INFORMATION NOTE

Supplementary Information on Mechanisms for Handling Complaints concerning Members' Operating Expenses Reimbursement Claims in Selected Legislatures

1. Background

- 1.2 The Subcommittee to Consider a Mechanism for Handling Complaints and Allegations Concerning Members' Operating Expenses Reimbursement Claims, at its meeting on 11 January 2005, requested the Research and Library Services Division to provide supplementary information on the following items regarding the independent officers/committees mentioned in the information note on "Mechanisms for Handling Complaints concerning Members' Operating Expenses Reimbursement Claims in Selected Legislatures":
 - (a) the eligibility requirements, remuneration and nature of appointment for the independent officers, i.e. the Parliamentary Commissioner for Standards of the House of Commons in the United Kingdom (UK) Parliament and the Ethics Commissioner of the House of Commons in the Parliament of Canada; and
 - (b) the number and subject matters of complaints handled by the independent officers/committees in the past five years.
- 1.3 To facilitate Members' discussion, a comparison table of the major features for handling complaints concerning Members' operating expenses reimbursement claims in the House of Commons in the UK, the House of Commons in Canada, the House of Representatives in the United States and the House of Representatives in Australia is presented in **Appendix I**. The flow charts showing the complaint handling process of the Parliamentary Commissioner for Standards of the House of Commons in the UK Parliament and the Committee on Standards of Official Conduct of the House of Representatives in the US Congress are presented in **Appendices II** and **III** respectively.

2. Eligibility requirements, remuneration and nature of appointment for the independent officers

<u>Parliamentary Commissioner for Standards of the House of Commons in the United Kingdom Parliament</u>

Eligibility requirements

2.1 In the UK, there is no formal requirement for the appointment of the Parliamentary Commissioner for Standards laid down in any resolution of the House. According to the present Commissioner, an eligible person must:

- (a) possess knowledge of the parliamentary system and understand the life which parliamentarians lead;
- (b) be politically impartial;
- (c) have intellectual rigour; and
- (d) demonstrate evident independence and integrity.
- 2.2 An eligible person is also expected to be able to "establish credibility both outside and inside the House", "have a record of success in operating at the most senior levels with complex institutions", and "give advice to Members and others in strict confidence as part of the establishment of trust".¹
- 2.3 Appointed in 2002, the present Commissioner is Sir Philip Mawer. From 1990 to 2002, he was the Secretary General of both the Archbishops' Council and the General Synod of the Church of England.

Remuneration

2.4 According to the present Commissioner, his annual remuneration is about £111,500 (HK\$1,628,000).

Nature of appointment

2.5 The appointment of the Commissioner is part-time. The time commitment required under contract for the present Commissioner is four days a week.²

Ethics Commissioner of the House of Commons in the Parliament of Canada

Eligibility requirements

2.6 In Canada, there is no formal eligibility requirement for the appointment of the Ethics Commissioner laid down in An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence, which creates the office of the Commissioner. The Act only disallows the Commissioner, after the appointment, to hold any other government office or engage in any other employment for reward.³

Speaker's reply to Sir Nigel Wicks, available from: http://www.public-standards.gov.uk/reports/8th_report/correspondence/speakers_reply.htm. [Accessed February 2005].

According to the Commissioner, the volume of work fluctuates in practice, usually upwards rather than downwards, and if four days prove to be a significant miscalculation over a sustained period, either he or the House of Common Commission, which made the appointment, can raise the matter with the other.

Section 72.03, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

2.7 Appointed in May 2004, the present Commissioner is Dr. Bernard J. Shapiro, who was the Principal and Vice-Chancellor Emeritus of McGill University.

Remuneration

2.8 The Commissioner has the rank of a deputy head of a department of the Government of Canada.⁴ The Order in Council effecting the appointment of the Commissioner indicates that the Commissioner's annual remuneration ranges from CN\$239,700 (HK\$1,520,000) to CN\$282,000 (HK\$1,800,000).

Nature of appointment

- 2.9 The Commissioner is a full-time appointment.
- 3. Number and subject matters of complaints handled by the independent officers/committees in the past five years

<u>Parliamentary Commissioner for Standards of the House of Commons in the United Kingdom Parliament</u>

- 3.1 According to the present Commissioner, statistics on complaints handled by the Office of the Parliamentary Commissioner for Standards was not kept comprehensively before his arrival in 2002.⁵
- 3.2 Under the complaint-handling procedures, the Commissioner is only required to handle a specific complaint against a named Member. Only complaints with some substance will merit a preliminary inquiry; otherwise they will be dismissed. If a complaint is justified but of a minor nature, the Commissioner may allow the Member under complaint to rectify the matter. 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 will fully investigate the complaint. More information on the complaint handling process of the Commissioner is presented in **Appendix II**.

Section 72.04, An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

According to the current Commissioner, 40% of the complaints received by his predecessors required further consideration by the Commissioners themselves, and 43% of those (or 17% of the total complaints received) then required a full investigation. See also Committee on Standards in Public Life (2002), p. 19.

⁶ For details, see Legislative Council Secretariat (2004), pp.3-4.

- 3.3 Between 1999-2000 and 2001-02, only the complaints which resulted in a report to the Committee on Standards and Privileges of the House were disclosed to the public. In 1999-2000, six reports on individual complaints were submitted to the Committee, and all concerned the registration of interests. In 2000-01, of the nine reports submitted to the Committee, one concerned the improper use of allowance, one the improper use of the position as Member to exercise influence, one the conduct which brought discredit on the House, and six the failure to declare or register interests. In 2001-02, of the seven reports submitted to the Committee, one concerned the improper use of allowance, while six concerned the failure to declare or register interests.
- 3.4 It was not until late 2002 that the Commissioner was required to publish a report each year containing more detailed statistics regarding the complaints handled by the Commissioner, as shown in Table 1. 10

Table 1 - Breakdown of the total number of complaints handled by the Parliamentary Commissioner for Standards from 2002 to 2004

	2002-03	2003-04
Total number of specific complaints ¹¹ against a named Member:	52	96
Complaints dismissed after examination ¹²	28	82
Complaints subject of preliminary inquiry (Below is the breakdown)	24	14
Complaints subject of preliminary inquiry then dismissed	10	6
Complaints handled by rectification procedures	1	0
Complaints subject of further investigation	13 ¹³	814

Source: Annual reports of the Parliamentary Commissioner for Standards.

See First Report, Second Report, Tenth Report, Eleventh Report, Twelfth report, Thirteenth Report, Fourteenth Report, Sixteenth Report and Seventeenth Report issued by the Committee on Standards and Privileges in 2000.

Committee on Standards in Public Life (2002), p. 60.

A complaint is defined by the Office of the Parliamentary Commissioner for Standards as a complaint or allegation against a named Member of Parliament which has been referred to the Commissioner by the complainant, whether or not the subject matter falls within the remit of the office. The Commissioner is not required to handle complaints not within the remit of his office.

The main reason for not proceeding with complaints against named Members was that they fell outside the Commissioner's terms of reference. For example, many of these complaints concerned the way a Member responded to a constituent's request for assistance, or what a Member said during proceedings in the House. See Parliamentary Commissioner for Standards annual reports published in 2002-03 and 2003-04.

Three complaints were about the same Member, and therefore 11 separate complaints were actually further investigated.

Two complaints were about the same Member, and therefore seven separate complaints were actually further investigated.

See First Report, Second Report, Third Report and Fourth Report issued by the Committee on Standards and Privileges in 1999, and Fifth Report, Sixth Report, Seventh Report, Eighth Report issued by the Committee on Standards and Privileges in 2000.

See First Report, Second Report, Third Report, Fourth Report, Sixth Report, Seventh Report and Eighth Report issued by the Committee on Standards and Privileges in 2001, and Fifth Report and Seventh Report issued by the Committee on Standards and Privileges in 2002.

- 3.5 While the information currently available to the public (as illustrated in Table 1) is more comprehensive than before under the policy on the disclosure of the handling of complaints against Members which is agreed by the Committee on Standards and Privileges and the Commissioner, only information on individual complaints that have been the subject of full investigation by the Commissioner and have resulted in a report to the Committee is disclosed to the public.
- 3.6 In 2002-03, four reports on individual complaints were submitted by the Commissioner to the Committee. One was about a Member's failure to register interests, one about a Member's conduct which might bring the House into disrepute, and two about Members' improper use of allowance.
- 3.7 In 2003-04, seven reports on individual complaints were submitted by the Commissioner to the Committee. One report was about a Member's libel action against a newspaper, three about Members' failure to register or declare interests, two about Members' improper use of allowances, and one about a Member's improper use of allowance and of the position as Member.

Ethics Commissioner of the House of Commons in the Parliament of Canada

3.8 Since the operation of his office started in October 2004, the Ethics Commissioner has received only one complaint. The complaint was against a Cabinet Minister, who subsequently resigned over allegations that she agreed to help a pizza shop owner to avoid deportation in return for free food provided to her election campaign volunteers.¹⁵

<u>Committee on Standards of Official Conduct of the House of Representatives in the United States Congress</u>

3.9 In the United States, only information on complaints that require full investigation by the Committee on Standards of Official Conduct of the House of Representatives is released to the public. More information on the complaint handling process of the Committee is presented in **Appendix III**. In the past five years, the Committee investigated a total of six complaints against Members, as shown in Table 2:¹⁶

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¹⁵ Information provided by the House of Commons of the Parliament of Canada.

¹⁶ Committee on Standards of Official Conduct (2004).

Table 2 - Number and subject matters of complaints investigated by the Committee on Standards of Official Conduct

Year	Number of complaints	Subject matters
2000	1	A Member's violation of gift rule and impropriety that brought disrepute to the House.
2001	2	One complaint concerned a Member's improper use of official resources for political purpose, while the other concerned a Member's improper campaign loans, improper use of campaign funds and improper financial disclosure.
2002	1	A Member's conspiracy to violate federal bribery and gratuity statutes, receipt of illegal gratuity, obstruction of justice, defrauding the government, racketeering and tax evasion.
2003	0	Nil.
2004	2	One complaint concerned a Member's receipt of communications linking support for the congressional candidacy of his son with his vote on the Medicare bill. The other concerned a Member's solicitation and receipt of campaign contributions in return for legislative assistance, use of corporate political contributions in violation of state law, and improper use of official resources for political purposes.

Source: Committee on Standards of Official Conduct (2004)

<u>Committee on Members' Interests of the House of Representatives in the Parliament of Australia</u>

3.10 In Australia, the Committee on Members' Interests of the House of Representatives has only received one complaint since the establishment of the Committee in 1985. The complaint was about a Member's failure to register interests.¹⁷

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Research and Library Services Division

¹⁷ Information provided by the House of Representatives of the Parliament of Australia.

Legislative Council Secretariat

Appendix I

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

	The House of Commons in the UK	The House of Commons in Canada	The House of Representatives in the US	The House of Representatives in Australia
Responsible authority	Parliamentary Commissioner for Standards.	Ethics Commissioner.	Committee on Standards of Official Conduct.	Committee on Members' Interests.
Scope of main duties	Considering complaints relating to breach of the Code of Conduct for Members of Parliament, including Members' improper use of allowances or failure to disclose relevant interests.	Considering complaints relating to breach of the Conflict of Interest Code for Members of the House of Commons, including Members' failure to disclose relevant interests or improper use of public resources for private interest.	Investigating Members' alleged violations of the Code of Official Conduct of the House, including improper use of official resources.	Considering complaints relating to Members' failure to disclose relevant interests; and inquiring into and reporting on the arrangements made for the compilation, maintenance and accessibility of the Register of Members' Interests.
Eligibility requirements	No formal requirement. Unofficial requirements include knowledge of the parliamentary system, political impartiality, intellectual rigour, independence and integrity.	No formal requirement. After the appointment, the Commissioner is prohibited from holding any other government office or engaging in any other employment for reward.	Not applicable.	Not applicable.
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.
Nature of appointment	Part-time.	Full-time.	Not applicable.	Not applicable.
Annual remuneration	£111,500 (HK\$1,628,000).	Ranging from CN\$239,700 (HK\$1,520,000) to CN\$282,000 (HK\$1,800,000).	Not applicable.	Not applicable.

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Appendix I (cont'd)

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

	The House of Commons in the UK	The House of Commons in Canada	The House of Representatives in the US	The House of Representatives in Australia
Subject matters of complaints handled by independent officers/committees	Failure to register and declare interests; improper use of allowance; improper use of the position as Member; and conduct bringing discredit on the House.	Improper use of the position as Member.	Violation of gift rule; impropriety bringing disrepute to the House; improper use of official resources for political purposes; improper campaign loans; improper use of campaign funds; improper financial disclosure; conspiracy to violate federal bribery and gratuity statutes; receipt of illegal gratuity; obstruction of justice; defrauding the government; racketeering; tax evasion; improper use of corporate political contributions; and receipt of campaign contributions in return for legislative assistance.	Failure to register interests.
Number of cases handled in recent years	During 2002-03 and 2003-04, of the 148 specific complaints against named Members received by the Commissioner, 21 required full investigation.	The Commissioner has received one complaint so far.	The Committee investigated eight complaints during the past five years.	The Committee has received one complaint so far.
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.

Legislative Council Secretariat IN24/04-05

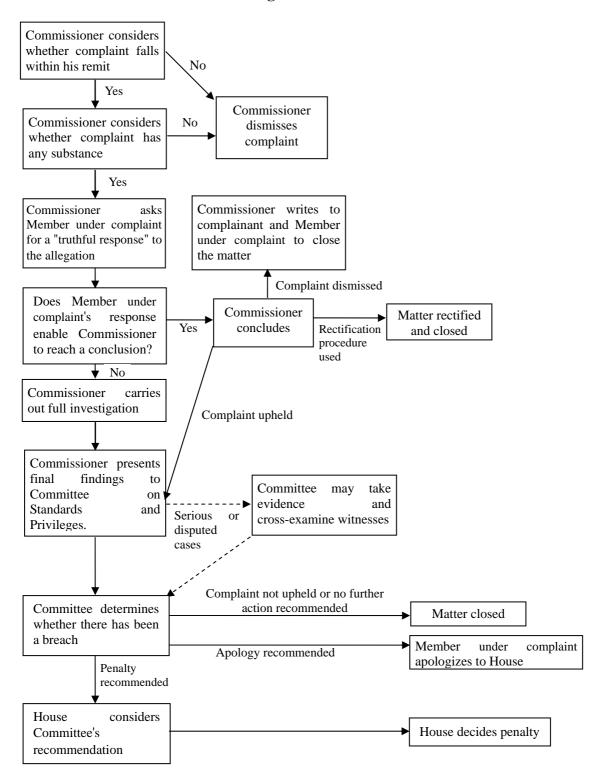
Appendix I (cont'd)

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

	The House of Commons in the UK	The House of Commons in Canada	The House of Representatives in the US	The House of Representatives in Australia
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.
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.

Appendix II

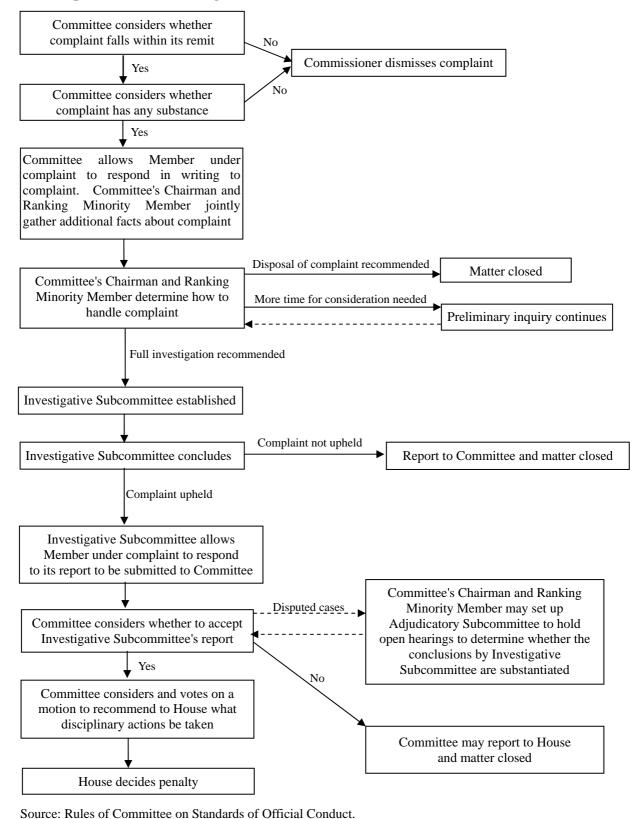
Complaint handling process of the Parliamentary Commissioner for Standards of the House of Commons in the United Kingdom Parliament



Source: Committee on Standards in Public Life (2002).

Appendix III

Complaint handling process of the Committee on Standards of Official Conduct of the House of Representatives in Congress of the United States



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