

## INFORMATION NOTE

### Sanctions Against Certain Misconduct in Previous Parliaments: Some References Overseas

#### 1. Background

1.1 This information note outlines the practice adopted by three overseas common law legislatures regarding sanctions available against current or former Members for certain misconduct in a previous Parliament, with particular reference to the declaration of interests. The United Kingdom Parliament, the United States Congress and the Parliament of Canada have been chosen in this study.

#### 2. United Kingdom Parliament

2.1 Parliament has long held disciplinary and penal powers over current Members as well as non-Members, who might have been past Members. These powers are part of the control exercised by Parliament over parliamentary affairs. These powers originated from the parliamentary privilege of "exclusive cognisance" (or "exclusive jurisdiction"). Parliament must have sole control over all aspects of its own affairs: to determine for itself what the procedures shall be, whether there has been a breach of its procedures and what then should happen. Indeed, acceptance by the executive and the courts of law that Parliament has the right to make its own rules and has unquestioned authority over the procedures it employs as legislator is a privilege of fundamental importance to ensure parliamentary independence.<sup>1</sup>

2.2 Most institutions exercise a degree of discipline over their members. So long as the disciplinary offences and the punishments are reasonable, and the procedures are fair, this is unexceptionable.

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<sup>1</sup> Joint Committee on Parliamentary Privilege, *Parliamentary Privilege - First Report*, 30 March 1999.

2.3 Parliament is unique in also possessing its own inherent powers of punishment over non-Members. This penal jurisdiction derives from the status of the High Court of Parliament<sup>2</sup> and the need for each House to have the means to carry out its functions properly. If non-Members improperly interfere with Parliament or its Members or officers in discharging their public duties, Parliament for its own protection must have power to take appropriate action in response.

2.4 Such interference, whether by Members or non-Members, is known as 'contempt of Parliament'.

### Contempt of Parliament

2.5 Contempt comprises any conduct (including words) which improperly interferes, or is intended or likely improperly to interfere, with the performance by either House of its function, or the performance by a Member or officer of the House of his duties as a Member or officer. The scope of contempt is broad, because the actions which may obstruct a House or one of its committees in the performance of their functions are diverse in character. Each House has the exclusive right to judge whether conduct amounts to improper interference and hence contempt. The categories of conduct constituting contempt are not closed. Figure 1 shows a list of some types of contempt. Please note that failure to declare financial interests by Members, present or former, constitutes a contempt of Parliament.

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<sup>2</sup> Erskine May's *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* : "The origin of the power seems to lie in the medieval concept of Parliament as primarily a court of justice, the 'High Court of Parliament'. The Lords derived its independent power to punish from their original membership of the Curia Regis. Immemorial constitutional antiquity was not similarly available to the Commons, and indeed its possession of penal jurisdiction was challenged on this ground as late as the 19<sup>th</sup> century, and has been defended by arguments which confused legislative with judicial jurisdiction. (Holroyd in *Burdett v Abbot* (1810) 104 ER 501; Sir R Atkyn's argument in the case of Speaker Sir William Williams (13 State Tr 1380)). The difficulties the commons experienced in proving its case to be a court of record --an issue never determined at law--were connected with these problems. Yet whatever the legal or constitutional niceties, in practice the House on many occasions in the 16<sup>th</sup> and 17<sup>th</sup> centuries exercised its power to impose fines and imprison offenders. These offenders might include Members of the House itself or non-Members, the latter comprising sheriffs, magistrates and even judges of the superior courts." 22<sup>nd</sup> edition, London: Butterworths, 1997, pp. 80-81.

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**Figure 1 - A list of some types of contempt of the UK Parliament**

- interrupting or disturbing the proceedings or, or engaging in other misconduct in the presence of, the House or a committee;
- assaulting, threatening, obstructing or intimidating a Member or officer of the house in the discharge of the Member's or officer's duty;
- deliberately attempting to misleading the House or a committee (by way of statement, evidence, or petition);
- deliberately publishing a false or misleading report of the proceedings of a House or a committee;
- removing, without authority, papers belonging to the House;
- falsifying or altering any papers belonging to the House or formally submitted to a committee of the House;
- deliberately altering, suppressing, concealing or destroying a paper required to be produced for the House or a committee;
- without reasonable excuse, failing to attend before the House or a committee after being summoned to do so;
- without reasonable excuse, refusing to answer a question or provide information or produce papers formally required by the House or a committee;
- without reasonable excuse, disobeying a lawful order of the House or a committee;
- interfering with or obstructing a person who is carrying out a lawful order of the House or a committee;
- bribing or attempting to bribe a Member to influence the member's conduct in respect of proceedings of the House or a committee;
- intimidating, preventing or hindering a witness from giving evidence or giving evidence in full to the House or a committee;
- bribing or attempting to bribe a witness;
- assaulting, threatening or disadvantaging a Member, or a former Member, on account of the Member's conduct in Parliament;
- divulging or publishing the content of any report or evidence of a select committee before it has been reported to the House.

Specifically in the case of Members:

- accepting a bribe intended to influence a Member's conduct in respect of proceedings of the House or a committee;
- acting in breach of any orders of the House;
- **failing to fulfil any requirement of the House, as declared in a code of conduct or otherwise, relating to the possession, declaration, or registration of financial interests or participation in debate or other proceedings.**

## Penalties

2.6 Parliament has power to impose the following penalties:

- ***to commit to prison***: In the 18<sup>th</sup> and early 19<sup>th</sup> centuries committal to the custody of the Serjeant-at-Arms, or to prison, was a regular punishment. The House of Commons has power to imprison until the end of the current parliamentary session, however long or short that may be. The House of Lords has power to imprison indefinitely. Neither House has used the power in recent times in respect of Members or non-Members.
- ***to fine***. The House of Commons has power to fine but this was last used in 1666. It was called into question by the courts in the 18<sup>th</sup> century and should be regarded as lapsed. The House of Lords still retains the power to fine, but it is open to doubt whether, in practice, the means exist to enforce payment. The House of Commons considers that the principle of punishment by financial penalty is already imposed through suspension; hence, there is no need for a power to fine.
- ***formal admonishment or reprimand***. This punishment extends to non-Members or past Members. The last time a non-Member was summoned to the bar of the House of Commons to apologize or take the consequences, which might have included committal, was in 1957.
- ***suspension (and loss of pay) for a period*** up to the end of the Parliament for the House of Commons. The House of Lords does not have power to suspend a member permanently.<sup>3</sup>
- ***expulsion***. This has not been used for half a century. The last time a Member was expelled, save following a criminal conviction and sentence of imprisonment of 12 months, was in 1947.

2.7 In practice, the House of Commons punishes Members found guilty of a serious contempt by suspension or admonishment or both; it punishes non-Members (including former Members) through a call to the bar of the House of Commons to apologize or take the consequences. The House of Lords has not found the need to impose any punishment on a member in the 20<sup>th</sup> century.

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<sup>3</sup> A writ of summons, which entitles a peer to "a seat, place and voice" in Parliament, cannot be withheld from a peer. A peer can be disqualified temporarily either by statute or at common law, for reasons such as bankruptcy or being under age. Joint Committee on Parliamentary Privilege, *Parliamentary Privilege - First Report*, 30 March 1999. See Chapter 6: Disciplinary and Penal Powers.

### Recent Cases

2.8 Although the penal powers of the two Houses are seldom used against non-Members, they have been used against current Members for certain misconduct relating to declaration of interests in the past. In March 2000 a Member received a suspension from the House of one month for a number of complaints upheld against her, including failure to register properties in the period 1987-94<sup>4</sup>. This is the longest period of suspension imposed upon a Member since 1995. The same Member had also been the subject of an earlier investigation by the Parliamentary Standards Commissioner for which she made a personal apology to the House in May 1999.<sup>5</sup>

2.9 Apart from the Member mentioned in para. 2.8 above, seven other Members<sup>6</sup> have been investigated by the Parliamentary Standards Commissioner in 1998-2000. Not all complaints have been upheld, and none has resulted in sanctions other than a formal apology to the House.

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<sup>4</sup> Teresa Gorman MP, HC 260 1999-2000

<sup>5</sup> Teresa Gorman MP, HC 458 1998-9

<sup>6</sup> Frank Cook MP, HC 709 1999-2000, Tony Baldry MP, HC 369 1999-2000, Marjorie Mowlam MP, HC 929 1998-9, Dr Jack Cunningham MP, HC 929 1998-9, Peter Mandelson MP, HC 611 1998-9, Sir Edward Heath MP, HC 348 1998-9, Geoffrey Robinson MP, HC 292 1998-9

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### 3. United States Congress

3.1 The United States Congress has the power to investigate all Members' interests, both declared and undeclared. If found guilty of withholding information or falsifying documents, current Members may be punished by the respective Houses of Congress which may refer evidence of criminal law violations to the Attorney General.

3.2 Unlike the UK Parliament, the US Congress does not have the power to investigate the actions of former Members. The Department of Justice may prosecute former Members for violations under US law.

3.3 The Ethics in Government Act of 1978 (EIGA), most recently amended in 1996, requires Members, officers, and principal assistants of the United States Congress to file an annual Financial Disclosure Statement. In the Financial Disclosure Statement, Members, officers, and principal assistants must disclose the identity of business entities where they have an interest or professional organizations where they derive an income. Since each house has adopted EIGA as of part of its respective rules, Members, officials, and employees are subject to each house's sanctions for violations.<sup>7</sup> Violations of ethical standards may lead to various penalties. The U.S. Constitution authorizes each House of Congress to punish its Members for disorderly behavior and, with the concurrence of two thirds, to expel a Member.<sup>8</sup>

3.4 In the House of Representatives ('House') the 12-member Committee on Standards of Official Conduct hears allegations of misconduct. In the Senate six Senators make up the Select Committee on Ethics. According to The Ethics Reform Act of 1989, The House Standards Committee may not investigate allegations against current Members of **ethics violations occurring before the 3<sup>rd</sup> previous Congress unless** it determines that such matters are directly related to an alleged violation which occurred in a more recent Congress.

#### Penalties

3.5 Each House has the power to impose the following penalties or a combination of penalties:

- **Expulsion:** Thus far, the House has only applied this punishment to Members who committed offences during their terms of office and not to their actions prior to election

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<sup>7</sup> *House Rules And Manual.* (Washington, D.C.: GPO, 1997), Rules XLIV-XLVII; "Senate Rules." 18 Sept. 2000 <<http://rules.senate.gov/senaterules/rule34.htm>XXXIV> Rule XXXIV.

<sup>8</sup> United States Constitution, Art. 1, Sec. 5

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- **Censure:** Upon the vote of the House or Senate, it is administered by the Presiding Officer at the bar of the chamber
- **Reprimand:** Administered to the Member "standing in his place" or by way of the adoption of a committee report
- **Fine or Other Economic Sanction**
- **Deprivation of Seniority or Committee Status**
- **Exclusion:** In *Powell v. McCormack*, the Supreme Court ruled that exclusion may only be used if the Member does not meet the Constitutional requirements for holding his office
- **Imprisonment:** Congress has never implemented this power.

3.6 These punishments are not mutually exclusive. Also, where standards of conduct derive from criminal law, violations of these standards may lead to a fine or imprisonment, or both.

3.7 The **resignation** of a Member at a time when expulsion proceedings against him are pending generally results in the suspension or discontinuance of the proceedings. Similarly, when a Member resigns after a committee of investigation has found him guilty of improper conduct and deserving of censure, the House may discontinue the proceeding. However, the House may also adopt a resolution censuring his conduct even after his resignation has been submitted.<sup>9</sup> The resolution may call for direct and immediate action by the House<sup>10</sup>, which can take effect before the resignation is accepted.

3.8 Historically, the practice has been that the House of Representatives or the Senate would not refrain from taking disciplinary action against a Member based merely on the fact that the misconduct had taken place in a previous Congress.<sup>11</sup> There has been, however, a distinction made between the punishment of censure (and in the House also "reprimand") which has addressed past misconduct as opposed to the punishment of "expulsion", for which the practice has been not to expel for previous misconduct when the electorate knew of such conduct, and re-elected the Member nonetheless.<sup>12</sup> The reluctance for imposing expulsion in the latter case is that the question might be raised about Congress seeking to override or usurp the character judgments made by the electorate of a particular individual whom they have chosen for Congress.<sup>13</sup>

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<sup>9</sup> *House Practice: A Guide to Rules, Precedents and Procedures of the House.* Washington, D.C.: GPO, 1996. "Misconduct; Sanctions," §19.

<sup>10</sup> *House Practice*, §24.

<sup>11</sup> "Conduct or Discipline of Members, Officers, or Employees." *Deschler's Precedents*, Ch. 12 §16. 1976. 27 Sept. 2000. <<http://www.access.gpo.gov/congress/house/precedents/chap12.html>>; Brown, Wm. Holmes.

*House Practice: A Guide to Rules, Precedents and Procedures of the House.* Washington, D.C.: GPO, 1996. "Misconduct; Sanctions," §18.

<sup>12</sup> *House Practice.*, "Misconduct; Sanctions," §18.

<sup>13</sup> H.R. Rpt. No. 77, 42<sup>nd</sup> Congress, 3d Sess.; H.R. Rpt. No.82, 42<sup>nd</sup> Cong., 3d Sess.; note also H.R. Rpt. No. 815, 44<sup>th</sup> Cong., 1<sup>st</sup> Sess., 2 *Hinds' Precedents* § 1283.

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## Cases

3.9 In the House of Representatives, only four Members have been expelled, three of them for conduct traitorous to the Union in the Civil War era, and one for bribery. Since the 90<sup>th</sup> Congress established the House Committee on Standards of Official Conduct in 1967, four Members have been censured by the House after Committee investigations, and seven have been reprimanded. In addition, the Committee has issued three public letters of reproof, without recommending action by the full House. Ten Members left the House after charges were brought by the Committee or court convictions were returned but before House action could be concluded.<sup>14</sup> Through the 94<sup>th</sup> Congress, the House had censured 17 members and one Delegate. Five cases were based on corrupt behavior by a Member. For example, in 1966--prior to the creation of the Committee on Standards--the House concluded that a Representative had deceived House authorities as to travel expenses and had made illegal salary payments to his wife. No formal action was taken in the 89<sup>th</sup> Congress; however, in the 90<sup>th</sup> Congress the House censured and fined him, and reduced his seniority.<sup>15</sup>

3.10 In the Senate, between 1789 and 1980, it has had eight cases of censure, one of which was for corrupt behavior.<sup>16</sup> The Senate censured one Senator for exercising the power and influence of his office to obtain and use for his personal benefit funds from the public raised through political testimonials and a political campaign.<sup>17</sup>

3.11 Any disciplinary measure which Congress invokes against a Member for violation of a statute is separate and distinct from sanctions which may be sought by law enforcement authorities at the state or federal level. Criminal prosecution may precede or follow committee investigation or House censure for the same offence. See *US v. Diggs*.<sup>18</sup>

3.12 The Ethics in Government Act of 1978, as amended, provides that the Attorney General may seek a civil penalty of up to US\$11,000 against an individual who knowingly and wilfully falsifies or fails to file or report any information required by the Act.<sup>19</sup>

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<sup>14</sup> "Ch. 1 Committee Procedures." *Ethics Manual for Members, Officers, and Employees of the U.S. House of Representatives*. 1992. Online version updated 102<sup>nd</sup> Congress, 2<sup>nd</sup> Session. 18 Sept. 2000 <<http://www.house.gov/ethics/Ethicforward/html>>

<sup>15</sup> Representative Adam Clayton Powell, Jr. of New York

<sup>16</sup> Riddick, Floyd, M. *Senate Procedure: Precedents and Practices*, Washington, D.C.: GPO, 1980, p. 219.

<sup>17</sup> "Conduct or Discipline of Members, Officers, or Employees." *Deschler's Precedents*, Ch.12 §16.3.1976. 27 Sept. 2000.<<http://www.access.gpo.gov/congress/house/precedents/chap12.html>>

<sup>18</sup> *House Practice*: "Misconduct; Sanctions" §9.

<sup>19</sup> "Failure to File or Falsifying Disclosure Statements." *Financial Disclosure Booklet 2000*. 18 Sept. 2000. <[http://www.house.gov/ethics/FD\\_Instructions\\_2000.htm](http://www.house.gov/ethics/FD_Instructions_2000.htm)>; 5 U.S.C. app. 4, §104.

#### 4. Parliament of Canada

4.1 There is no registry of financial interests currently in place for Members of the House of Commons or Senate. Under the Standing Orders of the House of Commons, there is a registry of foreign travel.

4.2 Rules, including disclosure, do exist for cabinet ministers, but these are administered by the executive, rather than the legislative, branch of government.

4.3 Similar to the UK House of Commons, the Canadian House of Commons' powers are unrestricted by exclusive cognisance to discipline or punish a Member for misconduct that occurred in a previous session or Parliament. They include censure, reprimand, suspension and expulsion. There is no record of any Member of the Parliament of Canada having ever been disciplined or punished for misconduct that occurred in a previous session or Parliament.<sup>20</sup>

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<sup>20</sup> Reply from the Research Branch, Library of Parliament, Canada dated 3 October 2000.

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