



## Opening Statement to the *Commission des institutions* During its study of Bill 48, Code d'éthique et de déontologie des membres de l'Assemblée nationale

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### Introduction

I would like to thank the Commission des institutions for inviting me to participate in your study of Bill 48. As well, I would like to congratulate Québec for introducing the Code d'éthique et de déontologie des membres de l'Assemblée nationale. It represents an important step in increasing accountability and enhancing public confidence.

I have chosen to comment on several areas of Bill 48, because I think my experience in those areas might be of interest to you. If you have questions about my thoughts on other aspects of the bill, I will be happy to answer them later. I think it's important to keep in mind that there is no right or wrong when it comes to developing conflict of interest legislation, and there is no such thing as a perfect conflict of interest regime. What is important is that you end up with a system that works for you.

To provide context for my comments, I will first review the mandate of my Office.

### Mandate

My Office administers the *Conflict of Interest Act* for public office holders, and the *Conflict of Interest Code for Members of the House of Commons*. Their coverage is much broader than that proposed in Bill 48. Like most provincial and territorial conflict of interest regimes, the bill deals only with MNAs and Cabinet ministers.

All 2,700 full- and part-time appointees of the Government of Canada are considered public office holders under the *Conflict of Interest Act*. They are subject to its general rules on avoiding conflict interest. Full-time appointees, who number about 1,100, are subject, in addition, to the Act's requirements relating to the disclosure and divestment of controlled assets. These reporting public office holders include ministers, parliamentary secretaries, ministerial staff, senior public servants, and all full-time Governor in Council appointees.

The Act requires reporting public office holders to file detailed, confidential declarations of their assets and liabilities with my Office, restricts their outside activities, and prohibits them from holding controlled assets such as publicly traded securities. It also includes post-employment rules that come into effect after they leave office. The main activities of my Office under the Act include advising public office holders about their obligations; receiving and reviewing their confidential declarations; maintaining a public registry of publicly declarable information; and investigating alleged contraventions.

The Members' Code is not a legislative instrument, but is approved by the House of Commons. It applies to all 308 elected Members of Parliament. Cabinet ministers and Parliamentary Secretaries are subject to both the Code and the Act. The Code includes rules on conflict of interest for Members, processes for the confidential disclosure of private interests to the Commissioner, procedures for making Members' summary information public, an advisory role for the Commissioner, and a process for investigating alleged contraventions.

I note that Bill 48 requires the adoption of ethics rules for ministerial staff, and for staff of Members occupying certain positions in the National Assembly, but not for appointees to most boards, commissions and tribunals.

### **Comments on Bill 48**

Bill 48 contains many provisions that are quite similar to those in our Members' Code, and those relating to ministers in the *Conflict of Interest Act*. These relate to confidential disclosure statements, public summary statements, divestment of certain assets, the rules for government contracts, and post-employment rules for ministers.

There are some minor differences between our conflict of interest regimes, but I will only highlight a few areas where the differences seem to be more significant.

### ***Gifts and Benefits***

One area I will comment on relates to gifts and benefits.

Sections 22 and 23 of Bill 48 appear to be quite strict.

Until recently, the rules under our *Conflict of Interest Act* and Members' Code differed significantly from each other. The Act, which has a clear conflict of interest test, has worked well. The Code, however, was problematic. Members and their families were prohibited from accepting any gift or benefit related to the Members' position, regardless of whether or not there was a real or potential conflict of interest.

The only exceptions were gifts received as protocol or hospitality, which is similar to the expression “normal bounds of propriety” in Bill 48. There was a tendency for Members to try to expand the meaning of protocol or hospitality under our Members’ Code in order to allow for certain gifts or benefits. I was concerned that Members did not fully appreciate the breadth of the prohibition. As a result of the confusion around the gift provisions, significant amendments were approved by the House of Commons this past June.

The Members’ Code now prohibits only those gifts that “could reasonably be seen to have been given to influence the member in the exercise of a duty or function of his or her office.”

### ***Outside Activities***

Like our Members’ Code, Bill 48 contains no broad prohibition against outside activities for Members. It does, however, include several exceptions, namely positions in the public sector and in non-profit international organizations.

The rules for ministers, however, under our Conflict of Interest Act are more stringent than are the rules under Bill 48. Our Act prohibits all outside activities. While Bill 48 prohibits ministers from serving as a director or officer of a corporation, it allows ministers to participate in other professional, commercial or financial activities, where the Quebec Ethics Commissioner determines there is no conflict of interest.

### ***Divestment***

I note that under Bill 48, the Quebec Ethics Commissioner will have the discretion to determine whether Cabinet ministers who have interests in a public company must divest themselves of those assets.

In contrast, I have very little discretion under *the Conflict of Interest Act* with respect to divestment of controlled assets. The Act requires ministers and other reporting public office holders to divest controlled assets even where there is little or no chance that holding them would place them in a conflict of interest. While it can be argued that the divestment requirements should be more stringent for ministers, because of the breadth of their responsibilities, particularly their Cabinet responsibilities, I believe that most reporting public office holders should be able to hold controlled assets where it poses no significant risk of conflict of interest to do so.

### ***Post-Employment Rules***

Post-employment rules are an important part of the federal conflict of interest regime.

Those proposed in Bill 48 appear to be similar to ours.

My Office gives public office holders detailed information on their post-employment responsibilities, both when they assume office and as soon as we are informed of their departure. However, we have found that the absence of post-employment reporting requirements in our Act makes it difficult to track the compliance of former public office holders once they have left office, or to assess how effective the provisions are.

## **Conclusion**

In conclusion, I would like to say that we have found that, in almost all cases, those subject to the federal regime have demonstrated a willingness to comply. I suspect that you will have the same experience and that compliance will prove to be a collaborative undertaking, rather than an adversarial one.

Several other issues were raised by witnesses during your previous meetings, such as whether ethics should be addressed broadly in conflict of interest legislation, the link between lobbying and conflict of interest, and the inquiry process. These are all interesting questions.

The scope of Bill 48 does not appear to include ethics issues other than those related to conflicts of interest. Similarly, even though “Ethics” is part of my title, it is not referred to in our Act or Code. There is only a single reference in the *Parliament of Canada Act* to a mandate to provide confidential advice to the Prime Minister on ethics issues.

I note that your Commissioner of Lobbying is separate from the Ethics Commissioner, as is the case federally. At one time, these responsibilities were dealt with by one office, as I believe they currently are in Ontario.

As for the inquiry process, your process appears to be quite similar to ours, which generally works. However, there are some areas where we have concerns. For example, I cannot comment publicly on my reasons for deciding not to investigate a matter that my Office has been asked to look into, even when the matter is being commented on publicly by others. This leaves my Office vulnerable to being used politically.

I will be happy to answer any questions you might wish to ask me on these and any other issues.

Thank you again for giving me this opportunity to participate in your study of Bill 48.