

## SUMMARY<sup>1</sup>

The Ethics Commissioner's Inquiry Report Regarding Mr. Pierre Fitzgibbon,  
Minister of Economy and Innovation and Member for Terrebonne

December 6, 2020

This report concerns Mr. Pierre Fitzgibbon, Minister of Economy and Innovation and Member for Terrebonne (the "Minister"). It was prepared pursuant to the *Code of ethics and conduct of the Members of the National Assembly* (the "Code") on the Ethics Commissioner's initiative. The purpose of the inquiry was to determine whether the Minister had contravened sections 15, 46 and 51 of the Code.

### **CONTEXT**

The inquiry was launched on the Ethics Commissioner's initiative. In light of new information obtained during the investigation, the inquiry was expanded twice. It focused on the Minister's holding of interests in companies whose shares are not traded on a stock exchange or other organized market ("unlisted companies") and which were contracting with the State.<sup>2</sup> They are designated here as companies A, B and C.<sup>3</sup> The inquiry also concerned information not reported by the Minister in the first private-interest disclosure statement he completed after being sworn in, including his interests in management companies and the ties between the State and unlisted companies B and C. Lastly, the inquiry looked at the Minister's intervention with Investissement Québec regarding an application for financial assistance submitted by company A.

### **STATEMENT OF INTERESTS**

Section 51 of the Code stipulates that, within 60 days after being sworn in as a Cabinet Minister, a minister must file a statement disclosing his or her private interests and those of his or her family members. Section 52 of the Code specifies the information that must appear in these statements. Under this section, the Minister was required to declare his management companies, but failed to do so. Cabinet ministers must disclose the legal entities in which they hold interests, even if these entities simply hold other shares.

Section 52 of the Code also requires that for every unlisted company in which a Cabinet Minister holds interests, he or she must also disclose the information he or she is reasonably able to obtain on the ties that may exist between the company and the State. The Minister failed to declare the ties between the State and two of the companies (B and C) in which he declared holding interests.

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- 1 The Ethics Commissioner's official position and conclusions are included in the inquiry report. In case of differences in the content of the summary and the report, the latter prevails.
  - 2 For the purposes of this summary, the term "State" is used to designate the Government, a government department or a public body.
  - 3 The unlisted companies have not been identified, as this report deals with the Minister's conduct and not that of the companies, to avoid any impact on their activities.

For company B, nothing in the evidence indicates that the Minister tried to conduct verifications to obtain information on such ties. Where identifying ties with the State is concerned, a Cabinet Minister cannot rely on previous knowledge and must conduct reasonable verifications when completing his or her statement of interests. Furthermore, the evidence collected shows that the Minister had obtained confirmation of ties between Investissement Québec and company C, first, before the deadline for filing his private-interest disclosure statement and again when the inquiry was expanded, but that he failed to inform the Ethics Commissioner.

The Commissioner concluded that the Minister was in violation of section 51 of the Code by not disclosing some of the information required by section 52 of the Code, namely the holding of interests in management companies and ties between the State and companies B and C, in which he held interests.

### **HOLDING OF INTERESTS IN UNLISTED COMPANIES**

The Code allows a Cabinet Minister to hold interests in an unlisted company only if the company does not contract with the Government, a government department or a public body. By granting a Cabinet Minister sixty (60) days after his or her “appointment or after having such interests conferred on him” to comply with this section, the legislator made it an essential condition for the Minister concerned to be able to exercise his or her ministerial responsibilities in keeping with the Code. The evidence shows that three companies in which the Minister declared holding interests contract with the State. To comply with section 46 of the Code, it was the Minister’s responsibility, as a shareholder or holder of another interest in the company, to ensure that the company put an end to all contracts and abstain from entering into any new contracts with the State. If the Minister could not ensure that the companies avoid such contracts with the State, the only other option was to divest himself of his interests.

Although Mr. Fitzgibbon divested himself of his interests in company B in July 2019, a number of contracts were carried out between the company and the State after the Minister was sworn in in 2018, several of them with his own department. Furthermore, according to the evidence collected, he had the opportunity to divest himself of his interests in companies A and B, but he chose to keep them. The Minister mentioned the financial sacrifices that would result from divesting himself of his interests and the fact that the Code is not adapted “for business”. The Commissioner recognizes that complying with section 46 of the Code may sometimes involve financial sacrifices on the part of an elected official. Yet the legislator made the deliberate and conscious choice to strictly regulate Cabinet ministers’ holding of interests, direct or indirect, in unlisted companies. The purpose of the rules of conduct governing Cabinet ministers is to ensure that the public interest prevails over their private interests at all times. The Commissioner concludes that the Minister violated section 46 of the Code through his interests in the three companies A, B and C and by failing, within the time prescribed, to divest himself of these interests or to ensure that the companies abstain from contracting in any way with the State.

### **INTERVENTION WITH INVESTISSEMENT QUÉBEC**

Section 15 of the Code provides that a Member may 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. The inquiry revealed that the Minister intervened with Investissement Québec to instruct it to refuse an application for financial assistance submitted by company A, in which he holds interests. The Minister issued these instructions knowing he was under investigation for holding interests in the company. Moreover, he did so immediately after the Commissioner explicitly requested that he abstain from intervening. At the time, the Minister's private interest was twofold: he held interests in company A in the form of shares or a convertible loan and he did not want to divest himself of his interests. Because he placed himself in a situation where his private interests might impair his independence of judgment in carrying out his duties of office, the Commissioner concluded that the Minister had violated section 15 of the Code.

### **SANCTION**

For all of the situations described above, the Commissioner recommends that the Minister be reprimanded for having violated sections 15, 46 and 51 of the Code. The Minister failed to provide the information he had regarding his interests and he intentionally acted against the Commissioner's explicit request. Furthermore, by failing to comply with section 46, the Minister is still in violation of the Code, nearly two years after the deadline for compliance.

The only sanction provided by the Code that includes an incentive to correct a problematic situation, and that would therefore be adapted to an ongoing violation, is the sanction provided for in paragraph 6 of section 99, which prescribes "a suspension of the Member's right to sit in the National Assembly [...] until the Member complies with a condition imposed by the Ethics Commissioner". However, the Commissioner considers that the serious nature of this measure requires that it be used with great caution, as it would prevent the elected official from fulfilling his role as legislator and would deprive the citizens of the riding of Terrebonne of representation, albeit temporarily, in the National Assembly. Furthermore, among the possible sanctions, the Code does not provide for the suspension of a Cabinet Minister's ministerial duties only "until the Member complies with a condition imposed by the Ethics Commissioner".

However, this recommendation must not exempt the Minister from rectifying his situation. The Minister cannot be allowed to remain in breach of the Code throughout his entire term. Not only must he comply with the law, it is also a question of fairness to the other Cabinet ministers who have complied with section 46 of the Code. The Commissioner therefore urges the Minister to take concrete steps immediately to comply with the Code in accordance with the solutions currently allowed by section 46. If violation persists, the Commissioner will have to revisit the matter and consider other sanctions, of increasing severity, prescribed by the Code.

### **FINAL REMARKS**

The National Assembly is enriched by elected officials with diverse backgrounds working for the common good. Having work experience as an investor and an entrepreneur is not incompatible with political life but becoming part of this new environment requires preparation and may involve financial and personal sacrifices.

Those considering a political career should inform themselves of these requirements beforehand, and political parties have a role to play in this respect. This is all the more necessary as some people might be tempted to carry over the rules of conduct from their previous context to that

of the National Assembly. However, all rules of conduct are specific to the context for which they were created. The rules of conduct for Members of the National Assembly are unique and demanding, as they exist to govern the conduct of persons whose role is, first and foremost, to serve the public interest. Applying a personal reading of the rules would entail a greater risk of departure from them. To avoid such a risk, the Commissioner, who is responsible for the application of the Code, guides the elected officials in interpreting the rules of conduct applicable to them.