

INFORMATION NOTE

Supplementary Note on Mechanisms for Regulating and Dealing with Members' Misbehaviour

1. Background

1.1 The Committee on Members' Interests, at its meeting on 3 November 2004, requested the Research and Library Services Division to provide supplementary information on the following items, which were touched upon in the information note entitled "Mechanisms in Selected Legislatures for Regulating and Dealing with Members' Misbehaviour Unconnected with Parliamentary Proceedings":

- (a) the misbehaviour unrelated to declaration/conflict of interests which is subject to regulation;
- (b) how the misbehaviour is regulated, and whether the regulation is advisory or mandatory in nature;
- (c) how the independent officers/committees responsible for handling misbehaviour are selected or formed; and
- (d) the codes and rules based on which the independent officers/committees handle Members' misbehaviour.

2. Misbehaviour unrelated to declaration/conflict of interests which is subject to regulation

The United Kingdom

2.1 In the United Kingdom (UK), under the Code of Conduct for Members of Parliament, Members' misbehaviour unrelated to declaration/conflict of interests which is subject to regulation can be classified as follows:

- (a) failure to conduct at all times in a manner which will tend to maintain and strengthen the public's trust and confidence in the integrity of Parliament;
- (b) undertaking any action which would bring the House, or its Members generally, into disrepute; and
- (c) information that Members receive in confidence in the course of their parliamentary duties being used under circumstances which are not connected with those duties.

The United States

2.2 In the United States (US), under the House of Representatives' Code of Official Conduct, Members' misbehaviour unrelated to declaration/conflict of interests which is subject to regulation can be classified as follows:

- (a) failure to conduct at all times in a manner that reflects creditably on the House;
- (b) retaining an employee who does not perform duties commensurate with the compensation the employee receives;
- (c) discharging or refusing to hire an individual, or discriminating against an individual with respect to compensation, terms, conditions or privileges of employment, because of the race, colour, religion, sex (including marital or parental status), disability, age or national origin of such individual;
- (d) allowing an individual, group or organization not under the direction and control of the House to use the words "Congress of the United States", "House of Representatives", "Official Business", or any combination of such words, on any letterhead or envelope; and
- (e) disclosing any classified information received in the course of service with the House, without the authorization by the House or in accordance with its Rules.

Canada and Australia

2.3 Both Australia and Canada do not have any parliamentary documents specifying the types of misbehaviour unrelated to declaration/conflict of interests, since such misbehaviour is not subject to regulation, unless it amounts to a matter of privilege.

3. How the misbehaviour is regulated and whether the regulation is advisory or mandatory in nature

3.1 In the UK's House of Commons, Members' misbehaviour unrelated to declaration/conflict of interests is regulated by the Code of Conduct for Members of Parliament, which was prepared pursuant to the Resolution of the House of 19th July 1995. The Code is binding on Members.

3.2 In the US's House of Representatives, such misbehaviour is regulated by the Code of Official Conduct, which was established in 1968 as Rule XXIII of the House Rules. The Code is binding on Members.

3.3 Both Canada and Australia do not have any codes of conduct or rules regulating Members' misbehaviour unrelated to declaration/conflict of interests.

4. How the independent officers/committees responsible for handling misbehaviour are selected or formed

The United Kingdom

4.1 In the UK's House of Commons, the Parliamentary Commissioner for Standards is responsible for handling Members' misbehaviour. The House's Standing Order 150 only states that the Commissioner is "*appointed by the House*". It does not have an established process through which the nomination of the Commissioner to the House is made.

4.2 Appointed by Resolution of the House in 2002, the current Commissioner was formally nominated by the House of Commons Commission, which is responsible for managing the personnel in the House. The Commission consists of the Speaker of the House as the Chairman, the Leader of the House, a Member of the House nominated by the Leader of the Opposition, and three other Members appointed by the House, none of whom is a Minister.¹

4.3 According to the Commissioner, the nomination process in 2002 involved interviews of candidates. During the final interview, the Chairman of the Committee on Standards and Privileges, who by convention had been drawn from the opposition parties², was invited to join the Commission to decide on the nomination of the Commissioner to the House. Meanwhile, the nomination process was invigilated by an independent assessor recommended by the Commissioner for Public Appointments.

¹ Erskine May (2004), pp. 236-237.

² This arrangement was explicitly agreed by the government in June 2003. In addition, by convention, no single party should have a majority on the Committee. See Erskine May (2004), p. 783.

The United States

4.4 In the US's House of Representatives, the Committee on Standards of Official Conduct is responsible for handling Members' misbehaviour. The Committee is the only standing committee of the House whose membership is divided evenly by party. The Committee is composed of 10 members, five from the majority party and five from the minority party.

Canada

4.5 In Canada, the Ethics Commissioner and the Senate Ethics Officer are responsible for handling Members' misbehaviour related only to conflict of interests in the House of Commons and the Senate respectively. They are new posts established on 31 March 2004 under An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence. The two officers are given the rank of a deputy head of a government department in Canada³. There is no significance associated with the terminological difference between "Commissioner" and "Officer"⁴ as both are appointed through a similar process which statutorily entails:⁵

- (a) consultation with the leader of every recognized party in either House of Parliament;
- (b) approval of the appointment of either officer by resolution of each House he or she serves; and
- (c) the Governor in Council making the appointment of either officer. The Governor in Council represents the Governor General⁶ who acts by and with the advice and consent of those members of the Privy Council⁷ who make up the Cabinet led by the Prime Minister.⁸

³ Sections 72.04 (1) and 20.4 (1), An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence, available from: <http://www.canlii.org/ca/as/2004/c7/sec2.html>.

⁴ There are, however, some differences in their functions. The Ethics Commissioner is responsible for administering not only the Conflict of Interest Code for Members of the House of Commons but also the Prime Minister's Conflict of Interest and Post-employment Code for Public Office Holders which applies to cabinet ministers, parliamentary secretaries and thousands of Federal Order in Council appointees. On the other hand, the Senate Ethics Officer is responsible only for administering the Senate's code of conduct which is still under consideration.

⁵ Sections 72.01 and 20.1, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

⁶ The Governor General is the representative of the UK's sovereign in Canada to exercise all of the Crown's powers, and is appointed on the advice of the Prime Minister normally for a five-year term.

⁷ The Privy Council is a formal advisory body to the executive branch of the government appointed by the Governor General on the advice of the Prime Minister.

⁸ The Prime Minister is the leader of the government, who is ordinarily the leader of the party having the greatest number of seats in the House of Commons.

4.6 Nevertheless, the Act does not establish a process through which potential candidates for either the Ethics Commissioner or the Senate Ethics Officer are solicited or brought forward. The current Ethics Commissioner was nominated by the Prime Minister. The nomination for the Senate Ethics Officer has not been made.

Australia

4.7 In Australia, the House of Representatives has two standing committees handling Members' misbehaviour. The Committee of Members' Interests, which can consider any specific complaints made in relation to the registration or declaration of interests, is appointed at the commencement of each Parliament in accordance with the House's Standing Order 329. The Committee has seven members: four nominated by the government party and three nominated by the opposition parties. The Committee of Privilege, which is responsible for inquiring into complaints of breach of privilege or contempt referred to it by the House or the Speaker, is established under Standing Order 325. The Committee consists of the Leader of the House or his or her nominee, the Deputy Leader of the Opposition or his or her nominee, and nine other Members.

5. Codes or rules based on which the independent officers/committees handle Members' misbehaviour

The United Kingdom

5.1 In the UK, the Parliamentary Commissioner for Standards performs his or her duties in accordance with the House's Standing Order 150, which empowers the Commissioner to receive and investigate specific complaints from Members or members of the public in respect of the registration or declaration of interest or other aspects of the propriety of a Member's conduct. The Office of the Parliamentary Commissioner for Standards has also issued guidance notes by which the Commissioner can follow when handling complaints or conducting investigations.

The United States

5.2 In the US, the powers of the Committee on Standards of Official Conduct to handle Members misbehaviour are authorized by clause 3 of House Rule XI. Such powers include investigating alleged violations of the Code of Official Conduct, and rendering advisory opinions regarding the propriety of any current or proposed conduct of a Member. Investigations conducted by the Committee are also made in accordance with Committee Rules adopted by the Committee under the authority of clause 2(a)(1) of House Rule XI of the current Congress. Committee Rules can be modified, amended or repealed by a vote of a majority of the Committee.

Canada

5.3 In Canada, it is An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence which empowers the Ethics Commissioner and the Senate Ethics Officer to perform their duties assigned by the House of Commons and the Senate respectively regarding the conduct of Members. In addition, the Ethics Commissioner performs his or her duties under the authority of the Conflict of Interest Code for Members of the House of Commons, which provides for not only rules of conduct but also procedures of conducting inquiries. Similar arrangement will apply to the Senate, which will also issue a code of conduct under which the Senate Ethics Officer performs his or her duties.⁹

Australia

5.4 In Australia, the Committee of Members' Interests handles complaints relating to Members' misbehaviour under the House's Standing Order 329, while the operation of the Committee of Privilege is authorized by Standing Order 325.

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⁹ Reply from the Parliamentary Information and Research Service of the Library of Parliament in Canada, 9 November 2004.