Ethics Commissioner plays a crucial role in maintaining public confidence in Members of the National Assembly, particularly in guiding them to keep their actions consistent with the National Assembly values and the rules of conduct. Upon request, he advises MNAs, Cabinet Ministers, and staff members on any matter concerning their obligations under the Code, Regulation and Rules. Relying on his constant monitoring, the Ethics Commissioner recommends necessary adjustments. If his recommendations are not adopted, the Commissioner must initiate an inquiry to determine whether a violation of the Code has occurred.

In case of default by the Ethics Commissioner, should the Members of the National Assembly have previously established means of intervention, in addition to the removal process mentioned earlier?

Despite all the precautions taken in selecting individuals for positions of authority and the high level of trust that can reasonably be granted to them based on their experience, the risk of inappropriate action cannot be entirely ruled out. This does not mean providing an appeal mechanism for the actions of the Ethics Commissioner. In fact, the Code strictly regulates the Commissioner's interventions, whether for consultations or written advisory opinions, or during inquiries. Certainly, the Ethics Commissioner has wide-ranging powers. In my opinion, establishing monitoring and control mechanisms for the exercise of such responsibilities would contribute to maintaining the highest standards of integrity, objectivity, impartiality and efficiency for such a fundamental role, in the exercise of Québec's democratic process.

● **RECOMMENDATION 16:**

That the Code be amended to provide for a review mechanism of the exercise of the Ethics Commissioner's responsibilities in the implementation of the Code, Regulation and Rules.

2.6.3 Advice and advisory opinion

Sections 87 to 90 of the Code entrust to the Ethics Commissioner the responsibility of providing MNAs with a written advisory opinion, upon request, containing recommendations he considers appropriate on any matter related to their obligations under the Code. In addition, sections 108 to 112 of the Code state that the Jurisconsult, appointed by the Office of the National Assembly, is responsible for providing an advisory opinion on ethics or professional conduct to any MNA who so requests.

Since the Code was assented in December 2010, hundreds of advisory opinions were given by the Ethics Commissioner and Jurisconsult to MNAs, Cabinet Ministers and, more recently, to their staff members. These advisory opinions have focused on the interpretation of the requirements of the Code, Regulation, and Rules, with regard to disclosure statements, rules of conduct regarding conflicts of interest, gifts and benefits, and post-term rules.

INTERPRETATION:

The Ethics Commissioner is not authorized to provide a written advisory opinion regarding another Member. For instance, an MNA wished to contact the Commissioner to obtain a written advisory opinion concerning the behavior of a colleague to determine if he has committed a violation of the Code in this particular context. We explained to the Member concerned that section 87 of the Code authorizes MNAs to request an advisory opinion for themselves only. The same goes for staff members under the Rules and Regulation. However, if an MNA has reasonable grounds for believing that another MNA has violated the rules of conduct, he may ask the Ethics Commissioner to conduct an inquiry into the matter.

A written advisory request offers several advantages. It can be used to help identify a potential conflict of interest situation. It also serves the purpose of informing MNAs, Cabinet Ministers and staff members by reviewing their position in relation to their responsibilities of office.

As provided for in the second paragraph of section 87 of the Code, the Ethics Commissioner's advisory opinion is strictly confidential and may only be made public by the Member himself or by the Member's written consent. Confidentiality is an essential attribute of the Commissioner's and Jurisconsult's role of advisers to Members of the National Assembly and their staff. This greatly facilitates the prevention objective by allowing MNAs, Cabinet Ministers and staff members to consult for even the most sensitive situations, without running the risk of it being disclosed by the Ethics Commissioner or Jurisconsult.

A written advisory opinion from the Ethics Commissioner ensures MNAs and staff members concerned that they will not be considered as having committed a violation of the Code for the facts relevant to the request.

"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 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."

2.6.3.1 Advisory opinion released to the media by an MNA

Since the beginning of the Ethics Commissioner's term, the media has paid close attention to the implementation of the Code. They were particularly interested in the Commissioner's views on the National Assembly values, ethical principles, and rules of conduct. As mentioned earlier, the Ethics Commissioner must, in accordance with sections 65 and 87 of the Code, maintain the confidentiality of consultations and avoid releasing any information related to the content of advisory opinions, without the written consent of the MNA or staff member concerned.

Among the written advisory opinions provided by the Ethics Commissioner in the past three years, many inform the MNA concerned that he has not committed a violation of the Code. Each advisory opinion describes the circumstances that were taken into account in its preparation. It specifies the provisions of the Code that were considered, analyses facts and draws a conclusion. Finally, the document states the grounds for the request, the conclusion and the Commissioner's recommendations.

The various elements of the Ethics Commissioner's written advisory opinion form a whole and cannot be separated. In order to fully grasp the Commissioner's conclusion, one must examine all the facts considered and review his reasoning in light of the grounds given. If the context is not known, the Commissioner's conclusion might be interpreted in different and sometimes erroneous ways.

A few Members of the National Assembly have publicly stated that they had received an advisory opinion from the Ethics Commissioner. Some of them gave the media a copy of the document, while others did not. In some cases, people were not able to get detailed information regarding the facts and grounds on which rested the advisory opinion. Not being able to access this information, they may give the document, which they have not read, a meaning that does not match the Commissioner's actual opinion.

Potential confusion and inappropriate application of the Ethics Commissioner's advisory opinion must be avoided. From the moment someone chooses to publicly state that a written advisory opinion has been requested and obtained from the Ethics Commissioner, it is inappropriate to cast doubt as to its content. After being informed of the existence of such a document, the public has a right to be informed of its content and to understand its significance. In my opinion, if an MNA chooses to publicly state that he has received a written advisory opinion from the Commissioner, the entire document must be made public.

● **RECOMMENDATION 17:**

That section 87 of the Code be amended to provide that the Ethics Commissioner may make public an advisory opinion delivered to a Member of the National Assembly if the latter publicly states to have obtained such a document from the Commissioner.

2.6.3.2 Informing MNAs and the public

While fully respecting the rule of confidentiality of advisory opinions relating to the application of the Code, Regulation, or Rules, the Ethics Commissioner has, whenever it was possible to do so, provided detailed information to the media so that they may have the necessary information to understand the rules prescribed by the Code and inform the public, depending on the current events covered by the media. In addition, under section 90 of the Code, the Ethics Commissioner organizes educational activities for MNAs and the general public on the role of Ethics Commissioner and on the enforcement and administration of the Code.

"90. 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."

In this context, on October 1, 2013, the Ethics Commissioner published on his website an information note regarding the letters of support or recommendation that MNAs and Cabinet Ministers can be asked to write.

The following December 6, the Commissioner published an information note on the date set to file a disclosure statement for both MNAs and Cabinet Ministers.

On December 9, 2013, the Ethics Commissioner published the forms for the disclosure statements of MNAs, and Cabinet Ministers and their family members. These documents were made available on the Commissioner's website.

On March 3, 2014, the Ethics Commissioner published an information note entitled *Blind trust and blind management agreement*, setting out the principles and conditions to be met when an MNA entrusts the management of certain interests to an independent trustee or mandatary.

On June 12, 2014, the Ethics Commissioner published further clarifications⁴⁴ of the *Guidelines respecting gifts, hospitality or other benefits*, particularly regarding the origin of a gift. In addition, an information note was released on the same day concerning the rules of conduct applicable to the office staff of Ministers. These staff members also receive a document informing them of the application of the rules on gifts, hospitality and other benefits, based on the types of free tickets offered, a copy of which is appended to this Report.

2.6.3.3 Professional development program

Section 15 of the Municipal Ethics and Good Conduct Act (Chapter E-15.1.0.1), adopted by the National Assembly a few days before the Code, provides as follows regarding the professional development of municipal officials.

“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.”

I believe that Members of the National Assembly should introduce a similar measure for MNAs, Cabinet Ministers, and their staff.

● RECOMMENDATION 18:

That the Code, Regulation and Rules be amended to include a requirement for MNAs, Cabinet Ministers, and their staff to participate in a professional development program within six months of the beginning of their term and, from then on, at least once for each subsequent term.

⁴⁴ http://www.ced-qc.ca/fr/documents/dons_avantages_marques_hospitalite_precisions.pdf (French only)

2.6.4 Inquiry and report

Under section 91 of the Code, an MNA who has reasonable grounds for believing that another MNA has violated a provision of the Code may ask the Ethics Commissioner to conduct an inquiry into the matter. In addition, section 92 of the Code allows the Ethics Commissioner to conduct an inquiry on his own initiative in order to determine if an MNA has violated the Code. Upon request or on his own initiative, the Commissioner may conduct an inquiry on a staff member of a House officer's or MNA's office, under section 33 of the Rules, or a staff member of a Minister's office, under section 34 of the Regulation.

The Ethics Commissioner must conduct inquiries in private and with due dispatch. He must allow the MNA or staff member concerned to present a full and complete defence. Following the inquiry, the Ethics Commissioner reports without delay to the President of the National Assembly, to the Member under inquiry and to the leader of the authorized party to which the Member belongs. The report must include reasons for its conclusions and recommendations. If the inquiry concerns a staff member, the report is given to the individual under inquiry, to the Minister or the MNA who employs him and to the leader of the party to which he belongs.

Since January 1, 2012, seven inquiries were conducted by the Ethics Commissioner. Of these, five concerned Members of the National Assembly, in application of the Code. Two were conducted under the *Regulation respecting the rules of conduct applicable to the office staff of ministers*. Information on these inquiries can be found in this report in the sections related to the ethical obligation for which the inquiry has been conducted.

2.6.4.1 Inquiry requests from other sources

In these past three years, I have on occasion been contacted by citizens who wished to submit an inquiry request. Media representatives have investigated whether the public could request an inquiry.

The Legislatures of British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia, the Northwest Territories and Nunavut all allow citizens to request the Commissioner to conduct an inquiry or to seek his opinion on a particular situation. In Québec, the Code does not provide these opportunities.

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.

Under the current state of the law, although I can gather information from the public, the Code does not expressly provide for it and offers no protection to them. It seems therefore appropriate for the National Assembly to confirm the essential role of the population in the implementation of the Code. To this end, I recommend providing explicitly that a citizen may confidentially disclose to the Ethics Commissioner any information he deems useful, and benefit from certain guarantees, including not encountering reprisals because of such action.

The Legislature could introduce provisions to the Code to protect any whistleblower. From the public's perspective, ensuring the privacy of their initiative is essential. The Code already provides a confidentiality regime that contributes to the protection of the identity of any person assisting an inquiry conducted by the Ethics Commissioner. Nevertheless, it may be appropriate to introduce comprehensive legislative protection for anyone who provides information to the Commissioner.

Currently, a person who has witnessed a violation of the Code has no guarantees against possible reprisals, particularly from an employer, if they release the information. In my opinion, the lack of protection for witnesses is likely to slow the release of information essential to the exercise of the Commissioner's enforcement duties.

● **RECOMMENDATION 19:**

That the Code be amended to prohibit retaliation against a person who provides information to the Ethics Commissioner or who collaborates in a verification or inquiry concerning a violation of the Code, Regulation or Rules; as well as prohibit the act of threatening a person with possible retaliation if they disclose information or collaborate in a verification or inquiry. Demotion, suspension, dismissal or removal of this person shall be considered retaliation, as well as any disciplinary measure or other measure affecting employment or working conditions, among others.

The Ethics Commissioner's extensive knowledge developed over the years enables him to accurately identify situations that could be related to his office. It must be made clear that the Commissioner has the responsibility to maintain complete confidentiality of information that has been brought to his attention, even that which is not relevant to his duties. Therefore, potential whistleblowers should not fear that providing information to the Ethics Commissioner will automatically lead to an inquiry if it is not warranted.

2.6.4.2 Simplified process

The Code sets out a number of actions that MNAs and Cabinet Ministers must perform. For example, MNAs must notify the Ethics Commissioner if they engage in remunerated teaching activities or practice a profession within certain bodies. To simplify things, we could group in four categories the actions that MNAs and Cabinet Ministers must comply with.

First, sections regarding MNAs' and Cabinet Ministers' duty of informing the Ethics Commissioner of:

- remunerated teaching or professional activities (sections 11 and 21 of the Code);
- interest they may have in an enterprise (section 18 of the Code);
- any expropriation process issued against him (section 20 of the Code);
- any salary, indemnity, financial assistance or other benefit arising from a prior office (section 28 of the Code);
- any serious effort they make or participate in with respect to an appointment they could accept, or to any employment, position or post (section 48 of the Code).

Second, when placed in a conflict of interest, MNAs and Cabinet Ministers must inform the Ethics Commissioner and end this situation within the time prescribed by the Code (sections 22, 23, 24 and 49 of the Code).

Third, the rules of conduct on gifts and benefits provide that MNAs and Cabinet Ministers must notify the Ethics Commissioner when:

- refusing a gift or a benefit (section 30 of the Code);
- accepting a gift or a benefit valued at more than \$200 (section 31 of the Code);
- returning something to the donor (section 31 of the Code).

Fourth, the rules of conduct applicable to all MNAs and the special rules applicable to Cabinet Ministers require all Members of the National Assembly to file with the Ethics Commissioner, within the prescribed period, a statement disclosing their private interests and those of their family members (sections 37 and 51 of the Code). In addition, Cabinet Ministers must inform the Ethics Commissioner of any material change in the information required in their disclosure statement within 60 days after the change occurs (section 53 of the Code).

On all these occasions, Members of the National Assembly must inform the Ethics Commissioner of circumstances related to the application of ethical principles and rules of conduct in the Code. However, what kind of measures can be taken if an MNA fails to notify the Commissioner or to disclose in a timely manner a gift, or their private interests or those of their family members?

Under section 41 of the Code, failing to respond within a reasonable time to a written request from the Ethics Commissioner may be considered contrary to the Code.

“41. A Member acts contrary to this Code if he or she

- (1) refuses or fails to respond to a written request of the Ethics Commissioner within a reasonable time;*
- (2) refuses or fails to provide within a reasonable time information or a document the Ethics Commissioner has required in writing;*
- (3) misleads or attempts to mislead the Ethics Commissioner in the exercise of the Ethics Commissioner's functions; or*
- (4) in any way hinders the Ethics Commissioner in the exercise of the Ethics Commissioner's functions.”*

However, under the current legislation, an MNA or Cabinet Minister who fails to inform the Ethics Commissioner or fails to file a disclosure statement within the prescribed period can only be penalised by the inquiry prescribed in section 91 or 92 of the Code.

“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 can be a useful coercive measure when necessary, but can involve an elaborate and expensive process that is poorly adapted to a delay in notifying the Ethics Commissioner or a delay in filing a disclosure statement. In my opinion, it would be beneficial to provide a simplified process for some cases of violation related to tasks required by the Code.

● **RECOMMENDATION 20:**

That the Code be amended to allow the Ethics Commissioner to impose a penalty for failure to comply with certain obligations under the Code, which would be identified in advance by the Legislature. The Ethics Commissioner would either notify the MNA concerned of his observations and his intention of imposing a penalty, or ask the MNA to pay the penalty in question. Failure of the MNA or Cabinet Minister to act following the Ethics Commissioner's advisory opinion would be considered an admission of liability involving a penalty determined by the Commissioner.

That the Code provide that the imposition of a penalty is made public by the Ethics Commissioner.

2.6.4.3 Communications with the media

So far, written inquiry requests addressed to the Ethics Commissioner under section 91 of the Code, and certain advisory opinion requests submitted to the Commissioner under section 87 of the Code have been disclosed to the media before the Commissioner had actually received them.

In my view, communicating with the media regarding an inquiry request or an advisory opinion request is premature. Generally, the media make the information public as soon as they are informed. In addition, they tend to immediately communicate with the Commissioner and the MNA concerned for comments.

In some cases, the Ethics Commissioner is informed by the media of an inquiry request or advisory opinion request that could be submitted to him. Similarly, the Member concerned is not informed by the Commissioner as required by the Code, but rather by the media.

The filing of an inquiry or advisory opinion must respect the fundamental right of the person concerned to be informed in advance, as required by the Code. The Ethics Commissioner must be the first informed to take appropriate action, as the situation requires. As mentioned in section 91 above, it is the Commissioner's role to confirm receipt of an inquiry request. To this end, he sends a copy of the request to the Member named in it. In my opinion, the Commissioner must have the opportunity to do this before the information is released to the media.

In order to ensure the confidentiality guaranteed by the Code, it would be appropriate to specify that a Member must wait until the Ethics Commissioner has confirmed receipt of an inquiry request before making the request public. Generally, the receipt of a request is rapidly confirmed by the Commissioner, after an initial examination and communication with the Member concerned.

● RECOMMENDATION 21:

That sections 87 and 91 of the Code be amended to indicate that an MNA's written request for an advisory opinion or an inquiry cannot be made public until the Ethics Commissioner has confirmed receipt of such documents.

2.6.4.4 Sanctions

Following an inquiry, the Ethics Commissioner submits without delay a report to the President of the National Assembly. This report must include reasons for its conclusions and recommendations, and determines whether the Code has been violated. If so, the Ethics Commissioner may recommend that one of the sanctions mentioned in section 99 of the Code be imposed. However, the decision to impose a sanction recommended by the Commissioner remains under the jurisdiction of the National Assembly, as Members have chosen not to delegate this authority to him. Under sections 103 and 104 of the Code, the National Assembly votes on the report of the Ethics Commissioner if the latter recommended the imposition of a sanction. Any recommended sanction is applicable upon adoption of the report by the National Assembly by the vote of two thirds of its Members.

Of the five inquiry reports submitted to the President of the National Assembly and tabled by him in the Assembly, none recommended that a sanction be imposed.

When the Ethics Commissioner's inquiry report concerns a staff member of a Minister's, House officer's or MNA's office, the Commissioner is not authorized to recommend a sanction. However, the application of a sanction to a staff member could be an appropriate measure, when circumstances demand. The Commissioner could be authorized to assess the situation and recommend a sanction, if required.

● **RECOMMENDATION 22:**

That the *Act respecting the National Assembly* be amended to delegate to the Office of the National Assembly the authority to authorize the Ethics Commissioner to impose sanctions, following an inquiry conducted under the Rules that concludes that a violation has been committed by a staff member of a House officer's or MNA's office.

That the *Executive Power Act* be amended in a similar manner to allow, under the Regulation, the imposition of a sanction to a staff member of a Minister's office in the event of default.

2.6.4.5 Guidelines

Under section 101 of the Code, the Ethics Commissioner may include in an inquiry report any guideline for the general interpretation of the Code and any recommendation for its revision. A similar power has been delegated to the Commissioner under section 42 of the Regulation.

Thus, in an inquiry report⁴⁵ on a staff member of a Minister's office, the Ethics Commissioner included a guideline regarding the post-term rules discussed in section 2.5.5.1 of this report, in application of section 42 of the Regulation.

⁴⁵ DE-01-2013

2.7 Exceptional situations

At the time of the adoption of the Code in 2010, the Legislature established a framework to prevent situations where MNAs' interests could place them in a position of conflict of interest while in office. The obligations put forth by the Code aimed not only to prevent such situations but also to provide some guarantees to the population and thus help maintain public confidence in democratic institutions.

At that time, elected officials had not anticipated the possibility that an MNA who is not a Cabinet Minister could hold interests of size or nature that could put them at constant risk of being in a conflict of interest, or of being subject to allegations in this regard. Without an appropriate framework, doubts raised by such situations do not contribute to maintain the population's confidence in elected officials. In addition, questions regarding these situations have sometimes been the subject of political debates, which the Legislature wished to avoid through the adoption of the rules of conduct prescribed by the Code and the appointment of an independent commissioner.

In the past three years, certain limits of the Code have been exposed when the situation of an MNA proved exceptional. As part of the examination of the Implementation Report, MNAs have the opportunity to reflect on such situations and consider the possibility of amending the Code. In light of the situations that have been debated since the adoption of the Code, the objective would be to consider the possibility of amending certain provisions regarding conflicts of interest and enforcement mechanisms to maintain the people's confidence. The Legislature could also consider the possibility of delegating to the Ethics Commissioner the responsibility of imposing other conditions, when exceptional situations arise.

- **RECOMMENDATION 23:**

That the Members of the National Assembly review the rules of conducts applicable to MNAs to clarify the Members' obligations and the Ethics Commissioner's powers over exceptional situations relating to interests held by elected officials.

3. CONCLUSION

In the past three years of implementation of the *Code of ethics and conduct* and through the various examples summarized in the pages above, we have witnessed an ethics-based culture rapidly establishing itself in all aspects of the functions of MNAs, Cabinet Ministers, and their staff. This ever-evolving culture at the National Assembly and in the various offices has supported the visible improvement of the bond of trust with the population.

Being fully aware of the importance of their responsibilities as representatives of the people of Québec, MNAs and their staff were quick to observe these new ethical standards. The Code, Regulation and Rules represent a new ethical framework, adding to the legal framework that all citizens must respect under the current legislation.

The main challenge is remaining aware of situations likely to constitute conflicts of interest or violations of other ethical obligations. If required, one must act without delay and consider any questions regarding ethical behavior. It is vital to leave nothing unresolved or unanswered. For this reason, MNAs and their staff have not hesitated to consult the Ethics Commissioner or the Jurisconsult whenever necessary in interpreting their ethical obligations.

The first *Report on the implementation of the Code of ethics and conduct* offers tools to support the ongoing improvement and development of the National Assembly's ethics and rules of conduct. It also features a summary of interpretations and comments that can help guide Members of the National Assembly, their staff, and the public in the application of these rules.

As Ethics Commissioner, my intent is for us to continuously strive to maintain the population's confidence in MNAs, their staff and the National Assembly.

February 20, 2015

LIST OF RECOMMENDATIONS

RECOMMENDATION 1:

That the Code be amended to provide that, in the six months preceding an election, the Ethics Commissioner may, upon written request from a person who is not MNA, provide a written advisory opinion for any question concerning this person's obligations under the Code.

Page 20

RECOMMENDATION 2:

That MNAs review the relevance of providing legislation relating to harassment toward MNAs, Cabinet Ministers, or their staff.

Page 23

RECOMMENDATION 3:

That the Members of the National Assembly 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.

Page 26

RECOMMENDATION 4:

That section 25 of the Code be amended regarding the obligation for an MNA with a distinct private financial interest to withdraw from a meeting or sitting, so that the Member may take part in debates without voting on the matter, provided that he has disclosed his private financial interest not shared by the other Members or the general public in the matter that is being discussed in the National Assembly or a committee.

Page 34

RECOMMENDATION 5:

That the Members of the National Assembly review, in light of the ethical principles and rules of conduct established by the Code, the different types of loyalty programs and the value of the benefits they provide, including the possibility to make personal use of bonus points obtained in the context of a loyalty program for expenses that are related to the duties of office and are reimbursed or paid by the State, in particular when the program is offered by a retailer or a carrier.

Page 38

RECOMMENDATION 6:

That the Code be amended to clarify MNAs' and Cabinet Ministers' obligations regarding interests held outside of Québec.

Page 40

RECOMMENDATION 7:

That section 38 of the Code be amended to include in the required elements of MNAs' disclosure statements information on real rights held in an immovable property, regardless of use, as well as information relating to immovable property for which they are tenants.

Page 40

RECOMMENDATION 8:

That the Code be amended to provide that the obligation to file a disclosure statement within 60 days of the publication of their election in the *Gazette officielle du Québec* does not apply to Members who are re-elected and expected to file their annual disclosure statement on the date set by the Ethics Commissioner under section 37 of the Code.

Page 41

RECOMMENDATION 9:

That the Code be amended to include a requirement for all MNAs to notify the Ethics Commissioner of any material change, as prescribed for Cabinet Ministers in section 53 of the Code.

Page 41

RECOMMENDATION 10:

That the Code be amended to allow the Ethics Commissioner to determine the information that should not appear in a summary, when circumstances warrant.

Page 43

RECOMMENDATION 11:

That the Code be amended to allow Members of the National Assembly to notify the Ethics Commissioner of the reasons why they would like for selected information about themselves or family members not to be included in the summary.

Page 43

RECOMMENDATION 12:

That the Code be amended to clarify the rules relating to blind trusts and blind management agreements, particularly the instructions given by a Member of the National Assembly to a trustee or mandatary.

Page 46

RECOMMENDATION 13:

That the Code be amended to provide that the Ethics Commissioner may, upon request, authorize the reimbursement of expenses related to the creation of a blind trust or blind management agreement, as well as the reimbursement of corresponding fees.

Page 47

RECOMMENDATION 14:

That the Code be amended to provide that the trustee or mandatary supplies the Ethics Commissioner, upon request, with a written report indicating the nature and value of the property managed and a list of interests that have been acquired or sold during the reporting period, or any other information or document relating to these interests.

Page 47

RECOMMENDATION 15:

That the Code be amended to provide an ethical framework when a family member of a Cabinet Minister holds interests in an enterprise whose securities are listed on an exchange or for whose securities there is a published market, to specify that if this enterprise is party to a contract with the Government or a department or public body, that the extent of the interests and the circumstances in which the contract is entered into do not enable collusion or undue influence.

Page 48

RECOMMENDATION 16:

That the Code be amended to provide for a review mechanism of the exercise of the Ethics Commissioner's responsibilities in the implementation of the Code, Regulation and Rules.

Page 56

RECOMMENDATION 17:

That section 87 of the Code be amended to provide that the Ethics Commissioner may make public an advisory opinion delivered to a Member of the National Assembly if the latter publicly states to have obtained such a document from the Commissioner.

Page 58

RECOMMENDATION 18:

That the Code, Regulation and Rules be amended to include a requirement for MNAs, Cabinet Ministers, and their staff to participate in a professional development program within six months of the beginning of their term and, from then on, at least once for each subsequent term.

Page 59

RECOMMENDATION 19:

That the Code be amended to prohibit retaliation against a person who provides information to the Ethics Commissioner or who collaborates in a verification or inquiry concerning a violation of the Code, Regulation or Rules; as well as prohibit the act of threatening a person with possible retaliation if they disclose information or collaborate in a verification or inquiry. Demotion, suspension, dismissal or removal of this person shall be considered retaliation, as well as any disciplinary measure or other measure affecting employment or working conditions, among others.

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RECOMMENDATION 20:

That the Code be amended to allow the Ethics Commissioner to impose a penalty for failure to comply with certain obligations under the Code, which would be identified in advance by the Legislature. The Ethics Commissioner would either notify the MNA concerned of his observations and his intention of imposing a penalty, or ask the MNA to pay the penalty in question. Failure of the MNA or Cabinet Minister to act following the Ethics Commissioner's advisory opinion would be considered an admission of liability involving a penalty determined by the Commissioner.

That the Code provide that the imposition of a penalty is made public by the Ethics Commissioner.

Page 63

RECOMMENDATION 21:

That sections 87 and 91 of the Code be amended to indicate that an MNA's written request for an advisory opinion or an inquiry cannot be made public until the Ethics Commissioner has confirmed receipt of such documents.

Page 64

RECOMMENDATION 22:

That the *Act respecting the National Assembly* be amended to delegate to the Office of the National Assembly the authority to authorize the Ethics Commissioner to impose sanctions, following an inquiry conducted under the Rules that concludes that a violation has been committed by a staff member of a House officer's or MNA's office.

That the *Executive Power Act* be amended in a similar manner to allow, under the Regulation, the imposition of a sanction to a staff member of a Minister's office in the event of default.

Page 65

RECOMMENDATION 23:

That the Members of the National Assembly review the rules of conducts applicable to MNAs to clarify the Members' obligations and the Ethics Commissioner's powers over exceptional situations relating to interests held by elected officials.

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APPENDIX 1

GIFTS, HOSPITALITY AND OTHER BENEFITS

Free tickets

The following points can be taken into consideration when free tickets are offered to you.

They consist of the application of sections 29 to 34 of the *Code of ethics and conduct of the Members of the National Assembly* (Code), sections 11 to 16 of the *Regulation respecting the rules of conduct applicable to the office staff of ministers*, and sections 10 to 15 of the *Rules of conduct applicable to the staff of Members and House officers of the National Assembly*.

1. Which free tickets should be refused?

- 1.1. Free tickets offered in exchange for your intervening in some way or taking a certain stand on an issue in the exercise of your office must be refused, no matter where they come from, whether from private or public sectors, and regardless of their value.

FOR EXAMPLE:

- 1.1.1. Tickets in exchange for supporting a funding application
- 1.1.2. Tickets in exchange for supporting the creation or modification of a standard or a legislative text
- 1.1.3. Tickets in exchange for supporting the settlement of litigation
- 1.1.4. Tickets in exchange for supporting the conclusion or modification of a contract with the Government or a department or public body

In all cases, it is important to be aware of the donor's true identity, especially when multiple stakeholders may be involved in providing the free ticket.

- 1.2. Free tickets that may impair your independence of judgment in carrying out the duties of your position, or that may compromise your integrity must be refused, no matter where they come from, whether from private or public sectors, and regardless of their value.

FOR EXAMPLE:

- 1.2.1. Free tickets from a donor whose professional, commercial or industrial activities are connected with your responsibilities, which may cause you or a reasonably well-informed person to question if the gift might influence you in your decisions or actions.

- 1.2.2. Free tickets offered in such a quantity, or whose exceptional or unique nature, value or other characteristics are so important that they could be perceived by a reasonably well-informed person as possibly compromising to your integrity, that of the National Assembly or the office to which you belong.
- 1.2.3. Free tickets from a donor whose dealings with the State may lead you to believe that something is expected in return and that it might influence you in your duties.
- 1.2.4. Free tickets given or accepted in a confidential manner, without being able to prove that the risk of influencing your independence of judgment was considered, as required by the Code, Regulation and Rules.

2. Any other free ticket may be accepted, regardless of the origin or value, if they:

- are not offered in exchange for intervening or taking a certain position on an issue;
- will not impair your independence of judgment in carrying out your duties;
- do not compromise your integrity, that of the National Assembly or the office to which you belong.

FOR EXAMPLE:

- 2.1. When an activity is tied in with your responsibilities, free tickets offered to attend the premiere of an event can be accepted.
- 2.2. Similarly, you may accept an invitation to an event for which you are asked to speak, give a prize, or participate in other ways to the event.

3. Any accepted free ticket whose total value is over \$200 must be disclosed to the Ethics Commissioner.

- 3.1. Any free ticket from the private or public sectors must be disclosed to the Ethics Commissioner if the total value is over \$200.
- 3.2. Free tickets received in the context of a purely private relationship do not have to be disclosed to the Ethics Commissioner.

For example, something offered by a spouse or a family member does not have to be disclosed to the Ethics Commissioner.

4. Consultations and advisory opinions

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

Under section 87 of the Code, section 31 of the Regulation and section 30 of the Rules, you may also submit a request in writing to the Ethics Commissioner for a written advisory opinion containing reasons and any recommendations the Ethics Commissioner considers appropriate on any matter related to your obligations under the Code, Regulation, or Rules.

For more information about gifts and benefits, please refer to the Code, Regulation and Rules, as applicable, as well as the guidelines of May 2012.

The Ethics Commissioner
June 2014

LEAVING OFFICE AS CABINET MINISTER

POST-TERM RULES OF CONDUCT

- 1. prohibition of accepting any appointment or post (60 (1))
- 2. prohibition of intervening on behalf of another person (60 (2))

- 1. Accepting an appointment:
 - i. to a board of directors
 - ii. as a member of:
- or
- 2. accepting: (60 (1))
 - i. employment
 - ii. a position
 - iii. any other post within:

- a body
- an agency
- another entity that is not a State entity (56)
- with which you have had official, direct and significant dealings
- in the year preceding the cessation in office

- 2. Intervening on behalf of another person (60 (2))⁴⁷
 - i. with any department
(even without official, direct and significant dealings)
 - ii. with another State entity with which you had official, direct and significant dealings in the year preceding your cessation in office.

⁴⁷ Unless they are still Members and subject to the prohibition regarding lobbying set out in section 14.

II. **Post-term rules applicable at all times**

1. Conduct yourself so as not to obtain undue benefit from your prior office. (57)

In assessing what may constitute an undue benefit, ask yourself how the situation might be different if you had not been a Cabinet Minister. For example, could you obtain undue benefit of previous reporting relationships, or of your knowledge of issues or situations that have not been made public?

2. Do not disclose confidential information obtained in or in connection with the carrying out of the duties of office. (58)
3. Do 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. (58)
4. Do not act on behalf of someone else in a proceeding, negotiation or other transaction in which you acted in connection with before leaving office as Cabinet Minister. (59)

In practice, if a former Cabinet Minister agrees to act in a proceeding, negotiation or other transaction, he should be able to prove that he has not acted as a Cabinet Minister in the same proceeding, negotiation or other transaction.

III. **For Cabinet Ministers still in office**

1. Abstain from dealing with a former Cabinet Minister
 1. who violates section 59 of the Code by acting in a same proceeding, negotiation or other transaction (61)
 2. who has dealings on behalf of another person with a department or any other State body with which he had official, direct and significant dealings in the year prior to his leaving the position (61)
 3. and inform the Ethics Commissioner of the situation in writing (61)
2. Make sure the same applies for
 1. the Minister's staff
 2. the personnel of the department
 3. any State entity
 - under the Minister's responsibility
 - that is the subject of the proceeding, negotiation or other transaction (61)

IV. Rules of conduct applicable to all former MNAs

1. Inform the Ethics Commissioner of any salary, indemnity, financial assistance or other benefit arising from your prior office. (28)

STATE ENTITY (as defined in section 56 of the Code)

- “State entity” means any of the following persons, agencies, bodies, enterprises or institutions:
 - **bodies and agencies within the meaning of the *Auditor General Act*:**
 - public bodies (56 (1))
 - government agencies (56 (1))
 - **education sector:**
 - the Université du Québec and its constituent universities, research institutes and
 - superior schools (56 (2))
 - university-level institutions (56 (3))
 - general and vocational colleges (56 (4))
 - school boards (56 (5))
 - school boards for Cree, Inuit and Naskapi Native Persons (56 (5))
 - accredited private institutions (56 (6))
 - other educational institutions (56 (7))
 - **health sector:**
 - public or private institutions under agreement (56 (8))
 - institutions for Cree Native persons (56 (9))
 - **municipal sector:**
 - municipalities (56 (10))
 - mandatory bodies of a municipality (56 (10))
 - supramunicipal bodies (56 (10))
 - James Bay Regional Administration and any delegate organization referred to in section 126.4 of the Municipal Powers Act (chapter C-47.1) (56 (11))
 - **public office holders (lobbying act):**
 - non-profit organization described in paragraph 4 of section 4 of the *Lobbying Transparency and Ethics Act*, designed to support public activities with government funds (56 (12))

2014-04-14

APPENDIX 3

STATISTICS

Period from January 6, 2011, to December 31, 2014

■ Advice and advisory opinions

Consultations, requests for information, and advisory opinions	Verbal or written requests	Requests in application of sections 30 of the Rules, 31 of the Regulation and 87 of the Code	Total
From MNAs	759	56	815
From the staff of MNAs	248	6	254
From members of the public	107	----	107
Total :	1 114	62	1 176

■ Requests from the media

Number of requests from the media	352
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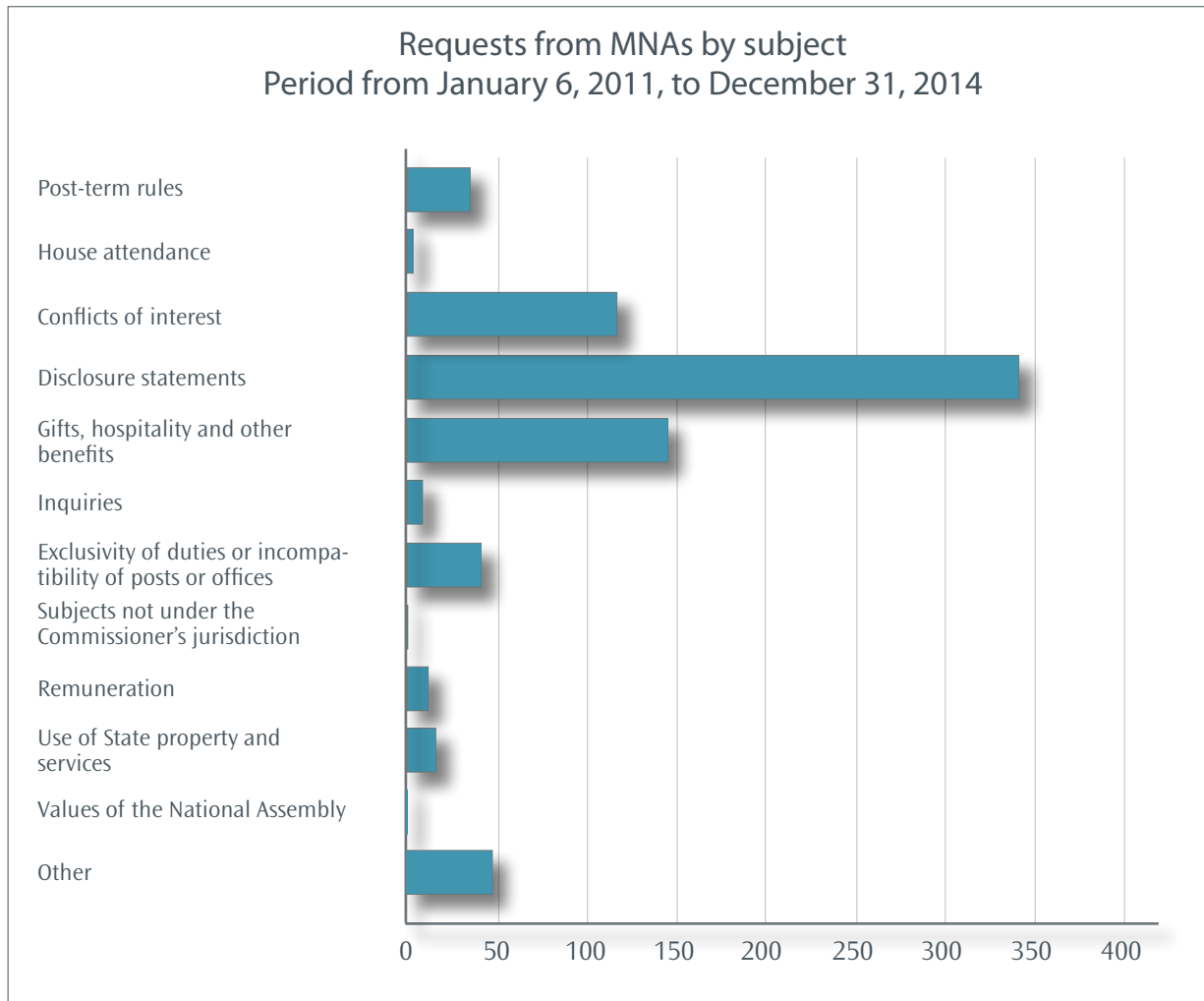
■ Inquiries

Inquiries conducted by the Ethics Commissioner	Regarding an MNA	Regarding the staff member of an MNA	Total
2011-2012	1		1
2012-2013	1		1
2013-2014		1	1
2014-2015	3	1	4
Total :	5	2	7

■ Disclosure statements concerning gifts, hospitality and other benefits

	Statements received and published	Notices of refusal under section 30 or 31 of the Code
Number	100	10
Total :	110	

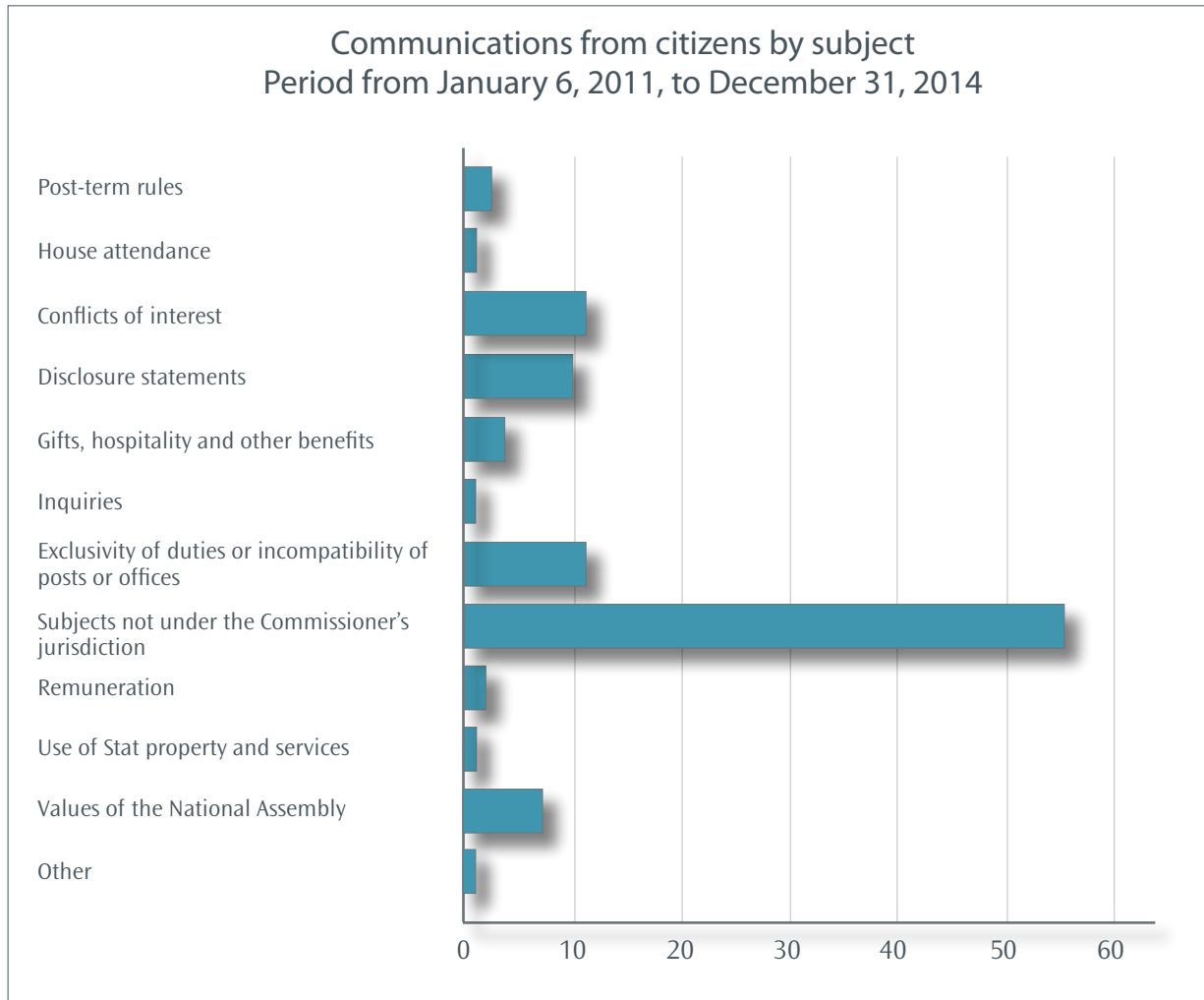
STATISTICAL GRAPHS



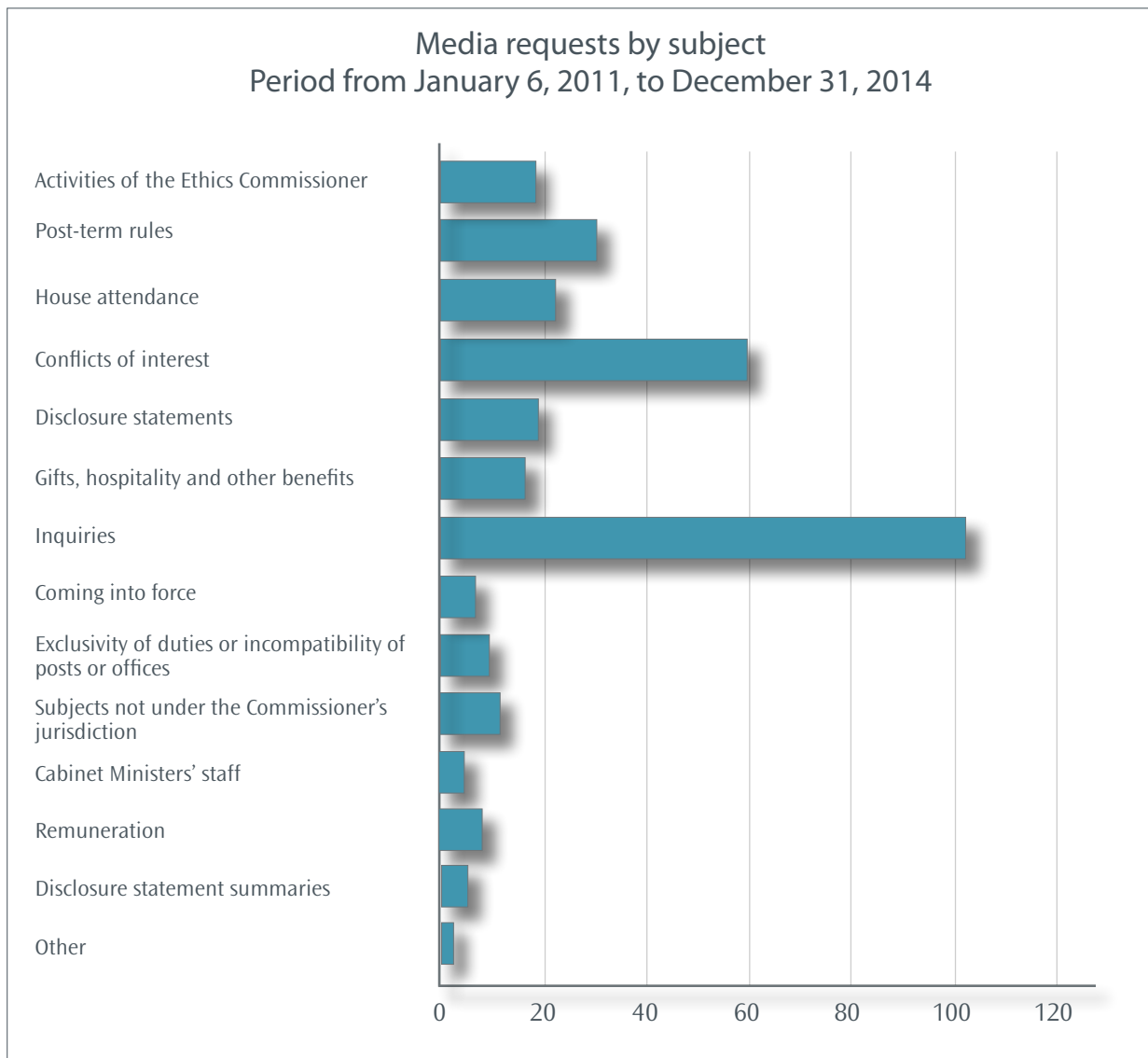
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STATISTICAL GRAPHS (continue)



STATISTICAL GRAPHS (continue)



APPENDIX 4

Expenses incurred by the office of the Ethics Commissioner

Fiscal years 2011-2012, 2012-2013, 2013-2014
and part of 2014-2015, ended December 31, 2014

Results for the fiscal year 2011-2012 ended March 31, 2012

(in thousands of dollars)

Expenses	
Remuneration	
Salaries and employee benefits	498,4
Operations	
Transportation and communication	11,9
Professional, administrative and other expenses	26,1
Rent paid to the Société immobilière du Québec	44,5
Materials and supplies	11,6
Amortization of tangible capital assets	15,1
	109,2
Expenses	607,6

Results for the fiscal year 2012-2013 ended March 31, 2013

(in thousands of dollars)

Expenses	
Remuneration	
Salaries and employee benefits	600,2
Operations	
Transportation and communication	14,5
Professional, administrative and other expenses	8,9
Rent paid to the Société immobilière du Québec	88,4
Materials and supplies	3,1
Amortization of tangible capital assets	38,3
	153,2
Expenses	753,4

Results for the fiscal year 2013-2014 ended March 31, 2014

(in thousands of dollars)

Expenses	
Remuneration	514,5
Transportation and communication	13,9
Professional, administrative and other expenses	9,7
Rent paid to the Société immobilière du Québec	88,9
Other rents	4,7
Materials and supplies	6,7
Expenses using appropriations	638,4
Amortization of tangible capital assets	39,4
Expenses	677,8

Results for part of the fiscal year 2014-2015 ended December 31, 2014

(in thousands of dollars)

Expenses	
Remuneration	395,0
Transportation and communication	11,2
Professional, administrative and other expenses	43,1
Rent paid to the Société immobilière du Québec	66,4
Other rents	1,3
Materials and supplies	4,3
Expenses using appropriations	521,3
Amortization of tangible capital assets	28,3
Expenses	549,6

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April 2015



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