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**Committee on Members' Interests**  
**Paper for the first meeting on 3 November 2004**

**Matters of ethics in relation to the conduct of**  
**Members in their capacity as such**

**Purpose**

This paper invites members of the Committee on Members' Interests (the Committee) to consider issuing to all Legislative Council (LegCo) Members the Advisory Guidelines on Matters of Ethics in relation to the conduct of Members of the Legislative Council of the Hong Kong Special Administrative Region in their capacity as such (Advisory Guidelines).

**Background**

2. One of the functions and responsibilities of the Committee as stipulated in Rule 73(d) of the Rules of Procedure is “to consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters”.

3. The Committee of the second term LegCo requested, at its meeting on 15 July 2003, the Research and Library Services Division (RLSD) to conduct a study on mechanisms in overseas legislatures for regulating and dealing with members' misbehaviour. An information note (IN02/04-05) prepared by RLSD is set out in **Appendix I**.

## **Practice of the Committee of past terms**

4. The Committee on Members' Interests of the first as well as that of the second term LegCo had issued Advisory Guidelines to all LegCo Members. The Advisory Guidelines issued by the respective Committees were substantially the same. The Advisory Guidelines issued by the Committee of the second term LegCo are set out in **Appendix II** for members' reference.

## **Advice sought**

5. Members are invited to consider whether and how the Advisory Guidelines in Appendix II should be revised and to consider issuing them to all LegCo Members.

Council Business Division 3  
Legislative Council Secretariat  
27 October 2004

**Appendix I****INFORMATION NOTE****Mechanisms in Selected Legislatures for Regulating and Dealing with Members' Misbehaviour Unconnected with Parliamentary Proceedings****1. Background**

1.1 The Committee on Members' Interests, at its meeting on 15 July 2003, requested the Research and Library Services Division (RLSD) to conduct a study on mechanisms in overseas legislatures for regulating and dealing with members' misbehaviour

1.2 While relevant previous studies<sup>1</sup> focused on members' misconduct involving conflict of interests, this note focuses on members' misbehaviour (primarily offensive words and acts) unconnected with parliamentary proceedings or outside the chamber, by which legislators may bring disrepute to the legislature.

1.3 The United Kingdom (the UK) Parliament, the United States of America (the US) Congress, the Parliament of Australia and the Parliament of Canada are selected for this study. The former two legislatures are chosen because of their established disciplinary systems, and the latter two, because of their fewer formal and explicit rules.

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<sup>1</sup> See Eva Liu and Anne Countiss, "Sanctions against Certain Misconduct in Previous Parliament: Some References Overseas", Information Note (IN2/00-01), 2000. It focused on sanctions against contempt of parliament in the UK, the US and Canada, with particular reference to the declaration of interests. See also LC Paper CB(1)442/98-99, CB(1)503/98-99 and CB(1)746/98-99, which outlined the practices adopted by legislatures in the UK, the US, Australia and Canada to disqualify a member from office for conflict of interests.

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## 2. The United Kingdom Parliament<sup>2</sup>

### House of Commons

#### *Code of Conduct for Members of Parliament*

2.1 The House of Commons does not have any specific provision in its Standing Orders handling Members' misbehaviour unconnected with parliamentary proceedings or outside the chamber.<sup>3</sup> Instead, such misbehaviour is regulated by the Code of Conduct for Members of Parliament (the Code),<sup>4</sup> which was prepared pursuant to a resolution of the House in 1995.<sup>5</sup>

Clause 8 of the Code provides that:

*“Members shall at all times conduct themselves in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament and never undertake any action which would bring the House of Commons, or its Members generally, into disrepute.”*

2.2 The clause applies to Members “*in all aspects of their public life*”<sup>6</sup>, and regulates all Members who act in their capacity as Members of Parliament - whether inside or outside the chamber.<sup>7</sup>

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<sup>2</sup> The UK Parliament has two Houses - the House of Commons and the House of Lords. Each House has its own disciplinary mechanism, with the two mechanisms based on the common privilege of “*exclusive jurisdiction*”. Such jurisdiction means that “*Parliament must have sole control over all aspects of its own affairs: to determine for itself what the procedures shall, whether there has been a breach of its procedures and what then should happen*”. This privilege includes the power for Parliament to discipline and punish Members for misbehaviour. “*Exclusive jurisdiction*” is a main component of “*the freedom of speech and debates or proceedings in Parliament*” guaranteed by Article 9 of the Bill of Rights of 1689, see Joint Committee on Parliamentary Privilege, *Parliamentary Privilege - First Report*, 1999, the United Kingdom Parliament, <http://www.publications.parliament.uk>.

<sup>3</sup> The Standing Orders only have provisions dealing with disorderly conduct in the chamber. See Standing Orders 43 and 44.

<sup>4</sup> Reply from the Parliamentary Commissioner for Standards of the House of Commons, 30 July 2003, and the House of Commons, “The Code of Conduct for Members of Parliament”, the United Kingdom Parliament, 1995, <http://www.parliament.the-stationery-office.co.uk>.

<sup>5</sup> The Code was prepared pursuant to the Resolution of the House of 19 July 1995, following recommendations by the Committee on Standards in Public Life chaired by Lord Nolan and the Select Committee of the House on Standards in Public Life.

<sup>6</sup> See clause 2, the Code of Conduct.

<sup>7</sup> Reply from the Parliamentary Commissioner for Standards, 5 August 2003.

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*Parliamentary Commissioner for Standards*

2.3 The Code is administered by the Parliamentary Commissioner for Standards who is appointed by the House. With regard to handling Members' misbehaviour, the Commissioner has the following duties stated in the Standing Orders:<sup>8</sup>

- (a) giving advice on the interpretation of the Code;
- (b) monitoring and making recommendations related to the operation of the Code; and
- (c) receiving and, if he thinks fit, investigating specific complaints from Members and from members of the public in respect of the propriety of a Member's conduct.

2.4 In handling a complaint, the Commissioner has power to:<sup>9</sup>

- (a) consider whether a complaint should be followed, and reject complaints which are anonymous, clearly trivial or vexatious, or have insufficient evidence;
- (b) seek to agree remedial action with the Member concerned under the rectification procedure, if the complaint, though justified, is minor; and
- (c) interview the Member concerned, the complainant and other persons; seek relevant documentary or other evidence from the parliamentary authorities and other public or private bodies, or from private individuals, when a full investigation is needed.

2.5 The Commissioner is required to report the facts of the complaint and offer his own conclusion to the Committee on Standards and Privileges (CSP) on whether the Code has been breached. CSP is a select committee appointed by the House to oversee the work of the Commissioner and to consider complaints relating to privilege and contempt, and breaches of the Code.<sup>10</sup> CSP has power to send for persons, papers and records in support of the Commissioner's investigation.<sup>11</sup> After deliberation of the complaint, CSP will report its recommendations to the House, and it will be for the House to make a decision on actions to be taken.<sup>12</sup>

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<sup>8</sup> Standing Order 150 (2) (c), (d) and (e).

<sup>9</sup> For details, see Procedural Notes 1-4 issued by the Office of the Parliamentary Commissioner for Standards, [http://www.parliament.uk/about\\_commons/pcfs.cfm](http://www.parliament.uk/about_commons/pcfs.cfm).

<sup>10</sup> Standing Order 149 (1) (a), (b) and (c).

<sup>11</sup> Standing Order 149 (6).

<sup>12</sup> See "Disciplinary and Penal Powers of the House of Commons", Fact sheet No. 62, House of Commons Information Office, July 1997.

### *Matter of Privilege*

2.6 In extreme cases, offensive words and acts may constitute a breach of privilege or a contempt. In normal practice, the question of privilege is first raised by a Member by letter with the Speaker who will decide whether or not to allow the Member to move a motion. If it is allowed and after it is moved, a Member (often the Leader of the House) will then move that the matter be referred to CSP for deliberation.

### *Disciplinary Action*

2.7 There are several types of sanctions available to the House to discipline Members for misbehaviour which constitutes a contempt. They include an apology by the Member to the House in person, censure, fines, suspension of the Member's service from the House for a period of time, expulsion and imprisonment.

2.8 Even when a Member's offensive words or acts involve clear evidence of contempt, the House has shown increasing reluctance to exercise its disciplinary and penal power.<sup>13</sup> The principle is that the House should exercise its penal jurisdiction as sparingly as possible, and only when satisfied that such action is essential to providing reasonable protection to the House and its Members from improper obstruction or substantial interference with the performance of their functions.

### House of Lords

2.9 The House of Lord also has a Code of Conduct, one purpose of which is "*to provide guidance of Members of the House of Lords on the standards of conduct expected of them in the discharge of their parliamentary and public duties*".<sup>14</sup> The Code is largely adapted from that of the House of Commons. In particular, Members are required to "*act always on their personal honour*".<sup>15</sup>

2.10 However, unlike the House of Commons, the House of Lords does not have a Parliamentary Commissioner for Standards or equivalent to administer the Code and to enforce standards. Members' misbehaviour relating to the alleged breach of privilege is handled by the Committee for Privileges. The Committee hears complaints of prima facie breach of privilege, takes evidence and reports its recommendations to the House of Lords, where they are debated before the House decides whether or not to accept them.

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<sup>13</sup> See "Disciplinary and Penal Powers of the House of Commons".

<sup>14</sup> See "Code of Conduct", the House of Lords, <http://www.publications.parliament.uk>.

<sup>15</sup> Ibid.

### Recent Cases

2.11 Since the introduction of the House of Commons' Code of Conduct in 1995, the Parliamentary Commissioner for Standards has not received any substantiated complaint regarding a Member's offensive words or acts.<sup>16</sup>

2.12 According to the Commissioner, his office does receive complaints regarding Members' remarks that have been made outside the chamber and offended members of the public, but he approaches such complaints "very cautiously", as "freedom of speech is at stake".<sup>17</sup>

2.13 A recent case involved a veteran Labour Member of Parliament reportedly making remarks that the British Prime Minister's policy towards war in Iraq had been influenced by his Jewish advisers. The complaint was that these remarks were offensive to the Jewish community and might constitute an incitement to racial hatred which is an offence under the criminal law of England.<sup>18</sup> Both the Commissioner and CSP took the view that "it would not be appropriate to take action under the Code in the circumstances of this case, especially as the general law could have been invoked (although in the event it was not)".<sup>19</sup>

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<sup>16</sup> According to the *Parliamentary Commissioner for Standards Annual Report 2002-03*, in the initial days when the Code was put into effect, the focus of complaints was on allegations that Members had abused their office by, for example, tabling questions in return for reward. Attention was then shifted to complaints that Members had failed to register or declare a relevant interest. In recent years, the focus has been on complaints alleging the improper use of parliamentary allowances. Of the 49 substantiated complaints handled by the Committee between July 1997 and July 2003, none of them was about a Member's offensive words or acts.

<sup>17</sup> Reply from the Parliamentary Commissioner for Standards, 30 July 2003.

<sup>18</sup> The case was also reported by *The Guardian* (London), 6 May 2003.

<sup>19</sup> Reply from the Parliamentary Commissioner for Standards, 30 July 2003.

### 3. The United States of America Congress<sup>20</sup>

#### House of Representatives

##### *The Code of Official Conduct*

3.1 Representatives' misbehaviour, including offensive words and acts unconnected with parliamentary proceedings or outside the chamber, is regulated by the Code of Official Conduct (the Code), which is incorporated in the Rules of the House.<sup>21</sup>

3.2 Clause 1 of the Code, as quoted below, is the provision which may be invoked to impose disciplinary measures against Representatives for the use of offensive words and acts:

*“A Member, officer, or employee of the House of Representatives shall conduct himself at all times in a manner which shall reflect creditably on the House of Representatives.”*<sup>22</sup>

3.3 Unlike the UK's House of Commons, there is no regulatory body such as the Parliamentary Commissioner for Standards for administering the Code in the US's House of Representatives. The jurisdiction over alleged breach of the Code rests with the Committee on Standards of Official Conduct (CSOC), which is designated by the Ethics in Government Act as the “*supervising ethics office*” for the House.<sup>23</sup> Both Representatives and members of the public may lodge complaints about a Representative's misbehaviour with CSOC.

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<sup>20</sup> The US Congress has two Houses - the House of Representatives and the Senate. Each House has its own disciplinary mechanism, the operation of which is much alike. Congress's authority to discipline its Members derives from the US Constitution which provides that each House “*may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member*”. See Article 1, section 5, clause 2, *The Constitution of the United States*, <http://lcweb2.loc.gov/const.html>.

<sup>21</sup> Rule XXIII on Code of Official Conduct. Before the 90th Congress, there was no formal code of conduct for Representatives or standing or permanent committees in the House to investigate and report on improper conduct of Representatives, officers and employees of the House. Allegations of improper conduct against Representatives were ordinarily considered by temporary select committees. In 1967 and 1968, the House Rules were amended to make the Committee on Standards of Official Conduct a standing committee of the House and to establish, as a new House Rule XXIII, a Code of Official Conduct for Representatives, officers and employees of the House. See *House Practice*, 108<sup>th</sup> Congress, chapter 25, section 7, <http://frwebgate.access.gpo.gov>.

<sup>22</sup> See Rule XXIII clause 1.

<sup>23</sup> See "Jurisdiction of the Committee on Standards of Official Conduct", <http://www.house.gov/ethics/CommitteeJurisdiction.htm>.



*Committee on Standards of Official Conduct*

3.4 CSOC is the only standing committee of the House which has a membership evenly divided by party.<sup>24</sup> Its functions in relation to complaints involving Representatives' offensive words or acts include:<sup>25</sup>

- (a) recommending administrative actions to establish or enforce standards of official conduct;
- (b) investigating alleged violations of the Code or of any applicable rules, laws or regulations governing the performance of official duties or the discharge of official responsibilities;
- (c) reporting to appropriate federal or state authorities substantial evidence of a violation of any law applicable to the performance of official duties that may have been disclosed in a Committee investigation; and
- (d) rendering advisory opinions regarding the propriety of any current or proposed conduct of a Representative, officer or employee, and issuing general guidance on such matters as necessary.

3.5 Under House Rules,<sup>26</sup> CSOC may initiate an investigation of the particular conduct of a Representative, Delegate, Resident Commissioner, officer or employee of the House, if one of the following conditions is met:

- (a) obtaining an approval by a majority vote of CSOC members;
- (b) receiving a complaint filed by a Representative; or
- (c) receiving a complaint filed by a non-Member which is accompanied by a certification from a Representative that the information is submitted in good faith and warrants consideration by CSOC.

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<sup>24</sup> See House of Representatives, Rules of Committee on Standards of Official Conduct, 108<sup>th</sup> Congress, 19 March 2003, [http://www.house.gov/ethics/Rules\\_108th.htm](http://www.house.gov/ethics/Rules_108th.htm).

<sup>25</sup> See Rule XI clause 3, Committee on Rules, US House of Representatives, <http://www.house.gov/rules/RXI.htm>.

<sup>26</sup> Rule XI clause 3 (b) (1) (A).

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- 3.6 In handling a complaint, CSOC is empowered to:<sup>27</sup>
- (a) establish an investigative subcommittee or an adjudicatory subcommittee, which could authorize and issue subpoenas, to consider a founded complaint;
  - (b) retain counsel not employed by the House for the purpose of a particular investigation or other proceedings, subject to the approval of the Committee on House Administration and by an affirmative vote of a majority of its members; and
  - (c) take action against Representatives or non-Members whose complaints are deemed frivolous by an affirmative vote of a majority of its members.

#### *Matter of Privilege*

3.7 In order to enforce the standards of official conduct, Representatives may raise from the floor questions of personal privilege. These questions are “*those affecting the rights, reputation and conduct of Members, Delegates or the Resident Commissioner, individually, in their representative capacity only*”. They can be raised in response to offending words that are not spoken in debate and, therefore, cannot be taken down.<sup>28</sup>

#### *Disciplinary Action*

3.8 The common forms of sanctions against Members’ misbehaviour are reprimand, censure and expulsion. The House may also discipline Representatives in such ways as suspension of voting rights and other privileges, imposition of a fine or deprivation of seniority status.<sup>29</sup> In addition, CSOC may issue a public “Letter of Reproval” for misbehaviour which does not rise to the level of consideration or sanction by the entire House. Such letter may include a direction to the offending Representative for making an apology. CSOC may also express its disapproval of conduct in informal letters and communications to Representatives.

3.9 In situations involving censure for unparliamentary language or behaviour, the House may accept an apology or explanation from the Representative, terminate the proceedings, and withdraw the resolution of censure. If the House has already voted to censure, it may reconsider its vote and decide against censure.<sup>30</sup>

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<sup>27</sup> Rule XVI clause 3 (e), (m), and (o).

<sup>28</sup> Ibid.

<sup>29</sup> See LC Paper IN2/00-01, 2000. For more details, see “Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives”, and also *House Practice*, House of Representatives, 108<sup>th</sup> Congress, chapter 25: pp. 493-523.

<sup>30</sup> See *House Practice*, chapter 25: p. 522.

### The Senate

3.10 The Senate does not have a mechanism for handling Senators' misbehaviour unconnected with parliamentary proceedings. Its Standing Rules only require Senators not to impute by any form of words to other Senators any conduct or motive unworthy or unbecoming of a Senator.<sup>31</sup>

3.11 The Senate has a Select Committee on Ethics and an Ethics Manual, but they are all concerned with the regulation of Senators' interests, not their offensive words or acts.

### Recent Cases

3.12 Cases involving Members' use of offensive words or acts, which sparked public outcry outside the chamber, have occurred sporadically. According to Congress records, there have not been any cases of such nature which ultimately led to the expulsion of a Member.<sup>32</sup> Nor have there been such cases giving rise to censure or reprimand by the full House in recent years.<sup>33</sup>

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<sup>31</sup> Rule XIX, *Standing Rules of the Senate*, <http://rules.senate.gov/senaterrules/rule19.htm>.

<sup>32</sup> See Appendix on disciplinary actions taken by the full House against a Representative, Jack Maskell, "Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives", Congressional Research Service, The Library of Congress, 16 April 2002.

<sup>33</sup> *Ibid.* In the 19th century, however, it was not uncommon that unparliamentary language, assaults upon another Representative or insults to the House by introduction of offensive resolution gave rise to censure by the full House.

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## 4. The Parliament of Australia<sup>34</sup>

### House of Representatives

4.1 The House of Representatives only has provisions in its Standing Orders to govern Representatives' words and acts in the chamber, but it does not have any specific provision or code of conduct to regulate Representatives' misbehaviour unconnected with parliamentary proceedings or outside the chamber, except for the situations amounting to a matter of privilege.

4.2 A draft document entitled "Framework of Ethical Principles for Members and Senators", proposed by a working group of Representatives and Senators, was tabled in 1995 for both Houses to study. It aimed "to provide a framework of reference for Members and Senators in the discharge of their responsibilities," and outlined "the minimum standards of behaviour" which the working group believed "the Australian people had a right to expect of their elected representatives."<sup>35</sup>

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<sup>34</sup> The Parliament has two Houses - the House of Representatives and the Senate, with each House having its own disciplinary mechanism. In common with the UK Parliament and the US Congress, the Parliament of Australia is empowered with the privilege to deal with its own affairs, including misbehaviour constituting a contempt or breach of privilege. This privilege has been further guaranteed by statutory provisions such as The Parliamentary Privileges Act 1987. See sections 44 and 45, *The Australian Constitution*, <http://pandora.nla.gov.au>. A safeguard against misuse of this power is explicitly given by the Act in that it states that: "Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free performance by a member of the member's duties as a member." See section 4, The Parliamentary Privileges Act 1987, reprinted as at 31 December 1991, <http://www.aph.gov.au>. It should be noted that, in 1984, the Joint Select Committee on Parliamentary Privilege recommended the adoption of a policy of restraint in the exercise of the penal jurisdiction regarding conduct against the Parliament of Australia. Although the policy has not been implemented by the Parliament of Australia through explicit action, successive Speakers, in giving decisions on complaints raised, have indicated support for it. See *House of Representatives Practice*, the Parliament of Australia, chapter 19, <http://www.aph.gov.au>.

<sup>35</sup> See "A Framework of Ethical Principles for Members and Senators", a document provided by Chamber Research Office, the Parliament of Australia. The document was regarded as an attempt in response to the mounting public concern about the declining ethical standards of ministers and members of the opposition who had been occasionally facing allegations of impropriety such as misuse of travel allowances and conflict of interests. See Andrew Brien, "A Code of Conduct for Parliamentarians?" Research Paper 2 1998-99, Department of the Parliamentary Library, the Parliament of Australia, 1998.

4.3 The proposed framework listed eight ethical principles, the seventh of which was on “*Personal Conduct*” and might serve as a mechanism for regulating Representatives’ offensive words or acts unconnected with parliamentary proceedings or outside the chamber that may discredit the Parliament.<sup>36</sup> It provided that:

*“Members and Senators must ensure that personal conduct is consistent with the dignity and integrity of the Parliament.”*<sup>37</sup>

4.4 The House has not made a decision on whether the proposed framework should be put into operation.

4.5 Unlike the UK’s House of Commons, the House of Representatives does not have a Parliamentary Commissioner for Standards or equivalent. The proposed ethical framework did not indicate a need to establish a regulatory body to enforce standards or handle complaints regarding Representatives’ misbehaviour.

#### *Matter of Privilege*

4.6 A Representative’s offensive words such as remarks reflecting on the Speaker or other Representatives outside the chamber, which may not fall under the Standing Orders or practice, could be raised as a matter of privilege.<sup>38</sup>

4.7 In normal practice, a Representative may rise to speak upon a matter of privilege. If satisfied that a prima facie case exists, the Speaker may allow priority to a motion on the matter which would usually be referred to the Committee of Privileges (the Committee) for investigation.<sup>39</sup> The Committee has power to send for persons, papers and records, and to make a finding on whether a breach of privilege or contempt has been committed. The Committee can also make non-binding recommendations to the House.<sup>40</sup> The final decision on what action should be taken lies with the House.

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<sup>36</sup> The headings of the other seven principles are as follows: Loyalty to the Nation and Regard for its Laws, Diligence and Economy, Respect for the Dignity and Privacy of Others, Integrity, Primacy of the Public Interest, Proper Exercise of Influence, and Additional Responsibilities of Parliamentary Office Holders.

<sup>37</sup> See “A Framework of Ethical Principles for Members and Senators”.

<sup>38</sup> See *House of Representatives Practice*, chapter 19: p.722, <http://www.aph.gov.au/house/pubs/PRACTICE/Index.htm>.

<sup>39</sup> Standing Order 325(a).

<sup>40</sup> See “Infosheet on Parliamentary Privilege”, Chamber Research Office, Department of the House of Representatives, April 2002.

### *Disciplinary Action*

4.8 Normally, actions taken by the House to discipline Representatives for offensive words or acts are dealt with as matters of order (offences and penalties under the Standing Orders) rather than as matters of privilege or contempt.<sup>41</sup> Accordingly, the House may only require an apology from the Representative instead of inflicting severe punishments upon him or her such as reprimand or suspension for a period from the service of the House.

### The Senate

4.9 Whilst the Senate does not have a code of conduct for Senators, the Standing Orders of the Senate only regulate Senators' offensive words or acts connected with parliamentary proceedings or inside the chamber. Privilege matters are considered by the Privileges Committee of the Senate.

### Recent Cases

4.10 According to the Chamber Research Office of the House of Representatives, cases regarding Representatives' use of offensive words or acts are not rare.<sup>42</sup> However, they usually occurred in the chamber, and they were "*almost always of a trifling nature*", and were dealt with routinely by the Speaker. There have been no major incidents in recent years.<sup>43</sup>

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<sup>41</sup> See "Infosheet on Parliamentary Privilege", Chamber Research Office, Department of the House of Representatives, April 2002.

<sup>42</sup> Reply from Chamber Research Office, House of Representatives, 2003.

<sup>43</sup> Ibid.

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## 5. The Parliament of Canada<sup>44</sup>

### House of Commons

5.1 Similar to the Australian House of Representatives, the House of Commons of the Parliament of Canada does not have any specific provision in its Standing Orders to regulate Members' misbehaviour unconnected with parliamentary proceedings or outside the chamber. The House is preparing a code of conduct for Members, but the code will deal with the issue of conflict of interests only.<sup>45</sup>

### *Matter of Privilege*

5.2 Members may raise privilege issues in the House if offensive words or acts by any Member amount to a breach of privilege.

5.3 Similar to other parliaments in this study, the parliamentary privilege of Members in Canada applies to Members' words spoken or acts done in relation to the context of a parliamentary proceeding, but not to other behaviour outside the chamber, particularly those of a criminal nature.<sup>46</sup> Within the jurisdiction of the House, Members are subject to its discipline for any form of misbehaviour, notably those amount to a breach of privilege or contempt, both inside and outside the chamber.<sup>47</sup>

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<sup>44</sup> The Parliament has two Houses - the House of Commons and the Senate. Each House has its own disciplinary mechanism, the operation of which is much alike. The power to discipline has been a keystone of both Houses' parliamentary privilege which is inherent from the UK Parliament and is guaranteed as well as confined by The Constitution Act, 1867. Section 18 of the Act prescribes that "any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or power exceeding those at the passing of such Act held, enjoyed, and exercised by the House of Commons of the Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof." The Act can be obtained at [http://www.lois.justice.gc.ca/en/const/c1867\\_e.html](http://www.lois.justice.gc.ca/en/const/c1867_e.html).

<sup>45</sup> See Senator Donald Oliver's webpage on Code of Conduct, <http://sen.parl.gc.ca/doliver/ComWork/eConduct.asp>.

<sup>46</sup> As Marleau and Montpetit said, "The House of Commons cannot be used to give a Member sanctuary from the application of the law. Even the floor of the Chamber of the House is not a sanctuary and the application of the law, particularly in criminal matters, is foremost. It is not the precinct of Parliament but the function that the precinct serves which is sacred." See *House of Commons Procedure and Practice*, chapter 3: pp.114-115.

<sup>47</sup> *Ibid*, chapter 3: p.97.

5.4 The Standing Orders have set out the procedure that must be followed in raising a question of privilege. In general, the Speaker must have found that a prima facie case of privilege exists, and the matter will then be referred to the Standing Committee on Procedure and House Affairs for detailed examination. The Committee will report its findings to the House about whether privilege has been breached or a contempt of the Parliament committed, with its recommendation on the appropriate penalty to be imposed. Only the House can decide on a question of privilege.<sup>48</sup>

### *Disciplinary Action*

5.5 The House has a wide range of sanctions for dealing with Members' misbehaviour, such as naming and suspension from the service of the House.<sup>49</sup> However, these disciplinary actions may not apply to a Member whose misbehaviour occurs outside the chamber unless it amounts to a breach of privilege.

### The Senate

5.6 Resembling the House of Commons, the Senate only has House rules to rely on to regulate "*objectionable speeches*" and "*exceptionable words*" in the chamber.<sup>50</sup> Criteria and procedures are provided for Senators to raise a question of privilege if there is a violation of the privileges of any Senator.<sup>51</sup> Privilege matters can be referred by the Senate to the Standing Committee on Rules, Procedures and the Rights of Parliament for investigation.

### Recent Cases

5.7 There was a case which involved offensive remarks by Members outside the chamber. The complaint was that the remarks were intended to intimate or attack the impartiality of the Speaker. In this case, the issue was considered a question of privilege. The **Appendix** presents the details of the case.

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<sup>48</sup> See House of Commons, *Procedure and Rules of Order*, <http://www.parl.gc.ca/InfoCom/documents/GuidePratique/CHAPTER10-E.html>.

<sup>49</sup> See Marleau and Montpetit, *House of Commons Procedure and Practice*, chapter 3: p. 96.

<sup>50</sup> Rule 18, *Ibid.*

<sup>51</sup> Rule 43, *Ibid.*



**Table -A summary of mechanisms in selected legislatures for regulating and dealing with members' misbehaviour unconnected with parliamentary proceedings**

<b>Mechanisms/ Selected legislatures</b>	<b>United Kingdom</b>	<b>United States of America</b>	<b>Australia</b>	<b>Canada</b>	<b>Hong Kong</b>
House rules on members' misbehaviour unconnected with parliamentary proceedings	No for both Houses.	No for both Houses.	No for both Houses.	No for both Houses.	No.
Availability of code of conduct/guidelines for regulating members' misbehaviour	Yes for both Houses.	Yes for the House of Representatives; No for the Senate.	No for both Houses, but both have a draft ethical framework with a provision probably applicable to cases involving offensive words or acts.	Codes of conduct are being considered by both Houses, but they do not have any provisions related to offensive words or acts.	Yes, there are advisory guidelines on matters of ethics in relation to the conduct of Members.
Availability of independent officers in handling members' misbehaviour unconnected with parliamentary proceedings	The Parliamentary Commissioner for the House of Commons; No for the House of Lords	No for both Houses.	No for both Houses.	The House of Commons has an Ethics Commissioner and the Senate, an Ethics Officer, but their mandates do not cover cases involving offensive words or acts.	No.

**Table -A summary of mechanisms in selected legislatures for regulating and dealing with members' misbehaviour unconnected with parliamentary proceedings (cont'd)**

<b>Mechanisms/ Selected legislatures</b>	<b>United Kingdom</b>	<b>United States of America</b>	<b>Australia</b>	<b>Canada</b>	<b>Hong Kong</b>
Committee responsible for handling members' misbehaviour unconnected with parliamentary proceedings	The House of Commons has the Committee on Standards and Privileges which oversees and supports the work of the Commissioner;  The House of Lords has the Committee for Privileges which handles complaints only related to prima facie breach of privilege.	The House of Commons has the Committee on Standards of Official Conduct which investigates complaints of misbehaviour;  The Senate does not have any committees to handle complaints of misbehaviour.	The House of Representatives has the Committee of Privileges which investigates complaints only related to prima facie breach of privilege;  The Senate has the Privileges Committee to consider matters related to breach of privilege only.	The House of Commons has the Standing Committee on Procedure and House Affairs to inquire into matters related to privileges only;  The Senate has the Standing Committee on Rules, Procedures and the Rights of Parliament to investigate prima facie case of privilege.	The Legislative Council has the Committee on Members' Interest to consider general matters of ethics, primarily conflict of interests. It does not have the function or power to determine whether the offensive behaviour in a particular case is appropriate or up to the ethical standard.
Whether offensive words or acts could constitute privilege issues	Yes for both Houses.	Yes for both Houses.	Yes for both Houses.	Yes for both Houses.	Not applicable.
Disciplinary actions imposed on members for misbehaviour which does not amount to a breach of privilege	Apology.	Letter of Reproval; Apology.	Apology.	Apology.	Not applicable.

## Appendix

### **Case about Representatives' offensive remarks outside the Parliament of Canada that constitute a matter of privilege**

**Date:** 9 March 1998

**Situation:** debate on privilege matter

**Procedure:** question of privilege, followed by a motion

**Parliamentary inquiry:** Mr. Speaker, I rise on a question of privilege that arises from a circumstance surrounding a newspaper article which appeared in the March 8 edition of the Ottawa Sun. Within that article there were quotations attributed to Members of this House which, in my view, constitute an overt and outrageous attempt to intimidate you, the Speaker of this House, and collectively the House itself...I would suggest that this article, which appears in public, affects the integrity of this entire House...While it might be argued that these statements were made outside the House and therefore should not fall under the purview or rubric of the question of privilege, I would suggest that it is clear from the precedents that this House has addressed such matters of contempt in the past.

**Chair's ruling:** I find a prima facie case and I am going to permit the Hon. House leader of the Progressive Conservative Party to put his motion.

**Action taken:** The question of privilege was referred to the Standing Committee on Procedure and House Affairs (SCPHA) for examination.

**Decision made:** SCPHA presented its report to the House on 27 April 1998. The report concluded that the quotations attributed to the Members were not intended to be contemptuous of the House or the Speaker, and thus did not bring into question the integrity of the House and the Speaker. The report was concurred on 5 May 1998.

Source: House of Commons Edited Hansard, Parliament of Canada, 10 March 1998, and the Standing Committee on Procedure and House Affairs, 29 the Report on the Integrity of the House of Commons and its servant the Speaker, 23 April 1998.

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**Advisory Guidelines on Matters of Ethics  
in relation to the conduct of Members of  
the Legislative Council of  
the Hong Kong Special Administrative Region  
in their capacity as such**

*(Issued by the Committee on Members' Interests under  
Rule 73(1)(d) of the Rules of Procedure of the Legislative Council)*

**I. General Standards**

- (1) (a) A Member should ensure that his conduct must not be such as to bring discredit upon the Legislative Council ("the Council").
  - (b) A Member should conduct himself in such a way as not to place himself in a position which may be contrary to the generally assumed standard of conduct expected of a Member of the Council. When deciding whether to engage in activities of a commercial nature such as advertisement activities, Members should accord due consideration as to whether the nature and contents of such activities might be regarded as not in keeping with the position or prestige of a Member of the Council and thereby bringing discredit upon the Council.
- (2) A Member should adhere to the spirit and the letter of any rules or regulations made by the Council, its committees or subcommittees, or the President for the regulation of the practice and procedure of the Council, its committees and subcommittees, or Members' behaviour in their conduct of the business of the Council.

**II. Specific Standards**

- (3) In accordance with Rules 83A, 84(1) and 84(1A) —
  - (a) In the Council or in any committee or subcommittee, a Member shall not move any motion or amendment relating to a matter in which he has

a pecuniary interest, whether direct or indirect, or speak on any such matter, except where he discloses the nature of that interest.

- (b) In the Council or in any committee or subcommittee, a Member shall not vote upon any question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.
- (c) In the Council or a committee of the whole Council, a Member shall withdraw when a vote is taken on a question in which he has a direct pecuniary interest except where his interest is in common with the rest of the population of Hong Kong or a sector thereof or his vote is given on a matter of Government policy.
- (4) In accordance with Rule 83 and guidance notes issued by the Committee on Members' Interests, a Member shall register particulars of registrable interests listed below:—
  - (a) remunerated directorships of companies, public or private;
  - (b) remunerated employments, offices, trades, professions or vocations;
  - (c) the names of clients when the interests referred to above include personal services by the Member which arise out of or are related in any manner to his membership of the Council;
  - (d) (i) all donations, as a candidate in the Legislative Council election in which the Member was elected as a Member of the Council, received by the Member or any person on his behalf for the purpose of meeting the Member's election expenses in the election; or
    - (ii) financial sponsorships, as a Member of the Council, by any person or organization, stating whether any such sponsorships include any payment or any material benefit or advantage to the Member or his spouse, whether direct or indirect;
  - (e) overseas visits made by the Member or his spouse relating to or arising



out of membership of the Council where the cost of any such visit has not been wholly borne by the Member or public funds;

- (f) any payments or any material benefits or advantages received by the Member or his spouse arising out of his membership of the Council from or on behalf of:
    - (i) any government or organization of a place outside Hong Kong; or
    - (ii) any person who is not a Hong Kong permanent resident;
  - (g) land and property;
  - (h) the names of companies or other bodies in which the Member has, to his knowledge, either himself or with or on behalf of his spouse or infant children, a beneficial interest in shareholdings of a nominal value greater than one-hundredth of the issued share capital.
- (5) A Member should not, in his capacity as such, seek to influence another person to further the Member's private interest.
- (6) (a) A Member should not take advantage of, or benefit from, information that is obtained in his capacity as a Member of the Council and which is not generally available to the public.
- (b) A Member should ask for information only about matters of public interest and should not seek information for private or personal interest.
- (7) A Member should not use any part of his Operating Expenses Reimbursement or District Office Allowance for purposes other than those in connection with the business of the Council.