

FACT SHEET

Representation of Members and Civil Servants in Disciplinary Inquiries

1. Introduction

1.1 This fact sheet provides information on the following items arising from the meeting of the Committee on Members' Interests held on 17 February 2006:

- (a) whether the Member under complaint is allowed to be accompanied or represented by a person who is not a lawyer in a disciplinary inquiry in selected overseas legislatures; and
- (b) whether the accused civil servant is allowed to be accompanied or represented by a person who is not a lawyer in a disciplinary inquiry in the Government of the Hong Kong Special Administrative Region (HKSAR).

1.2 For Members' reference, the selected overseas legislatures¹ covered by this fact sheet consistent with those covered by the information note entitled "Mechanisms for handling Complaints concerning Members' Operating Expenses Reimbursement Claims in Selected Legislatures", in which item (a) is touched upon.²

¹ The selected overseas legislatures are the House of Commons of the United Kingdom Parliament, the House of Representatives of the Parliament of Australia, the House of Commons of the Parliament of Canada, and the House of Representatives of the United States Congress.

² Legislative Council Secretariat. (2005) *Mechanisms for handling Complaints concerning Members' Operating Expenses Reimbursement Claims in Selected Legislatures*. LC Paper No. IN13/04-05.

2. **Persons accompanying or representing Members in disciplinary inquiries in selected overseas legislatures**

2.1 In the House of Commons of the United Kingdom (UK) Parliament, the practice is that at any meeting with the Parliamentary Commissioner for Standards, the Member under complaint is allowed to be accompanied by, and to confer with, a lawyer or any other adviser with expertise other than that in law. In addition, the Commissioner says that he may allow the Member under complaint to be accompanied by another Member, as long as that Member, in the Commissioner's judgement, will help advance the consideration of the complaint. Nevertheless, only the Member under complaint himself or herself is expected to respond, orally or in writing, to the Commissioner's enquiries.³

2.2 The practice of the House of Representatives of the Parliament of Australia is similar to that of the House of Commons in the UK. It allows the Member under complaint to be accompanied by persons who need not be lawyers to meet with the Committee on Members' Interests or the Committee on Privileges.⁴ There is also a precedent for a Member being accompanied by another Member when appearing before the Committee of Privileges.⁵

2.3 In Canada, throughout the inquiry conducted by the Ethics Commissioner, a Member under complaint is allowed to "*make representations*" to the Commissioner in writing or in person "*by counsel or by any other representative.*"⁶ According to the Parliament of Canada, this arrangement allows a Member under complaint to choose whoever he or she wishes to represent him or her, and does not prevent the Member from having another Member to act as his or her representative.

2.4 In the House of Representatives of the United States Congress, the Committee on Standards of Official Conduct allows the Member under complaint "*to be represented by counsel.*"⁷ Both the Rules of the Committee on Standards of Official Conduct and the House Rules have no provision which allows a person other than a counsel to represent or accompany the Member under complaint appearing before the Committee.

³ Parliamentary Commissioner for Standards. (2003).

⁴ Department of the House of Representatives. (2005).

⁵ Ibid.

⁶ 27(7), Conflict of Interest Code for Members of the House of Commons.

⁷ Rule 26, Rules of the Committee on Standards of Official Conduct.

3. Persons accompanying or representing civil servants in disciplinary inquiries in the Hong Kong Special Administrative Region

3.1 In the HKSAR, the Public Service (Disciplinary) Regulation states that in the inquiry hearing stage of a disciplinary case, the accused officer *"may be assisted in his defense by - (a) another public servant, other than a legally qualified officer, who may be a representative member of a staff association represented on the Senior Civil Service Council; or (b) such other person as the Chief Executive may authorize"*.⁸ According to the Civil Service Bureau of the HKSAR Government, the person authorized by the Chief Executive can be a lawyer, provided that the lawyer is not a public servant. The Public Service (Disciplinary) Regulation is applicable to all civil servants, except certain categories of staff in disciplined service departments, i.e. the rank and file and middle-ranking officers.

3.2 There are different arrangements for representation of the rank and file and middle-ranking officers in respective disciplined service departments. Under the Police (Discipline) Regulations, in a hearing of a disciplinary case, the junior police officer charged with a disciplinary offence is permitted to *"be represented by - (a) an inspector or other junior police officer of his choice or (b) any other police officer of his choice who is qualified as a barrister or solicitor"*.⁹ On the other hand, under the Custom and Excise Service (Discipline) Rules, the officer charged *"shall have the right to be represented by a subordinate officer of his choice who may conduct his defense on his behalf"*, but *"shall not be entitled to be represented by counsel or a solicitor"*.¹⁰

Research and Library Services Division
22 March 2006
Tel: 2869 9621

Fact sheets are compiled for Members and Committees of the Legislative Council. They are not legal or other professional advice and shall not be relied on as such. Fact sheets are subject to copyright owned by the Legislative Council Commission (the Commission). The Commission permits accurate reproduction of the fact sheets for non-commercial use in a manner not adversely affecting the Legislative Council, provided that acknowledgement is made stating the Research and Library Services Division of the Legislative Council Secretariat as the source and one copy of the reproduction is sent to the Legislative Council Library.

⁸ Regulation 8(3), Public Service (Disciplinary) Regulation.

⁹ Regulation 9(11), Police (Discipline) Regulations.

¹⁰ Rule 6, Customs and Excise Service (Discipline) Rules.

References

1. Department of the House of Representatives. (2005) *House of Representatives Practice*. 5th ed. Available from: <http://www.aph.gov.au/house/pubs/PRACTICE/index.htm> [Accessed February 2006].
2. *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*. (2004) 23rd ed. LexisNexis Butterworths.
3. House of Representatives of the United States Congress. *Rules of the 109th Congress*. Available from: <http://www.rules.house.gov/archives/10RX.htm> [Accessed February 2006].
4. Marleau, R. & Montpetit, C. (ed.) (2000) *House of Commons Procedure and Practice*. House of Commons, Ottawa.
5. Parliamentary Commissioner for Standards. (2003) *Guidance for Members Who are the Subject of a Complaint. Procedural Note 3*. Available from: <http://www.publications.parliament.uk/> [Accessed February 2006].
6. The House of Commons of the Parliament of Canada. (2004) *Conflict of Interest Code for members of the House of Commons*. Available from: <http://www.parl.gc.ca/information/about/process/house/standingorders/appal-e.htm> [Accessed February 2006].
7. The House of Commons of the Parliament of Canada. (2005) *Standing Orders*. Available from: <http://www.parl.gc.ca/information/about/process/house/standingorders/toc-e.htm> [Accessed February 2006].
8. The House of Commons of the United Kingdom Parliament. (2005) *Standing Orders*. Available from: <http://www.publications.parliament.uk> [Accessed February 2006].
9. The House of Representatives of the Parliament of Australia. (2004) *Standing Orders*. Available from: <http://www.aph.gov.au/house/pubs/standos/index.htm> [Accessed February 2006].