

Role of the House in relation to a code

Introduction

- 8.1 The House of Representatives is central to the operation of a code of conduct for members as the House provides the legal authority for the framework which the Committee has discussed and, ultimately, provides the authority for any sanctions against members taken as a result of any breach of the code.
- 8.2 The Committee considers that the approach it has taken in this discussion paper to handling matters that are raised under a code of conduct for members appropriately places the House at arm's length from the detail of the matters which might arise. A Parliamentary Integrity Commissioner, independently of the House and its members, could have the primary responsibility for receiving complaints and determining whether complaints should be investigated, and then investigating the complaints. The proposed Committee of Privileges, Ethics and Members' Interests could receive and review the reports of the Commissioner and, in turn, report to the House with any findings and recommendations for sanctions.
- 8.3 Once any matters raised under the code have reached the House, the House should be able to be well informed about the matters and have a reasoned proposed course of action put to it that has been examined in a bipartisan political context by the proposed Committee of Privileges, Ethics and Members' Interests.

Legal authority for a code of conduct and the imposition of sanctions

8.4 The Clerk of the Canadian House of Commons in referring to the enforcement of the code of conduct in Canada noted that ‘The sanctions available to the House in response to legal or ethical breaches by its members are largely dependent on the will of the House itself’.¹ Quoting *Canadian House of Commons Procedure and Practice*, the general authority of the House of Commons in relation to its members, the Clerk noted that it is evident that: ‘By virtue of parliamentary privilege, only the House has the inherent right to decide matters affecting its own membership’.²

8.5 In the United Kingdom House of Commons the power of the House to deal with members is equally as strong. An historical authority on procedure in the House of Commons has noted:

The penal jurisdiction of the House has ... always extended far beyond the bounds of debate, and in certain directions the House claims unlimited power over the persons of its members.³

8.6 The implementation of a code of conduct in the UK has developed from a recognition that the conduct of members cannot always be dealt with as one of a contempt of the House. As noted in Erskine May’s *Parliamentary Practice* in relation to matters such as corruption or impropriety: ‘Some have been seen as raising issues of whether the standards which the House is entitled to expect of its members have been observed’.⁴ The adoption by the House of Commons and the House of Lords of codes of conduct for their members has ‘considerably altered the approach taken by both Houses to the punishment of offences of this kind [matters of corruption or impropriety]’.⁵

8.7 In the Commonwealth Parliament the authority for the House to set a framework for the conduct of its members and to impose sanctions rests on sections 49 and 50 of the Constitution. These provide:

- **49.** The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until

1 Submission from Ms Audrey O’Brien, p. 7.

2 Ibid.

3 J Redlich, *The Procedure of the House of Commons, A Study of its History and Present Form*, Volume 3, trans by A E Steinthal, Archibald Constable & Co Ltd, London, 1908, p. 71.

4 Erskine May, *Parliamentary Practice*, 23rd edition, Lexis Nexis, 2004, p. 133.

5 Ibid.

declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

- 50. Each House of the Parliament may make rules and orders with respect to -
 - (i.) The mode in which its powers, privileges, and immunities may be exercised and upheld;
 - (ii.) The order and conduct of its business and proceedings either separately or jointly with the other House.

8.8 The implementation of any code might recognise, as noted earlier in the discussion paper and as referred to in *May*, that the traditional contempt processes of the House might not properly cover the sorts of actions which may give rise to complaints about the conduct of members.

The role of the House

8.9 In addition to providing the overall framework for a code of conduct, only the House is able to take action against members for any breaches of the code of conduct. As noted earlier, the framework the Committee has discussed for dealing with complaints should ensure that the House has all the evidence before it in relation to any matter and recommendations as to how it should deal with the matter.

Sanctions

8.10 The question of sanctions to be imposed for breaches of a code is an important one.

8.11 In relation to sanctions the Clerk of the UK House of Commons noted:

The consequences for a Member who is found to have breached the code of conduct are two-fold: damage to the Member's reputation and any formal sanctions or penalty. The scale and nature of the formal penalty may influence the extent of the reputational damage.

In the business of politics, reputational damage may threaten or terminate a parliamentary career; the consequences could range

from a temporary loss of prestige to a suspension of the Whip to a Member being permanently deprived of their position as a future candidate for their political party.⁶

8.12 The impact on a member of findings of a breach of a code also was referred to by the Chair of the UK House of Commons Committee on Standards and Privileges:

I think it is important to remember that even where no sanction is recommended, an adverse finding can have severe consequences for a Members' public standing. The reputational damage may even bring about a premature end to a Member's political career and damage prospects for future employment. Sanctions need to be proportionate and in deciding on them the relevant committee and the House need to have due regard to precedent and to consideration of fairness.⁷

8.13 In the United Kingdom, the Committee on Standards and Privileges has recommended the following individual penalties, having first taken account of a report from the Parliamentary Commissioner for Standards:

- an apology, in the form of a letter for publication;
- an apology, by way of a personal oral statement to the House;
- withdrawal of an allowance to which a retiring member would have been entitled;
- repayment of expenses incorrectly claimed;
- withdrawal of a former member's parliamentary pass; and
- suspension from the service of the House for a short period.⁸

8.14 In the video-conference discussion with the Committee, the Chair of the UK Committee on Standards and Privileges referred to the escalating range of sanctions available to the UK Committee to recommend for breaches of the code, with the imposition of suspensions being the most serious. The strongest sanction that has been recommended to date is the suspension of a member for 18 sitting days.⁹

8.15 The Committee considers that a sanctions regime associated with the enforcement of a code of conduct could have the following characteristics:

6 Submission from Dr Malcolm Jack, p. 4.

7 Submission from Rt Hon Kevin Barron MP, p. 2.

8 Submission from Dr Malcolm Jack, p. 5.

9 Transcript of evidence, 21 June 2011, p. 3.

- the sanctions regime be distinct from the regime that applies to questions of contempt;
- sanctions should be proportionate to the breach of the code to which they relate;
- sanctions should have regard not only to the individual breach of the code but to the wider public perception of members and the parliamentary institution created by the breach; and
- procedural fairness and natural justice must be built into the sanctions regime.

8.16 The Committee considers that any sanctions regime should not be prescribed in exhaustive detail as there should be flexibility to respond to individual cases with sanctions that are appropriate to the circumstances. Any arrangement that is put in place for a code of conduct should refer in general terms to the form of sanctions which could be recommended by the Committee. The penalties could range from seeking apologies to the imposition of suspensions for more serious breaches. In relation to procedural fairness, the Committee considers that the procedures for the protection of witnesses could make specific provision for allegations that there may have been a breach of the code of conduct or complaints about members conduct. These procedures provide safeguards to ensure procedural fairness when allegations have been made in relation to a person. The procedures also provide the opportunity for a person to respond where there is a proposal to make a recommendation for the imposition of a penalty.