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# *Conflict of Interest and the Office of Jurisconsult in Quebec*

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In the past Quebec parliamentarians who practised other professions or had interests in some undertaking often found themselves in a delicate situation. How many times have we seen some member of the press or of the opposition raise the subject of a government member's personal interests? The mere mention of the subject can frequently tarnish a member's reputation, even if what that member has done is all strictly above-board.

In Quebec we have devised a unique method of helping members of the National Assembly deal with this problem. When a situation arises which might constitute a conflict of interest, or if a member wants to be assured whether some office might be considered incompatible with that of a member of the Assembly, he or she can apply for an advisory opinion to the jurisconsult.

The office of jurisconsult was instituted in 1982, so that our parliamentarians might have help in interpreting the rules of ethics. Section 74 of the *Act respecting the National Assembly* stipulates that the jurisconsult gives "to Members who so request in writing, written and substantiated opinions on whether the situations they may be in are in conformity with the provisions on incompatible offices and conflicts of interest".

The jurisconsult's opinion must be given within thirty days after the request is made. The member thus quickly obtains a decision which will enable him to take appropriate actions. If he is considering the purchase of stock, for instance, or accepting additional responsibilities. The offers may be limited in time. Once a member has requested an opinion of the jurisconsult and has complied with that opinion, he has obtained a sort of guarantee. No one can accuse him of any offence, provided the facts supporting his request are clear and complete.

All opinions handed down by the jurisconsult are confidential, unless the member in question authorizes their divulgence. The jurisconsult is in the same position as a lawyer

bound by professional secrecy. He submits no report on the cases which come before him, not even to the Speaker of the Assembly. Nor is he required to appear before the House or before any parliamentary committee to justify or explain the opinions given to members.

Only after serious reflection was the rule of confidentiality inserted in the Act, even though it can lead to strange situations. Suppose that the jurisconsult advises a member not to do a certain thing, but the member goes ahead and does it. The only person aware of what is going on is the jurisconsult. But the rule of confidentiality prevents him from saying anything. In this sort of situation, all we can hope is that some third party will learn what is going on, and will say so publicly.

The Act also provides that the jurisconsult may submit a report to the Speaker of the Assembly, containing recommendations on how the provisions governing incompatibility of offices and conflicts of interest can be applied. The report, however, may not name any member nor provide any indication as to a member's identification.

The jurisconsult must enjoy the confidence of all members of the National Assembly. For this reason, his appointment must be approved by two-thirds of them. In order to preserve the independence of the person selected, the Act provides a relatively long term of office, a maximum of five years. Also, to avoid any possible conflict of interest, the jurisconsult is requested to avoid direct or indirect contact with any issue involving the public administration. The conflict of interest rules applicable to the jurisconsult must be spelled out before he or she is hired and before the motion is passed in the National Assembly. Finally, the jurisconsult cannot be dismissed except by resolution passed by two-thirds of the National Assembly.

To date, two former judges have been appointed jurisconsults. The first, Mr. Lucien Tremblay, was for many years Chief Judge of Quebec's Court of Appeal. Following his death in June of 1985 Albert Mayrand, retired Judge of the Court of Appeal, was appointed jurisconsult on February 5, 1986. In an exceptional move, Judge Mayrand was appointed unanimously by the members of the *Office of the National Assembly*, and not by two-thirds of the Members. On December 19, 1985, a short Bill was passed, under which the provision of the Act respecting the jurisconsult's appointment could be by-passed. We acted thus because the very

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brief session which followed the December election was not long enough to allow all the consultations required prior to the appointment of a jurisconsult.

The jurisconsult's working conditions were laid down by the Office of the National Assembly in 1983. The Office had to consider the special nature of the duty involved, and the fact that

problematical situations and eager to respect the rules of probity and integrity laid down in the Act.

This office was set up as a preventive rather than a curative measure. The Act is concerned with possible situations. In practice, the jurisconsult carries out formally and regularly a duty which the Speaker of the Assembly used to carry out informally



*Senator Lorne Bonnell (left) and members of the Quebec delegation to the 11th CPA Regional Seminar, Denis Perron and Albert Khelfa. (R. Quayle)*

requests for opinions are submitted sporadically. Thus the jurisconsult has been receiving \$15,000 per annum since 1983, plus \$100 for each hour worked. The jurisconsult is also entitled to an office within the Parliament Buildings, and to the services of a secretary.

Interpretation of legislation governing incompatibility and conflicts of interest has become very difficult. The office of jurisconsult meets a real need of parliamentarians grappling with

and sporadically. Some of the more cautious members would sometimes consult the Speaker who would never talk about this to others – although not bound by any oath of confidentiality.

The office of jurisconsult is not a panacea, but at least the members now know where they stand. No longer can they plead ignorance. Since the appointment of the first jurisconsult, no members have been accused of conflicts of interest or incompatibility of office. Surely this is no coincidence. ■