

INFORMATION NOTE

Mechanisms for handling complaints concerning Members' registration or declaration of interests in selected legislatures

1. Background

1.1 At its meetings on 2 January and 21 April 2009, the Committee on Members' Interests deliberated its procedure for handling complaints received in relation to the registration or declaration of Members' interests, or Members' claims for reimbursement of operating expenses or applications for advance of operating funds. Some members were concerned about the issue of whether the committee should consider the following:

- (a) anonymous complaints; and
- (b) allegations reported by the media but with no relevant complaint received.

1.2 This note provides information on the mechanisms in the four selected overseas legislatures, namely the United Kingdom (UK), Canada, the United States (US) and Australia, for handling anonymous complaints and allegations reported by the media against Members. The related issue of whether the responsible authorities may carry out investigations on their own initiative is also covered. To facilitate members' discussion, a comparison table of major features of the mechanisms in these selected legislatures is presented in the **Appendix**.

2. The United Kingdom

2.1 In the UK House of Commons, complaints made in relation to the registration and declaration of Members' interests are considered by the Parliamentary Commissioner for Standards (the Commissioner), an officer of the House who is appointed by resolution of the House and whose work is overseen by the Committee on Standards and Privileges.

Handling of anonymous complaints

2.2 According to the two procedural notes known as *Description of the Complaints Investigation Process* and *Frivolous or Vexatious Complaints* issued by the Commissioner, the Commissioner will not consider anonymous complaints or those which are not supported by evidence sufficient to suggest that they merit at least preliminary enquiry. In other words, anonymous complaints are simply rejected.¹

Handling of allegations reported by the media

2.3 The Commissioner conducts an investigation only upon receipt of a complaint and he may not conduct an investigation in the absence of a complaint, unless expressly authorized by the Committee on Standards and Privileges.²

2.4 Erskine May points out that both the Commissioner and the Committee are guided by the view held by the former Select Committee on Members' Interests that "it is not sufficient to make an unsubstantiated allegation and expect the Committee to assemble the supporting evidence", and that it "would not normally regard a complaint founded upon no more than a newspaper story or television report as a substantiated allegation".³

2.5 Nevertheless, the Commissioner will conduct an investigation if a complainant submits a media report which provides evidence sufficient to justify an investigation.⁴

2.6 In some instances, Members may ask the Commissioner to investigate when there is adverse media coverage on them, even though no complaint has been made. The Commissioner will consider these cases only with the consent of the Committee on Standards and Privileges.⁵

¹ Reply from the Office of the Parliamentary Commissioner for Standards, 24 July 2009.

² Parliamentary Commissioner for Standards (2009) p.18.

³ May (2004) p.494.

⁴ Parliamentary Commissioner for Standards (2009) pp.22-23.

⁵ Reply from the Office of the Parliamentary Commissioner for Standards, 24 and 30 July 2009. Up to now, there have only been two published reports of self referrals, which are the enquiries into Mr Clive Betts in 2002-2003 and Mrs Spelman in 2008-2009.

3. Canada

3.1 In Canada, conflict-of-interest complaints against Members of the House of Commons are considered by the Conflict of Interest and Ethics Commissioner, which was created in 2007 by section 81 of the *Parliament of Canada Act* to replace the Ethics Commissioner.⁶ The Commissioner is an officer of Parliament appointed by the Governor in Council after approval by resolution of the House. The Commissioner administers the *Conflict of Interest Code for Members of the House of Commons* (the *Code*), with a view to helping Members to avoid conflicts of interest. In particular, the Office of the Commissioner advises Members on their compliance obligations, maintains confidential files of required disclosures and a registry, and conducts inquiries into alleged contraventions of the *Code*.

Handling of anonymous complaints

- 3.2 Under the *Code*, an enquiry may be initiated in one of three ways:
- (a) on request by a Member who considers that there are reasonable grounds for him to believe that another Member has breached the *Code*;
 - (b) on passage of a relevant resolution of the House of Commons;
or
 - (c) on the initiative of the Commissioner if he considers that there are reasonable grounds for him to believe that a Member might have breached the *Code*.

No specific rule has been laid down for handling anonymous complaints.

3.3 The Commissioner will exercise discretion on whether or not to conduct an enquiry into complaints from members of the public. The Commissioner will base his decision on the information received and whether it meets the requirements under the *Code* for launching an enquiry on his own initiative, i.e. there are reasonable grounds for him to believe that a Member might have breached the *Code*.⁷

⁶ With the coming into force of the *Conflict of Interest Act* on 9 July 2007, the Office of the Ethics Commissioner was dissolved. The Office was previously charged with the administration of the *Conflict of Interest and Post-Employment Codes for Public Office Holders and Members of Parliament*.

⁷ Reply from the Office of the Conflict of Interest and Ethics Commissioner, 30 July 2009.

3.4 Although the Commissioner has never exercised the power to initiate an enquiry since the creation of the office in 2007, the steps to be taken in self-initiated cases are similar to those taken in complainant-initiated cases. The Member under complaint is entitled to 30 days to respond to the concerns raised. Irrespective of whether or not the Member under complaint has responded, the Commissioner will reassess the case to determine if he should proceed with an investigation.⁸

3.5 If the Commissioner considers that there are reasonable grounds for him to believe that the Member concerned might have breached his obligations under the *Code*, the Commissioner may take the initiative to conduct an enquiry into the matter.⁹ The decision of whether or not to launch an enquiry depends on information received from members of the public, media reports and the Member's response. Nevertheless, the failure of the Member to respond will not on its own constitute grounds for the Commissioner to take follow-up actions.¹⁰

Handling of allegations reported by the media

3.6 With respect to allegations reported by the media, the Commissioner will decide whether or not to launch an enquiry. The decision depends on the information revealed in the particular case and whether it meets the requirements under the *Code*. A media report may prompt the Commissioner to conduct an enquiry if the information therein makes him to believe that there might have been a contravention of the *Code*. However, there has not been such a case to date.¹¹

4. The United States

4.1 In the US House of Representatives, complaints in relation to Members' violation of the *Code of Official Conduct* or any of the applicable rules, laws, or regulations governing their performance of official duties or discharge of official responsibilities are considered by the Committee on Standards of Official Conduct. The Committee may exercise its investigative authority when:

⁸ Office of the Conflict of Interest and Ethics Commissioner (2009) p.15.

⁹ *Conflict of Interest Code for Members of the House of Commons*.

¹⁰ Reply from the Office of the Conflict of Interest and Ethics Commissioner, 28 August 2009.

¹¹ Office of the Conflict of Interest and Ethics Commissioner (2009) p.15.

- (a) it receives a complaint made by a Member of the House or by others having a Member's certification in writing that the information is submitted in good faith and warrants the review of the Committee;
- (b) a Member, officer or employee is convicted of a felony;
- (c) the House authorizes the Committee to undertake an enquiry by resolution;
- (d) there is a referral from the Board of the Office of Congressional Ethics; or
- (e) the Committee undertakes the investigation on its own initiative.¹²

4.2 The Committee on Standards of Official Conduct is authorized to recommend administrative actions to establish or enforce standards of official conduct; investigate alleged violations of the *Code of Official Conduct* or of any applicable rules, laws, or regulations governing the performance of official duties; report to appropriate federal or State authorities substantial evidence of a violation of any law applicable to the performance of official duties; render advisory opinions and issue general guidance on the propriety of any current or proposed conduct of a Member, officer or employee; and consider requests for written waivers of the gift rule.

4.3 In March 2008, the Office of Congressional Ethics (OCE) was established by the House of Representatives. It is an independent, non-partisan entity charged with the responsibility of reviewing allegations of misconduct against Members, officers and staff of the House and, when appropriate, referring matters to the Committee on Standards of Official Conduct for consideration. Any member of the public may bring a matter of suspected misconduct to the attention of OCE. Since the Committee on Standards of Official Conduct considers complaints only if they are made or certified by Members, the setting up of OCE provides a direct channel for members of the public to lodge complaints about misconduct of Members.

¹² *Rules of the Committee on Standards of Official Conduct.*

4.4 Unlike the Committee on Standards of Official Conduct which has both advisory and enforcement responsibilities, OCE only conducts preliminary investigations upon receipt of complaints from the public. The jurisdiction of OCE is limited to investigation of allegations that a Member, an officer or a staff member of the House has violated a law, rule, regulation, or other ethical standard of conduct on or after 11 March 2008. Investigation by OCE is conducted in two stages: preliminary review and second-phase review. At the end of the second-phase review, OCE shall recommend to the Committee on Standards of Official Conduct that either the matter requires the Committee's further review or it should dismiss the matter.

Handling of anonymous complaints

4.5 According to the *Rules of the Committee on Standards of Official Conduct*, a complaint submitted to the Committee shall be in writing, dated, and properly verified by a notary with the language, "Signed and sworn to (or affirmed) before me on (date) by (the name of the person)" setting forth in simple, concise, and direct statements the name and legal address of the party filing the complaint; the name and position or title of the respondent; the nature of the alleged violation; and the facts alleged to give rise to the violation. As such, anonymous complaints are not considered.

Handling of allegations reported by the media

4.6 Notwithstanding the absence of a filed complaint, the Committee on Standards of Official Conduct may conduct an investigation on its own initiative.¹³ The Committee may consider any information in its possession indicating that a Member might have committed a violation of the *Code of Official Conduct* or any law, rule, regulation, or other standard of conduct applicable to the conduct of that Member in the performance of the duties or the discharge of the responsibilities of such individual. The Chair and Ranking Minority Member of the Committee may jointly gather additional information concerning the alleged violation unless and until an investigative subcommittee has been established.

4.7 No specific rule has been laid down for handling allegations reported by the media. It is up to the Committee to decide whether or not to consider an allegation reported by the media.

¹³ *Rules of the Committee on Standards of Official Conduct.*

5. Australia

5.1 In the House of Representatives of the Australian Parliament, complaints about the registration and declaration of Members' interests were considered by the Standing Committee of Members' Interests in the past. With the adoption of *Standing Order* 216 at the commencement of the 42nd Parliament in 2008, the Committee was amalgamated with the Standing Committee of Privileges to form the Standing Committee of Privileges and Members' Interests, which took over the duty to consider such complaints.

Handling of anonymous complaints

5.2 The Standing Committee of Privileges and Members' Interests has never considered any anonymous complaint to date. In addition, it has not formulated any practice or guideline to assist it in handling such complaints. In theory, it is open for the Committee to decide whether or not to consider anonymous complaints, and it might decide to consider an anonymous complaint if a majority of its members agree to do so.¹⁴

5.3 The procedure for handling an anonymous complaint will be the same as that for handling other complaints. The Member who is the subject of the proposed investigation by the Committee shall be notified in advance of the nature of the allegations made against him, preferably formulated as a specific charge, or if this is not possible, of the general nature of the issues being investigated, in order to allow him to respond.¹⁵

5.4 Since the Committee has no experience in investigating anonymous complaints, if a prima facie case has been established upon completion of the initial enquiry but there is still no non-anonymous complainant, whether the complaint will be considered further remains an open question for the Committee to discuss.¹⁶

¹⁴ Reply from the House of Representatives Standing Committee of Privileges and Members' Interests, 14 July 2009. Nonetheless, according to David Elder, the Secretary of the Committee of Privileges and Members' Interests, the Committee might feel that it should not do so owing to the anonymous nature of the complaint.

¹⁵ Standing Committee of Privileges and Members' Interests (2008).

¹⁶ Reply from the House of Representatives Standing Committee of Privileges and Members' Interests, 15 July 2009.

Handling of allegations reported by the media

5.5 Although the Committee may carry out investigations on its own initiative, it will not act in response to allegations reported by the media.¹⁷

Prepared by Yuki HUEN

7 December 2009

Tel: 2869 8343

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¹⁷ Reply from the House of Representatives Standing Committee of Privileges and Members' Interests, 10 July 2009.

Appendix

Major features of handling of anonymous complaints and allegations reported by the media in selected legislatures

	United Kingdom	Canada	United States	Australia
Responsible authority	Parliamentary Commissioner for Standards.	Conflict of Interest and Ethics Commissioner.	Committee on Standards of Official Conduct.	Standing Committee of Privileges and Members' Interests.
Handling of anonymous complaints				
Whether anonymous complaint will be considered?	No, the Commissioner will not conduct even a preliminary enquiry on anonymous complaints.	Yes, complaints will be considered if the Commissioner considers that there are reasonable grounds for him to believe that a Member might have breached the <i>Conflict of Interest Code for Members of the House of Commons</i> (the Code).	No, a complaint submitted to the Committee shall be in writing, dated, and properly verified, setting forth in statements information including the name and legal address of the complainant.	It is open for the Committee to consider anonymous complaints.
Whether an initial enquiry on an anonymous complaint will be conducted?	Not applicable.	Not applicable.	Not applicable.	Yes, with the agreement of a majority of the Committee, an anonymous complaint may be investigated.
During the initial enquiry, whether the Member under complaint or his office would be contacted to seek clarification or explanation?	Not applicable.	Yes, the Member under complaint is entitled to 30 days to respond to the concerns raised.	Not applicable.	Yes, the Member who is subject of the complaint will be contacted to seek clarification or explanation.

Appendix (cont'd)

Major features of handling of anonymous complaints and allegations reported by the media in selected legislatures

	United Kingdom	Canada	United States	Australia
Handling of allegations reported by the media				
Whether, in the absence of a complaint, the responsible authority will carry out investigations on its own initiative;	No.	Yes, if the Commissioner considers that there are reasonable grounds for him to believe that a Member might have breached the <i>Code</i> .	Yes, notwithstanding the absence of a filed complaint, the Committee can undertake an investigation on its own initiative.	Yes, the Committee may carry out investigations on its own initiative.
if so, whether allegation reported by the media without relevant complaint received will be considered?		Yes, a media report may prompt the Commissioner to conduct an enquiry if the information therein makes him to believe that there might have been a contravention of the <i>Code</i> .	Yes, but there is no specific rule for handling allegations reported by the media.	No, the Committee does not act in response to allegations reported by the media.

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Canada

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