

## INFORMATION NOTE

### Sanctions against Substantiated Cases of Abusive Claims of Public Funds by Members of Selected Overseas Legislatures

#### 1. Introduction

1.1 This information note aims to provide information on whether the imposition of fines is one of the sanctions against substantiated cases of abusive claims of public funds by Members of selected overseas legislatures, and the legal or constitutional basis for imposing or not imposing fines.

1.2 For consistency with previous works on related subjects,<sup>1</sup> the House of Commons in the United Kingdom (UK) Parliament, the House of Representatives in the United States (US) Congress, the House of Representatives in the Parliament of Australia and the House of Commons in the Parliament of Canada are chosen for this study.

1.3 A case involving abusive claims of public funds by a Member of the UK Parliament is presented in **Appendix I** to illustrate the procedures involved in the investigation and imposition of sanction for Members' reference.

#### 2. House of Commons in the United Kingdom Parliament

2.1 In the UK, the House of Commons does not have the power to impose fines on its Members who breach the Code of Conduct for Members of Parliament. A provision of the Code states that "*no improper use shall be made of any payment or allowance made to Members for public purposes and the administrative rules which apply to such payments and allowances must be strictly observed*". According to Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament, while the House of Lords in its capacity as a court of record has the power to inflict fines, "*the status of the House of Commons as a court of record has been doubted, and the Commons has not imposed a fine since 1666*".<sup>2</sup>

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<sup>1</sup> For example, see Legislative Council Secretariat (2004a), (2004b) and (2004c).

<sup>2</sup> McKay (2004), p. 161.

2.2 In 1999, there was a recommendation made by the Joint Committee on Parliamentary Privilege that the House of Commons should have the power to fine because of the following reasons:<sup>3</sup>

- (a) imposing fines had been commonplace as a disciplinary sanction in leading professional bodies, such as the Bar Council of England and Wales, the Law Society of England and Wales, the Institute of Chartered Accountants, the Institute of Actuaries and the General Optical Council;
- (b) the House already had power to impose one form of financial sanction, i.e. loss of salary for the duration of a Member's suspension from the service of the House;
- (c) some forms of sanctions (e.g. imprisonment) more serious than imposing fines had been available against Members; and
- (d) imposing fines was a modest and sensible option when suspension was undesirable or inadequate (e.g. when a Parliament comes to an end).

2.3 Despite the recommendation, no follow-up has been taken by the House on whether fines should be imposed on Members.<sup>4</sup>

2.4 Currently, the House of Commons can only punish its Members by the following ways: apology to the House by a personal statement; reprimand or admonition; withholding of salary for a specified period without suspension; suspension from the service of the House; and expulsion.<sup>5</sup> **Table 1** presents the sanctions against substantiated cases of abusive claims of public funds by Members since 1997. In addition, the Department of Finance and Administration of the UK Parliament states that if a Member overspends or mischarges something to his or her allowances, it reserves the right to deduct the costs from the Member's salary or, if the Member is leaving the House, his or her resettlement grant.<sup>6</sup>

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<sup>3</sup> Joint Committee on Parliamentary Privilege (1999).

<sup>4</sup> McKay (2004), p. 162.

<sup>5</sup> McKay (2004), pp. 132-138 and pp. 163-166.

<sup>6</sup> Department of Finance and Administration (2005), p. 3.

**Table 1 – Sanctions against substantiated cases involving abusive claims of public funds by Members of the House of Commons of the UK Parliament from 1997 to 2004**

Date of report issued	Subject matter	Sanction
October 2001	A Member did not seek advice from the Fees Office before claiming reimbursement of rent against accommodation which he or his family owned, and made improper use of the Office Costs Allowance.	The Member under complaint made an apology to the House.
February 2003	A Member negligently claimed Additional Costs Allowance in respect of expenditure incurred in relation to his main home and failed to strictly observe the administrative rules relating to the Allowance.	The Member under complaint was suspended from the service of the House for two weeks.
July 2003	A Member sub-let part of his constituency office to a firm, but failed to register the income he received from the sub-let and to offset the rental income from the sub-let when claiming the full rental cost against his Office Costs Allowance entitlement (See <b>Appendix I</b> ).	The person under complaint was subject to no sanction because he was no longer a Member. Had he still been a Member, the Committee on Standards and Privileges indicated that it would have recommended to the House a period of suspension of one week.
March 2004	A Member employed his wife paid out of the Member's parliamentary allowances, but she did not do any work for which Members of Parliament are entitled to claim from their allowances.	The Member under complaint made an apology. No further action was recommended by the Committee on Standards and Privileges.

Source: Committee on Standards and Privileges.

### 3. House of Representatives of the United States Congress

3.1 Under the US Constitution, the House can "*determine the rules of its proceedings*" and "*punish its Members for disorderly behaviour*".<sup>7</sup> According to Deschler's Precedents, pursuant to its constitutional authority to punish its Members, the House can levy a fine against a Member.<sup>8</sup> The House's power to fine was also recognized by the Supreme Court in dicta in *Kilbourn v. Thompson*.<sup>9</sup>

3.2 Under the Rules of the Committee on Standards of Official Conduct (the Committee Rules), adopted under the authority of clause 2(a)(1) of Rule XI of the Rules of the House of Representatives of the 109<sup>th</sup> Congress, sanctions which can be recommended to the House by the Committee on Standards of Official Conduct include not only expulsion, censure, reprimand, letter of reproof and denial or limitation of any right, power, privilege or immunity of a Member but also fine or any other sanction determined by the Committee to be appropriate. According to the Committee Rules, "*a recommendation of a fine is appropriate in a case in which it is likely that the violation was committed to secure a personal financial benefit*".<sup>10</sup> In any event, this clause only serves as a general guideline without limiting the authority of the Committee to recommend other sanctions.<sup>11</sup>

3.3 Imposing fines on Members has been infrequent. According to Deschler's Precedents, the House fined a Member in 1969 in the sum of US\$25,000 (HK\$195,000) to be deducted on a monthly basis from the Member's salary. **Table 2** indicates that in the past seven years, none of the sanctions against substantiated cases involving Members' abusive claims of public funds was fines.

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<sup>7</sup> Article I, Section 5, clause 2.

<sup>8</sup> Deschler's Precedents, p. 1753.

<sup>9</sup> 103 U.S. 168 (1880) and Maskell (2002), pp. 15-16.

<sup>10</sup> Rule 24 (g), the Committee Rules. With respect to the sanctions that the Committee on Standards of Official Conduct may recommend, reprimand is appropriate for serious violations, censure is appropriate for more serious violations, and expulsion of a Member is appropriate for the most serious violations.

<sup>11</sup> Rule 24 (g), the Committee Rules.

**Table 2 - Sanctions against substantiated cases involving abusive claims of public funds by Members of the House of Representatives of the United States Congress from 1998 to 2004**

Date of report issued	Subject matter	Sanction
October 2000	The number and dollar amount of expenditures by a Member's campaign committee for meals designated as "political meetings" and for transportation on chartered aircraft, combined with inadequate record-keeping practices to verify the legitimate campaign purposes of these expenditures, created an appearance that certain expenditures of his campaign committee might not be attributable to bona fide campaign or political purposes.	The Committee on Standards of Official Conduct issued a Letter of Reproval to the Member under complaint.
June 2001	A Member converted campaign funds to personal use in various ways, including making expenditures to individuals for salary and benefits for performing services for corporations owned or controlled by the Member and members of his family, and making expenditures for rent substantially in excess of fair market value to a corporation operated and controlled by members of the Member's family.	The Committee on Standards of Official Conduct issued a Letter of Reproval to the Member under complaint.

Source: Committee on Standards of Official Conduct.

#### **4. House of Representatives in the Parliament of Australia**

4.1 In Australia, the House of Representatives has the power to fine Members, but such power only applies to substantiated cases involving breach of privilege or contempt instead of abusive claims of public funds.

4.2 Under section 7 of the Parliamentary Privileges Act 1987, the House can impose a fine not exceeding AUS\$5,000 (HK\$29,500) in the case of a natural person, and not exceeding AUS\$25,000 (HK\$147,500) in the case of a corporation, for an offence against the House.<sup>12</sup> Such offence does not cover abusive claims of public funds by Members; it only refers to "*conduct (including the use of words)*" that "*amounts, or is 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*".<sup>13</sup> The House has not exercised the power to fine so far.

4.3 According to the Parliament of Australia, cases involving abusive claims of public funds will most likely be referred directly to the police, and the House has not handled such a case to date.

## 5. House of Commons in the Parliament of Canada

5.1 In Canada, the House of Commons does not have the power to fine. It can only punish its Members by the following ways: apology to the House, reprimand or admonition, suspension from the service of the House; and expulsion. These sanctions only apply to whoever is guilty of a misconduct which the House considers amounts to a breach of privilege or contempt.<sup>14</sup> Although a Member's fraudulent use of public funds for an unauthorized or illegal purpose may give rise to an allegation of contempt, such situation has not occurred. According to the Parliament of Canada, cases involving abusive claims of public funds by Members are generally to be handled by the police. If they are substantiated, charges will be laid under the Criminal Code of Canada, and the matter will be pursued through criminal courts. No such cases have occurred so far.

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<sup>12</sup> Section 7 (6) of the Parliamentary Privileges Act 1987 states that such fines are debts due to the Commonwealth and may be recovered on behalf of the Commonwealth in a court of competent jurisdiction by any person appointed by the House.

<sup>13</sup> Section 4, the Parliamentary Privileges Act 1987.

<sup>14</sup> Marleau R. and Montpetit, C. (2000) p. 96-97.

**Appendix I****A case involving abusive claims of public funds by a Member of the UK Parliament****Initiating an investigation**

A.I.1 In November 2001, a Member of the House of Commons submitted a written complaint to the Chairman of the Committee on Standards and Privileges (the Committee), asking the Committee to authorize an investigation into the allowance claims made by Henry McLeish, who had been elected as a Member since 1987 but lost his seat in 2001. The complaint was that, since December 1987, Henry McLeish had sub-let part of his constituency office to a firm, but had failed to register, before April 2001, the income he received from the sub-lets, and also failed to offset the rental income from the sub-lets when claiming the full rental cost against his Office Costs Allowance (OCA) entitlement. The sub-lets were first revealed by the press in April 2001.

**Preliminary consideration**

A.I.2 The Committee considered that the complaint had substance, but decided to put the complaint on hold because the issues of the complaint were already the subject of a police investigation. Meanwhile, following contact with the Parliamentary Commissioner for Standards, Henry McLeish undertook to repay the £38,500 he had over-claimed against his OCA by not offsetting the income from sub-letting against the amount of rent claimed from his OCA. The full sum had been repaid by April 2002.

**Full investigation**

A.I.3 In December 2002, another Member wrote to the Chairman of the Committee on Standards and Privileges to urge the Committee to instigate an investigation into the complaint against Henry McLeish. After the police announced in March 2003 that no further action would be taken into allegations relating to the case of Henry McLeish, the Committee authorized in April 2003 the Parliamentary Commissioner for Standards to conduct an investigation into the complaint against Henry McLeish in relation to the Code of Conduct for Members of the House of Commons and the associated Rules relating to the registration and declaration of interests. The Commissioner informed Henry McLeish of the particular provisions of the Code of Conduct which had allegedly been breached, and invited him to provide a full account of the circumstances relating to the complaint. At the same time, the Commissioner wrote to the complainants, giving them the opportunity to submit further materials in support of their complaints.

**Appendix I (cont'd)****Decision on whether the complaint was substantiated**

A.I.4 After obtaining a written response from Henry McLeish and no further information from the complainants, the Commissioner assessed the evidence. Before reaching his conclusion, the Commissioner shared with Henry McLeish the draft of those parts of his report dealing with issues of fact to let him comment on them. In June 2003, the Commissioner submitted his report to the Committee, in which he concluded that Henry McLeish violated the Code of Conduct and the associated Rules by failing to register the fact that he had been receiving a substantial income from sub-letting part of his constituency office, and by not offsetting the rental income he received from the sub-lets against his claims under OCA.

**The Committee on Standards and Privileges' recommendation to the House**

A.I.5 The Committee agreed with the Commissioner's conclusion. It did not take further evidence from the complainants, Henry McLeish and others. The Committee's decisions were that as Henry McLeish was no longer a Member, no sanction was available to the House in this case, and that had he still been a Member, it would have recommended to the House a period of suspension of one week.

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