AN ETHICAL FRAMEWORK FOR MEMBERS OF THE NATIONAL ASSEMBLY OF QUÉBEC

Ethics and transparency in political life have become core values in today’s democracies. With many societies facing widespread public disaffection with politicians, citizens expect their elected representatives to conduct themselves with integrity. In an effort to regain the trust they require to fully exercise their role, implementing Codes of Conduct are becoming widespread throughout Parliaments across the globe. The President of the National Assembly of Quebec accounts how such a framework is working in its Parliament.

Hon. Jacques Chagnon, MNA
Mr Chagnon has been President of the National Assembly of Québec since 2012 and is the Chair of the CPA Québec Branch. He also holds the titles of Chair of the Québec Branch, Parliamentary Confederation of the Americas (COPA), and Chair of the Québec Branch, Assemblée parlementaire de la Francophonie (APF). Prior to being elected President, Mr Chagnon was Chair of the Committee on the National Assembly from 2012 to 5 March 2014.

The emergence of a code
In Québec, the Act respecting the National Assembly was passed in 1982. Its purpose was to enshrine the operating rules of the National Assembly of Québec in a new legislative framework. It expressly set out general rules of ethics for Members and introduced provisions on conflicts of interest and on the incompatibility of certain offices.

It also inaugurated the office of jurisconsult, making Québec the first legislative assembly in Canada to appoint a code-of-conduct adviser.1 The jurisconsult’s job was to answer Members’ requests for confidential advisory opinions on any potential incompatibility of office or conflict of interest.

After 2000, the National Assembly embarked on an in-depth review of its operations and of the rules governing its deliberations. In conjunction with these reform discussions, the question of introducing a Code of Ethics and Conduct for Members was examined.

By 2004, on the initiative of former President of the Assembly, Hon. Michel Bissonnet, MNA, a committee formed of Parliamentarians, public servants and ethics experts began meeting to propose a comprehensive code of ethics for the National Assembly and its Members and specific rules of conduct for the latter. The committee conducted a comparative study of the subjects covered in various codes of ethics adopted by legislative bodies in Canada, the United Kingdom, Australia and New Zealand.

The former President of the National Assembly, Yvon Vallières, then produced a draft code, which served as a foundation for Bill 48, the Code of ethics and conduct of the Members of the National Assembly.

It was introduced in the House on 14 May 2009, by Government House Leader and Minister for the Reform of Democratic Institutions, Hon. Jacques Dupuis, MNA.

The final version wasn’t adopted until 19 months later, on 3 December 2010. A parliamentary committee—the Committee on Institutions—held 27 sittings to examine the Bill, during which it met with representatives of organizations such as the Barreau du Québec (Québec Bar) and numerous experts, including National Assembly jurisconsult Claude Bisson. The Committee also adopted a total of 155 amendments for a Bill that initially comprised only 129 sections. This
demonstrated how important the Bill was in the eyes of the Members, since it would provide a framework for their conduct during and, to a degree, after their parliamentary careers.

Why a Code of Ethics and Conduct?

Before the Code was adopted, the provisions of the Act respecting the National Assembly that dealt with conflicts of interest comprised about a dozen sections worded in general terms. Members had few guidelines they could rely on to govern their conduct in specific situations.

The Code therefore required a need for the kind of clarity and precision that was lacking in the old rules. Still, a code could have been adopted without turning it into a law, so why legislate it? The following answer by the jurisconsult sums it up well:

"Legislating is the most solemn manner by which a democracy expresses itself. Therefore, establishing rules of conduct and ethics for public office holders through legislation is the most appropriate way of demonstrating the importance accorded to those rules and to their observance. Such a demonstration is made not only for those who are subject to the rules, but also for the people on behalf of whom they are enacted, that is, the entire population."

To a large degree, then, the Code of Ethics and Conduct is a concrete response to the public's concerns about the conduct of their elected representatives. But it also serves the Members, who seek the full confidence of their fellow citizens and want reliable guidelines to govern their conduct.

In its preamble, the Code states that the people of Quebec expect their elected representatives, due to the very nature of their functions, to observe certain rules of conduct. The Code clearly affirms the broad ethical principles:

- Members must adhere to and establishes specific rules of conduct they must follow, hence the title Code of ethics and rules of conduct of the Members of the National Assembly. The term "ethics" refers to the values set out in Title I of the Code, which all Parliamentarians must adhere to from the outset. The "rules of conduct"—the rules set out in Title II, applicable to all Members, and in Title III, applicable to Cabinet Ministers—represent the concrete application of those values to everyday life.

The values of the National Assembly

Section 6 of the Code gives the following expression to the values of the National Assembly:

- Commitment to improving the social and economic situation of Quebeckers;
- High regard for and the protection of the National Assembly and its democratic institutions; and
- Respect for other Members, public servants and citizens.

It also states that the conduct of Members must be characterized by benevolence, integrity, adaptability, wisdom, honesty, sincerity and justice. Consequently, Members must

- Show loyalty towards the people of Quebec;
- Recognize that it is their duty to serve the citizens;
- Show rigour and diligence;
- Seek the truth and keep their word; and
- Preserve the memory of how the National Assembly and its democratic institutions function.

Subsequent sections affirm that not only do Members embrace these values, but that observance of them is an essential condition for maintaining public confidence in the Members and the National Assembly. It also helps to enable Members to fully achieve their mission of serving the public interest.

Rules of conduct for Parliamentarians

In addition to these broad ethical
principles, the Code enacts specific rules of conduct applicable to all Parliamentarians.

To begin with, it sets out rules on the incompatibility of different offices and posts. Hence, a Member may not also be a mayor or municipal councillor or an employee of the government, a foreign country or an international non-profit organization. Newly elected Members must resign from any incompatible office or post before taking the oath of office. Members are also prohibited from acting as lobbyists within the meaning of the Lobbying Transparency and Ethics Act.4

Second, the Code sets out conflict-of-interest rules. Members may not place themselves in situations where their private interest or that of their families may impair their independence of judgement in carrying out their duties of office. They are not allowed to communicate information obtained in the course of their duties to further their own or another person’s private interests. Nor may they be a party to a contract with the government or engage in acts of favouritism. They are required to devote themselves exclusively to the duties of their office. In addition, they may not simultaneously sit on a board of directors or be a director of a business or association. Once their term of office has ended, former Cabinet Ministers are subject to strict post-term rules. They must conduct themselves in such a way as to avoid obtaining undue benefit from their prior office, and must refrain from disclosing confidential information obtained in connection with that office. In addition, they may not accept an appointment or job with a business, body or agency, other than a State entity, with which they had official, direct and significant dealings in the year before they left Cabinet.

Implementation and monitoring mechanisms
An Ethics Commissioner is responsible for the administration of the Code. As is the case for the other Officers of the National Assembly, such as the Auditor General and the Chief Electoral Officer,5 the Ethics Commissioner answers directly to the Assembly. To ensure the Commissioner’s independence and freedom from political influence, he or she is appointed by a joint recommendation of the Premier and the Leader of the Official Opposition, after consultation with the leaders of the other parties represented in the Assembly. The appointment must be approved by a two-thirds majority in the House.6 The Commissioner’s five-year term may be renewed.

The Commissioner may be seen as the caretaker of Parliamentarians’ ethical concerns. Specific rules of ethics also apply to the Commissioner, who must carry out their duties exclusively, with a focus on information and prevention, confidentiality, objectivity and impartiality. Like private Members and Ministers, the Commissioner is required to make and publish an annual disclosure statement.

Using such rules of ethics, the Commissioner must carry out his or her duties, which may include conducting inquiries if they have reasonable grounds for believing that a Member has violated the Code. Such inquiries may be conducted on the Commissioner’s own initiative or at the request of another Member. The Commissioner’s inquiry reports are tabled by the President of the National Assembly. The Assembly, by a vote of its Members, ultimately rules on whether the sanctions recommended by the Commissioner will be applied. Possible sanctions range from a simple reprimand to the loss of a Member’s seat or dismissal from Cabinet.

While the draft Code was being studied, the Members came out...
in favour of the idea, expressed by some of their number, that the office of jurisconsult be retained. An amendment was passed to that effect, thus allaying any fears that Members’ requests for advisory opinions, made in good faith, could result in an inquiry being launched against them.

The jurisconsult’s advisory opinions are confidential and not binding on the Commissioner, but they may not be given to Members under verification or inquiry by the Commissioner until the verification or inquiry process has been completed. Members are required to file an annual disclosure statement with the Commissioner concerning their own and their family members’ private interests, including income, immovable property other than personal residential property, business interests, and any professional, industrial or commercial activities they are engaged in. Cabinet Ministers have to make a more detailed statement that includes their assets and liabilities, their immovables, and information on any proceedings in which they are involved before a court of law or an adjudicative body.

Members who, despite their best efforts, find themselves in a conflict-of-interest or incompatibility-of-office situation must inform the Commissioner immediately and remedy the situation.

Finally, gifts worth more than $200 from the same source must be declared to the Commissioner.

Outcomes: To be Determined
The Code of ethics and conduct of the Members of the National Assembly has been fully in force since 1 January 2012.

For the past two years, the Commissioner has spent much of his time and energy presenting and explaining the new rules to the Members, who now find themselves under the major obligation of filing a disclosure statement of their own and their family members’ private interests. Though familiar enough to Parliamentarians in other Canadian assemblies, this is a new addition to the workload of the Members of the National Assembly.

Under the Code, the Commissioner may request a meeting with a Member in order to verify the Member’s disclosure statement and discuss their obligations under the Code. In this regard, the Commissioner has thus far fulfilled his role in systematic fashion. During his first term, he met with all private Members and Cabinet Ministers individually to discuss their disclosure statements. This exercise was useful to both groups, as it has helped them “domesticate” the Code.

The Members clearly take the new rules very seriously, as is demonstrated by the number of requests addressed to the Commissioner. In 2012–2013, the Commissioner answered 237 such requests (including 19 for written advisory opinions) in an Assembly that numbers only 125 Members. Furthermore, several former Cabinet Ministers consulted the Commissioner about post-term rules of conduct. This not only demonstrates that Members require clarification on various points of the Code, but also that they are strongly motivated to act in accordance with its ethical principles.

As the Code was implemented only two years ago, it is still much too early to tell whether it will change the public’s perception of its elected representatives. But we may safely assume that the more the Members’ conduct is seen to be exemplary, the more the public will be inclined to find them trustworthy.

The Code constitutes a clear commitment on the part of the Members of the National Assembly to observe the rules prescribed for them.

By 1 January 2015, the Commissioner must submit a report to the President on the implementation of the Code and the advisability of amending it.

The report will then be studied by the competent parliamentary committee. At that point, the Members will have an opportunity to state their views on whether the Code serves the objectives they had in mind when they adopted it.

Endnotes
3. Compilation of Quebec Laws and Regulations (COLR), chapter C-23.1.
4. COLR, chapter T-11.01.
5. The other Officers of the National Assembly are the Public Protector and the Lobbyists Commissioner.
6. The first Ethics Commissioner, Jacques Saint-Laurent, was unanimously appointed by the Members of the Assembly on 9 December 2010.
7. Thus far, the Commissioner has produced two inquiry reports. On 28 March 2012, he ruled that an inquiry request filed by a Member against a former Minister was unfounded (Ethics Commissioner, Activity Report 2011-2012, pp. 23-24). The second report, produced in June 2012, was the result of the Commissioner’s own initiative to inquire into a Member’s prolonged absence from the House. For more information, see http://www.ced-qcc.ca/.