



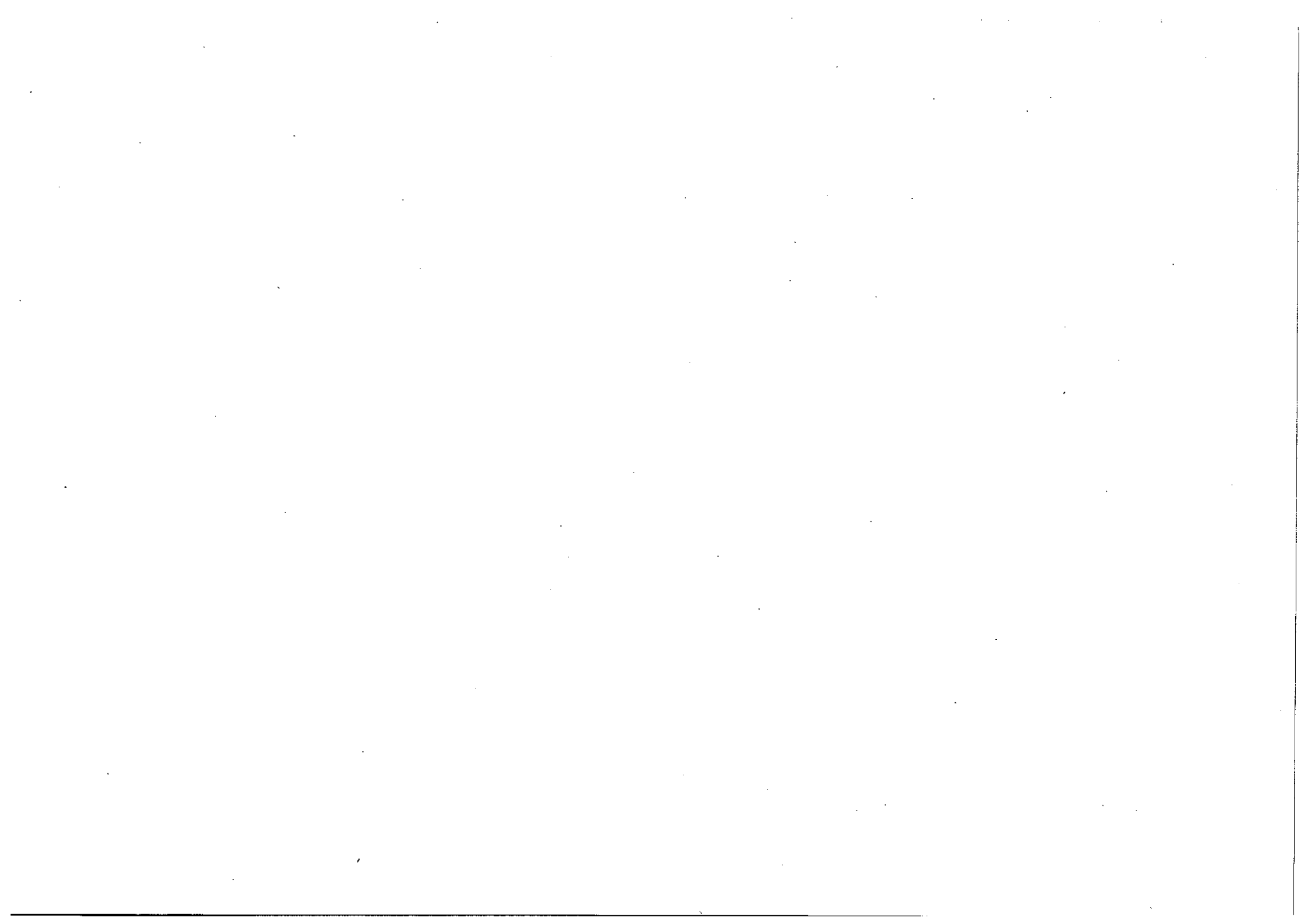
PARLIAMENT OF NEW SOUTH WALES
LEGISLATIVE COUNCIL

STANDING COMMITTEE ON
PARLIAMENTARY PRIVILEGE AND ETHICS

STUDY TOUR
TO
INDIA, EUROPE AND
NORTH AMERICA

JANUARY 1996

Ordered to be printed 23 May 1996,
according to Resolution of the House



Foreword by the Chair

A delegation comprising the Hon. Jennifer Gardiner MLC and myself, accompanied by the Clerk to the Committee, Ms Lynn Lovelock, undertook a study tour to several overseas Parliaments in January 1996, to investigate different approaches to the development of ethical standards for Members of Parliament and the regulation of Members' conduct. The purpose of the tour was to assist the Committee in its task of developing a code of conduct for Members of the Legislative Council, by examining the way various rules, codes, and enforcement procedures operate in practice.

During the tour the delegation was able to compare approaches to ethics regulation across a wide variety of parliamentary and political systems: Westminster-based systems in India and Canada; federal systems in Germany and the United States; a constitutional monarchy in Holland; and the European Parliament. Where possible, State and provincial legislatures, as well as national Parliaments, were visited.

The delegation encountered great diversity in the content and degree of codification of the rules of conduct operating in various Parliaments. In the European Parliament for example, the present code of conduct is limited in scope. However, problems have arisen in two particular areas - lobbyists' activities, and Members' conflicts of interest. Accordingly, at the time of the delegation's visit, voting had commenced on two Committee reports, one proposing amendments to the *Rules of Procedure* to regulate the conduct of lobbyists, and another to introduce detailed requirements for the disclosure of Members' pecuniary interests.

By contrast, the German State of Brandenburg has reasonably extensive rules governing various aspects of Members' activities. However, there is considerable support both from the public and from elements within the Parliament for these rules to be expanded and enshrined in a formal code of conduct. This is largely due to concerns over maintaining standards in public life following re-unification with East Germany, and to the influx of new Members from "non political" backgrounds since 1990.

The most detailed regulatory system encountered during the tour was in the United States Congress. Members of Congress are subject to an array of rules in many different areas including financial interests, use of official resources, and campaign activities. The great advantage of this type of system is that Members have clear guidelines as to what conduct is and is not acceptable. However, in many cases the complexity and detail of the rules appear to encourage a legalistic approach to the regulation of Members' conduct, rather than fostering adherence to positive ethical principles.

Perhaps the greatest range of different models encountered by the delegation was in the area of mechanisms for enforcing compliance with ethical standards. In the German Bundestag, breaches of rules by Members are within the jurisdiction of the President (i.e. the Presiding Officer). In the US Congress, the ethics committee of each House investigates allegations of improper conduct and recommends sanctions. In Saskatchewan, as in the other Canadian provinces, an independent commissioner appointed by the Parliament monitors Members' compliance with conflict of interest laws, and provides confidential advice to Members, on request, in relation to particular matters. From the extensive discussions which the delegation held with key Members and officers of the Legislature, it appears that this system is working extremely well, both from the point of view of restoring public confidence in the conduct of public life, and from the Members' perspective.

The tour provided many invaluable insights into the advantages and problems associated with a wide variety of models and approaches. I am confident that, drawing on this experience together with the other work which the Committee has undertaken, it will be possible to devise a useful and practical code of conduct which responds to the needs of our Members and the community.

A handwritten signature in cursive script, reading "Meredith Burgmann".

The Hon. Dr Meredith Burgmann
CHAIR

Background

The Standing Committee on Parliamentary Privilege and Ethics was established by resolution of the Legislative Council on 24 May 1995. The Committee has various functions relating to ethical standards for Members of the Legislative Council pursuant to the *Independent Commission Against Corruption (Amendment) Act 1994*. One of these functions is the development of a draft code of conduct for Members of the House. The Committee is required by 31 July 1996 to present a draft code of conduct for consideration by the Legislative Council.

Since the Committee's establishment in 1995, the primary focus of the Committee's activities has been the conduct of an inquiry into the development of a code. The Committee has held several public hearings and taken evidence from representatives of a wide cross-section of the community in relation to this issue.

On 11 October 1995, the Committee resolved that a sub-committee consisting of the Chair and another Member together with the Clerk to the Committee, undertake a visit of inspection to a number of overseas Parliaments. The purpose of the study tour was to examine different approaches to the regulation of ethical standards for Members of Parliament. Specifically, the sub-committee sought to examine: rules governing Members' conduct and the disclosure of Members' financial interests; the type and composition of bodies charged with administering the rules; how breaches of the rules have been dealt with; problems or difficulties which have arisen in practice with the application of the rules; and strategies for educating Members about their ethical duties and responsibilities.

Committee Membership

The Hon Dr Meredith Burgmann, MLC Australian Labor Party
Chair

The Hon Jenny Gardiner, MLC National Party

The Hon Charlie Lynn, MLC Liberal Party

The Hon John Johnson, MLC Australian Labor Party

The Hon Richard Jones, MLC

The Hon Andrew Manson, MLC Australian Labor Party

The Hon Bryan Vaughan, MLC Australian Labor Party

SECRETARIAT

Ms Lynn Lovelock Clerk to the Committee

Ms Velia Mignacca Senior Project Officer

Ms Phillipa Gately Committee Officer

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Record of Meetings

INDIA

Indian High Commission

- Mr Rakesh Ahuja, Acting High Commissioner
- Mr Mohan Mathews, Deputy High Commissioner

Lok Sabha Committee on Privileges

- Shri Shiv Charan Mathur, MP, Chairman
- Shri Ram Narain Berwa
- Shri Ram Sundar Das
- Shri Santosh Kumar Gangwar
- Shri Anna Joshi
- Shri P R Kumaramangalam
- Shri Uttamrao Patil
- Shri Bhagwan Sharkar Rawat
- Shri Tej Naryan Singh

Lok Sabha

- Hon Mr V C Shukla
Minister for Water Resources and Parliamentary Affairs
- Hon Mr Shivraj V Patil
Speaker of the Lok Sabha

Delhi Vidhan Sabha (State Legislature) Privileges Committee

- Shri Fateh Singh, Deputy Speaker, Chairman
- Dr Harshvardhan
- Shri Bodh Raj
- Shri G S Bhardwaj
- Shri J P Yadav
- Smt. Tajdar Babar
- Shri Parvez Hashmi
- Shri P N Gupta, Secretary

Rajasthan

- Hon Mr Shanti Lal Choplot
Speaker, Rajasthan Vidhan Sabha, Jaipur

Rajasthan Vidhan Sabha Privileges Committee, Jaipur

- Shri Rama Kant Sharma, Chairman
- Shri B L Gupta, Secretary

GERMANY

Brandenburg Parliament, Potsdam

- The Hon Martin Habermann
Vice President des Landtages Brandenburg
(Ms Ruth Bader, MA, Interpreter)

Abgeordnetenhaus, Berlin

- Herr Werner Gohmert, Director
- Herr Peter Kipsch, Head of Section, General Administration
- Herr Hartmann v.d. Aue, Deputy Head of Section, Committee on European and Federal Matters
(Frau Brigette Amedinck, Conference Interpreter)

Deutscher Bundestag, Bonn (German Federal Parliament)

Legal Division

- Herr Hermann Josef Shreiner, Head of Parliamentary Legal Division
- Herr Guenter Hirnschal, Parliamentary Law and Archives
- Dr Joseph Weller, Parliamentary Law and Archives

Committee on Electoral Scrutiny, Immunity and Procedure

- Herr Dieter Wiefelspuetz, MP, Chair
- Dr Gerald Kretschmer, Head of Secretariat

EUROPEAN PARLIAMENT, Strasbourg

- Mr Niall O'Neil

Committee on the Rules of Procedure, the Verification of Credentials and Immunities

- Mr Fayot, MEP, Chairman
- Mr Glyn Ford, MEP, Rapporteur
- Mr Jean-Thomas Nordmann, MEP, Rapporteur
- Mr Donnelly, MEP, Member
- Mr Hugh Kerr, MEP
- Mr Herve Fabre-Aubrespy, MEP
- Mr Philippe Ventujol, Chief of Division
- Mr Weigel, Secretary
- Mr Bent Adamson, Secretary

Alsace Development Corporation

- Mr Patrick G'Styr, Director
- Mr Benoit Eschbach, Assistant Director
- Mr Vincent Froelicher, Assistant Director
- Mr Anthony Knox, Regional Director
- Ms Monique Jung, Chargee de Mission

NETHERLANDS

Staten Generaal (Dutch Parliament), The Hague

- Mr Willem de Beaufort, Secetaire General
- Mr Hendrick, Staff Member, Committee on Home Affairs

UNITED STATES

- Mr Theodore J Van Der Meid, Chief Counsel/Staff Director, Committee on Standards of Official Conduct, US House of Representatives
- Mr Adam Bromwell, Chief Counsel, US Senate Select Committee on Ethics

CANADA

Saskatchewan Legislative Assembly

- **Mr Derril McLeod, Conflict of Interest Commissioner and Information and Privacy Commissioner**
- **Ms Lynda Haverstock, Independent Liberal Member and Former Leader of the Liberal Party**
- **Hon Ned Shillington, Minister for Intergovernmental Relations**
- **Hon Herman Rolfes, Speaker**



Chapter One - India

LOK SABHA - FEDERAL PARLIAMENT

The Lok Sabha is the Lower House of the Federal Parliament of India. The other House is the Rajya Sabha.

1 CODE OR TYPE OF REGULATION ON BEHAVIOUR

Despite the prevalent perception of corruption within the Indian National Parliament, there is no code of conduct for parliamentarians in place at the present time. In discussions with Members of the Lok Sabha, it became obvious that the expression "code of conduct" was interpreted only as referring to Members' behaviour in the House. This interpretation is also evident in the Paper entitled "Discipline and Decorum in the Parliament and State Legislatures", which was issued to the delegation by the Rajya Sabha¹. While the Paper addresses the need for a Code of Conduct, it determines that these needs are primarily attributable to the problem of lack of discipline in the House, particularly during the Address by the President or Governor.

The Paper concludes that while the adoption of a code of conduct would be desirable, "...many guidelines for the conduct of members are already available - though in a scattered form - in rules of the House as also in various customs and conventions, written and unwritten". [p13]

The only reference to ethical conduct in the Paper occurs in an Appendix II. This contains a draft Code of Conduct for Legislators, prepared on the basis of recommendations by various committees of the Parliament and rules of conduct which have developed over the years. The following is a summary of the relevant provisions contained in the draft Code:

- *Chapter III - During the sittings of Committee*
Where a Member of a Committee has a personal pecuniary or direct interest in any matter to be considered by the committee, he shall state his interest to the Speaker through the Chairman of the committee

The proceedings of a committee are to be confidential, and it is not permissible for any information to be divulged to the press.

¹ The Paper contains no indication as to its authorship, the issuing body, or date of publication. A copy of the Paper is available from the Committee Secretariat.

The evidence given before a committee shall not be published by any person or Member until it has been laid on the Table.

- *During the study tours of Parliamentary Committees*
Matters covered in this section include: the avoidance of intermediate journeys; a requirement that Members refuse to accept costly gifts; and a prohibition on Members taking their spouses on study tours.
- *Chapter VI - Code of Conduct for Legislators outside the Legislature*
Members are not to divulge information given in confidence or by virtue of being a Member; are not to try to secure business from Government for a firm in which Member is concerned; are not to unduly influence Government officials or Ministers etc.
- *Chapter VII - Punishment for Breach of Code*
The House has the right to impose the following punishments for contempts committed by Members: admonition, reprimand, withdrawal from House, suspension from service of House, imprisonment and expulsion from House.

The Chairman of the Lok Sabha Committee on Privileges indicated that there was a unanimous decision within the Parliament not to introduce a Code of Conduct on the grounds that such a code would result in Members of Parliament being made subservient to the Courts, thus interfering with the separation of powers. Political parties are primarily responsible for handling ethical issues arising from the behaviour of their Members of Parliament.

Although there is no code as such, there are provisions both within the Rules of Procedure and the Representation of the People Act 1951 which deal with conflict of interest and corruption. These are detailed below:

Rules of Procedure and Conduct of business

- *Rule 255 (Objection to Members of Committees):*

Where objection is taken to the inclusion of a member in a committee on the ground that the member has a personal, pecuniary or direct interest that may prejudice consideration of any matter to be considered by committee, there is a procedure to be followed which allows both the member and the objector to speak and produce evidence. The Speaker then decides whether the Member can continue to be a member of the committee.

- *Rule 371 (Objection to vote of a Member):*

If the vote of a Member is challenged in a division in the House on the ground of personal, pecuniary or direct interest in the matter to be decided, the Speaker may, if he considers necessary, call upon the Member making the challenge to state precisely the grounds of his objection and the Member whose vote has been challenged to state his case and shall decide whether the vote of the Member should be disallowed or not and his decision shall be final:

Provided that the vote of a Member or Members is challenged immediately after the division is over and before the result is announced by the Speaker.

Representation of the People Act, 1951

The Representation of the People Act, 1951, Part VII sets out what constitutes corrupt practice. Section 123 states that corrupt practices shall be deemed to be:

- *Bribery*
The receipt of, or agreement to receive, any gratification whether as a motive or reward. [s.123 subsection 1]
- *Interference with the free exercise of electoral rights*
A direct or indirect attempt to interfere on the part of the candidate or his agent with the free exercise of any electoral rights. [subsection 2]
- *Conduct based on racial or other prejudices*
The appeal by a candidate to vote or refrain from voting on the grounds of prejudice based on racial, religious or other grounds or prejudicially affecting the election of any candidate.
- *Falsification of documents*
Either explicitly or through omission, relating to the personal character or other of a candidate with the aim of impinging on the candidates prospects at an election.
- *Providing transport to electors*
The hiring or procuring of a vehicle for the free conveyance of any elector to or from any polling stations.

2 QUALIFICATIONS & DISQUALIFICATIONS

The Representation of the People Act, 1951, section 3,4,5,6, sets out the qualifications for membership in Parliament and State Legislatures:

- A person is qualified to be chosen as a representative of any state if he is an elector for a Parliamentary constituency in that state.
- Sections 4,5&6 relate to qualifications for membership concerning seats reserved for scheduled castes, tribes etc.

The disqualifications for membership are:

- *Conviction for certain criminal offences [s.8]*

promoting enmity between racial groups, bribery, offences relating to elections, offences related to rape, cruelty towards a woman etc.

preaching and/or practising "untouchability".

importing/exporting prohibited goods.

being a member of an association declared unlawful or dealing with funds of an unlawful association.

conviction under the Narcotic Drugs and Psychotropic Substances Act, 1985

committing terrorist acts

removing ballot papers from polling booths

hoarding, profiteering, adulteration of food or drugs, contravention of the Dowry Prohibition Act, 1961

The above offences constitute a disqualification for a period of six years from the date of such conviction.

- *Conduct which constitutes corrupt practice [s.8A, 9, 9A]*

A person who has held an office under the Government of India or under the Government of any State and has been dismissed for corruption or for disloyalty, is disqualified for six years.

- *Contracts, conflicting interests* [s.10, 10A]

A person is disqualified from standing for Parliament while they are the managing agent of any company or corporation in the capital of which the appropriate Government has not less than twenty-five per cent share. Also, any candidate who fails to lodge account of election expenses is disqualified from membership of Parliament for a period of 3 years.

Defection

Due to the diversity of the Indian population, there is a plethora of political parties within the Indian Parliament. In recent years, this has led to a degree of instability as Members have switched allegiance from one party to another, depending on the inducements being offered. To prevent this, and to allow a measure of stability in government, legislation was introduced making political defection a ground for disqualification as a Member of Parliament. The Constitution (Disqualification of Members on Ground of Defection) Act, 1991 states that a member who voluntarily gives up their membership in a political party shall be disqualified. The exceptions are:

- when a party splits and the new group constitutes no less than one-third of the members of the original party or; [s.3]
- when the original party merges with another party.[s.4]

The one-third rule means that individuals are prevented from being enticed to defect from their party on spurious grounds, while allowing for the resolution of genuine political dissatisfaction within a party.

The question of whether a Member of the House is subject to disqualification under these provisions is referred for the decision of the Chairman or the Speaker of the House, and their decision is final.

3 BREACHES/SANCTIONS

The delegation met with the Indian Lok Sabha - Committee on Privileges, and was informed that the Privileges Committee investigates breach of privileges matters, and punishment is determined by a consensus of the

House. This punishment can take various forms, such as disqualification or suspension. The Privileges committee emphasized that punishment was based on a consensus rather than a clear case of numbers in a vote of the House.

Suspension or disqualification of a member for disorderly behaviour was primarily used before 1980. There has been only one example of a disqualification by a vote of the House. Indira Gandhi was disqualified, giving rise to considerable debate amongst Parliamentarians. Mrs Gandhi apparently believed that suspensions were "undignified" and so the practice diminished.

As noted in Section 2(b) above, there are various criminal offences which could constitute a disqualification of a Member, or a person standing for membership.

4 EDUCATION

Various references are available for the purposes of education of Members². There is no material that covers ethical education. The issues that are dealt with by the educational literature are:

- Being a more effective legislator
- Dealing with a conflict of loyalties
- Conduct and behaviour on the floor
- How to utilise parliamentary procedure

and generally teaches the Members how to follow procedure, custom and convention in the House. The emphasis appears to be on form and procedure, with little or no consideration given to the question of ethics. For example, Hon Mr V C Shukla, Minister for Water Resources and Parliamentary Affairs advised that many seminars by the Indian Parliamentary Union are conducted for Members but many "don't take their advice".

² "Problems faced by New Members", "First Session of a New Member - Role & Opportunities", "How to be an Effective Parliamentarian?", "Parliamentary Customs, Conventions and Etiquettes", by Lok Sabha Secretariat, Bureau of Parliamentary Studies & Training, Lok Sabha Secretariat, New Delhi.

5 CITIZEN'S RIGHT OF REPLY

There was no concept of a citizen's right of reply in India. The acting Australian High Commissioner Rakesh Ahuja stated that a right of reply had been investigated but not adopted/codified. A citizen could not be named in India under parliamentary privilege. Mr Shivraj V. Patil, Speaker of the Lok Sabha, concurred with this point of view and stated that a Right of Reply was not really an issue in India.

6 PRIVILEGES

What constitutes Privilege in India

The privileges as set out by "Question of Privilege - Parliamentary Procedure Abstract Series 14", are;

- Freedom of speech.
- Immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament.
- Immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper votes or proceedings, prohibition on the courts to inquire into proceedings of Parliament and freedom from arrest of members in civil cases during the continuance of the session of the House and forty days before its commencement and forty days after its conclusion.

The Indian Constitution, Article 105 conferred the rights and privileges of the House of Commons and these rights were conferred on the State Legislatures through Article 194. The Privileges Committee of the Lok Sabha saw its privileges as being: the right to attend the House without interference; freedom of speech; and the right to cast a vote according to conscience.

Role of Committee

The Privileges Committee's primary role is to investigate a complaint, prepare a report of the investigations and pass the findings and recommendations for sanctions back to the House for judgement³. In India

³ "Question of Privilege - Parliamentary Procedure Abstract Series 14"

the structure and composition of the privileges committee is similar to Australian privilege committees. There are two committees, one for the Lok Sabha and one for the Rajya Sabha and both have representatives from all parties. The way of raising a Privilege matter is for the Member to give notice to the Speaker by 10:00 am on a sitting day. The Speaker can then refer it to the House and the House can then refer it to the Committee for consideration.

Freedom of Speech

Freedom of speech does not extend to the naming of citizens, nor does it extend to the defamation of the Governor or President. The practice of freedom of speech in India is restrained and the Speaker can expunge statements from the record if it is felt they are outside of the bounds of Parliamentary procedure.

Expunging from the record

Mr Vidya Charan Shukla⁴ stated that the Presiding Officer expunges from the record statements which are deemed to be not acceptable according to parliamentary procedure or language.

The Members of the Rajasthan Legislative Assembly Privileges Committee concurred with this and reiterated that the Speaker has the final say in expunging from the record unparliamentary language, excessively lengthy speeches, speeches without notice etc.

7 PECUNIARY INTERESTS

There is no official register for the disclosure of pecuniary interests. The disclosure of such interests are optional and can be presented to the Speaker by the Member if the Member so wishes. It appears that it is up to the Members to police themselves, and other Members, on conflict of interest issues. This could potentially leave room for unethical and corrupt conduct. However it appears that the Speaker may, upon request, view any Members' taxation records where there is some issue as to the Members' pecuniary position in a matter before the House.

⁴ Minister of Water Resources and Parliamentary Affairs

Mr V C Shukla advised that Members are not prohibited from earning income from business enterprises although it is not acceptable to be a party to government contracts.

DELHI VIDHAN SABHA (State Legislature)

Limited statehood was conferred on Delhi in 1993, and elections to the new state Legislature took place in December of that year.

1 CODE OR TYPE OF REGULATION ON BEHAVIOUR

There is no code of conduct in place in the Delhi Parliament. Behaviour of Members in the House is governed by Rules of Debate and administered by the Speaker.

2 BREACHES/SANCTIONS

According to the Deputy Speaker Shri Fateh Singh, no significant cases of misconduct have been brought before the House since the elections in 1993. However should a case of corruption/misconduct arise the Legislature would only notice the matter if it was raised in the House, and the matter would in all probability be resolved politically (presumably by the Member resigning). If a sitting member was convicted in the courts of an offence the matter would be referred to the Privileges Committee⁵ for consideration. However the Committee only has the power to recommend; all decisions in such matters are made by the House.

Members have occasionally been suspended from the service of the House. Suspension is for a period of up to 7 days. The Member continues to receive their salary while suspended.

3 EDUCATION

Induction seminars are held for new Members, following elections. Material covered is mainly to do with conduct and behaviour on the floor of the House, as well as practice and procedure. There appears to be little attention given to ethical matters, nor to behaviour outside the House.

4 CITIZEN'S RIGHT OF REPLY

Under the Standing Orders of the House, Members cannot defame a citizen.

⁵ The Privileges Committee consists of 7 Members, representing all Parties, nominated by the Speaker.

If a Member does name a citizen no action is taken against the Member, but the Speaker has the authority to expunge the record. For this reason, there is no perceived need for a citizen's right of reply.

5 PRIVILEGES

The Indian Constitution, Article 105 confers on the National Parliament the rights and privileges of the House of Commons. These rights are conferred on the state legislatures through Article 194. Freedom of speech is guaranteed, with the exception of defamation of citizens as outlined above.

Privilege matters are referred on occasion to the Privileges Committee for investigation. The Committee reports on the matter and in relation to Members can recommend an appropriate penalty. Penalties include being called before the Bar of the House to explain, suspension and expulsion. Once again, it is the House which decides what, if any, action is taken.

6 PECUNIARY INTERESTS

According to the Deputy Speaker of the Delhi Legislature, Members may not vote on matters in which they are financially involved. While there is no Act of Parliament requiring Members to register their pecuniary interests there are conflict of interest regulations.

Individual parties require their Members to declare their assets at the time of their election and then regularly after that.

If one Member in the House believes that another Member has a conflict of interest on an issue, they must raise it in the House at the time the matter is under discussion. The House then determines whether or not the Member may vote.

RAJASTHAN VIDHAN SABHA (State Legislature)**1 CODE OR TYPE OF REGULATION ON BEHAVIOUR**

No code of Conduct exists in the Rajasthan Parliament. Members are bound by the rules and regulations of Parliament, including decisions by the Speaker and precedent.

2 QUALIFICATIONS & DISQUALIFICATIONS

Corrupt practice constitutes a disqualification. Corruption legislation exists but the Chief Minister is exempted. This is in line with Federal legislation, which exempts the Prime Minister. The whole issue of exemption is currently being reviewed and it is possible there will be changes in the future.

3 BREACHES/SANCTIONS

A person who has been convicted of a crime which constitutes moral turpitude is barred, under the State Penal Code, from ever standing for or sitting in Parliament. Crimes of moral turpitude include, but are not limited to, instances of cheating, fraud, forgery, murder or rape. A person convicted of a social/political crime is not prevented from later running for election.

There is a general expectation that a Member who is the subject of allegations of corruption will resign. If they don't and are subsequently convicted and imprisoned (in the case of imprisonment for a short period) the House determines whether or not the seat must be vacated. In the case of a longer sentence, the Member would forfeit their seat if they are absent from the House for a period of time.

The Speaker can suspend Members for breaches of the Standing Orders. Members continue to receive their salary while suspended.

4 EDUCATION

Induction training is provided, but is once again confined to conduct in the House, and procedural matters to do with business in the House.

5 CITIZEN'S RIGHT OF REPLY

There is no citizen's right of reply. Members are not allowed however to mention citizen's names in Parliament. The Speaker will automatically expunge the record if this occurs (and apparently, this occurs frequently).

6 PRIVILEGES

The Indian Constitution, Article 105 confers the rights and privileges of the House of Commons and these rights are conferred on the state legislatures through Article 194.

Freedom of speech

There is absolute freedom of speech save that Members cannot name citizens or use unparliamentary language against other Members, the Queen, the Governor, the Judiciary etc, nor make false allegations.

The Speaker has the authority to expunge the record for any of the above, and his decision is not appellable.

Committee

The Privileges Committee works in the same way as in the Lok Sabha. An issue is referred by the Speaker or by Parliament to the Committee for investigation and recommendations. The House then makes decisions based on those recommendations.

7 PECUNIARY INTERESTS

In Rajasthan, there is no pecuniary interest register. Members, however, are not allowed to raise issues that relate to their business interests. It is unclear what action, if any, would be taken against a Member found to have breached this rule.

Chapter Two - Germany

BUNDESTAG - GERMAN FEDERAL PARLIAMENT

The Bundestag is the Lower House of the German Federal Legislature. The Bundesrat is the Upper House.

1 CODE OR TYPE OF REGULATION ON BEHAVIOUR

Annexure 1 to the Rules of Procedure of the German Bundestag contains a Code of Conduct for Members. The Code consists of 9 Rules. The broad approach taken in the Code is to make actual and potential conflicts of interest public, rather than to ban particular activities.

If any Member is in doubt concerning his or her obligations under the Code, the Member is obliged to clarify the matter by seeking further information from the President (Rule 7).

Officers of the Legal Division receive several enquiries each day from Members seeking advice on the code.

2 PECUNIARY INTERESTS

Rule 1

Members are obliged to inform the President in writing of certain matters, including:

- the Member's occupation/s;
- the Member's activities as a member of a company board;
- the Member's functions in trade and industry associations;
- contracts and activities pursued outside the Member's occupation and parliamentary duties, e.g. providing expert opinions, writing reports, conducting lectures;
- the Member's holdings in joint-stock companies or partnerships, if, as a result of the holding the Member has a considerable economic influence on the company.

Members must inform the President of the income derived from all such activities, functions or contracts, except income derived from the Member's occupation or holding in companies or partnerships. (There is some discussion about the possibility of publishing details of outside income in future).

Pecuniary interests of spouses are not required to be disclosed.

The information received by the President is published in the Official Handbook (Rule 3).

Rule 4 - Donations

All Members must keep separate accounts of political donations and gifts (Rule 4(1)).

Donations are partly tax deductible.

Donations which exceed DM 10,000 in one calendar year must be notified to the President, specifying the amount and the name and address of the donor (Rule 4(2)). (Donations from outside Germany are not permitted).

3 USE OF PUBLIC OFFICE FOR PRIVATE PURPOSES

Rule 5

No reference may be made to membership of the Bundestag in the course of a Member's business or occupation.

4 OTHER CONFLICT OF INTEREST PROVISIONS

Rule 2 - Members acting in legal proceedings

Members who act for or against the Federal Republic of Germany for a fee in legal proceedings, must give details to the President. This information is published in the Official Handbook (Rule 3).

Rule 6 - Conflict of interest in committees

A member of a Committee of the Bundestag who has a financial interest in a subject under debate in the committee, or who is concerned with the subject as part of his or her occupation or for a fee, must disclose that interest prior to the Committee's deliberations.

Rule 9 - Inadmissible remuneration

A Member shall not receive any remuneration or pecuniary benefits for the performance of his or her parliamentary duties other than that provided for by law.

5 LOBBYISTS**Annexure 2 to the *Rules of Procedure***

The President maintains a public register of all representatives of trade and industry associations which deal with the Bundestag or the Federal Government. Details incorporated in the register include:

- address of the association;
- composition of the board of directors and board of management;
- area of interest of the association;
- number of members of the association;
- names of the associations representatives.

Passes admitting representatives to the Bundestag buildings are only issued if the above information is provided.

At present there are over 1500 registered lobbyists.

6 BREACHES/SANCTIONS**Rule 8**

If it appears that a Member has failed to meet his or her obligations under the Rules, the President investigates the matter, after hearing the Member concerned.

The President is assisted by the parliamentary legal branch in these investigations.

If the President ascertains that a Member has failed to meet his or her obligations, the President informs the Presidium (which consists of

representatives of all the parliamentary groups) at a joint, confidential meeting. If an objection to the President's preliminary finding is lodged, the President investigates the matter further.

The President's conclusion concerning the matter is published as a printed paper. Publicising the Member's breach of the rules is the only form of sanction which is imposed. Members regard this as a serious sanction.

The President's conclusion on the matter may only be challenged in the Constitutional Court.

There has been no case where a Member has been found to have breached the rules.

Sanctions in respect of Members' conduct in the House

The President has the power to suspend a Member from the service of the House for up to 30 days for disorderly conduct in the Chamber. The Member's expense allowance is reduced according to the number of days the Member is absent from the Chamber. (Suspension is rare and parliamentary language is milder than in Australia).

A Member may not be expelled, except where the Member's party is banned on the grounds that it is unconstitutional. It is considered that there is no authority by which the Member's mandate can be withdrawn, or by which the Member's electorate can be deprived of its representative.

7 PRIVILEGES

Freedom of speech

Article 46(1) of the German Constitution

Members of the Bundestag enjoy absolute freedom of speech in the course of parliamentary proceedings, except in the case of "defamatory insults", for which Members may be taken to court. The delegation was unable to obtain a detailed explanation of the term "defamatory insults" but was advised that the term is defined in various court rulings. A similar concept exists in the Brandenburg Parliament and the Berlin Abgeordnetenhaus, where Members may be held accountable for personal insults uttered in the course of parliamentary proceedings.

As with Houses of Parliament in the British tradition, the Presiding Officer of the Bundestag has the power to censure Members for using "unparliamentary" language in the Chamber.

In principle, the President does not expunge remarks from the record, although there have been "some rare exceptions".

Immunity from prosecution

Article 46(2) of the German Constitution

Members of the Bundestag are immune from prosecution or arrest for any criminal offence, unless the Bundestag consents to the prosecution or arrest. However, a Member may be arrested or prosecuted without the permission of the Bundestag if the Member is caught in the act of committing the offence, or apprehended the day after commission of the offence.

8 CITIZEN'S RIGHT OF REPLY

A citizen who is named by a Member in Parliament has no right of redress, unless the Member's comments amount to a "defamatory insult" as discussed above.

9 EDUCATION

New Members are informed of the Code of Conduct and given additional explanatory material as to their obligations.

Each year, Members are reminded of their obligations by the President and given a complex questionnaire which is intended to monitor compliance with the Rules.

10 QUALIFICATION/DISQUALIFICATION

German electoral laws set out qualifications for Members. A gaoled candidate could run for Parliament although this would depend on the length of the term of imprisonment and the seriousness of the crime.

11 COMMITTEE OF RULES AND PROCEDURES

The Committee is appointed by the House and comprises 17 Members in proportion to the relative strength of political parties.

BRANDENBURG STATE LEGISLATURE

1. CODE OR TYPE OF REGULATION ON BEHAVIOUR

There is no code of conduct for parliamentarians at present. However, public opinion appears to favour the introduction of a code. Public sensitivity to standards of conduct for Members of Parliament has increased since reunification with East Germany in 1990. Many of the Members who have joined Parliament since 1990 are interested in reforming the parliamentary system and introducing greater openness.

While there is no code of conduct as such, there is a handbook which sets out rules governing Members' conduct and interests. The rules are similar to those which apply in the German Federal Parliament, especially in relation to business dealings, acceptance of money, and use of a Member's position for private purposes.

Any Member who is in doubt as to whether certain activities are permitted under the rules may seek advice from the President. This advice is kept confidential, although if the President is unsure of the position there is a special Committee consisting of Party Chairs and Treasurers which deals with issues relating to Parliament to which the President can refer the matter. (See item 7)

2. PECUNIARY INTERESTS

Interests published

There is no register of pecuniary interests. However, a handbook is published containing details of each Member's:

- personal situation;
- professional status and current employment; and
- affiliations.

Interests under contracts

Members must inform the President if they enter a contract under which they are to receive remuneration e.g. a contract to write a report on an area of expertise.

Donations

The President must be informed of all personal donations received by Members. Cases of personal donations are rare, as most donations are given to the parties rather than to individual Members.

3 USE OF PUBLIC OFFICE FOR PRIVATE PURPOSES

Members may not refer to their status as Members of Parliament in their private business dealings e.g. on business cards. The President investigates alleged breaches of this rule to ensure compliance.

4 OTHER CONFLICT OF INTEREST PROVISIONS

Outside employment

Members may continue outside employment or occupations, but may not be employed as public servants.

Ministers may not engage in outside work or become a member of a board, unless they are granted permission by vote of the House. In some cases the House has refused to give its permission.

Committee matters

There must be no conflict between a Member's duties as a member of a parliamentary committee and the Member's paid or voluntary work e.g. membership of a board.

5 LOBBYISTS

The activities of lobbyists are not perceived to be a problem in the Brandenburg Parliament, although this is an issue at the Federal level. There are no rules governing lobbyists in the Brandenburg Parliament.

6 BREACHES/SANCTIONS

Breaches of rules

The President investigates alleged breaches of the rules and may determine whether any action should be taken. The President also acts as an advisor to Members in doubt about possible breaches.

The President may seek advice from the General Committee upon which the Chairmen of all parliamentary parties sit.

Disorder in the House

A Member who is repeatedly called to order in the House may be suspended by the President for up to four sittings. In such cases the Member continues to receive their salary.

A Member may not be expelled from the House.

7 PRIVILEGES

Immunity from prosecution

Members of Parliament are immune from prosecution for criminal offences if immunity is granted by the General Committee of the House. This is the reverse of the position in the Bundestag, where Members have immunity from prosecution automatically, unless the House consents to the prosecution. The General Committee which confers immunity in the Brandenburg Parliament is made up of Party Chairs and Treasurers. (See item 2)

Where a Member is under investigation for a criminal offence, the State Attorney informs the Minister for Justice and the President. The President informs the General Committee which then decides whether the Member should be granted immunity. If immunity is granted, the investigation stops until such time as the immunity is lifted, e.g. until the Member ceases to be a Member. (The lack of automatic immunity flows from a post-unification desire to show to the public that Members of Parliament do not have special privileges as of right).

Freedom of speech

Members may not be held to account in respect of statements made by them in the course of parliamentary proceedings, except in the case of statements which amount to personal attacks or insults. Legal proceedings may be brought against the Member in respect of such statements.

8 CITIZEN'S RIGHT OF REPLY

Citizens who are subjected to criticism or attacks in Parliament by a Member may bring legal proceedings against the Member, provided the attacks are of a personal nature, or in the nature of an insult. Citizens have no right of redress in respect of "justifiable" criticism by a Member in the House, e.g. criticism regarding the citizen in a professional capacity. Whether an action may be brought depends on the facts of the particular case. It appears that no action against a Member has been successful.

9 EDUCATION

There is no program of ethics education in the Brandenburg Parliament.

10 OTHER MATTERS

Conviction for criminal offences

It is not unlawful for a person with a criminal record to stand for Parliament or to continue in office as a Member. It is up to the party to decide whether or not to endorse the particular person as a candidate or Member in such circumstances.

Persons wishing to stand for Parliament must lodge with the Parliament a certificate stating whether or not they have been prosecuted for any criminal offence within a certain period, or whether there are any criminal prosecutions outstanding against them. The certificates are issued by the police authority.

ABGEORDNETENHAUS (BERLIN)**1 CODE OR TYPE OF REGULATION ON BEHAVIOUR**

There is a code of conduct/Rules of Behaviour for Members of Parliament. Where a Member is uncertain as to whether an activity contravenes the Rules, the Member must ask the President of the House for advice.

2 PECUNIARY INTERESTS**Register**

There is a pecuniary interests register for parliamentarians, similar to that which operates in NSW. The register does not specify the amount of each interest, only the source.

Donations

Donations to political parties of 10,000 DMs or more are listed in a public register. The parties require that any donation to an individual Member be passed on to the party.

Donors to political parties are entitled to a tax deduction in respect of donations, but must name the receiver of the donation to claim the deduction.

3 USE OF PUBLIC OFFICE FOR PRIVATE PURPOSES

A Member may not refer to his or her status as a Member in the course of private business dealings.

4 OTHER CONFLICT OF INTEREST PROVISIONS**Outside employment**

A Member may have outside employment or occupations, but may not be employed as a public servant.

5 LOBBYISTS

There are no plans to ban professional lobbyists.

6 BREACHES/SANCTIONS

Conduct in the House

The President may suspend a Member for up to three sittings for disorderly conduct in the Chamber. No deductions are made from the salary or allowances of a Member who is suspended.

There is no power to expel a Member from the House.

7 PRIVILEGES

Immunity from prosecution

Members of the Abgeordnetenhaus are immune from prosecution for criminal offences in a similar way to Members of the Brandenburg Parliament. The immunity must be granted by the House. A major factor which is taken into account by the House when determining whether the immunity should be granted is the extent to which the Member will be impeded from performing his or her parliamentary duties if the prosecution proceeds.

Freedom of speech

The Constitution of the State of Berlin states that Members cannot be held accountable for their votes or conduct in Parliament, except in the case of "libellous/vilifying insults". A citizen who is the subject of such an insult may bring a court action against the Member who made the statement. In addition, "unparliamentary" language is censured by the President.

8 CITIZEN'S RIGHT OF REPLY

Citizens who are named by a Member in Parliament have no right of redress, except where the Member's statement amounts to a "libellous/vilifying insult". In such cases, the citizen may bring a court action against the Member.

9 EDUCATION RE ETHICS

No training in ethics or the rules of conduct is provided for Members.

Chapter Three - European Parliament

EUROPEAN PARLIAMENT (Strasbourg)

In the European Parliament, two issues were currently of significant concern: lobbyists and conflict of interest. At the time that the Committee visited the European Parliament, voting occurred on two reports, one of which proposed amendments to the Rules of Parliament to regulate the behaviour of lobbyists and the other to introduce a pecuniary interest register.

Rule changes require support from an absolute majority of Members of European Parliament's entitled to vote and so are difficult to achieve.

Both reports' recommendations failed to attract the necessary support in a plenary session and were referred back to the Rules Committee for re-working.

1 CODE OR OTHER REGULATION OF CONDUCT

Lobbyists

A report on lobbying prepared in the European Parliament by the Committee on the Rules of Procedure⁶ was adopted unopposed on 25 September 1995, and tabled on 27 September 1995. According to Mr Fayot⁷, the Committee on the Rules of Procedure began working on the regulation of lobbyists in 1989, following concern within the European Parliament at the level of lobby activity. The regulations were needed to guarantee transparency and to ensure Members were not involved in unethical conduct.

The report recommends that a register be kept containing information about individuals and lobby groups who require access to Parliament on a regular basis. The register would be available for public inspection. The report does not attempt to provide an exhaustive definition of what constitutes a lobby group, nor does it seek to make distinctions between the various forms of lobby groups. For instance there is no distinction made between paid and unpaid lobbyists. This was basically to avoid any complex classification problems that may have, in effect, thwarted the original aim, ie to make the act of lobbying transparent. The report not only makes recommendations about lobbying but also recommends tighter regulations

⁶ Full title is "Committee on the Rules of Procedure, the Verification of Credentials and Immunities", short title is to be used in this report

⁷ Chair of the "Committee on the Rules of Procedure, the Verification of Credentials and Immunities"

concerning the acceptance of gifts and the conduct of lobbyists.

Gifts

Debate has ranged over the cost, monetary limit and cumulative value of gifts which can be accepted by Members of Parliament. As well, the issue of entertainment and payment of travel for Members and/or for staff has been hotly debated. At the present time it would appear that the only curb on the acceptance of gifts is transparency, while no curbs appear to regulate the acceptance of free travel or entertainment. Some of the report's recommendations concerning gifts were:

- The annual declaration to be made by persons included in the register should specify:
 - (a) the sum total of the amounts used for each of the areas to which the activities of the individual registered with Parliament relate;
 - (b) the services of whatever nature which they have provided to Members, officials or assistants on a periodic basis;
 - (c) the favours, gifts, acts of generosity or services of whatever nature which they have provided to members, officials or assistants on an occasional basis whenever they exceed the limit laid down in the relevant annex to the Rules of Procedure;
- The Member, official or assistant concerned should be notified regarding the section of the declaration of interests which relates to him or her, so that he or she can corroborate it or rectify it; in the latter case that section of the declaration shall be considered incorrect if the declarant does not provide written proof of its accuracy which is sufficient to satisfy the College of Quaestors⁸;
- Publication of the section in the declaration of interests which relates to acts of generosity or services provided to members or their assistants should be subject to separate rules and should be included

⁸ The College of Quaestors is the term used to refer to the Members of Parliament who are responsible for administrative tasks. They are elected by Parliament and are involved with every administrative program concerning entitlements, pensions, or offices of Members. The College of Quaestors was considered (by the committee) to be the appropriate body for the role of regulating what constituted an acceptable monetary limit when accepting gifts.

in the report being prepared by the Committee on the Rules of Procedure, the Verification of Credentials and Immunities on the transparency of the financial interests of Members of the European Parliament.

Code of Conduct for Lobbyists

The report also recommended that a code of conduct for lobbyists be drafted. One of the primary reasons for drafting the code was to encourage more professional conduct of lobbying. The recommendation stipulated:

- The European Parliament should establish, after consulting its committees, a code of conduct to govern the activities of lobbyists. It should simultaneously establish a procedure (including the possibility of sanctions) to deal with infringements of, challenges to, or disputes in connection with agreed and constituted roles.

The report suggests that such a code would work in conjunction with a register of Members' interests to minimise the possibility of unethical conduct. It also suggests that the Parliament should draft regulations concerning sanctions applicable to Members who failed to register their interests.

2 CITIZEN'S RIGHT OF REPLY

There is no citizen's right of reply in the European Parliament. A citizen, however, can attempt to sue a Member for defamation and the courts can request that the Parliament waive the Member's immunity. Parliament will weigh up the issues and then decide whether or not to waive the Member's immunity.

3 PRIVILEGES

Freedom of speech and immunity

Freedom of speech in the European Parliament is not absolute since Members can be sued for defamation.

There are 2 types of immunity:

- the immunity of the European Parliament Member in their own country which is based on national regulations. For example, the

French Members of Parliament fall under the immunity of their own country and the German fall under the immunity of theirs. The British do not have any regulations concerning immunity, but the British freedom of speech privilege applies;

- each European Parliament Member has some level of immunity within Europe.

4 PECUNIARY INTERESTS

The Committee on the Rules of Procedure drew up a report toughening up the declaration of Members' pecuniary interests in the European Parliament. The report, proposing amendments to the Rules of Procedure of the European Parliaments, was adopted on the 25 September 1995. The report recommended that a register be created in which Members list their pecuniary interests and that the register be open to the public. The proposed amendments were as follows:

Addition of - Annex 1, Article 2

- 1 The College of Quaestors shall keep a register in which every member shall make a personal, detailed declaration of:
 - (a) professional activities and any other functions or activities for which they receive any remuneration above an annual amount laid down by the College of Quaestors,
 - (b) any gift or benefit in payment or in kind received in connexion with their mandate and exceeding an annual amount laid down by the College of Quaestors; these entries must show the name, and where applicable, the business name of the donor
 - (c) movable and immovable property.
- 2 These declarations shall be made at the start of each term of office. Members shall provide details every year of any modifications which need to be made to their entries.

Annex 1, Article 3

This article stipulates that the register is open to the public.

The Committee on the Rules of Procedure report was also subjected to blocking amendments and was referred back to the Committee by the Parliament's plenary session.

Some Members of the European Parliament objected to the idea of a register of outside interests on the grounds that each Member should govern his/her affairs according to national rules. Others, worried about terrorism, believed that the register was an invasion of privacy and a possible security risk.

Chapter Four - The Netherlands

DUTCH PARLIAMENT - "STATEN GENERAL"

1 CODE OR TYPE OF REGULATION ON BEHAVIOUR

There is no code of conduct in the Staten General. According to Mr W. H. de Beaufort (the Clerk of the Lower House) there has not been a need for a code as the Members of Parliament are subject to public and media scrutiny. There is a strong culture of the press rigorously scrutinising the activities of politicians which enables adequate policing of Members' conduct. Also there is a belief that the size of the country leads to transparency. From discussions with Mr de Beaufort it seems that there has not been a necessity to set up regulations governing the conduct of Members due to the lack of instances of unethical conduct.

Rules of Procedure

The rules of procedure⁹ primarily relate to the effective procedure of the House when it comes to the passage of bills. It contains provisions, for example, on the composition and organisation of the House and Committees. There is no emphasis on the conduct of Members, particularly in an ethical sense although there are two articles which relate to provisions concerning behaviour.

Article 59

- If a person who has the floor continues to stray from debate, use offensive language, cause a disturbance etc, the Speaker may order the Member to yield the floor and that Member can no longer take part in the debate on the subject under discussion at that meeting.

Article 69

- The Speaker can remove words from the report of the meeting if they constitute offensive language.

An interesting issue which arose in relation to Member's conduct however was the employment by Members of Parliament, of members of their own family. Approximately 15 to 20 years ago it was not permitted for Members

⁹ Published by the Lower House of the Kingdom of Netherlands

to engage as staff any members of their own family. However after it was found that Members were finding ways to get around the rule, it was decided to abandon it. At present there is no restriction on the employment of family members.

2 QUALIFICATIONS

The Qualifications for being a Member of the Dutch Parliament are drawn from the *Constitution of the Kingdom of the Netherlands*, as listed below:

Article 56

- Eligibility for membership is based on the criteria of Dutch nationality, being 18 years of age or over and eligible to vote.

Article 57

- No one can be a Member of both chambers. Nor can a member of the Staten General (Parliament) be a Minister, State Secretary, member of the Council of State or Supreme Court.

Article 60

- Members (when accepting an office) of the chambers will swear by Oath that they have not done anything which may legally debar them from holding office.

3 BREACHES/SANCTIONS

Punishment

The Speaker has the right to suspend a Member, although this has not occurred since 1936. There is no power of expulsion.

Party discipline is rather strict and Members' parties generally deal with breaches of the unwritten code.

Conviction of a crime

Previous criminal offence does not constitute a disqualification from Parliament. A Member of Parliament who commits a crime and is in prison for *less* than one year is not disqualified and can continue to hold office as a Member. If a Member is in prison for *over* one year then the Member is

automatically disqualified. (So far there have been no such cases).

4 EDUCATION

Ethical training is provided through political parties; not through the Parliament. Schools of Administration run courses on ethics for public officials such as mayors. However participation is not compulsory for Members of Parliament.

5 CITIZEN'S RIGHT OF REPLY

There are no restrictions on naming citizens in Parliament and no citizen's right of reply. However the Speaker has a role in protecting individuals named in Parliament, under the rules of procedure in the House.

6 PRIVILEGES

Freedom of speech

Members of the Dutch Parliament have freedom of speech and they cannot be prosecuted under defamation laws for anything said in Parliament. The limitations are on speech which is outside the rules of procedure. This is subject to the ruling of the Speaker and usually concerns language that is considered to be unparliamentary. The Constitution confers the power of freedom of speech through Article 71, which states;

- Members of the States General, Ministers, State Secretaries and other persons taking part in deliberations may not be prosecuted or otherwise held liable in law for anything they say during the sittings of the States General or of its committees or for anything they submit to them in writing.

As with most Parliaments, under the Constitution of The Netherlands Members may not politicise the Queen or use her name to influence debate in the House.

7 PECUNIARY INTERESTS

There is no requirement to disclose pecuniary interests. A register does exist and Members are encouraged to register their interests outside Parliament. However, this is not compulsory. Members also are not

required to declare a conflict of interest during debate as any citizen's share holding over 5% must be registered on the stock exchange and this would be subject to media scrutiny.

Members may receive income from a second occupation but an amount equal to half of the second salary is deducted from the Member's parliamentary salary up to a certain level. It is possible that a Member's current salary of fl 120,000 could reduce to as low as fl 90,000 based on income from another position. It is possible to evade this issue by not declaring the second income but this would be considered unethical and result in very unfavourable publicity if detected.

8 LOBBYISTS/GIFTS

According to Mr de Beaufort, there is no problem with lobbyists in the Dutch Parliament. Members are asked to register any travel which is provided by an outside organisation, that is not within the bounds of official parliamentary or private travel. Members also take an oath when they become a member of Parliament, that they will not accept gifts from organisations in return for action on their behalf in Parliament.

Chapter Five - United States

UNITED STATES HOUSE OF REPRESENTATIVES

1 CODE OR TYPE OF REGULATION ON BEHAVIOUR

Rule 43 of the House of Representatives contains a Code of Official Conduct for Members, officers and employees of the House. The Code of Conduct consists of 12 general ethical principles. In addition to the Code, detailed rules governing standards of conduct for Members and employees are contained in various statutes, Rules of the House and memoranda, advisings and rulings of the Committee on Standards of Official Conduct. A guide to these extensive regulations is published by the Committee on Standards of Official Conduct in the *House Ethics Manual*. The Manual runs to some 500 pages.

Committee on Standards of Official Conduct

The Committee on Standards of Official Conduct has two Sections which reflect the two main functions which the Committee performs in relation to ethical standards:

- (1) Advice and Education
- (2) Investigation.

Information obtained in the course of providing advice must not be disclosed to the investigation section, and vice versa.

The Committee has issued hundreds of advisory opinions.

Up to 14 Members may be appointed to the Committee, but at present there are only ten Members, five Republican and five Democrat. Committee Members are not tied to a party vote. The Chair has a deliberative but not a casting vote so there is the potential for the Committee to become deadlocked. (Once deadlocked, a matter does not proceed).

Allegations of misconduct are investigated by a subcommittee consisting of four Members, two from each major party. If the subcommittee finds "clear

and convincing" evidence of wrongdoing, the subcommittee refers the matter back to the full committee for determination and recommendation of disciplinary action.

The Committee has up to ten staff comprising a maximum of six attorneys, three support staff and the Chief Counsel. Staff are required to sign an oath to the effect that they will not disclose confidential information obtained in the course of their duties. For example, a confession of misconduct to the staff by a Member would not be handed over to the Justice Department.

Complaints against Members are brought by filing a written statement in the House. Citizens can file a complaint only if three Members have certified that they refuse to file the complaint on the citizen's behalf. Complaints may not be brought within 60 days before an election. It is up to the Committee to determine whether or not it will investigate particular matters. The Committee may initiate a complaint or a Member may complain to the Committee about another Member and send a copy of the complaint for that Member.

The Committee met 12 times between 1989 and 1993, but 65 - 70 times since February 1995, due to increased partisanship in the House.

2 PECUNIARY INTERESTS

The *Ethics in Government Act 1978* requires Members, certain officers and employees of the House of Representatives above a specified salary level to file a Financial Disclosure Statement with the Clerk of the House each year. Candidates for the House of Representatives who raise or spend more than \$5,000¹⁰ are also required to file a Financial Disclosure Statement.

The Committee on Standards of Official Conduct reviews all Statements to ensure that all requirements have been complied with. It also provides advice on reporting requirements and grants extensions of time for the filing of Statements where appropriate.

Reports filed with the Clerk are available for public inspection upon submission of a written application and the payment of a prescribed fee.

¹⁰ All monetary amounts referred to in this section are in US Dollars.

Information to be disclosed

The information which must be recorded in the Financial Disclosure Statement includes:

(1) Income

The source and amount of income earned; the source of income earned by the spouse (not the amount) over \$1,000; the source and the amount of honoraria (payments for speeches, appearances and articles) received by the spouse.

(2) Payments to charity in lieu of honoraria

Members, officers and employees of the House of Representatives are prohibited by Federal law and House rules from receiving honoraria i.e. payments for speeches, appearances, and articles. However, payments in lieu of honoraria may be made to qualified charities by sponsors of speeches, appearances, and articles up to a maximum amount of \$2,000. No payment may be made to an organisation from which the Member, officer or employee or a parent, sibling, child, or dependent relative of that individual derives any financial benefit.

(3) Assets and income from assets

Real and personal property held for investment or for the production of income over a certain amount; income from rents, royalties, dividends, interest, capital gains and similar amounts received as a return on investment.

(4) Transactions

Any purchase, sale or exchange of real property, stocks, bonds, futures, or other securities where the amount of the transaction exceeded \$1,000. Transactions by the Member's spouse or dependent child must also be disclosed.

(5) Liabilities

Liabilities over \$10,000 owed to any one creditor by the Member, the Member's spouse or dependent child, and certain other members of family.

(6) Gifts

Gifts totalling more than \$250 from a single source, including gifts received by spouse or dependent child. Gifts with a value of \$100 or less need not be added to the \$250 threshold. The following types of gifts need not be disclosed: gifts from relatives; gifts of personal hospitality of an individual; local meals; gifts to a spouse or dependent child that are totally independent of his or her relationship to the Member, officer or employee.

(7) Travel

Travel and travel-related expenses totalling more than \$250, including payments received by the Member's spouse or dependent child.

(8) Positions

All positions, paid or unpaid, held in any business enterprise, non profit organisation, labour organisation or educational or other institution. Does not include positions held in religious, social, fraternal or political entities, or positions solely of an honorary nature.

(9) Agreements

Details of any agreement or arrangement with respect to various matters, including: future employment; continuing participation in an employee welfare or benefit plan maintained by a former employer.

Penalties - failing to comply with disclosure requirements

Under legislation (18 U.S.C. § 1001), if a person knowingly and willfully falsifies or conceals any material fact in a Statement, the person may be fined up to \$10,000 or imprisoned for up to five years. Under the Ethics in Government Act, if a person knowingly and willfully falsifies or fails to file or report any information required by the Act the Attorney General may seek a civil penalty of up to \$10,000.

Any individual who files a Statement or an amendment more than 30 days after the required date must pay a \$200 fine and may be subject to any other actions authorised by law or the Rules of the House.

The House, acting on the recommendation of the Committee, may impose additional penalties.

3 USE OF PUBLIC OFFICE FOR PRIVATE PURPOSES

Business cards

The terms "US House of Representatives" and "US Congress" may not be used on Members' business cards. There is no specific prohibition against using the title "Congressman". However, the delegation was advised that if a case involving this practice were to come before the Committee, it is likely that an adverse finding would be made.

Stationery

Three different types of stationery are recognised: official; personal; and political. Official stationery must only be used for official purposes and not in connection with personal matters or campaign matters. On personal stationery (e.g. thank-you letters not relating to official business) the term "US Congress" may not appear, though the title "Congressman" may be used.

4 OTHER CONFLICT OF INTEREST PROVISIONS

Banned professional activities

Members are banned from engaging in certain professional activities, such as the practice of law (unless on a pro bono basis).

Limit on outside income

There is a cap on the amount of outside income which Members, officers and employees paid above a certain amount may earn. In 1995, the cap was \$20,040 for Members and staff paid at or above \$81,530. Income earned in excess of the cap may be donated to qualified charities, but must be disclosed in the Financial Disclosure Statement.

Staff

Family members may not be employed by Members as their congressional staff. Members of the House are required to sign and submit a form certifying that staff have no family relationship to them.

Gift rule

A new Gift Rule was adopted by the House on 7 December 1995. The Rule prohibits Members, officers and employees of the House from accepting gifts in any cases other than those specified in the exceptions to the Rule. Relatives and close associates of Members and employees are also prohibited from accepting gifts where the Member or employee knows or acquiesces, and has reason to believe the gift was given because of the Member's or the employee's official capacity.

The Committee on Standards of Official Conduct has sole authority to interpret, enforce and issue guidance on the Gift Rule. The Committee has issued a ten page explanatory Memorandum concerning the Rule for Members, officers and employees, which contains numerous examples of situations which are permitted/banned.

The exceptions to the Gift Rule are detailed and include:

- Gifts from family members. Gifts exceeding \$250 require the approval of the Committee.
- Gifts from friends, unless the Member, officer or employee has reason to believe that the gift was given because of his or her official position. Gifts exceeding \$250 require the approval of the Committee.
- Meals in connection with travel to a meeting, speaking engagement, fact finding trip or similar event in connection with official duties.
- Food and drink in connection with unofficial activities or outside business.
- Food and refreshments of a nominal value offered other than as part of a meal.
- Acceptance of a sponsor's offer of free attendance at events open to a wide range of persons (e.g. persons in a given industry or profession), where attendance is related to the performance of the official duties or the representative functions of the Member or employee.
- Acceptance of a sponsor's offer of free attendance at charity events, including free local transportation, food, refreshments and entertainment.

- Travel expenses associated with meetings, speaking engagements, fact-finding trips and similar events in connection with the Member's duties. All privately funded travel expenses must be itemised and disclosed within 30 days of return.
- Political campaign contributions. Food, refreshments, lodging, transportation and other benefits provided by political organisations in connection with fundraising or campaign events.
- Items of nominal value e.g. baseball caps, T shirts, occasional bunch of flowers.

5 LOBBYISTS

Under the Gift Rule lobbyists may not provide travel or personal hospitality to Members or staff, contribute to Members' or staffers' legal expense funds, support conferences or retreats for Members or staff, contribute to entities maintained or controlled by Members or staff, or donate to charities at Members' or staffers' recommendation. The ban on accepting personal hospitality from lobbyists does not apply where the lobbyist is a bona fide personal friend.

6 BREACHES/SANCTIONS

Breaches of ethical standards

The Committee on Standards of Official Conduct may recommend various types of sanctions to the House of Representatives in respect of a Member's breach of ethical standards, including reprimand, censure, (but not docking of salary) and expulsion. The House can expel a Member for conduct which does "not reflect creditably on the House". This requires a 2/3rds majority of the House. There is no provision for suspending a Member.

Disorderly conduct in the House

If a Member is disorderly in the House, the Speaker can choose not to recognise the Member, denying the Member the right to speak on the floor.

In serious cases, the Sergeant presents the mace to the disorderly Member, but has no power to escort the Member out of the Chamber.

7 PRIVILEGES

Freedom of speech

Members may not be held accountable at law for statements made by them in the course of proceedings in the House including criticism of private citizens. It has been asserted that the privilege of freedom of speech extends to statements made by Members at press conferences, but this has not been tested in the courts. The extent of Members' freedom of speech is being tested in several court cases which were pending at the time of the delegation's visit to Washington.

If a Member uses "unparliamentary" language, he or she loses the right to speak on the floor of the House for the remainder of the day. The House can vote to allow the Member to continue to speak.

A statement made in the House (including "unparliamentary" expressions) may only be withdrawn if there is unanimous consent.

The transcript of proceedings in the House cannot be altered other than for the correction of grammatical errors.

8 CITIZEN'S RIGHT OF REPLY

This issue is not the subject of attention or discussion in the House or in the public arena.

9 EDUCATION

Various publications are issued to Members setting out their duties and obligations. In addition, regular briefings on ethics issues are held for Members and staff. The briefings take various forms including group discussions and one-on-one sessions. Spouses were also briefed on the new Gift Rule.

10 OTHER MATTERS

Anti-discrimination legislation

Members are subject to Anti-discrimination legislation, with the following exceptions:

- (1) Statements made in the House are not covered.
- (2) Members may take into account political affiliation and district of origin when selecting their congressional staff.

Qualifications for Office

There is no prohibition on persons with a criminal record being elected to the House, and no requirement for the disclosure of past criminal convictions. However, if a previous criminal conviction is discovered, the House may vote to expel the Member on the basis that the Member's conduct does not reflect creditably on the House. A 2/3rds majority of the House is required to expel the Member.

Similarly, if a Member is convicted of an offence during his or her term of office, the Member may continue in office, unless expelled by the House on a 2/3rds majority.

The only qualifications for being a Member are age (Members must be 25 years old or over) and place of residence.

Unauthorised disclosure of *in camera* committee evidence

Members of some committees of the House sign a pledge to maintain the secrecy of confidential information obtained in relation to the committee's work. Any Member who "leaks" information is subject to disciplinary action by the Committee on Standards of Official Conduct.

UNITED STATES SENATE

1 CODE OR TYPE OF REGULATION ON BEHAVIOUR

Rules 34-43 of the Senate contain a Code of Official Conduct for Senators. The Code is supplemented by Interpretative Rulings of the Senate Select Committee on Ethics and provisions of civil and criminal statutes.

Senate Select Committee on Ethics

The Senate Select Committee on Ethics was established in 1964. The Senate Committee is completely independent of the House of Representatives Committee on Standards of Official Conduct, although the Committees may consult with each other. Both Committees undertake investigative and advisory work. The main functions of the Ethics Committee are to:

- investigate allegations of improper conduct and violations of law or of the Code of Official Conduct;
- recommend disciplinary action against Senators or staff where appropriate;
- recommend rules or regulations necessary to ensure appropriate Senate standards of conduct;
- regulate the use of the franking privilege in the Senate;
- implement the Senate public financial disclosure requirements of the *Ethics in Government Act*;
- give advisory opinions on the application of Senate rules and laws to Senators, officers and employees.

The structure of the Committee is designed to foster a bipartisan approach to ethics issues. There are six members, three Democrat, and three Republican. Four members constitute a quorum. The Chair and Vice Chair are from opposing parties, and have exactly the same powers with respect to the calling of meetings and setting of agendas for committee meetings. At present, the Chair of the Committee is a Republican, and the Vice Chair a Democrat.

The staff of the Committee comprises four lawyers, four assistants and one Chief Clerk. The four lawyers perform both investigative and advisory work.

The Committee may investigate allegations brought by Members, officers, employees of the Senate, or private citizens, against any Senator, Senate officer or employee. Whereas in the House of Representatives a citizen may not file a complaint unless three Members have refused to file it on the citizen's behalf, in the Senate any reasonable complaint by a citizen may be investigated by the Committee.

When a complaint is received, Committee lawyers make a preliminary determination as to whether the matter warrants investigation. Committee staff are authorised to reply to complaints which clearly lack merit (e.g. frivolous or vexatious complaints), without bringing the matter to the attention of the Chair. If the Committee lawyers consider that the complaint should be investigated, the Chair and Vice Chair are informed. The Chair and Vice Chair then decide whether the matter should be put before the full Committee. The Committee does not publicise allegations that do not merit full review.

The Committee has power to issue subpoenas requiring the attendance of persons before it, and to take evidence on oath. Counsel undertake investigations on behalf of the Committee and report their findings to the Committee. If the Committee wishes to examine the matter further, it can vote to launch a full scale investigation at which the Senator can present his or her own side of the matter.

The Committee may recommend sanctions, but it is for the House to determine whether any sanctions should be imposed. Sanctions which may be recommended include expulsion, censure, or reprimand.

2 PECUNIARY INTERESTS

Under Title 1 of the *Ethics in Government Act* and Senate Rule 34, Public Financial Disclosure Reports must be filed each year by Members, officers and employees above a specified salary level.

The information which must be disclosed is similar to that which is recorded in the House of Representatives Financial Disclosure Statements, including payments in lieu of honoraria, assets and income, transactions, liabilities, gifts, travel reimbursements, outside positions and agreements. Generally, information regarding a Senator's spouse and dependent children must also be disclosed.

As in the House of Representatives, a \$200 penalty is imposed for late filing of a Report. Civil or criminal penalties apply for knowing and willful failure to comply with disclosure requirements.

3 OTHER CONFLICT OF INTEREST PROVISIONS

Gifts

Senate Rule 35 and related statutes govern the acceptance of gifts by Senators officers and employees. The rules are complex and detailed. In most cases the rules relating to gifts also apply to gifts presented to Senators' spouses and dependent children.

Senators may not receive gifts worth more than \$250 per year from any one source.¹¹ Only gifts over \$100 in value are aggregated toward the \$250 threshold. In the case of gifts from lobbyists, only gifts worth less than \$50 each may be received.

Exceptions to the gift rules include beverages and meals in certain circumstances, gifts from relatives, suitable mementos, and personal hospitality.

It is a criminal offence for a Senator to accept anything of value in return for or because of an official action (18 USC 201).

Honoraria

As is the case with Members of the House of Representatives, Senators are prohibited from receiving honoraria i.e. payments for speeches, appearances, and articles. However, payments in lieu of honoraria may be made to qualified charities by sponsors of speeches, appearances, and articles up to a maximum amount. Such payments must be disclosed in the Public Financial Disclosure Report.

Travel

Under the Rules of the Senate and Interpretative Rulings of the Ethics Committee, private sources may not be used for official travel by Senators,

¹¹ An Overview of the Senate Code of Conduct and Related Laws, Select Committee on Ethics, US Senate, June 1995, p.2.

officers and employees. However, privately funded travel expenses may be accepted from a sponsor if necessary for officially connected fact-finding or services provided to the sponsor.¹²

A Senators' spouse, child or employee may accompany the Senator and have necessary expenses paid by the sponsor of a fact-finding event.

Restrictions on outside employment

Senators may engage in outside professional activities, including the practice of law, provided such activities do not conflict with their official duties. For example, a Senator may not act in a court case where the United States has an interest, even on a *pro bono* basis, but may act in other matters where no conflict arises.

Post employment restrictions

It is a criminal offence for a former Senator to attempt to influence on behalf of another any person in the legislative branch, for one year after leaving the Senate. It is also an offence for a former Senate employee who was paid at a specified salary level to attempt to influence on behalf of another certain Members or Senate employees.¹³

If an employee on the staff of a Senator, upon leaving that position, becomes a registered lobbyist under the *Federal Regulation of Lobbying Act 1946* or is employed by a registered lobbyist, he or she may not lobby the Senator for whom he or she worked, or that Senator's staff, for a period of one year after leaving that position. The same restriction applies to an employee of a committee in relation to lobbying the Senators or staff of the committee.¹⁴

Campaign activities

There are various rules designed to keep official activities and resources separate from political and campaign activities and resources. For example,

¹² Ibid, p. 3.

¹³ Senate Post Employment Restrictions, Select Committee on Ethics, US Senate, Memo 2/92, pp.1-2.

¹⁴ Ibid, p. 1.

Senate space and equipment may not be used for campaign activities. Senators may hold fundraising dinners, but not on Senate property or during hours when they are expected to undertake official Senate duties. Campaign contributions may not be solicited on, or for delivery to, Senate property. Congressional staff may not contribute to their supervising Senator's campaign, and may only engage in volunteer campaign work in their own time.

These rules are subject to two main exceptions:

- (1) Certain moratorium periods apply to use of Senate facilities/frank/official expenses before primaries and elections;¹⁵
- (2) Each Senator may nominate up to three members of their personal staff to perform limited political fund activities. All such staff must file a public financial disclosure statement in respect of themselves and their families. Under the House Rules, such employees must not spend a substantial amount of time in connection with receiving or handling political funds.¹⁶

Funds for Senate business

Only Senate funds and a Senator's personal funds may be used for official activities. Expenses which are deemed to be official include office space, furniture, office equipment and franked mail expenses.¹⁷

Interventions with Government agencies

When intervening with Government agencies on behalf of constituents, Senators are permitted to urge prompt consideration of a case, make status inquiries, express judgements, and request reconsideration of a decision based on current laws and regulations. However, a decision to provide assistance to a constituent or petitioner may not be based on contributions or services provided to campaigns or other organisations.

¹⁵ An Overview of the Senate Code of Conduct and Related Laws, Select Committee on Ethics, US Senate, June 1995, p.9.

¹⁶ Designation of Staff for Limited Political Fund Activity, Form 41.1, US Government Printing Office.

¹⁷ An Overview of the Senate Code of Conduct and Related Laws, Select Committee on Ethics, US Senate, June 1995, p.10.

Ex parte communications by Senators are prohibited in some judicial and quasi judicial proceedings.¹⁸

Other conflicting interests

A Senator may not use his or her official position to introduce or pass legislation where a principal purpose is to further a Senator's, officer's, employee's, or immediate family member's financial interests, or the financial interests of a limited class to which such individuals belong.

4 LOBBYISTS

For rules affecting former Senators and staff acting as lobbyists, see rules referred to at point 4 above - **Other conflict of interest provisions - Post-employment restrictions.**

5 BREACHES/SANCTIONS

Breaches of ethical standards

The Senate has power to impose a range of sanctions in respect of breaches of ethical standards by Senators. The sanctions include:

- (a) Expulsion (a 2/3rd majority of the Senate is required).
- (b) Censure by vote of the House (a vote by simple majority of the Senate is sufficient).

The Ethics Committee may recommend a range of sanctions including censure and expulsion. In addition, the Committee itself may issue a reprimand to the offending Senator by letter. In matters which have been investigated by the Committee, the following types of sanctions have been imposed: censure (one case); denunciation (a form of censure - two cases); rebuking by the Committee for improper acceptance of gifts (one case);

¹⁸ Ibid, p. 13.

reprimand by the Committee (one case); criticism in written statements from the Committee for showing poor judgement and giving the appearance of acting improperly (four cases). In addition, one Senator resigned before almost certain expulsion for a bribery conviction.¹⁹

Disorder in the House

Senators may not be suspended or expelled from the House for disorderly conduct in the House, as to do so would be to disadvantage the Senator's State by depriving it of a vote. The principle that a State cannot be deprived of its vote is grounded in the US Constitution.

However, cases of unruly behaviour may be referred to the Ethics Committee for consideration.

6 PRIVILEGES

Freedom of speech

The US Constitution guarantees absolute freedom of speech and debate for Senators. This privilege extends to anything done or said in connection with the role of being a Senator. It is considered that the privilege is not confined to statements made by Senators on the floor of the House, but the limits of the privilege have not been tested in the courts. As a general rule, the further away from the floor of the House a Senator makes a particular statement, the less certain is the application of the privilege of freedom of speech to that statement.

7 CITIZEN'S RIGHT OF REPLY

A citizen who feels aggrieved at statements made about him/her in the Senate may file a complaint against the Senator who made the statements. The Ethics Committee may decide to investigate the complaint.

¹⁹ Amer, M. *The Senate Select Committee on Ethics: A Brief History of its Evolution and Jurisdiction*, Congressional Research Service Report for Congress, 17 March 1993, p. 1.

8 OTHER MATTERS**Discrimination by Senators in personnel matters**

No Senator may discriminate against an individual based on race, colour, religion, sex, national origin, age or disability in any personnel action. The Ethics Committee has jurisdiction for disciplinary purposes in cases of alleged discrimination by Senators.

Qualifications for office

The qualifications for membership of the Senate are the same as those which apply to membership of the House of Representatives (referred to at page 44 of this Report).

Chapter Six - Canada

SASKATCHEWAN LEGISLATIVE ASSEMBLY

1 CODE OF CONDUCT OR TYPE OF REGULATION ON BEHAVIOUR

In 1993 the Legislative Assembly of Saskatchewan adopted by way of resolution (not statute) a Code of Ethical Conduct for Members of the Legislative Assembly. Ned Shillington, Minister for Inter-Governmental Relations, believes that this was adopted out of a need to restore faith in public office that was rapidly diminishing throughout the 1980's. Reasons attributed to this diminishing faith were partly due to Members being involved in the falsification of allowance claims, and partly due to the general belief that Canadian industries (such as banking) were involved in scandals that led to a demise in the general prosperity of Saskatchewan.

(Other Canadian legislatures also have integrity/conflict of interest statutes)

The Code includes a "Statement of Commitment" and a "Declaration of Principles" - which are an expression of the ethical principles that members should adhere to when in office. Some of these principles are:

- Members of the Legislative Assembly must carry out official duties in a manner that protects the public interest and enhances public confidence and trust in Government.
- Members must act lawfully and in such a way that will withstand public scrutiny.
- Members are individually responsible for preventing potential and actual conflicts of interest.
- Members must carry out duties objectively, without consideration of personal or financial interests.
- Members must not accept gifts, benefits or favours except for incidental gifts or customary hospitality of nominal value as provided for in legislation.

The code itself stipulates that it is not exhaustive and according to Lynda Haverstock²⁰ the Code did not prove to be stringent enough. This is

²⁰ Independent Liberal Member of the Saskatchewan Legislative Assembly, former Leader of the Liberal Party

because no sanctions applied to Members who were in breach of the Code. As a result, a Private Members' Bill was introduced in 1995 by Ms Haverstock entitled *An Act to Provide for the Enforcement of the Code of Ethical Conduct* (also known as the *Anti-corruption Act*), as a way of strengthening the adherence to the Ethics Code. Its aim, according to Ms Haverstock, is to show that Members of Parliament want to be held responsible for their actions.

This Bill contained the following provisions:

Section 3 - Report of violation

- Any Member of the public may report a suspected violation of the Code of Ethical Conduct to the Clerk of the Saskatchewan Legislative Assembly, who shall thereupon submit the matter to the Ethics Committee established pursuant to section 4.

Section 4 - Ethics Committee Inquiry

- There shall be an Ethics Committee comprised of a supernumerary Judge of the Court of Appeal appointed by the Chief Justice; the Ombudsman; and the Conflict of Interest Commissioner.
- The Ethics Committee shall have the power to inquire into any alleged violation of the Code of Ethical Conduct submitted to it by the Clerk of the Saskatchewan Legislative Assembly pursuant to section 3 or upon learning of the conviction of a member of the Legislative Assembly for an offence under the *Criminal Code* of Canada.
- The Ethics Committee shall have all the powers afforded a commission of inquiry established pursuant to *The Public Inquiries Act*.

Section 5 - Penalties

- Any finding of guilt respecting the violation of the Code of Ethical Conduct on the part of a member of the Legislative Assembly by the Ethics Committee shall be punishable by:
 - (a) a fine;
 - (b) suspension of the Member for such a period as the Committee shall specify;
 - (c) the vacating of the Member's seat in the Assembly;

- (d) the seizure of the Member's pension or any portion thereof that the Committee may find appropriate under the circumstances; or
- (e) any combination of the above.

The Anti-Corruption Bill according to Ms Haverstock, was criticised by the official opposition because they felt the public would abuse the system and make frivolous complaints against Members. However she indicated that this was safeguarded against through complaints being received and passed on by the Clerk.

Ms Haverstock's Bill has not received the support of either the Government or the Opposition, and has not passed the second reading stage in the Assembly.

Ms Lynda Haverstock provided the Committee with an example of a declaration form which members of the Liberal Party sign to express their commitment to ethical conduct. This declaration outlines principles by which a member of the party swears to abide, such as integrity, impartiality and honesty, and states that "...as an aspirant to or holder of elected office...should I violate these ethical principles, appropriate penalties, including resignation, as determined by myself, the Liberal Party, my elected colleagues and the public, should ensue." However, while this code was supported by the Party, it has not been incorporated into the Party's Constitution.

2 CONFLICT OF INTEREST

*The Members' Conflict of Interest Act*²¹ was passed in 1993 and proclaimed in 1994, the same time as the Code of Ethical Conduct. The conduct of Members is regulated primarily by this legislation as it imposes strict guidelines for Members and sanctions for breaching the guidelines.

The Act stipulates what Members must disclose and is regulated by the Conflict of Interest Commissioner. The disclosure which Members must make is extensive and detailed, comprising 38 pages and requiring

²¹ Chapter M-11.11, 1993, Statutes of Saskatchewan

disclosure of basically every aspect of their financial affairs, including accounts. There are four separate sections which Members must fill out:

Members Private Disclosure Statement

- Members must list any private companies controlled by the Member or Spouse, offices and directorships, memberships, employment, businesses managed or operated, income received from the province of Saskatchewan and income received from all other sources, statement of assets (such as property, banking and bonds), statement of liabilities (mortgages, debts and loans), gifts received and government contracts held.

Schedule A - Member's Spouse

- This Schedule requires the Member's Spouse to disclose general information, statement of income, assets and liabilities.

Schedule B - Dependent Child

- Schedule B requires the Member to list any dependent children.

Schedule C - Private Companies

- This Schedule requires that Members who are involved with private companies disclose more detailed information.

Role of the Commissioner

The Conflict of Interest Commissioner is a newly created part-time position under the Conflict of Interest Act. Mr Derryl Macleod QC is the first and current conflict of Interest Commissioner in Saskatchewan. The Commissioner is appointed by a vote of the Legislature: in Mr Macleod's case he was supported unanimously. The Commissioner acts as arbiter and provides all the necessary forms for disclosure required by Members under the Act. The Commissioner reviews the forms with the Members and prepares a public disclosure form. The public disclosure form is not as extensive as the private disclosure, serving only to inform the public of any conflict of interest matters before the House. It does not reveal the value of assets, nor any liabilities incurred by the Member. Members can go to the Commissioner for advice if they have any uncertainty about matters eg

receiving a gift. According to Mr Glen Hagel, MP²² Members and the public see the Conflict of Interest Commissioner as an ally. He advises his Caucus to use the Commissioner as "an advance protection system".

It is generally accepted that if the Commissioner advises a Member that there is no Conflict of Interest involved in, for example, accepting a gift/donation then the community would accept that as final. However, the Commissioner cannot give immunity against legal action.

The Commissioner's role is principally to advise. However, Section 29 of the *Conflict of Interest Act* allows for a Member who has reasonable and probable grounds to believe that another Member is in contravention of the Act to request the Commissioner to give an opinion as to whether there has been a violation and to make recommendations accordingly. In addition, the Assembly may request, by resolution, that the Commissioner give an opinion on any matter respecting the compliance of a Member with the provisions of the Act, and the President of the Executive Council may request the Commissioner to give an opinion regarding compliance by a member of the Executive Council.

Under Section 30, the Commissioner may conduct an inquiry on receiving such a request or where the Commissioner considers it to be advisable. The Member who is the subject of the inquiry must be notified in writing and be given reasonable notice of the inquiry.

At the conclusion of the inquiry, the Commissioner reports to the Speaker and the Member concerned. The Speaker tables the report in the House as soon as is practicable. The Commissioner's powers are quite broad and include the power to recommend the following sanctions:

- (a) that the Member be ordered to comply with the Act on those terms and conditions the Assembly considers appropriate;
- (b) that the Member be reprimanded;
- (c) that the Assembly impose a fine on the Member in an amount determined by order of the Assembly;
- (d) that the Member be suspended; or
- (e) that the Member's seat be declared vacant.

²² Member for Moosejaw and Chair of the Government Caucus

To date there have been no cases where the Commissioner has recommended the imposition of sanctions.

The powers of the Commissioner relate only to the *Conflict of Interest Act*. The Commissioner has no investigative or punitive authority in relation to the Code of Ethical Conduct for Members of the Legislative Assembly of Saskatchewan.

Every province in Canada has a Conflict of Interest Commissioner operating along similar lines to that in Saskatchewan.

3 DISQUALIFICATIONS

The Legislative Assembly and Executive Council Act 1994, sections 10 and 10.1 set out the disqualifications for becoming a Member of the Legislative Assembly, or continuing to sit as a Member of the Legislative Assembly:

Section 10 states that certain persons are not eligible for election as a Member. These are:

- (a) the Governor General of Canada, a Lieutenant Governor of a province or Commissioner of a territory of Canada;
- (b) a judge of the Supreme Court of Canada, of the Federal court of Canada or of any superior, district or county court of any province or territory of Canada;
- (c) a judge of the Provincial Court of Saskatchewan;
- (d) a senator;
- (e) a member of the House of Commons of Canada.

Section 10.1 states that "No person who holds any office under, receives any remuneration for services rendered for or is in any manner employed by the Crown, a department, board, commission or other agency of the Government of Saskatchewan or a Crown corporation is eligible for election as a member."

A previous criminal record does not constitute a bar to being elected. However a person who is currently in prison cannot run for Parliament on the basis that they are ineligible to vote. A person must be eligible to vote in order to stand for Parliament.

4 BREACHES/SANCTIONS

(a) Punishment

The Speaker of the Legislative Assembly, Mr Hermann Rolfes believed that a Member found guilty of contempt of the House be called before the Bar of the House, or be fined. Members have been ejected on occasion for breaching of the Standing Orders with 4 Members being ejected during the last session. Members lose their sitting allowance when they are suspended, although they continue to receive their salary.

(b) Conviction of a crime

In the Legislative Assembly and Executive Council Act, conviction of a crime can constitute various penalties. Section 40.1 states:

(1) On the tabling of a certified copy of conviction of a member for an indictable offence for which he has been sentenced to imprisonment for a term of two years or more, the Legislature may, by resolution:

- (a) suspend the member from sitting and voting as a member; or
- (b) declare the seat of the member to be vacant.

5 EDUCATION

All Members receive a Members' Handbook which outlines rules and regulations for Members of the Legislative Assembly. It contains such varied information as: use of entitlements and allowances; legislation/resolutions in place for governing conduct of Members (such as the Code of Ethical Conduct); how a Bill becomes an Act; the workings of Parliament and Committees; and other general information.

6 CITIZEN'S RIGHT OF REPLY

The privilege of freedom of speech has rarely been abused in the Saskatchewan Legislative Assembly. Consequently there are no provisions for a citizen's right of reply.

7 PRIVILEGES

The Saskatchewan Legislature has assumed some rights and privileges of the Westminster House of Commons although it does not have a separate Privileges Act.

Freedom of Speech

Freedom of Speech is conferred through the *Legislative Assembly and Executive Council Act* section 26-30.

Section 26 - there shall be no liability for an act done under the authority of the Assembly.

Section 27 - Members are not liable to any civil action or prosecution, arrest, imprisonment or damages by reason of anything said by them before the Assembly.

Section 28 - during a session of the Legislature, no member is liable to arrest in civil action.

Section 29 - members are exempt from service as jurors whilst the Legislature is in session.

8 PECUNIARY INTERESTS

The disclosure of pecuniary interests is regulated by the *Members' Conflict of Interest Act*, as discussed in item 2 of this section.

9 LOBBYISTS

Lobbyists are not perceived as a problem in Saskatchewan. There is no requirement on them to register and no restrictions on them attending the Parliament and meeting with Members.

10 USE OF OFFICE FOR PRIVATE GAIN

Section 5.5 of the Conflict of Interest Act states that Members should not use their office to change a decision of another person in favour of the Member or family of the Member.



Contact Details

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JANUARY 1996

Standing Committee on Parliamentary Privilege and Ethics

