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## INFORMATION NOTE

### **Mechanisms for Handling Complaints concerning Members' Operating Expenses Reimbursement Claims in Selected Legislatures**

#### **1. Background**

1.1 At the meeting of the Subcommittee to consider a mechanism for handling complaints and allegations concerning Members' Operating Expenses Reimbursement claims on 16 November 2004, Members requested the Research and Library Services Division to provide information on:

- (a) the operation of independent officers/committees in overseas legislatures for handling complaints in relation to Members' misuse of allowances for personal interest; and
- (b) a case illustrating the investigation process of complaints conducted by such officers/committees.

1.2 This study focuses on the operation of independent officers/committees in four overseas legislatures, namely the Parliamentary Commissioner for Standards of the House of Commons in the United Kingdom (UK) Parliament, the Ethics Commissioner of the House of Commons in the Canadian Parliament, the Committee on Standards of Official Conduct of the House of Representatives of the United States (US) Congress, and the Committee on Members' Interests of the House of Representatives in the Australian Parliament. Their operation focuses on the following aspects: appointment process; duties and remit of handling complaints; investigatory powers; initiation of investigation and preliminary consideration; full investigation; decision on whether a complaint is substantiated; legal representation and right of silence of the Member under complaint; and safeguards against partisanship.

1.3 The investigation process involving a complaint against a Member of the House of Commons in the UK is presented for Members' reference.

## 2. The United Kingdom

2.1 In the UK, complaints relating to the misuse of allowances for personal interest by Members of the House of Commons of Parliament are considered by the Parliamentary Commissioner for Standards under the Code of Conduct for Members of Parliament and the associated Rules relating to the registration and declaration of interests.

### Appointment process

2.2 According to the House of Commons Standing Order 150, the Parliamentary Commissioner for Standards is "*appointed by the House*", but the Standing Order does not specify a nomination process for the Commissioner. Appointed in 2002, the current Commissioner was identified, interviewed and nominated by the House of Commons Commission.<sup>1</sup> During the final interview, the Chairman of the Committee on Standards and Privileges<sup>2</sup> was invited to join the House of Commons Commission to decide on the nomination to the House. The nomination process was invigilated by an independent assessor recommended by the Commissioner for Public Appointments. The appointment motion was debated and passed by resolution of the House.

### Duties and remit of handling complaints

- 2.3 The Commissioner is responsible for considering complaints relating to:
- (a) breach of the Code of Conduct for Members of Parliament which provides 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*";
  - (b) failure of a Member to register or declare relevant financial interests or benefits, as required by House Rules;
  - (c) advocacy of a decision where the Member concerned has a relevant financial interest; and
  - (d) participation in delegations where the Member concerned has a relevant financial interest.

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<sup>1</sup> Responsible for managing the personnel in the House, the House of Commons 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. Erskine May (2004), pp. 236-237.

<sup>2</sup> Erskine May (2004), p. 783. Appointed by the House, the Committee on Standards and Privileges is mainly responsible for overseeing the work of the Commissioner, considering any specific complaints made relating to the registration or declaration of interests referred to it by the Commissioner, and considering any matter relating to the conduct of Members, including specific complaints relating to alleged breaches of the Code of Conduct. By convention, the Committee's Chair is drawn from the opposition parties.

- 2.4 The Commissioner does not consider a complaint which:<sup>3</sup>
- (a) is anonymous, clearly trivial or vexatious, or not in writing;
  - (b) is not supported by evidence sufficient to suggest that it merits at least preliminary inquiry;
  - (c) involves substantially repeated allegations which have already been the subject of the Commissioner's inquiry, unless it has significant fresh evidence;
  - (d) appears to him that it may involve an allegation of criminal misconduct and more appropriately be investigated by the police or another investigatory agency;<sup>4</sup> or
  - (e) is against a former Member, or relates to events more than seven years old<sup>5</sup>, unless the Committee on Standards and Privileges considers that the complaint is particularly serious.

#### Investigatory power

2.5 When investigating a complaint, the Commissioner does not have power to compel the production of documents or witnesses. Nevertheless, the Committee on Standards and Privileges has indicated that it will exercise its power to send for persons, papers and records in support of the Commissioner if necessary.

#### Initiation of investigation and preliminary consideration

2.6 The Commissioner receives complaints made not only by Members or the Committee on Standards and Privileges but also by members of the public.

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<sup>3</sup> See the procedural notes issued by the Parliamentary Commissioner for Standards.

<sup>4</sup> According to the current Commissioner, there is nothing to stop a Commissioner from looking into alleged criminal conduct, but doing so may damage the chances of a successful criminal investigation or prosecution. Nor does the Commissioner have the expertise or resources to conduct such a criminal investigation satisfactorily. Therefore, the Commissioner normally leaves criminal matters to the police or other investigating agency.

<sup>5</sup> The seven-year cut-off period was decided on by the Committee on Standards and Privileges in the light of advice from the first Commissioner in 1998. The first Commissioner said that *"I am not sure that Parliament's image will be improved by having a whole series of complaints relating to actions or omissions of many years ago which delight the press but which Parliament deems unworthy of a penalty."* See the Committee on Standards and Privileges (1998). Nevertheless, according to the current Commissioner, the reason for setting seven years as the threshold has been unclear.

2.7 If the Commissioner decides that the complaint received does not merit further consideration, he can at his discretion reject it. If the Commissioner is satisfied that the complaint has some substance, he will ask the Member under complaint to respond to the complaint, and then conduct a preliminary inquiry. If the Commissioner decides that there is no prima facie case, he will report that conclusion to the Committee on Standards and Privileges. If the complaint is justified but minor, the Commissioner has discretion to allow the Member under complaint to rectify the matter following specified procedures. Any rectification is reported in brief to the Committee on Standards and Privileges. If the Commissioner considers that the complaint may involve an allegation of criminal misconduct and may more appropriately be investigated by the police or another investigatory agency, he will advise the complainant to approach that agency.

#### Full investigation

2.8 If the balance of the evidence assembled during the preliminary investigation into a complaint is unclear or the nature of the allegations is particularly serious, the Commissioner can conduct a full investigation. The Commissioner may interview the Member under complaint, the complainant and other persons, and/or seek evidence from the parliamentary authorities, other public or private bodies, and private individuals.

2.9 If a complaint involves significant and contested issues of fact where the Member under complaint would face serious penalty in the event of the complaint being proved valid, the Commissioner may (and if requested by the Committee on Standards and Privileges, must) set up an Investigatory Panel to consider the complaint under the House's Standing Order 150 (2B). Whether the Panel needs to be set up is solely decided on by the Commissioner or the Committee on Standards and Privileges. The Panel consists of the Commissioner as the Chairman, a legal assessor (appointed by the Commissioner) and a Member assessor (who is a senior backbencher but not a member of the Committee on Standards and Privileges) appointed by the Speaker. Only before the Panel can the Member under complaint call witnesses and examine other witnesses. The Panel meets in private and decides by a majority. In any event, so far no complaint has warranted the establishment of the Panel.

#### Decision on whether a complaint is substantiated

2.10 After all proceedings have been completed, the Commissioner prepares a report to the Committee on Standards and Privileges, normally containing facts and his own conclusion on whether the Member under complaint has violated the Code of Conduct. The Committee considers whether it agrees with the report, and what action is appropriate. Any action recommended must be debated and approved by the House.

2.11 Before reaching its conclusion, the Committee may take evidence, normally in private, from the complainant, the Member under complaint and witnesses. The Committee may not necessarily reach the same conclusion on a complaint as the Commissioner, and can refer the report back to the Commissioner, provided that it sets out its decisions in full.

#### Legal representation and right of silence of the Member under complaint

2.12 At any meeting with the Commissioner or the Committee on Standards and Privileges, the Member under complaint may be accompanied by a legal adviser, but is expected to answer for himself, not through the adviser, any questions put to him.

2.13 There is no specific rule on the right of silence of the Member under complaint. However, the Member, even if who is a Minister, is required by the Committee to co-operate with any investigation at all stages. The Committee is the only select committee of the House which has power to summon Members to appear as witnesses. By convention, witnesses are bound to answer all questions which the Committee sees fit to put to them.<sup>6</sup> The Committee can take a Member's refusal to answer its questions into account in a report it submits to the House.

#### Safeguards against partisanship

2.14 Safeguard measures have been in place in a bid to enhance the non-partisan nature of the operation of the Commissioner:

- (a) The post of the Commissioner is defined as an office-holder who is an appointee instead of an employee of the House. When selecting a new Commissioner, the House of Commons Commission is required to conform with the Code of Practice of the Commissioner for Public Appointments at all stages of the selection process to ensure fairness and transparency;
- (b) The House's Standing Order 150 requires the legal assessor to the Investigatory Panel, when such a Panel is formed, to give the Committee on Standards and Privileges his opinion on the extent to which the proceedings have been consistent with the principles of natural justice. The Member assessor to the Panel may also report his opinion on the extent to which the proceedings have had regard to the customs and practice of the House and its Members;

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<sup>6</sup> Erskine May (2004), p. 762. According to May, witnesses cannot be excused when: they may become subject to a civil action; they have taken an oath not to disclose a matter; a matter was a privileged communication; they are advised that they cannot do so without the risk of incriminating themselves or being exposed to a civil suit; or they would be prejudiced as defendants in pending litigation.

- (c) The Code of Conduct disallows Members or anyone else to lobby members of the Committee on Standards and Privileges with the intention of influencing their view of a complaint; and
- (d) The Committee on Standards and Privileges is established as an impartial "quasi-judicial" committee.<sup>7</sup> No one party is allowed to hold an overall majority membership of the Committee. It must consist of a majority of Members with substantial seniority in the House because they are more likely to be perceived as "*being able to leave their party affiliations at the door*" and have more confidence "*to command the respect of the whole House*".<sup>8</sup> In addition, the Committee Chairman is required to set and keep a non-partisan stance to the proceedings.

### 3. Canada

3.1 In Canada, complaints relating to the misuse of allowances for personal interest by Members of the House of Commons of the Canadian Parliament can be considered by the Ethics Commissioner under the Conflict of Interest Code for Members of the House of Commons.

#### Appointment process

3.2 Under An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence, the appointment process for the Ethics Commissioner entails:

- (a) consultation with the leader of every recognized party in the House of Commons;
- (b) approval of the appointment of the Commissioner by resolution of the House; and
- (c) the appointment of the Commissioner by the Governor in Council. The Governor in Council represents the Governor General who acts by and with the advice and consent of those members of the Privy Council who make up the Cabinet led by the Prime Minister.<sup>9</sup>

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<sup>7</sup> Committee on Standards in Public Life (2002) p. 43.

<sup>8</sup> Ibid, p. 47.

<sup>9</sup> 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. 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.

3.3 The Act does not establish a process through which potential candidates for the Commissioner are identified and nominated. The current Commissioner was nominated by the Prime Minister.

#### Duties and remit of handling complaints

3.4 The Commissioner performs the duties and functions assigned by the House of Commons to govern the conduct of its Members when carrying out the duties and functions of their office as Members of the House. In addition, the Commissioner is responsible for administering the Conflict of Interest Code, which requires Members to disclose information relating to their private interests. The Conflict of Interest Code does not have clear rules on whether the Commissioner can consider specific complaints relating to the misuse of allowances for private interest, and such situation has not arisen. Nevertheless, the Commissioner can receive and investigate complaints involving violations of the provisions of the Conflict of Interest Code, notably on the registration and declaration of interests.<sup>10</sup>

3.5 The Commissioner does not consider a complaint which is frivolous, vexatious, not made in good faith, not in writing, or not supported by sufficient grounds. The Commissioner will suspend an investigation under two circumstances. In the first occasion, the Member under complaint is believed to have committed an offence, and the Commissioner must refer the matter to the proper authorities. In the other situation, the act or omission under the Commissioner's investigation is being investigated by law enforcement authorities simultaneously, or a charge has been laid with respect to that act or omission.

#### Investigatory power

3.6 The Commissioner has power to summon witnesses, and require them to produce any documents and things that the Commissioner considers necessary.

#### Initiation of investigation and preliminary consideration

3.7 The Commissioner handles requests by Members and the House for investigation into complaints. He may also, on his own initiative and giving the Member concerned reasonable written notice, conduct an inquiry to see whether the Member has complied with the Conflict of Interest Code.

3.8 If the Commissioner dismisses a complaint which does not merit a consideration, he will report the dismissal to the House, and may recommend that action be considered against the Member who made the request.

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<sup>10</sup> Reply from the Law and Government Division of the Parliamentary Information and Research Service of the Library of Parliament in Canada, 25 November 2004.

### Full investigation

3.9 The full investigation is conducted in private. The Commissioner is required to give the Member under complaint reasonable opportunities to make representations to the Commissioner in writing or in person.

### Decision on whether a complaint is substantiated

3.10 If the Commissioner concludes that the Member under complaint has not complied with the Conflict of Interest Code, he may recommend appropriate sanctions, unless the Member has taken all reasonable measures to prevent the non-compliance, or that the non-compliance is trivial or has occurred through inadvertence or an error in judgment made in good faith.

3.11 Following the investigation, the Commissioner is required to table his report in the House and make it available to the public. The report must include reasons for any conclusions and recommendations made. After tabling the report in the House, the Member under complaint has a right to make a statement regarding the report to the House. The House can refer the report back to the Commissioner for further consideration, with or without instruction.

### Legal representation and right of silence of the Member under complaint

3.12 The Member under complaint can be represented by counsel. There is no specific rule on the right of silence of the Member. Nevertheless, the Conflict of Interest Code requires all Members to co-operate with the Commissioner with respect to any investigation.

### Safeguards against partisanship

3.13 The main safeguards against partisanship are as follows:

- (a) The Commissioner cannot be a sitting Member (but can be a former Member of Parliament or member of a provincial or territorial legislature), and is required to refrain from active participation in partisan politics;
- (b) Once a request for an inquiry has been made to the Commissioner, Members are required to respect the inquiry process and permit it to take place without commenting further on the matter; and
- (c) Members can raise concerns relating to investigations that are not fair, independent or politically impartial when the House considers the Commissioner's report.



#### **4. The United States**

4.1 In the US, complaints relating to the misuse of allowances for personal interest by Members of the House of Representatives of Congress are considered by the Committee on Standards of Official Conduct under House Rules and federal statutes.

##### Appointment process

4.2 The Committee on Standards of Official Conduct is appointed under House Rule X of the House of Representatives. As the House's only standing committee whose membership is divided evenly by party, the Committee consists of 10 members, five from the majority party and five from the minority party. They are either elected or selected within their respective parties.

##### Duties and remit of handling complaints

4.3 The Committee's duties include:

- (a) investigating Members' alleged violations of the Code of Official Conduct or any rules, regulations or laws governing their performance of official duties or discharge of official responsibilities;
- (b) reporting to appropriate federal or state authorities substantial evidence of a violation of any law applicable to Members' performance of official duties that may have been disclosed in a Committee investigation; and
- (c) recommending administrative actions to establish or enforce standards of official conduct.

4.4 The Committee does not accept:

- (a) any complaint that is not in writing, dated and properly verified by a notary;
- (b) any complaint submitted within the 60 days before an election at which the subject of the complaint is a candidate; and
- (c) a complaint of any alleged violation which occurred before the third previous Congress, unless the Committee determines that the alleged violation was directly related to an alleged violation which occurred in a more recent Congress.

4.5 The Committee may defer action on a complaint when the complaint alleges conduct that is being investigated by law enforcement or regulatory authorities, or when the Committee determines that it is appropriate for the conduct alleged to be investigated initially by law enforcement or regulatory authorities.

#### Investigatory power

4.6 The Committee can establish an investigative subcommittee or adjudicatory subcommittee, which can authorize and issue subpoenas, to consider a complaint.

#### Initiation of investigation and preliminary consideration

4.7 The Committee exercises its investigative authority only when it is authorized by resolution of the House, or receives a complaint by a Member or a non-Member whose complaint is accompanied by a certification from a Member that the information is submitted in good faith and warrants Committee consideration. The Committee can also initiate an investigation by itself, even when it does not receive a filed complaint.

4.8 After receiving a valid complaint, the Committee will acknowledge the Member under complaint of receipt of the complaint and allow the Member under complaint to submit a written statement in response to the complaint. Meanwhile, the Committee's Chairman and Ranking Minority Member<sup>11</sup>, who are responsible for performing an initial screening of the complaint, may jointly gather additional facts concerning the complaint. After due consideration, they must make one of three actions, namely recommending to the Committee that it should dispose of the complaint that does not require action by the House; requesting the Committee to give them more time to make a recommendation on how to handle the complaint; or establishing an investigative subcommittee to investigate the complaint.

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<sup>11</sup> The Ranking Minority Member is the highest ranking (and usually longest serving) minority member of a committee or subcommittee.

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### Full investigation

4.9 The Committee undertakes an investigation through an Investigative Subcommittee which consists of four members (with equal representation from the majority and minority parties) designated by the Chairman and Ranking Minority Member.<sup>12</sup> The Subcommittee is responsible for considering whether a Statement of Alleged Violation (SAV), a formal charging document containing specific allegations against the Member under complaint, should be adopted.

4.10 The Member under complaint is given the right to present, orally or in writing, a statement under oath or affirmation regarding the allegations and any other questions arising from the investigation. By a majority vote of its members, the Subcommittee may require, by subpoena, the attendance and testimony of witnesses and the production of such materials as it deems necessary. Testimony must be given under oath or affirmation. The Subcommittee meets in private, unless otherwise voted open by a majority of its members.

### Decision on whether a complaint is substantiated

4.11 If the Investigative Subcommittee finds a complaint unsubstantiated and does not adopt an SAV, it will present a report to the Committee which may, by a majority vote of its members, present the report to the House.

4.12 If the Investigative Subcommittee adopts an SAV, and the Member under complaint admits violations specified in the SAV and waives the right to an adjudicatory hearing, the Subcommittee will provide the final draft of its report, to be presented to the Committee, to the Member under complaint. The Member can submit views as an attachment to the final report. The Committee will consider and vote on a motion to recommend to the House what disciplinary actions be taken.

4.13 Before reaching its conclusion on a report submitted by the Investigative Subcommittee, the Committee's Chairman and Ranking Minority Member can designate the Committee members who do not serve on the Investigative Subcommittee to serve on an Adjudicatory Subcommittee,<sup>13</sup> which holds open hearings and determines whether the allegations in the SAV adopted by the Investigative Subcommittee are proved by clear and convincing evidence.

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<sup>12</sup> Members of the Investigative Subcommittee are not necessarily Committee members, and can be selected from among Members of the House. In addition, both the Chairman and Ranking Minority Member may serve as members of the Investigative Subcommittee.

<sup>13</sup> If the Committee's Chairman and Ranking Minority Member do not serve on the Investigative Subcommittee, they can be the Chairman and Ranking Minority Member respectively of the Adjudicatory Subcommittee. The Adjudicatory Subcommittee can, by subpoena, require the attendance and testimony of such witnesses and production of materials as it deems necessary at its hearings, which are normally open to the public. The Subcommittee decides by a majority vote of its members.

### Legal representation and right of silence of the Member under complaint

4.14 The Member under complaint can be represented by counsel. There is no specific rule on whether the Member has the right of silence. The Committee Rules only provide that the Member may seek to waive any procedural rights or steps in the disciplinary process, and any such request must be subject to the acceptance of the Committee or its subcommittees.

### Safeguards against partisanship

4.15 The Committee has the following major safeguards against partisanship:

- (a) Committee staff members must be professional, perform all official duties in a non-partisan manner, be appointed in a bipartisan manner by an affirmative vote of a majority of Committee members, and be prohibited from engaging in any partisan political activity directly affecting any congressional or presidential election;
- (b) if necessary and appropriate, the Committee can retain counsel not employed by the House. Both the hiring and dismissal of any outside counsel can only occur by an affirmative vote of a majority of the Committee;
- (c) the Member under complaint is ineligible to participate in any Committee or subcommittee proceeding; and
- (d) the Member under complaint can raise objection to the participation of any subcommittee member on the ground that the subcommittee member cannot render an impartial and unbiased decision. The subcommittee member against whom the objection is made is the sole judge of his or her disqualification. In addition, a Committee member can disqualify himself or herself from participating in any Committee proceeding relating to an investigation.

## **5. Australia**

5.1 In Australia, complaints relating to the misuse of allowances for personal interest by Members of the House of Representatives of the Australian Parliament are considered by the Committee on Members' Interests. Since its establishment in 1985, the Committee has only received one complaint and that complaint did not have a criminal element.

### Appointment process

5.2 The Committee on Members' Interests is appointed at the commencement of each Parliament under Standing Order 329. It consists of seven members: four Government Party Members (one of them is the Committee Chair) and three are non-government Members. If the Opposition is composed of two parties, two of the non-government members belong to the larger opposition party while the remaining one goes to the smaller opposition party. Independent Members can liaise with the opposition whips in respect of non-government positions. The Members to be appointed as Committee members are either elected or selected within their respective parties, depending upon the process set by the whips.

### Duties and remit of handling complaints

5.3 The Committee's duties include:

- (a) considering any specific complaints made in relation to the registration or declaration of interests of Members;
- (b) considering what changes to any code of conduct adopted by the House are necessary or desirable;
- (c) inquiring into and reporting on the arrangements made for the compilation, maintenance and accessibility of the Register of Members' Interests;
- (d) considering any proposals made by Members and other as to the form and content of the register; and
- (e) considering what classes of persons, if any, other than Members ought to be required to register and declare their interests.

5.4 The Committee can receive and investigate complaints about events that occurred in previous terms of Parliament, but this situation has not arisen and no rules have been laid down about it. The Committee has also not laid down any special rules restricting its handling of complaints, including whether it should proceed to investigate a criminal case.

### Investigatory power

5.5 While the Committee has power to conduct an investigation and call for witnesses and documents, it cannot exercise such power unless approved by not less than four Committee members other than the Chair. The Committee has power to administer an oath to witnesses.

### Initiation of investigation and preliminary consideration

5.6 The Committee investigates complaints referred by the House, Ministers, the Speaker and members of the public. The Committee does not have detailed rules for handling and investigating complaints.<sup>14</sup>

### Full investigation

5.7 The Committee Chair can direct the Committee secretary to call witnesses to a hearing and request or require the production of documents. Those who decline the Committee's call to attend a hearing can be summoned to appear, if the Committee considers the circumstances warrant such action. Whether an investigation is conducted in private or in public is decided by the Committee.

### Decision on whether a complaint is substantiated

5.8 Similar to other committees in the House, the Committee follows the procedures laid down in the Standing Order. Generally, after considering evidence, the Committee Chair prepares a draft report and submits it to the Committee for deliberation. A Committee member objecting to any portion of the report can vote against it and move an amendment to it. If any member dissents from all or part of the report or wishes to attach a protest to a report, the member can add a protest or dissenting report to the main report. The report is tabled in the House and may be debated.

### Legal representation and the right of silence of the Member under complaint

5.9 The Member under complaint is not allowed to have legal representation at any meeting with the Committee. The Member can apply for permission to be accompanied by, and to confer with, counsel or advisers (need not be lawyers), but such person(s) is not allowed to question the witness(es) or to address the Committee.

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<sup>14</sup> Reply from the House of Representatives of the Australian Parliament, 30 November 2004.

5.10 The Committee has no specific rule on the right of silence of the Member under complaint. In parliamentary practices, witnesses are bound to answer all questions which the Committee sees fit to put to them. Under Standing Order 362, if a Member refuses to come or give evidence or information as a witness to the Committee, the Committee can advise the House to see what action should be taken.

#### Safeguards against partisanship

5.11 The Committee does not undertake an investigation of a person's private interests unless that action is approved by at least four Committee members other than the Chair. In practice, this means that government members on their own cannot force such an investigation to proceed.

### **6. Case illustrating the investigation process of complaints conducted by an independent officer**

6.1 Below is a case relating to the investigation into a complaint against former Member Henry McLeish by the Parliamentary Commissioner for Standards of the House of Commons in the UK.

#### Initiating an investigation

6.2 In November 2001, a Member of the House submitted a written complaint to the Chair of the Committee on Standards and Privileges, 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-sets when claiming the full rental cost against his Office Costs Allowance (OCA) entitlement. The sub-lets were first revealed by press in April 2001.

#### Preliminary consideration

6.3 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

6.4 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. The investigation did not require an Investigatory Panel.

### Decision on whether a complaint is substantiated

6.5 After obtaining a written response from Henry McLeish (the complainants did not provide further information), 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

6.6 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. In July 2003, the Committee's report on the complaint was tabled in the House and made available to the public.



**Table 1 - Major features of Mechanisms for Handling Complaints concerning Members' Operating Expenses Reimbursement Claims in Selected Legislatures**

	<b>The House of Commons in the UK</b>	<b>The House of Commons in Canada</b>	<b>The House of Representatives in the US</b>	<b>The House of Representatives in Australia</b>
Responsible authority	Parliamentary Commissioner for Standards.	Ethics Commissioner.	Committee on Standards of Official Conduct.	Committee on Members' Interests.
Appointment /formation	Nominated by the House of Commons Commission, and approved by resolution of the House.	Nominated by the Prime Minister after consultation with parties in the House, approved by resolution of the House, and appointed by the Governor in Council.	Comprising 10 members divided evenly by party, with five from the majority party and five from the minority party.	Comprising seven members, with four from the Government Party and three from non-government parties or independents.
Whether complaints about events that occurred in previous terms of parliament can be considered	Normally the Commissioner does not consider complaints which are against former Members or go back more than seven years.	Such situation has not arisen and no rules have been provided on this issue.	Normally it does not accept a complaint of any alleged violation which occurred before the third previous Congress.	Such situation has not arisen and no rules have been provided on this issue.
Whether complaints that have criminal elements can be considered	Normally the Commissioner does not investigate complaints which involve allegations of criminal misconduct.	The Commissioner is required to suspend investigating a complaint which involves violation of law or is being investigated by other authorities.	The Committee is required to defer action on a complaint which alleges conduct that is being, or more appropriate to be investigated by other law enforcement agencies.	Such situation has not arisen, and no rules prohibit the Committee from investigating complaints which involve allegations of criminal misconduct.
Whether witnesses and documents can be called for	No, but the Committee on Standards and Privileges can do so in support of the Commissioner.	Yes.	Yes.	Yes.
Whether an investigation can be initiated by the responsible authority	No.	Yes.	Yes.	No.
Whether an investigation is conducted in private	In private.	In private.	In private.	Can be in private or in public.

**Table 1 - Major features of Mechanisms for Handling Complaints concerning Members' Operating Expenses Reimbursement Claims in Selected Legislatures (cont'd)**

	<b>The House of Commons in the UK</b>	<b>The House of Commons in Canada</b>	<b>The House of Representatives in the US</b>	<b>The House of Representatives in Australia</b>
Whether the Member under complaint can have legal representation	No, but the Member under complaint can be accompanied by, and confer with, counsel.	Yes.	Yes.	No, but the Member under complaint can be accompanied by, and confer with, counsel.
Whether the Member under complaint has the right of silence	There is no specific rule on the right of silence. By convention, the Member under complaint is required to co-operate with any investigation at all stages.	Such situation has not arisen. The Member under complaint is required by the Conflict of Interest Code to co-operate with respect to any investigation.	There is no specific rule on the right of silence.	There is no specific rule on the right of silence. By convention, witnesses are bound to answer all questions which the Committee sees fit to put to them.
Safeguards against partisanship	The Commissioner is an appointee, not an employee, of the House. The Committee on Standards and Privileges does not allow any one party to have a majority of its membership, and most of its members are senior backbenchers who are respected in the House.	The Commissioner cannot be a sitting Member and cannot actively participate in partisan politics. Members are required to respect the investigation process and permit it to take place without commenting on the matter.	Committee staff must be professional and non-partisan. The Member under complaint is ineligible to participate in any Committee or subcommittee proceedings.	The Committee's government members on their own cannot force an investigation to proceed. The Member under complaint is ineligible to participate in any Committee proceedings.

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30 December 2004  
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