

Report No. 14

**Report on study tours by two delegations of the committee
June and July 1997**

LEGISLATIVE ASSEMBLY OF QUEENSLAND

MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

REPORT ON STUDY TOURS BY TWO DELEGATIONS
OF THE COMMITTEE JUNE AND JULY 1997

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<u>REPORTS</u>	<u>DATE TABLED</u>
1. Annual Report 1995/96	8 August 1996
2. Review of the Register of Members' Interests of the Legislative Assembly	30 October 1996
3. Report on a Matter of Privilege—The Alleged Misleading of the House by the Deputy Premier, Treasurer and Minister for The Arts on 12 November 1996	29 January 1997
4. Report on a Matter of Privilege—The Alleged Misleading of the House by a Minister on 14 November 1996	29 January 1997
5. Report on a Citizen's Right of Reply No.1—A response to matters raised in the Legislative Assembly on 31 October 1996	20 March 1997
6. Report on a Citizen's Right of Reply Numbers 2, 3 and 4—A response to matters raised in the Legislative Assembly on 18 March 1997 and 19 March 1997	10 July 1997
7. Report on the Sub Judice Convention	11 July 1997
8. Annual Report 1996/97	22 September 1997
9. Report on a Citizen's Right of Reply Numbers 5 and 6	30 October 1997
10. Report on a Matter of Privilege: Alleged Contempt by the Criminal Justice Commission—Matter Referred to the Committee on 3 December 1996	30 October 1997
11. Report on a Matter of Privilege: Matter Referred to the Committee on 2 September 1997	26 November 1997
12. Report on a Matter of Privilege: A Matter arising in the Anti-Discrimination Tribunal—Freedom of Speech	27 November 1997
13. Report on a matter of Privilege: Matter Referred to the Committee on 22 September 1997	December 1997
 <u>ISSUES PAPERS</u>	
1. A Code of Conduct for Members of the Legislative Assembly	8 August 1996
2. The Sub Judice Convention	18 March 1997
3. Parliamentary Privilege in Queensland	19 August 1997
 <u>INFORMATION PAPERS</u>	
1. Citizen's Right of Reply—Queensland Legislative Assembly	3 December 1996

MEMBERS' ETHICS AND PARLIAMENTARY PRIVILEGES COMMITTEE

48TH PARLIAMENT
SECOND SESSION

CHAIRMAN: Ms Lyn Warwick MLA, Member for Barron River

DEPUTY CHAIRMAN: Mr Clem Campbell MLA, Member for Bundaberg

MEMBERS: Hon Jim Fouras MLA, Member for Ashgrove
Mrs Linda Lavarch MLA, Member for Kurwongbah
Mr Marc Rowell MLA, Member for Hinchinbrook
Mr Lawrence Springborg MLA, Member for Warwick

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RESEARCH OFFICER: Ms Meg Hoban

EXECUTIVE ASSISTANT: Ms Sandy Musch

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CHAIRMAN'S FOREWORD

The Members' Ethics and Parliamentary Privileges Committee undertook a study tour to several overseas jurisdictions in June and July this year to meet with specialists in the areas of ethics and parliamentary privilege. The purpose of the study tour was to investigate different approaches to achieving high ethical standards for elected officials, and to investigate changes to, and developments in, parliamentary privilege.

The study tour provided the committee with an opportunity to gain a valuable insight into a number of approaches to ethics and privileges matters. It also provided the Queensland parliament with a unique opportunity to benefit from the experiences of other legislatures.

This report presents an overview of discussions held. The wealth of information gathered will be of great assistance to the committee in its inquiries into a code of conduct for members, and parliamentary privilege. Much additional information held by the committee has not been covered here, but will be used in the preparation of the committee's reports to the Legislative Assembly on these inquiries.

We would like to extend our appreciation to all those who generously gave their time to meet with us during the study tour.

Lyn Warwick MLA
Chairman

December 1997

1. BACKGROUND

The Members' Ethics and Parliamentary Privileges Committee ("the committee") has been given responsibility under the *Parliamentary Committees Act 1995* (Qld) ["the act"] for the ethical conduct of members, and for parliamentary privilege.

Sections 15 and 16 of the act provide that the committee's responsibility for the ethical conduct of members includes:

- recommending to the Legislative Assembly a proposed code of conduct for members;
- recommending to the Assembly a procedure for handling complaints about a member not complying with the code adopted by the Assembly including, for example, the persons who may make complaints, or the persons who must refer complaints to the committee; and
- considering complaints against particular members for failing to comply with the code, reporting to the Assembly about complaints, and recommending action by the Assembly.

Section 17 of the act provides that the committee's area of responsibility about parliamentary privilege includes the privileges of the Legislative Assembly, its committees and members.

By resolution of the House, the committee also has responsibility for advising the House about individual requests from citizens for a right of reply.

2. THE COMMITTEE'S CURRENT INQUIRIES

The committee is currently undertaking an extensive and wide-ranging review of parliamentary privilege as it pertains to Queensland, and is inquiring into a code of conduct for members of the Queensland Legislative Assembly.

The committee's evidence in the privileges inquiry to date has concentrated on Westminster-style parliaments. Therefore, the committee believed it would be extremely beneficial to hold discussions with overseas legislatures, including federal systems such as the United States and Canada, and other legislatures such as the European Parliament, to investigate the most recent developments in, and alternative ways of dealing with, this very complex matter.

In this respect, committee members were anxious to meet with other privileges committees, and parliamentary officials, to discuss issues including: the desirability or otherwise of the privileges of the Legislative Assembly being enunciated in statute; privilege with respect to the publication of correspondence between constituents, members and ministers; measures for providing legal assistance to members of parliament who personally incur costs in defending the privileges of parliaments; the right of reply for citizens; and the sub judice convention.

The development of codes of conduct for elected representatives in Australia is in its early stages, with only Victoria and Tasmania so far adopting a code. Several state parliaments are examining whether or not a code of conduct for their members should be introduced, and a number of draft codes have been circulated. However, at the time of the study tour, these

parliaments had not presented or adopted codes. Significantly, the codes of conduct that have either been adopted, or are presently being considered in draft form by state legislatures, focus primarily on the pecuniary interests of members.

The committee believed it was essential, therefore, to examine the experiences of overseas legislatures which have adopted various pecuniary interests regulations and/or codes of conduct, before making their final recommendation to the Legislative Assembly on the form and content of any code of conduct for Queensland MLAs. This was considered to be particularly so in the light of experiences in the United States, where stringent ethical regimes have not necessarily resulted in a reduction in conflict of interest situations for legislators.

The committee also believed that it would be particularly beneficial to investigate the processes in place for developing high ethical standards for elected representatives in legislatures which have opted not to adopt stringent pecuniary interests regulations or prescriptive codes of conduct, such as the European Parliament.

The committee is also conscious of the responsibility they will have for recommending a process for handling complaints about the alleged non-compliance by members with any code adopted by the Legislative Assembly, as well as its responsibility in the area of enforcing compliance. As this is a responsibility unlike that of other ethics committees in the Australian states, the committee believed it would be beneficial to investigate a range of enforcement models in overseas legislatures.

The committee therefore resolved to undertake a study tour to the United States, Canada, Europe and the United Kingdom to further assist their inquiries into these important issues.

In accordance with Decision No. 423 of the former Parliamentary Service Commission, the committee sought and obtained approval for the study tour from the Honourable the Premier and the Honourable the Speaker.

In order to obtain the most cost-effective benefit from the study tour, the committee resolved that the travel be undertaken in two stages. One delegation comprising two members and one secretariat staff, led by the Deputy Chairman, travelled in June 1997 to Strasbourg, Ottawa, Toronto and Sacramento. A second delegation comprising three members and one secretariat staff, led by the Chairman, travelled in July 1997 to Bonn, London, Washington, Albany and Boston. The travel was undertaken outside the normal sittings of the parliament.

Contained within this report is a brief overview of the information gathered by each delegation. It is stressed that these are overviews only and a great deal of the information gathered will be utilised by the committee in preparing later reports.

3. OBJECTIVES

The objectives of the study tour can be summarised as follows:

- investigate the way parliamentary privilege is established in Westminster and non Westminster-style parliaments, federal systems and other legislatures;

- investigate recent changes to, and developments in, parliamentary privilege in Westminster-style parliaments, and the ramifications of such developments for the Queensland Legislative Assembly;
- investigate the circumstances behind the development of various codes, rules and laws regulating the conduct of members and how these codes, rules and laws were formulated;
- explore how ethics codes, rules and laws apply in practice to members and other officials, and how they affect the day-to-day representative and legislative activities of members;
- investigate procedures for dealing with alleged breaches of ethics codes, rules and laws;
- investigate the level of complaints, the complaints handling processes, and the formal and informal sanctions which apply to breaches;
- investigate the resources, staffing levels, work-loads and costs connected with monitoring and enforcing ethics codes, rules and laws;
- investigate the resources associated with advising members and the public about ethics codes, rules and laws; and
- explore orientation programs, and education and training provided to members and other officials, about conflicts of interests and codes of conduct.

**DELEGATION TO STRASBOURG, OTTAWA,
TORONTO AND SACRAMENTO**

4. DELEGATION TO STRASBOURG, OTTAWA, TORONTO AND SACRAMENTO

4.1 Organisations visited and meetings held

Thursday 12 June 1997

EUROPEAN PARLIAMENT

- Mr Brendan Patrick Donnelly, member of the European Parliament and political group coordinator
- Mr Richard Balfe, member of the European Parliament and chairman-in-office of the quaestors
- Mr David Harley, member of the secretariat of the Bureau and the Conference of Presidents

Friday 13 June 1997

FRENCH SÉNAT AND CONSEIL GENERAL DU BAS-RHIN

- Senator Francis Grignon, senator, and vice president of the Conseil General du Bas-Rhin
- Ms Monique Jung, Association de Development du Bas-Rhin

COUNCIL OF EUROPE

- Mr Horst Schade, Committee on Rules of Procedure, Office of the Clerk, Parliamentary Assembly of the Council of Europe
- Mr Joern Stegen, Head of the Division for Interparliamentary Relations, Parliamentary Assembly of the Council of Europe
- Ms Valerie Clamer, Committee on Legal Affairs and Human Rights

Monday 16 June 1997

FEDERAL PARLIAMENT OF CANADA

- Mr Peter Milliken MP, co-chair, former Special Joint Committee on a Code of Conduct
- Mr Blair Armitage, Clerk, Senate, member of the former Special Joint Committee on a Code of Conduct
- Ms Ellen Savage, Clerk, House of Commons, member of the former Special Joint Committee on a Code of Conduct
- Mr James Robertson, research officer, Library of Parliament, member of the former Special Joint Committee on a Code of Conduct

OFFICE OF THE ETHICS COUNSELLOR

- Mr Howard Wilson, Ethics Counsellor
- Mr Gordon Parkes, Chief Advisor

AUSTRALIAN HIGH COMMISSION

- His Excellency Mr Greg Wood, High Commissioner for Australia

Tuesday 17 June 1997

STATE LEGISLATURE OF ONTARIO

- Honourable Chris Stockwell MPP, Speaker of the Legislative Assembly
- Mr Claude DesRosiers, Clerk of the Legislative Assembly
- Ms Deborah Deller, Clerk Assistant, and Executive Director of the Legislative Services Division
- Mr Peter Sibenik, Procedural Clerk (Research) and Clerk of the Legislative Assembly Committee

OFFICE OF THE INTEGRITY COMMISSION

- Honourable Gregory Evans QC, Integrity Commissioner
- Ms Lynn Morrison, Executive Administrative Officer

Wednesday 18 June 1997

UNIVERSITY OF GUELPH

- Professor Maureen Mancuso, Associate Professor of Political Studies
- Ms Melissa Gabler, Research Officer

Thursday 19 June 1997

STATE LEGISLATURE OF CALIFORNIA

- Senator David Kelley, Chair, Senate Committee on Constitutional Amendments
- Senator the Honourable James Brulte, Member, Senate Committee on Rules
- Mr Bion Gregory, Chief Legislative Counsel
- Ms Ann Bailey, Chief Counsel, Senate Committee on Legislative Ethics
- Mr Greg Schmidt, Executive Officer, Senate Committee on Rules, and Secretary of the Senate

Friday 20 June 1997

STATE LEGISLATURE OF CALIFORNIA

- Mr E Dotson Wilson, Chief Clerk, and Parliamentarian of the Assembly

FAIR POLITICAL PRACTICES COMMISSION

- Mr Ravi Mehta, Chairman
- Mr Gary Huckaby, Director of Communications

A brief overview of information gathered, and comments made by people with whom the delegation met, is set out below.

4.2 Parliamentary privilege

4.2.1 *Federal parliament of Canada*

The delegation was advised that the Canadian *Charter of Rights and Freedoms* has not yet affected parliamentary privilege. However, it was considered that there was the possibility that in the future the charter may clash with parliamentary privilege. If this was to occur, one option that the federal parliament would consider was whether to enunciate parliamentary privilege in statute.

There is no right of reply for citizens. The delegation was informed that the possibility exists in Canada for a right of reply procedure to be used by lobbyist groups to their own advantage.

The delegation was told that the sub judice convention is not rigidly applied. For example, members may ask questions about royal commissions of inquiry. (The Royal Commission into the Somali U.N. Action was ongoing for three years, for instance, and it was not ruled sub judice.)

4.2.2 *State legislature of Ontario*

Parliamentary privilege is not enunciated in statute and the delegation was advised that there are no plans to change this situation. If the need arose to protect the correspondence of members, however, there was a suggestion that it may be appropriate to legislate for privilege because an amendment to the standing orders to cover members' correspondence would not provide adequate privilege to that correspondence.

The delegation was warned that the "expanded role" of members of parliament may not be covered by parliamentary privilege. For example, members generally have no formal qualifications to provide legal, immigration and other advice to constituents in their electorates. It was felt that members may well be leaving themselves open to litigation under such circumstances.

There is no right of reply for citizens, and no perceived need for such a procedure in the province. It was considered that citizens had adequate alternative opportunities to seek redress for alleged abuses of parliamentary privilege by members.

The sub judice rule is also not strictly applied in Ontario because the Speaker cannot be expected to have knowledge of all the judicial proceedings which may be on-going in the province. Rather than preventing a question from being asked, the Speaker allows a question. The onus is then on the minister to advise the parliament that a matter is sub judice and he or she has the option of not answering the question. Most matters before the courts receive wide publicity and the application of the convention is, therefore, generally not warranted.

4.2.3 *State legislature of California*

Members enjoy privilege for statements made during proceedings in the house and in committee. (For example, members cannot be sued for statements made in the House.)

Citizens appearing before a committee also enjoy full privilege. The Chief Legislative Counsel has been involved in defending senators in a number of cases which related directly to their positions as legislators.

The delegation was advised that California's privilege is based on statute and that has proven to be effective over time. There was, therefore, some support for the Queensland parliament clarifying its privileges in legislation. California's Constitution also includes a Speech and Debate Clause similar to Article 9 of the *Bill of Rights 1689* (UK).

The delegation was advised that fixed terms arose because of the initiative process.¹ This had resulted in 98 new members being appointed to the legislature since 1982. Whilst fixed terms have advantages, they have also resulted in a loss to the legislature of the institutional knowledge built up over the years. For example, the average tenure of members at present is 2.2 years.

4.2.4 The European Parliament

Members enjoy privileges and immunities in accordance with the Protocol on the Privileges and Immunities of the European Communities, annexed to the Treaty of 8 April 1965 establishing a Single Council and a Single Commission of the European Communities.² The immunities include freedom of speech, and freedom from being gaoled whilst the parliament is sitting, but members have only qualified privilege for libel.

The delegation was advised that the immunities of members may be waived. Any request for waiver must be addressed to the President by the appropriate authority of a Member State and must be announced in parliament and referred to the responsible committee. The committee generally considers requests without delay. Additional information can be sought from the Member State and the member concerned may be heard at his or her request.³ A member could contest the decision to waive their immunity, but the Immunities Committee has the authority to over-rule any objection. The court of the member's home country decides whether or not an action is to proceed.

There is no privileges committee. The delegation was told that the Bureau of Parliament and the quaestors⁴ fulfil some of the functions of a privileges committee.

There is no provision for paid legal expenses for members of parliament on an individual basis. Should an officer of the parliament (such as a president) be involved in a legal case arising from their duties, the legal expenses would be met from the parliament's administration budget.

¹ Initiatives are state or local legislative measures placed on the ballot by a group of citizens, by means of a petition signed by a specified percentage of voters, and enacted by a majority of the voters. In operation in California since 1911, the number of initiatives qualifying for the California ballot has increased dramatically in the last 25 years. Proponents need to obtain signatures equivalent to 5 percent of the vote in the last gubernatorial election for statutory initiatives and 8 percent for constitutional initiatives. The cost per signature can range from \$38.92 to \$0.05, with the median cost being \$1.41. [Simmons, Charlene. *California's statewide initiative process*, California State Library, Sacramento, May 1997, p.1-11.]

² European Parliament, *Rules of Procedure*, 12th edition, November 1996, p.10.

³ European Parliament, *Rules of Procedure*, 12th edition, November 1996, p.11.

⁴ Quaestors are members of the European Parliament who are the political interface between the administration and the members. They are elected for 2 ½ years by the whole House, and report to the President of the Bureau of Parliament.

The delegation was informed that the execution of search warrants on members' offices would possibly be illegal under the laws of the European Parliament. Such warrants may be vigorously contested and the European Parliament may elect to support a member in contesting the matter. The criminal law is not harmonised in the European Parliament. For example, if a member's conduct was alleged under British law to be corrupt, the case could run for years on argument concerning who had jurisdiction to lay the charges, and who had jurisdiction to try the matter. The European Court of Justice could be called upon to determine who had jurisdiction if the allegations related to a member's work in the European Parliament.

The delegation was informed that sub judice had not arisen as a significant issue within the European Parliament because it would be extremely difficult to keep track of what matters are before the courts at any given time in the member countries.

4.2.5 The Council of Europe

There is a general agreement on privileges and immunities that applies only to acts perpetrated as members of the Assembly. There is also a rule concerning "unparliamentary language" that covers racial hatred. What is said in the House has full privilege and cannot be used in a court of law. The delegation was told that the President would not strike out a statement unless it was unparliamentary in its language, as the Council of Europe encourages very open debate.

The delegation was informed that there is no right of reply for citizens and it was not anticipated that such a procedure would be adopted. The types of issues that are deliberated, and the manner of proceedings in the Parliamentary Assembly of the Council of Europe, differ significantly from those of Westminster-style parliaments. (For example, there is no Westminster-style question time.)

4.2.6 Assemblée Nationale, Sénat and Conseil General du Bas-Rhin

Parliamentary privilege (or *immunité parlementaire*) is part of the Constitutional Law in France. Privilege is based upon article 26, which (in translation) states: "No member of parliament, in criminal matters or for offences, can be arrested or be deprived of his liberties, without warrant of his parliamentary bureau." This warrant is not required for *flagrante delicto* offences, or in the case of definitive convictions. The detention, the privation or restriction of liberty, or the prosecution of a member of parliament can be suspended for the duration of the parliamentary session if required by parliament.

The privileges of the *Assemblée Nationale* are based upon two principles—*irresponsabilité* and *inviolabilité*. *Irresponsabilité* protects members from law suits, and from being prosecuted for the content of their speeches or written documents made in parliament as part of their parliamentary functions. The protection for these speeches and documents remains after the duration of their electoral mandate. Speeches made outside parliament are not regarded as part of the parliamentary functions of members, and consequently proceedings are possible against members for those comments.

Under the principle of *inviolabilité*, proceedings or any public prosecution against a member of parliament is possible without warrant of the parliament. It mainly relates to restrictions of liberty such as arrest, detention under remand, and bail. This proceeding (known as "*levee de*

l'immunité parlementaire") depends solely upon the decision of the National Assembly or of the Senate's Bureau.

The Bureau not only has the absolute power to decide the levee de l'immunité parlementaire but also has the power to decide the suspension of the detention, or the suspension of the prosecution, for the duration of the parliamentary session.

The delegation was advised that members of the National Assembly's executive are generally responsible for meeting their own legal expenses, particularly in private actions.

Legitimate warrants may be executed to search parliamentary or other offices for a specific purpose. It was emphasised, however, that secondary searches are not permissible. Should secondary searches be undertaken unlawfully, and should they uncover material which would ordinarily be actionable, that action would by law be prevented.

The delegation was informed that there is no right of reply for citizens but that aggrieved citizens are able to canvass other members to speak in parliament on their behalf.

4.3 Ethics regimes in selected legislatures

4.3.1 *Federal parliament of Canada*

Ministers and parliamentary secretaries are currently governed by the prime minister's *Conflict of Interest and Post-Employment Code for Public Office Holders* which was tabled in the House of Commons in June 1994.⁵ This comprehensive code could also apply to a limited number of members, but only by virtue of their position as members of the executive. The code applies to political advisers and staff, and to very senior members of the public service. All members of boards, agencies and tribunals who are full-time appointees are also covered by the code.

The delegation was told that the prime minister's code has been viewed in some quarters as a means by which the politicisation of the public service can be prevented. The code is a term and condition of appointment, rather than a legal document, and therefore has a certain amount of in-built flexibility. The object of the prime minister's code of conduct is to enhance public confidence in the integrity of government. It sets out a number of principles to which members of the executive and public employees must conform. The majority of the compliance measures embodied in the prime minister's code are conflict of interest-based. They relate to matters such as: the divestment of assets; restrictions on outside activities; acceptance of gifts, hospitality and other benefits; and post-public employment restrictions.

The *Conflict of Interest Act 1985* established the Commission on Conflict of Interest, which is headed by an ethics counsellor. The ethics counsellor has responsibility for administering the prime minister's code and for providing advice on conflict of interest matters. Ministers are required to provide the ethics counsellor with a detailed personal information statement. Details required to be disclosed include: assets; liabilities; other sources of income; activities; and, gifts, hospitality and other benefits. The ethics counsellor subsequently provides ministers with detailed advice concerning additional compliance measures that may be

⁵ The impetus for the prime minister's code was a number of scandals involving cabinet ministers.

necessary under the code. A summary of the personal information statement is produced as a public statement of declarable assets.

It was stressed in the strongest terms to the delegation that rules which are appropriate to ministers—such as those laid down in the prime minister’s code of conduct—should not be replicated for members in general because the respective responsibilities of ministers and members are quite distinct. Whilst both members and ministers represent the people, and debate and vote on issues, ministers alone have access to the type of confidential or privileged information from which a personal benefit—and thus a conflict of interest—could result.

There is currently no specific code of conduct for members and senators. However, a number of conflict of interest provisions covering members and senators are contained in the *Parliament of Canada Act*, the *Canada Elections Act* and the *Criminal Code*. For example, the *Criminal Code* governs matters such as: corruption; influence peddling; and breach of trust.

The standing orders of the respective Houses, as well as the laws and usages of the Parliament of the United Kingdom referred to in section 18 of the *Constitution Act 1867*, also govern some aspects of the conduct of federal Canadian members and senators. Furthermore, the House of Commons Board of Internal Economy (by virtue of the *Parliament of Canada Act 1985*) has exclusive jurisdiction over the propriety of the use of any funds, goods, services or premises made available to members for carrying out of their parliamentary functions. In the Senate, the Standing Senate Committee on Internal Economy, Budgets and Administration has the same mandate, subject to approval by the Senate.⁶

The delegation was told that public ethics developed as an election issue during the 1990s. Consequently, a special joint committee was established in March 1996 to develop a code of conduct specifically for senators and members. The special joint committee tabled its final report in March 1997 and this was debated in April 1997. The special joint committee’s report recommended a code of conduct for members and senators with a pecuniary interest focus. The proposed code rests on three pillars:

- *the appointment of an independent officer of parliament named the Jurisconsult to advise and guide members of both Houses as to what is and is not proper conduct, and as to any steps that should be taken to ensure that every member conforms to the code;*
- *full public disclosure of all interests, assets and liabilities of each member and of his or her spouse and dependants; and*
- *the establishment of clear rules stating what is and what is not proper in various circumstances and the procedures to be followed when potential problems arise.*⁷

The delegation was advised that the issue of a code of conduct for members and senators had lapsed with the recent elections, but that it may be taken up again later in the year by the new parliament.

⁶ Young, Margaret. *Conflict of Interest: Selected Issues*, Law and Government Division, Library of Parliament Research Branch, July 1995, Federal Canadian Parliament, p.23.

⁷ Senate Debates, 22 April 1997, p. 2052.

The delegation was informed that the activities of lobbyist groups had been of concern,⁸ and the government had introduced a *Lobbyists' Code of Conduct* which aimed at promoting public trust in the integrity of governmental decision-making processes. The lobbyists' code, which came into effect in March 1997, embodied principles such as: integrity and honesty; openness; and professionalism.

The delegation was advised that there was considerable support for a ministerial code of conduct, and some support for greater transparency⁹ for members and senators. However, there was virtually no media, public or other pressure to introduce stringent codes of conduct governing the way members and senators carry out their parliamentary duties. The view was strongly expressed to the delegation that in a democracy, the electors alone should determine whether or not the activities of an elected official are appropriate. There was some support for full public disclosure, coupled with provisions of the criminal law, as the most effective means by which to ensure high ethical standards for elected officials.

4.3.2 State legislature of Ontario

State members are subject to pecuniary interests or conflict of interest based legislation (the *Members' Integrity Act 1994*) which requires them to lodge a public disclosure statement with an integrity commissioner. The *Members' Integrity Act* was proclaimed in October 1995 and replaced the *Members' Conflict of Interest Act 1988*. Members are required to make disclosure statements to the integrity commissioner, who then prepares a public disclosure statement based upon the information provided. The Clerk of the Legislative Assembly retains the public statement in his office, and statements may be viewed but not photocopied.

The statements include matters such as: income; assets; gifts and personal benefits; liabilities; and offices and directorships. Election funds must also be disclosed. The advantages of the declaration of members' interests being established by resolution of the House rather than by statute was stressed to the delegation—issues which arise can then be easily added as appropriate.

The integrity commissioner is primarily a conflict of interest commissioner. The delegation was advised that the majority of conflict of interest dilemmas occurring in state legislatures relate (in fact are almost exclusively related) to members of the executive, rather than to legislators generally. It was considered that members had very little opportunity to personally benefit from government decisions, and therefore very little likelihood that conflicts of interest would arise between their legislative and their private roles.

It was stressed to the delegation that research currently being undertaken in Canada suggests that the majority of public concern with the conduct of elected officials relates to conflict of interest matters. The research also confirms that the public are comfortable with public disclosure requirements for elected officials and that full public disclosure reassures the community of the integrity of their elected officials.

⁸ The activities of lobbyists was also a matter of concern in California. The delegation noted that the major areas of concern regarding the conduct of elected officials in the United States and Canada related primarily to either lobbying or campaign funding.

⁹ This is particularly so with respect to members' expenses, and to allowances such as travel allowances.

The view was strongly expressed to the delegation that conflicts of interest are demonstrable, able to be proven in law and able to be subjected to regulation. Ethics, on the other hand, were considered to be something which is very personal, time-specific, and almost impossible to define or legislate for.

4.3.3 State legislature of California

The ethics rules and laws that apply in California are very complex and the delegation was advised that they are rigidly applied. Some rules (such as those relating to campaign funding and participation in governmental decision-making processes) were established as early as the 1970s.

The state's ethics laws cover: the misuse of state resources for non-legislative activities; prohibitions on the acceptance of honoraria; prohibitions on the use of campaign funds for non political, government or legislative purposes; conflict of interest matters; financial disclosure requirements; and income and post-government employment restrictions.

The Assembly's Legislative Ethics Committee, the Senate Committee on Legislative Ethics, the Office of the Legislative Counsel and the Fair Political Practices Commission each plays a significant role in administering the state's ethics laws. The greatest responsibility rests with the Fair Political Practices Commission which was created in 1974 under the *Political Reform Act* in response to the Watergate scandal. The Fair Political Practices Commission comprises three divisions: the Enforcement Division, the Legal Division and the Technical Division. They have a total staff of 75.

Most state and local government officials and employees are required to publicly disclose their personal assets and income. The disclosure statements address matters such as: business positions; gifts received; business income; retirement accounts; investments; loans made to others; real estate holdings; and other income. Elected officials file annual statements of economic interests and file a disclosure statement (which is a public document) at the time they go on the ballot.

The state's elected officials are also subject to the federal ethics-related laws, including—the 1970 racketeer influenced and corrupt organisation statute; the federal bribery statute; the mail fraud statute; the *Travel Act* and the *Money Laundering Act*.

The delegation was informed that the complicated nature of compliance requirements has been severely criticised in some quarters for being beyond the capabilities of the average person, and for being time consuming and expensive.

The delegation was advised that the majority of ethical dilemmas and conflict of interests issues in California arise from campaign funding and from issues related to lobbying.

The ethics laws have also been severely criticised because of their potential to be used for purely political purposes.

4.3.4 The European Parliament

In 1996 the European Parliament adopted Annex 1 to Rule 9 which relates to the transparency of members' financial interests. Under Annex 1, members are required to lodge a general

declaration of financial interests which is incorporated into a register. The register is open for public inspection. The delegation was informed that this is the closest that the European Parliament has moved towards adopting a code of conduct for members.

Rule 9 states that whilst the parliament may lay down a code of conduct for its members, the code shall not in any way prejudice or restrict a member in the exercise of his or her office or of any political or other activity relating thereto.¹⁰

Members are remunerated for “discharging their political mandate” and are free to determine themselves how best to discharge that mandate. The only issue that must be determined in any dilemma or conflict is whether or not a particular action (or any use of a particular entitlement) is a legitimate discharge of the member’s political mandate.

A recurring theme in discussions with most legislatures was the difficulty that arises when attempting to specify what constitutes the responsibilities and duties of elected officials. This difficulty was particularly evident in the European Parliament. For example, even the concept of “participation” varied significantly between the various Member States.

The delegation was advised that the European Parliament have adopted a generally self-regulated approach to monitoring the conduct of their members and achieving the high ethical standards expected of members. Members are under the general control of five quaestors who enforce and monitor standards. The quaestors couple the self-regulated approach with peer pressure. The delegation was advised that this two-fold approach received wide support from a number of quarters.

Members are permitted to undertake professional activities (and any other remunerated activities, including consultancies) provided the activities are declared. If a member receives any remuneration, staff or other support from a person or organisation outside the parliament, the identity of the person or organisation providing the remuneration, staff or support must be declared, together with a number of other details. However, there is no declaration of assets. Before speaking on any matter in which they have a direct financial interest, members must disclose that interest.

The public register of interests is the responsibility of the quaestors and is generally kept in Luxembourg. (The parliament itself rotates between Strasbourg, Brussels and Luxembourg.) The delegation was informed that the subject of a more detailed public register attracted some controversy. However, the principle of a detailed declaration is now accepted by the majority of members although it continues to be opposed by some groups. Transparency is seen as a way of ensuring that there is no conflict between a member’s parliamentary role and their outside interests.

Members may not accept gifts. The delegation was advised that the European Parliament considered applying a pecuniary limit on gifts rather than outright prohibition. However, this did not eventuate as such a measure was argued to be tantamount to “touting” for gifts up to the pre-set limit. The fear apparently was that the guidelines would have been misinterpreted, and the practice of presenting gifts to members up to the value of the pre-set limit would be seen as acceptable.

¹⁰ European Parliament, *Rules of Procedure*, 12th edition, November 1996, p.15.

4.3.5 *The Council of Europe*

The Council of Europe has no code of conduct. The delegation was informed that there are no proposals from either within the Member States or from other quarters for greater controls over the conduct of members.

The delegation was advised that the internal political groupings exert an effective control over members thus ensuring high ethical standards. The Council of Europe's financing, functions and procedures¹¹ preclude many of the ethical dilemmas that arise in other legislatures.

4.3.6 *French Assemblée Nationale, Sénat and Conseil General du Bas-Rhin*

There is no code of conduct applying to members in the state legislature of Bas-Rhin.

At the national level, the French laws, together with the rules of the parliament, are relied upon to maintain high ethical standards of members. For example, an act of parliament passed just before the 1995 election for the presidency of the republic clarifies the links between politics and money. That act prohibits companies, associations or trusts from financing political parties or from contributing to their electoral expenses. Private gifts are limited to 30,000 francs. Limits are also set on the amount which may be spent on an election, and a system of public subsidy has been instituted for electoral expenses incurred by each political party.

The delegation was told that the opportunity to make a personal gain from governmental decision-making, or from passing particular laws, rests only with ministers. Where a minister (or a member) attempted to gain "personal enrichment" from a particular decision by the government, the matter would be resolved by the justice system rather than by the parliament.

Whilst there had been some pressure from the public for deputies to be more transparent in certain matters, there is no proposal for the parliament to adopt a code of conduct for members. The emphasis remains on the power of the law, which is seen as the appropriate mechanism to govern the standards of elected officials.

There is a pecuniary interests register. Senators are required to declare in writing all their assets including dollar values (and zonings) upon their election. The register is completely confidential. The delegation was told that there is no proposal from any quarter for the information to be made available publicly. The register is lodged with the Bureau of the Senate. The president of the Senate, plus two or three other senators in charge of the administrative organisation of the Senate, are able to access the register.

When elected to office, senators must also declare all "other activities". The Office of the Senate determines whether or not a senator may continue with those other activities following

¹¹ There are 40 Member States, and the Parliamentary Assembly now includes 286 representatives and 286 substitutes. The Council of Europe is financed by the Member States in proportion to their population and resources, with members being drawn from the national parliament of each country in the Council. The secretariat has a permanent staff of approximately 1,200 officials drawn from the 40 Member States. The 1996 budget was approximately £162 million, and accommodation, secretariat and translation expenses constitute the Council's basic expenditure.

election. Senators may not hold contracts with “departements”.¹² Family members (children and fathers) are also prohibited from having contracts with regional government organisations.

4.4 Complaints handling processes and sanctions

4.4.1 *Federal parliament of Canada*

The delegation noted that the House of Commons had the right to regulate its own internal affairs and procedures free from any interference. This included the right to enforce discipline on its members by suspension, commitment and expulsion, as well as the right to administer the laws relating to its internal procedure without interference from the courts.

The jurisdiction of the House over its members and its right to maintain discipline within its own walls is absolute and exclusive. Therefore, even if a member was convicted of bribery, or sentenced to imprisonment for a period longer than the life of the parliament for an indictable offence, the member could not be deprived of his or her seat without a formal decision of the House.¹³

The former Special Joint Committee on a Code of Conduct for Members and Senators has recommended a parliamentary adviser with investigative powers be appointed by the federal Canadian parliament. The delegation was advised that this proposal has not met with unanimous approval. The delegation was told that whilst investigations do occur in the provinces, where such ethics regimes are currently in place, they are limited to investigations of the activities of ministers. The principal complaints which do arise are generally about non-disclosure, rather than allegations concerning the conduct of members.

Complaints do not arise about the mis-use by members of their travel entitlements as a global budgeting system is in place.

4.4.2 *State legislature of Ontario*

The complaints handling process of the integrity commission requires that complainants submit all complaints in affidavit form. Responses by the members who are the subject of the complaint must also be lodged in an affidavit.

The delegation was told that complaints from the public are rare, and the level of complaints generally is quite low.

4.4.3 *State legislature of California*

Complaints to the ethics committees are required to be verified under oath. The delegation was informed that, on average, only one valid complaint per year is received by the committees. The chairman of an ethics committee does not have a casting vote in the event of

¹² There are four levels of government—they are (in ascending order) the municipality (37,000 in number), the “departement” (of which there are approximately 100), the region (26, comprised of one or more “departements”), and the national level.

¹³ Office of the Law Clerk and Parliamentary Counsel, *Conflict of Interest and Members of Parliament*, Federal Canadian Parliament, December 1988.

an equality of votes. Any resolution for action put forward by an ethics committee must be unanimously adopted, otherwise no action may be taken on the matter.

Between 35,000 and 40,000 people are covered by the Californian Fair Political Practices Commission, and anyone may make a complaint to the commission. Complaints may be lodged by telephone, and all calls are investigated. The delegation was informed that about 750 serious complaints are considered by the commission per annum with the commission hearing about 50 or 60 of those cases each year. Complaints may relate to “any public official” and less than ten percent of complaints filed relate to elected officials. The Fair Political Practices Commission has both investigative and prosecutorial powers, and the power to fine.

The most severe sanctions the delegation noted were those applying in California. For example, an error or omission by a member when completing their forms is now an offence in California.¹⁴ If it were to be proven that an error or omission had been wilfully and knowingly carried out, this would constitute a criminal offence, as would a number of other offences¹⁵ and the member could receive a gaol sentence as a result. Even an omission made in good faith may be a felony under the current legislation.

The delegation was advised that unfavourable media comment to which a member could be subjected for violating the *Political Reform Act* is considered to be a powerful additional sanction to members, as unfavourable media comment impacts upon campaign contributions.

4.4.4 The European Parliament

The delegation was told that the quaestors do not impose “value judgements” when assessing allegations about a member’s use of his or her entitlements or about alleged inappropriate expenses claims. The quaestors consider only whether or not a legitimate discharge of the member’s political mandate has occurred. If an entitlement has not been personally appropriated by the member, no transgression has occurred. This is because it is entirely up to the members to interpret how they will fulfil their political mandate. Should an actual abuse of a particular entitlement be proven, the European Parliament’s legal service would undertake a prosecution in the country of which the member is a national in order to recover any monies owed.

4.4.5 The Council of Europe

The delegation was advised that few problems arose which required sanctions in the Council of Europe because members do not have executive or economic power. If a member of the Assembly was to become an office holder, that person must resign. There are consequently no formal sanctions for inappropriate conduct by members of the Council of Europe. The country to which the member belongs is responsible for removing a delegate who behaves inappropriately. Peer pressure is one effective sanction, with control being exercised purely by the political groups. The delegation was informed that members who are “misfits” would find themselves “sidelined” by their peers, and forced into the non-committed groups.

¹⁴ The delegation noted that members of the state legislature were previously not subject to sanctions if they violated the *Political Reform Act*, but that there were now civil and criminal sanctions which apply.

¹⁵ Log rolling is another felony under the state’s laws which carries civil sanctions such as a \$20,000 fine—although the delegation were advised that members can pay such fines from their campaign funds.

4.4.6 *Assemblée Nationale, Sénat and Conseil General du Bas-Rhin*

A specific legal procedure is followed if a complaint arises against a member in France. Scandals, when they arise, are invariably about money-related matters rather than about the conduct of members.

The delegation was informed that complaints about travel-related issues do not arise as global budgeting is in place.

4.5 Ethics counsellors, advisers and education

4.5.1 *Federal parliament of Canada*

The federal parliament has appointed an ethics counsellor who administers the prime minister's code of conduct for ministers. The delegation was informed that it is absolutely essential that the person appointed to such a position have the full confidence of all ministers.

In addition to ministers, a total of 1,400 people now submit reports to the ethics counsellor, including staff and full-time senior appointees from statutory bodies, etc.¹⁶ Whilst the counsellor's principal role is to assist the prime minister, his office now has a variety of functions, including administering the recently introduced lobbyist registration rules. The ethics counsellor also assists boards to develop their own codes of conduct.

The delegation was informed that the ethics commission has a staff of 20 and its budget is a line item in the public accounts. The counsellor is not required to provide an annual report to parliament concerning the prime minister's code but will in future be required to report annually to parliament on matters related to lobbying. The delegation noted that the commission's conflict of interest role accounts for approximately \$US1.5 million of the running costs of the office. The substantial paper burden for the office was brought to the delegation's attention. The burden is increased when changes of assets occur and at the time of annual reviews.

The former Special Joint Committee on a Code of Conduct for Members and Senators recently recommended the establishment of a position of jurisconsult to be responsible for administering any code of conduct for members and senators. The view was expressed that two jurisconsults may be appointed: one looking after senators, and one looking after members. The delegation was told that the responsibilities of senators and members, and thus the amount of time available to them to undertake outside employment (and consequently their susceptibility to conflicts of interest) varied considerably.

It was suggested to the delegation that the appointment of an independent, non-elected person to investigate allegations against ministers, and to pass judgement on them, may present a constitutional dilemma as it is generally accepted that it should be the exclusive prerogative of prime ministers only to make a decision about, or pass judgement on, their ministers.

It was also suggested to the delegation that the appointment of a jurisconsult with responsibility to both investigate complaints against members and also provide members with

¹⁶ Part-time board members are subject only to the principles of the code.

impartial advice may present constitutional difficulties because of the basic incompatibility of the two roles.

4.5.2 *State legislature of Ontario*

The position of integrity commissioner (originally “conflict of interest commissioner”) has been established for nine years. The delegation noted that the integrity commissioner’s role was now somewhat wider than when the position was originally established. He currently monitors and advises 130 members and their spouses, in addition to constituency staff. He has also recently been given the added responsibility for senior public officials, and senior political staff. The office is expected to shortly gain responsibility for dealing also with order-in-council appointments. The delegation was informed that the current staffing level¹⁷ is expected to increase with the added responsibilities. The commission’s budget has remained relatively static at approximately \$280,000 per annum. The budget is expected to increase in the near future due to a necessity to fund the commission’s accommodation (which is likely to cost \$100,000 per annum).

It was stressed to the delegation that the appointment of the “right” person to the role of integrity commissioner was vital. The success or otherwise of an entire ethics regime could revolve around that appointment. The person appointed to the position should ideally have already attained the highest office in their professional life, and not be taking up the position to “build up” their personal reputation. It was also vital that every political party was represented in the selection process.

The delegation was told that research in Canada and the United Kingdom has indicated that members want, and need, to obtain advice when they face ethical dilemmas. A substantial number of members wish to receive formal ethics “training” and do not wish to rely only upon their own instincts, or upon inclination. Some members considered that an hour of informal ethics “training” during their orientation was inadequate as it did not provide the type of information they need.

4.5.3 *State legislature of California*

California has not appointed an independent ethics counsellor, although the chairman of the Fair Political Practices Commission is expected to be, in practice, independent of politics. For example, by law the chairman may not participate in the party political process by attending political party functions. In some quarters, there appeared a degree of scepticism concerning the appointment of independent ethics counsellors or advisers.

The Senate’s Office of the Chief Legislative Counsel provides advice to senators on ethical questions. The delegation was informed that the office receives approximately 15-20 ethics inquiries per year. In cases of uncertainty, senators are required to seek advice in writing, following which the Chief Legislative Counsel’s office advises the appropriate course of action. The Fair Political Practices Commission may also provide advice on the particular dilemma. However, if the advice of the Fair Political Practices Commission is at variance with the Senate’s advice, the Senate’s advice prevails.

¹⁷ Currently the commission is staffed by the commissioner, an executive administrative officer, and an administrative assistant.

The Senate Committee on Legislative Ethics, the Joint Legislative Ethics Committee, and more recently the Assembly Legislative Ethics Committee, have produced a handbook titled *A guide to laws on official conduct for legislators and legislative staff*. Thousands of copies of this handbook have been distributed to members, staff, lobbyists and the press and public since it was first produced in 1990. The aim of the handbook is stated as being to: *educate the Legislature and the public about existing government ethics laws, as well as the changes made by comprehensive ethics legislation enacted in 1989 and 1990.*¹⁸

There is a legal requirement for legislators, designated legislative staff and registered lobbyists to participate in an ethics orientation course at least once every biennial session. At the time of the delegation's visit, approximately 1,500 lobbyists were participating in orientation courses that had been scheduled to run over a one week period.

¹⁸ California State Legislature, *A guide to laws on official conduct for legislators and legislative staff*, as revised March 1997, p.1.

**DELEGATION TO BONN, LONDON, WASHINGTON,
ALBANY AND BOSTON**

5. DELEGATION TO BONN, LONDON, WASHINGTON, ALBANY AND BOSTON

5.1 Organisations visited and meetings held

Monday 14 July 1997

AUSTRALIAN EMBASSY, BONN

- Ms Janet Gardiner, Charge d'affaires

GERMAN BUNDESTAG AND BUNDESRAT

- Mr Hermann-Joseph Schreiner, Ministerial Counsellor
- Ms Heike Baddenhausen-Lange, First Executive Counsellor
- Dr Dastner, Vice Secretary-General of the Bundesrat and Director of the Committee on Legal Affairs
- Mr Ruthe, Petitions Committee Clerk
- Dr van Welk, Head of Petitions Branch

Tuesday 15 July 1997

GERMAN BUNDESTAG AND BUNDESRAT

- Dr Wolfgang Zeh, Director of the Subdirectorate Parliamentary Services
- Mr Jorg van Essen MP, Member of the Committee on the Scrutiny of Elections, Immunity and the Rules of Procedure
- Mr Helmut Becker, red(d) Vice President
- Mr Gunter Hirnschal, Ministerial Counsellor
- Mr Hermann-Josef Schreiner, Head of the Parliamentary Law Section
- Ms Monika Jantsch, Secretariat of the Committee

Wednesday 16 July 1997

HESSISCHER LANDTAG (PARLIAMENT OF HESSE)

- Mr Klaus Peter Moeller, President
- Members of the Council of Eldermen

RHINELAND-PALATINATE LANDTAG (PARLIAMENT OF RHINELAND-PALATINATE)

- Mr Christop Grimm, President
- Members of the Landtag

Thursday 17 July 1997

UNITED KINGDOM HOUSE OF COMMONS

- Sir Gordon Downey KCB, Parliamentary Commissioner for Standards
- Sir Clifford Boulton, member of the Nolan Committee, and former Clerk of the House of Commons
- Mr Jim Hastings, Clerk to the Committee on Standards and Privileges
- Mr Roger Willoughby, Registrar of Members' Interests

Monday 21 July 1997

UNITED STATES OFFICE OF GOVERNMENT ETHICS

- Ms Jane Ley, Deputy Director for Policy

COMMON CAUSE

- Mr Ed Davis, Lobbyist

UNITED STATES HOUSE OF REPRESENTATIVES AND SENATE

- Ms Corine Larson, Legislative Assistant, Office of Senator Robert Bennett, Chair, Task Force on Senate Reorganization
- Mr Charles Johnson, House Parliamentarian
- Mr Pat Pettey, Chief of Staff, Office of Senator Robert Smith, Chair, Senate Ethics Committee
- Mr Victor Baird, Staff Director and Chief Counsel, Office of Senator Robert Smith

Tuesday 22 July 1997

UNITED STATES HOUSE OF REPRESENTATIVES AND SENATE

- Representative Benjamin L Cardin, co-chair, House Bipartisan Task Force on Reform of the Ethics Process
- Mr Ted Van Der Meid, Staff Director and Chief Counsel, House Ethics Committee
- Mr Stan Skocki, Legislative Assistant, Office of Representative Bob Livingston, co-chair, House Bipartisan Task Force on Reform of the Ethics Process

Wednesday 23 July 1997

STATE UNIVERSITY OF NEW YORK AT ALBANY

- Mr Joseph Zimmerman
- Ms Sally Freidman
- Mr Scott Barclay
- Mr Michael Malbin

NEW YORK BAR ASSOCIATION

- Ms Kathleen Baxter, Counsel

NEW YORK STATE LEGISLATURE

- Ms Nancy Davenport, Counsel

Thursday 24 July 1997

NEW YORK STATE ETHICS COMMISSION

- Mr Richard Rifkin, Executive Director

NEW YORK STATE LEGISLATURE

- Senator William T Stachowski, Ranking Member, New York Senate Ethics Committee
- Ms Carlyne Kerns, House Parliamentarian
- Ms Karen Kaufmann, General Counsel
- Mr Stephen Sloan, Secretary of the Senate

Friday 25 July 1997

MASSACHUSETTS STATE LEGISLATURE

- Mr David Sullivan, Counsel to the Senate of Massachusetts
- Mr Louis A Rizoli, Counsel to the House of Massachusetts
- Mr Edward O'Neill, Clerk of the Senate
- Mr Larry McCavitt, Advisor, Office of Senator Robert Creedon, Chair, Senate Ethics Committee
- Representative Anthony P Giglio, Vice Chair, House Ethics Committee

MASSACHUSETTS STATE ETHICS COMMISSION

- Ms Stephanie Lovell, Executive Director

COMMON CAUSE

- Mr Paul Fitzgerald, Executive Director
- Mr Josh Friedes, Policy Director

A summary of some of the comments made by people with whom the delegation met is set out below.

5.2 Parliamentary privilege

5.2.1 *German Bundestag and Bundesrat*

The federal constitution provides for the privileges of the federal parliament (the Bundestag). Privilege is called **indemnity** where it is legal protection for prosecution of a civil matter and it is related to the members' actions in the Bundestag (it does not apply to defamatory insults), and **immunity** where it is legal protection for prosecution for a criminal matter, not related to the members' work in parliament. Immunity only applies in relation to criminal offences—it does not apply in relation to regulatory offences (such as traffic offences).

Article 46 of the Basic law provides that members may only be arrested or charged with a criminal offence with the consent of the Bundestag. It applies to any restriction of a member's liberty.

In relation to immunity, as a matter of Law prosecution authorities cannot commence any investigation into a matter involving a member without first obtaining consent from the Bundestag. However, as a matter of practice, a general decision is taken at the beginning of the parliamentary term which applies to all investigations undertaken by the Director of Public Prosecutions and permits those investigations. However, a special allowance is required to charge a member. The delegation was informed that if a charge arises from an investigation, and the matter is referred to court, the investigating judge would always inquire as to whether immunity has been waived by the Bundestag. Immunity has always been waived—there was no known case in which immunity had not been waived. The delegation was informed that the Scrutiny Standing Committee ensures (and is obliged to ensure) that investigations are carried out in reasonable time, and the committee would exert pressure on the prosecuting authority to ensure that investigations involving members are completed promptly.

The Director of Public Prosecutions is under an obligation to inform the Scrutiny Standing Committee about investigations into members of the Bundestag. The Bundestag does not have a committee of privileges.

The delegation was told that when the police are investigating a member of the Bundestag they always call in the public prosecutor when searching the member's offices in order to ensure that the purpose of the warrant is strictly followed. Prosecutors know that they must proceed very carefully with respect to search warrants in relation to members of the Bundesrat. The terms of warrants in Germany are very restrictive.

The delegation was advised that whilst there is no written sub judice rule the members have the greatest respect for the powers and obligations of the judiciary and therefore exercise self-restraint not to publicly comment on cases. For example, a member may ask the Minister for Justice to give information on a case, but would not discuss the case publicly. There is an unwritten rule or convention not to ask questions in the House about any current proceedings, and if questions were to be asked, special care would be taken not to name the case or the individuals involved, but to make the questions anonymous. The delegation was told that this respect of the judiciary was largely a result of Germany's political history.

There was some support for members' correspondence being protected from criminal action and defamation.

Privilege does not attach to statements made during the proceedings of the Bundesrat and members are subject to the normal criminal and civil law, although public interest immunity, which applies to everyone, is also a defence. As a result, the Bundesrat has no right of reply for citizens and nothing similar to that procedure. Citizens are merely required to prove that a statement by a member was defamatory.

5.2.2 *Hessischer Landtag (State Parliament of Hesse)*

The delegation was informed that should a member offend the law there is a special immunity. This immunity historically protected members from the power of the state, but there was never any immunity from regulatory offences. Privileges and indemnity only provide protection from the penal code—for example, for defamation. There was some feeling that immunity had largely lost its importance.

The delegation was advised that with respect to immunity in criminal matters, it is a decision of parliament as to whether the prosecution can inquire into or deal with a matter. The parliament may limit the prosecution before it starts its investigation. The prosecution must come to parliament before they investigate a member unless that member has been “caught in the act”.

In relation to documents in possession of a member, every action vis-a-vis a member must be approved by the member. The delegation was told that it would be an exceptional occurrence to search a member’s office and this would require parliament’s permission.

A court may, however, call a member as a witness in a civil matter.

Privilege vis-a-vis royal commissions is not applicable to Germany because the parliament does not establish royal commissions to inquire into matters. Instead, parliament sets up a parliamentary inquiry to inquire into government matters.

Correspondence between a member and a minister is protected. A citizen’s correspondence to a member or a minister is similarly protected.

There is no punitive power such as contempt vested in the Landtag. The Attorney-General may prosecute those sorts of matters in a court only if the matter is a criminal offence. Under the principle of legality, an Attorney-General must inquire into all but minor matters and bring prosecution. The decision as to whether a matter proceeds is up to the court.

The delegation was informed that there is no right of reply for citizens but that aggrieved citizens may write to the Speaker as well as take civil action about a particular matter.

5.2.3 *Rhineland-Palatinate Landtag (State Parliament of Rhineland-Palatinate)*

The principle of indemnity applies in the Rhineland-Palatinate Landtag. Article 93 of their Constitution states that no representative can be prosecuted by any means outside the parliament for carrying out their mandate. The provision covers both penal and civil jurisdictions.

There is no right of reply for citizens in the Rhineland-Palatinate Landtag.

There is also no power in the parliament or committees to punish for “leaking” material from committee proceedings. The delegation was told that it was an unwritten law for the press (in theory) to require two sources before anything is published. The House may only punish “contempt-type matters” via the criminal law.

There is a select committee called the Investigation Committee. Twenty-five per cent of the House must vote in order for the committee to commence an investigation. Any person appearing before that committee has the same rights as they would have within the criminal justice system.

The delegation was told that sub judice operates only as an informal unwritten rule that matters that are before the courts are not discussed.

5.2.4 United Kingdom House of Commons

There appeared to be little support for codification of privileges. The view was expressed to the delegation that codification for privilege would increase the political power of judges because judges would be able to hold parliament to account to the courts. This in turn could lead to problems with the independence of the judiciary with the actual appointment of judges becoming a political issue.

The United Kingdom amendments to allow waiver of Article 9 of the *Bill of Rights 1689* came about as a result of a specific case—the Neil Hamilton defamation case against *The Guardian* newspaper—which required the waiver of his rights under Article 9 for Mr Hamilton to successfully sue. However, for a number of reasons, the case itself did not proceed after the amendment of the Article.

The delegation was told that there is now little support for a provision allowing waiver of parliamentary privilege. In fact, there is a very strong push to have Article 9 amended back to its former status.

The delegation was advised that there is some debate as to whether bribery of a member is actually an offence in the United Kingdom.

The view was expressed that privileges or ethics committees should exercise care not to interfere in criminal proceedings, even if this results in the committee having to “hold back” its inquiries.

The delegation was advised that it was considered unlikely that there would be any moves within the European Union to introduce measures that would amend the privileges or immunities of member parliaments.

The view was strongly expressed that so-called independent non-elected investigatory bodies should not impinge upon the privileges of parliament. It was suggested that the best way for parliament to proceed would be to exercise creditable self-discipline. Self-discipline would also (to a large degree) reduce negative press coverage. It was suggested to the delegation that if creating a position of parliamentary commissioner or a similar position, the word “independent” was not fully appropriate and should not be used. It was stressed that such persons have independent standing but they are still accountable to the House.

There was some suggestion that in the United Kingdom, parliamentary privilege, freedom of speech, defamation, bribery and a number of other areas may need to be modernised to prevent the absolute disintegration of parliament.

The importance of privileges committees operating on a totally bipartisan basis was stressed.

There was no strong support for correspondence between ministers and members being protected by parliamentary privilege. The delegation was also warned that there was always a danger that any widening of the privileges of members would leave the way open for the system to be abused.

5.2.5 United States

Article 1, section 6 of the United States Constitution guarantees that the ‘speech and debate’ of either House of congress shall not be questioned in any other place.

This “speech and debate clause” has been held to generally apply to “all things done in session of the House by one of its members in relation to the business before it”.¹⁹ In summary, the provision is very similar to Article 9 of the *Bill of Rights 1689* (UK). The various states of the United States all have similar provisions in their constitutions. Waiver of the speech and debate clause in New York State is permissible, but rare.

There was considerable debate in some quarters of the New York state legislature about whether correspondence between members and ministers is or should be privileged. The particular difficulties associated with “correspondence” in electronic form (such as e-mail) were also discussed. The courts have held that the speech and debate clause in the US Constitution only applies to confer immunity on material which was essential to the deliberative process of the relevant House.²⁰

There is no right of reply for citizens at the federal or state level. The delegation was told that this is probably because it was very unusual for persons to be defamed under parliamentary privilege. Similarly, there is no sub judice convention as such because members rarely discuss individual cases and when they do, it is after there has already been extensive media coverage.

5.3 Ethics regimes in selected legislatures

5.3.1 German Bundestag and Bundesrat

Article 38 of the Basic Law (the German Constitution) provides that every member of the Bundestag is not bound by orders and instructions, and are only subject to their own conscience. This Article reflects the underlying principle that no-one is able to impeach the mandate given to the members of the Bundestag by the people. Therefore, unless otherwise found in the Basic Law, no-one except the people may sanction a member for his or her conduct as a member.

This principle reflects German abhorrence of a majority acting against a minority.

¹⁹ Kilbourne v Thompson 103 US 168 (1881).

²⁰ For example, it did not extend to press releases and newsletters. *Hutchinson v Proxmire* 443 US 111 (1979).

The Bundestag does not have an ethics committee, and the Standing Orders do not cover ethical norms as such. The code of conduct for members of the German Bundestag is more akin to Queensland's pecuniary interests register, although it also deals with matters such as special rules for practising lawyers, accounts of donations and gifts.

The Constitution guarantees a free mandate to elected members and it also guarantees a member's right to determine the scope of that mandate.

The constitutional court has ruled that members have the same right to earn money as any other individual. Therefore, members cannot be prohibited from obtaining outside income. However, if a member earns more than DM30,000 per year in income from any source other than from their public allowance (excluding investments or income derived from property) a confidential declaration to that effect must be made to the president. Although there are no restrictions in respect of private enterprise, the Constitution prohibits members from holding a public service position. Persons who do hold public office may run as a candidate, but once elected they must leave the public service.

There are, however, transparency provisions, and every member is required to disclose their financial interests. The code of conduct of the Bundestag is also a register of pecuniary interests, but the register is not a "wealth register" and property is not declared. The register is more concerned with activities than with assets. Therefore, a member's participation on a bank board would be declared, for example, as would professional associations, lobbying associations and business enterprises.

The delegation was advised that there was little support in Germany for an ethics regime such as that operating in the United States Congress. These regimes were seen as encouraging a fixation with minor administrative discrepancies. It was felt that the public image of parliamentarians had been lowered by a continual emphasis on negative issues rather than considering the many positive issues associated with legislatures. The Petitions Committee, which performs functions similar to those of the Ombudsman in Australia, is considered to have enhanced the image of the parliament in Germany.

The comment was made that the declaration of pecuniary interests was much more necessary at the provincial and local level than the federal level because members in those bodies were more likely to have direct interests in matters which they consider.

Members are expected to disclose their interest on any business before a committee. However, it was considered difficult to preclude a member from voting because of a personal interest. A member represents a constituency, which is likely to hold the same interests as the member's personal interests. For example, farmers represent farmers. It was considered difficult to delineate when personal and public interests start and end in such circumstances. A very strong view was expressed that parliament should not be isolated from the rest of the community, which is likely to happen if members are not permitted to hold outside interests.

Article 66 of the Constitution provides that a minister may not hold any other office. Ministers are also subject to a code of conduct but there was little support for an ethical code of conduct for members. The "code of conduct" that is in place is taken very seriously, with advice often being sought from the whips (Elders) concerning what is allowed and not allowed under the code.

The Bundestag has a register of lobbyists and the information they produce and distribute is considered very important to the representative process.

5.3.2 Hessischer Landtag (State Parliament of Hesse)

Under a change to the law in 1989 the state parliament of Hesse introduced a code of conduct based largely on the provisions operating in the Bundestag.

The code relates only to pecuniary matters. All gifts and donations over DM300 are declared, as is membership of organisations etc. All earnings from outside parliament are publicly declared and published annually. Income sources are declared but assets are not. The amount of any donation has to be shown, and campaign funding over DM20,000 is also declared.

There is no requirement to declare the interest of spouses or trusts. Members do not have to declare their possessions or their property. A member who has an involvement in a topic on the agenda in a committee must declare that interest before voting.

Whilst ministers are not permitted to manage an enterprise they may own an enterprise. Ministers are not permitted to be a trustee of a trust with an active business. Ministers generally divest themselves of their interests but are not required by law to sell their interests in a business.

The delegation was told that the public generally tended to support members holding a second (outside) job or business, as this allowed members to keep their “hand in” and “experience the real world”. The majority of members are formerly from the civil service and the view was expressed that parliament generally is not as representative of the community as it should be. For example, doctors and scientists are not represented at all, whilst many MPs are lawyers and continue to practise law. The current make up of parliament is significantly influenced by the practicalities of outside employment. For example, a lawyer who enters parliament is able to return to the law if voted out of office, but a machinist may find it difficult to get another job. Public servants by law must resign once elected, but because they do not have to resign until elected there are a large number of public servants in parliament. The importance of having a diversity of people within the parliament was emphasised to the delegation.

5.3.3 Rhineland-Palatinate Landtag (Parliament of Rhineland-Palatinate)

The code of conduct is basically a pecuniary register and is available only to the President and is not a public document. Some of the information is published in the handbook—for example, the *curriculum vitae* includes all professional offices and interests groups of which an MP is a member. Membership on the boards of companies is also declared. Members are not required to declare their assets or property. The delegation was advised that the code is generally well accepted.

A member must resign any public office upon election. Ten to fifteen per cent of parliamentarians have another occupation and members must declare if they have a second job. However, they are not required to declare the income from that job.

Ministers cannot be directly involved in business, but the delegation was informed that blind trusts have never been used to circumvent this requirement. Whilst ministers are still able to receive the profits from their business, ministers must put a manager in charge of their

business. For example, the Attorney-General can still hold an interest in his law firm but cannot practise as a lawyer.

The delegation was told that it was an unwritten rule (rather than a law or hard and fast rule) that if a member had a special interest they did not speak on any question involving that matter. However, this did not extend to prevent members from speaking on topics on which they had a particular specialist knowledge. For example, a physician who is also a member may speak in relation to transplants and laws relating to transplants. However, a member who is a physician should not speak on transplants if that member also owned a transplant surgery. It was considered desirable that people with particular expertise or interests in various areas be able to speak and vote on those specialist issues. For example, milk quota issues are so complex in the European Union that only experts, or someone involved in the milk industry, can fully understand the quota system.

The rules are more stringent for local government in the Rhineland-Palatinate—they cannot vote on anything in which they have an interest and they must declare that interest.

5.3.4 *United Kingdom House of Commons*

The code of conduct, introduced in July 1996, formalised many of the general provisions that were already in place in another form. For example, the ban on paid advocacy had always existed and had always been a contempt of parliament. Prior to the introduction of a code of conduct, the “cash for questions” incident did not involve the breaking of any specific “rule”. However, the privileges committee still concluded that the actions of those involved “crossed the line” into unacceptable behaviour.

The code, and the guide to the rules, do not contain a great deal of detail. The delegation was advised that as a result, the code is to some extent open to interpretation particularly because of a catch-all provision dealing with “bringing the House into disrepute”.

There was some suggestion that the House of Commons may be moving towards a legally enforceable code of conduct at some future point.

There was also considerable support for the concept of the House exercising discipline in respect of the conduct of its members. Generally speaking, self-discipline was considered a preferable option to having an outside body undertake the role of “watchdog” which, the delegation was told, risked compromising the independence of the parliament and the constitutional structure. The delegation was advised that there was no doubt that the conduct of members played an important role in the recent British elections. There was a general feeling that the reforms will have a positive effect on the conduct of members.

It was seen as virtually impossible to predict all types of conduct when formulating a code of conduct, and impossible to draw up rules to cover all eventualities. Therefore, there was some support for brief, aspirational codes rather than for detailed rule-based codes. There are specific rules for ministers and these are dealt with by the Cabinet Office.

The register of interests is not a wealth register. For example, shareholdings are disclosed but the value of those shareholdings is not disclosed. There is no register of interests for members’ spouses, as such, although some specific declarations are made (for example, where a spouse has a holding of more than £25,000). The register is published annually and is

updated electronically every four to six weeks. There was strong support for members “going beyond registration” and declaring an interest in any matter on debate.

The delegation was advised that gifts and sponsorships remained a “grey area”. However, it was suggested that in such a regime there will always be grey areas and many of these could be effectively pursued with a member in an alternative manner.

There appeared to be some uncertainty about the difference between what constitutes an “advisory” position and what constitutes “consultancy” and “advocacy”.

It was argued that a prohibition on all outside work by members would limit the range of experience within the parliament and discourage talented persons from entering parliament. It was considered important for members to continue to participate in the wider society, in order to discourage the development of “professional” politicians. Outside interests are thus encouraged by the House of Commons, providing they are not “improper” interests.

5.3.5 United States

The Office of Government Ethics is the overall policy body for ethics of the executive branch of the government. The office was created in 1979 and is seen as a child of the Watergate era. In 1979 the first public registers for federal public servants were introduced. The staff of the office counsel people and help people to avoid problems with conflicts of interests. The system was not designed as a “Gotcha system”. There are criminal codes in the United States dealing with conflicts of interests—some codes are as old as, or arise from, the Civil War.

The code of conduct—“The Standards of Ethical Conduct for Employees of the Executive Branch”, covers all executive branch employees.

Disclosure requirements cover all presidential appointments that require confirmation (the senior executive service). The rule is that action may not be undertaken by a person if it affects that person’s private interests, unless a waiver is given by the President. Secretaries are required to divest themselves of anything that may cause a conflict of interest in their portfolio. Blind trusts are not widely used as they are generally too expensive to administer. There are about three million people covered by the ethics regime, and only about forty blind trusts are in operation.

There are about 4,500 political appointments in the US government. The average tenure of political appointees is 22 months. It was considered that having a very professional non political staff is, without a doubt, a buffer to non ethical conduct.

Post employment restrictions are very strict, and basically prohibit a person from working on any matter in which they were involved when employed with the government. At the higher levels the ban is for two years, and for senior officials, the ban is one year. The delegation was told that the employment restrictions can be a little absurd at times because they can work against the government. Sometimes it would be advantageous, for example, to have people in the public sector who understand how the government operates.

Concern was expressed that the appointment of “independent counsels” was now “out of control”. Independent counsels use up enormous resources and operate under seal (in private). The counsels have the same power as the Attorney-General and may summon the Grand Jury.

The Senate and the House of Representatives each has a code of conduct for their members and staff and a committee to enforce those codes. There are three purposes of these codes: to prohibit personal enrichment by public office; to prohibit state resources being used for campaign purposes; and to prohibit undue influence by those who have resources.

There was some suggestion by those involved in the ethics regimes that operate in the Congress that they are too detailed, complicated and over-regulated. Some of the rules were considered to be counter-productive. The delegation was told that there were instances where rules had been introduced in areas which had never previously caused any problems.

Members of Congress and their staff are required to provide financial disclosure statements. A register is kept by the Records and Register Committee, which also gives advice. Outside earned income exceeding \$20,000 a year must be declared. Whilst payment in excess of \$20,000 as a director is not allowed, the management of a farm or small business was not considered to be “earned income”.

The rules state that no member shall vote on a direct or personal pecuniary interest. However, the delegation was informed that it was up to each member to individually decide whether there was a direct or personal pecuniary interest, as that term is not defined. The test generally applied is whether the member is part of a larger class of persons or whether the member is uniquely affected. Advisory opinions can be obtained on such matters from the committees, and if the opinion is in written form, the member is exonerated if that particular issue arises.

The committee structure in Congress is bipartisan in the sense that the committees hold equal numbers of Republicans and Democrats and committee staffing is non partisan. Committees have full investigative powers, including the ability to subpoena witnesses, holding hearings, call for documents, etc. One difficulty faced by the House committee in the past was “leaks” from within the committee. Another difficulty was “deadlocks”. If the committee divided on party lines, there was no casting vote to break the deadlock. An affirmative vote was generally needed to dismiss a complaint or to take a complaint to Congress. The Committees have a dual function—to advise and to enforce the code.

It was suggested to the delegation that in some respects, the major objective of ethics committees should be to help members avoid trouble, rather than to enforce standards, for which the committees have been criticised. The committees from time to time become involved in a partisan manner and in such instances an issue cannot be resolved. The committees have also been subjected to considerable pressure from time to time. The delegation was told that it was becoming increasingly difficult to appoint appropriate persons to the committees. A review of various aspects of the ethics regime was currently being conducted, during which there was a moratorium on complaints. The Senate ethics regime appeared to be less rigorous than that of the House.

The detailed rules on gifts have now become very much more strict than was envisaged when they were originally proposed.

The delegation was informed that most recent scandals in relation to the conduct of parliamentarians in the United States have tended to focus on campaign funding. A deep concern was expressed to the delegation that campaign financing was becoming the focus of the parliamentary process.

The delegation was told that lobbying activities were also often at the centre of conflicts of interests and allegations concerning the conduct of legislators. Common Cause, a public interest lobby group with 250,000 members, was formed in response to a perceived need for a group to lobby on good government reform. There was a desire to change government via legislation rather than having a group to study government from a theoretical perspective. The organisation lobbies Congress on a range of issues including campaign finance. Common Cause was supportive of pay increases for congressmen as a means of eliminating problem areas such as the payment of honoraria to members, and was instrumental in revised provisions being adopted in relation to disclosure and limits on funding.

The delegation was advised that unfortunately, ethics in the United States has become a “weapon of choice”. If someone cannot be undermined by policy, ethics can be used as a political weapon. It was considered, however, that blatant conflicts of interest could arise without a code.

The delegation was told that in spite of the rigorous ethics regime operating in the US, the public perception of politicians remained extremely poor. Whilst there had always been a healthy scepticism by the public of politics and politicians, the bad press received by governments as a result of Vietnam and the Watergate scandal had impacted significantly upon the public’s perception of politicians. There had been an unfortunate emphasis by the press and some members on pursuing and exposing “mistakes” by members as a measure of their own “success”. It was thus becoming increasingly difficult to attract people of quality to participate in the parliamentary process. This was also resulting in a general decline in the quality of members.

In New York State there was some support for an advisory board which could give advice, including written opinions. Over time, those opinions would become a sort of common law. It was considered that opinions should be strictly advisory, and should be published and that a member should be able to use a written advice as a defence.

It was emphasised that ethics boards can impact favourably upon members. For example, if a member was to be the subject of a “trial by media”, an ethics board could fully investigate the matter and exonerate that member. This has happened on a number of occasions.

In New York State, financial disclosure statements are confidential except by court order. Members disclose everything; however the dollar amount is redacted for public registers. The New York State code is not complex but it is unintentionally ambiguous and there was now considerable support for the code to be revised to eliminate the loopholes.

5.4 Complaints handling processes and sanctions

5.4.1 *German Bundestag*

If there is a problem with a member’s conduct or personal arrangements, the President in the first instance approaches the member and explains the problem. If the problem remains unresolved, the President refers the matter to that member’s faction leader.

5.4.2 *United Kingdom House of Commons*

The Parliamentary Commissioner for Standards deals with complaints about the misconduct of members. In the last 18 months, the parliamentary commissioner has reported between 12 or 15 times—mainly in relation to comparatively minor “misconduct” issues such as the non-registration of interests. However, his most recent report was 150 pages in length, and covered some 760 pages of evidence. The parliamentary commissioner had the services of a Queen’s Counsel to assist him with that particular inquiry.

The delegation was informed that most complaints are originally sourced from the media. The parliamentary commissioner must have supporting evidence before acting on a complaint and he will not act on frivolous complaints. No action is taken in relation to conduct concerning the private lives of members, and personal conduct is not covered under the code. The personal conduct of a member would only be investigated where it resulted in a conflict with his or her official duties.

A member who is subjected to allegations is given 14 days to make a response to the committee. Lawyers are permitted to provide advice to members who are called before the parliamentary committee, but not to act as advocates. The cost of legal advice to members appearing before the committee is not met by the parliament. Generally speaking, the approach in such inquiries is not adversarial or inquisitorial. Rather, the approach taken is designed to not disadvantage or bias any appeal to the committee.

The parliamentary commissioner can obtain the power to question journalists or others via the standing orders. The power is vested with the committee to which he reports. It has been made clear to the parliamentary commissioner that the committee would, if necessary, make orders and exercise the appropriate authority to enable him to have that power.

Public sanction following misconduct was considered to be penalty in itself. The House of Commons has not inflicted fines for 200 years nor imprisoned anyone for 100 years. In practice, the House is unlikely to conduct itself as a court now, although in theory the power still exists. The lack of any real remedy—apart from public censure, or the expulsion of a member—was perceived to be a weakness of the new system.

5.4.3 *United States*

The complaints handling process is very cumbersome at the federal level. For example, outside groups and individual citizens cannot bring a complaint before the ethics committee unless that person first is able to show that three members had refused to bring the complaint to the committee. However, this is expected to be replaced with a direct access rule. The committee itself may initiate complaints. A complainant must have personal knowledge of the breach being complained of, and hearsay will not be acted upon. For example, reference to a newspaper article would not be acted upon as it would be considered to be information rather than personal knowledge. Members have been criticised for ignoring complaints.

The general rule applied was that substantial evidence would be required before a matter would be referred to any law enforcement agency. The House can vote to release information by a two-thirds vote to allow substantial evidence to go to a special prosecutor. If this does not occur, the House deals with the complaint.

The majority of complaints are from members. As the majority of complaints received have been considered to be frivolous, it is expected that the threshold level for complaints may be eventually raised.

5.5 Ethics counsellors, advisers and education

5.5.1 *United Kingdom House of Commons*

It was suggested to the delegation that a lack of induction education for members may have been responsible to some extent for the problems which the House of Commons had experienced with respect to the ethical conduct of members. Induction of members had now increased substantially, with presentations and seminars for both newly elected and continuing members being conducted by the Registrar of Members' Interests and the Parliamentary Commissioner for Standards. There was enthusiastic support for videos to explain to members the types of services available, and for a comprehensive manual for members that sets out both the services and the associated rules.

The delegation was advised that the Parliamentary Commissioner for Standards had been well received both by the members themselves (including those who were initially apprehensive about the independent nature of the role of the commissioner) and by the public in general. Whether or not the public's perception of MPs has been enhanced by the appointment was presently inconclusive.

A perceived advantage of appointing a Parliamentary Commissioner for Standards was that, unlike a committee process which arguably could be open to manipulation or divisions on political grounds, the commissioner is totally independent of the political process. However, it was stressed that the term "independent" not be used because whilst they had independent standing, they were still accountable to the parliament. It was considered that any such position must be subject to review as necessary, and able to be removed by the House if required. There was some support for the concept of an "elder statesman" being appointed to such a position—particularly if the person enjoyed the confidence of both sides of the House and had already achieved high office. It was considered important that such a person not seek to use the position to further his or her personal ambitions and that the parliamentary commissioner be an officer of the House and thus able to conduct inquiries with the authority of the House.

5.5.2 *United States*

The delegation was told that staff of members frequently contacted the ethics committees to clarify whether or not a particular course of action would fall within the ethics guidelines, and in this respect they found the committees a useful resource.

The delegation was advised that all documents gathered by the Senate committee (in relation to both criminal investigations and committee investigations) belonged to the Senate and were not allowed to be released to other organisations such as the Justice Department without a vote of the Senate.

Some scepticism was expressed about the appointment of former members to positions such as Parliamentary Commissioner for Standards.

6. BENEFITS OF THE STUDY TOUR

The benefits of the study tour will undoubtedly be reflected in the inquiries currently being undertaken by the committee, particularly with respect to its responsibilities concerning a code of conduct for members and its comprehensive review of parliamentary privilege.

7. ACKNOWLEDGMENTS

The committee is grateful for the large amount of documentation that was provided by the various organisations during the course of the study tour. The information gathered will be invaluable in the preparation of the committee's reports to the Legislative Assembly on a code of conduct for members, and on parliamentary privilege in Queensland. A list of the material gathered is at Appendix 1. The documentation is available to members from the committee's secretariat upon request.

The committee would like to thank all those who generously gave their time to meet with committee members and discuss these important issues during the study tour. We also thank all those who assisted in the organisation of the committee's program of meetings. Finally, the committee would like to take this opportunity to acknowledge the assistance of the Parliamentary Travel Officer, Mr Craig Atkinson.

APPENDIX 1

DOCUMENTS GATHERED

The following is a selection of the many documents which were obtained during the course of the study tour. The publications are available from the committee's secretariat, room C.10, Parliament House, on request.

CANADA

1. An Act to revise the Members' Conflict of Interest Act and to make related amendments to the Legislative Assembly Act - Bill 209
2. Annual Report 1994 - 1995, Commission on Conflict of Interest, Legislative Assembly of Ontario
3. Annual Report 1995-1996, Office of the Integrity Commissioner, Legislative Assembly of Ontario
4. Annual Report 1996-1997, Office of the Integrity Commission, Legislative Assembly of Ontario
5. Conflict of Interest and Members of the House of Commons - December 1988
6. Conflict of Interest and Post-Employment Code for Public Office Holders, June 1994
7. Conflict of Interest and Post-Employment Code for the Public Service, October 1985
8. Conflict of Interest in Canada - Comparative Tables 1994
9. Conflict of Interest Rules for Federal Legislators
10. Conflict of Interest: Selected Issues - Background Paper
11. Conflicts of Interest Amendment Act 1997 - Bill 20
12. Implementing the Conflict of Interest Code - The Case of Jane Doe - 1996
13. Lobbyists' Code of Conduct
14. Members' Integrity Act, 1994
15. Members of the Senate and House of Commons Conflict of Interests Act - Legislative Summary - 26 November 1991 - Bill C-43
16. Members' Conflict of Interest Act 1990
17. Members' Conflict of Interest Amendment Act 1992
18. Standing Committee on the Legislative Assembly, Final Report on Referenda, June 1997, Legislative Assembly of Ontario
19. Standing Committee on the Legislative Assembly, Your Ontario, Your Choice: A preliminary look at the referendum alternative, Government of Ontario, August 1996
20. The Conflict of Interests of Public Office Holders Act and Parliament of Canada Act Amendments - Legislative Summary - 18 March 1993 - Bill C-116:
21. The Special Joint Committee on a Code of Conduct for the Senate and the House of Commons - Second Report

FRANCE

22. Report on the program of action against corruption adopted by the Committee of Members, European Parliament
23. Report on the Regime of Parliamentary Immunity, June 1996, Council of Europe
24. Rules Governing the Payment of Expenses and Allowances to Members, European Parliament, January 1997
25. Rules of Procedure, 12th edition, European Parliament
26. Rules of the Procedure of the Assembly and Statute of the Council of Europe, Council of Europe, December 1996

GERMANY

27. Association of Secretaries General of Parliaments, Codes of Conduct for Parliamentary Staff
28. Code of Conduct for members of the German Bundestag
29. Law on the Powers of the Petitions Committee of the German Bundestag
30. Organisation, Responsibilities and Procedures of the Petitions Committee of the German Bundestag
31. Petitions, The Petitions Committee - the Citizens' Advocate

UNITED STATES OF AMERICA

32. General Court of Massachusetts, Ethics Outline for New Legislators
33. Massachusetts State Senate Employee Handbook, January 1997
34. The Lawyer's Code of Professional Responsibility, New York State Bar Association
35. Seminar Materials Prepared for Freshman Legislators, February 27 1997, State Ethics Commission Massachusetts
36. State Ethics Commission Massachusetts, Statement of Financial Interests 1996 Instruction Booklet
37. A Practical Guide to the Conflict of Interest and Financial Disclosure Laws for Elected Officials, State Ethics Commission Massachusetts
38. Final Report Special Commission on Ethics, June 12 1995
39. Legislative Ethics Committee State of New York, Guide to the Legislative Annual Statement of Financial Disclosure
40. State of New York Legislative Ethics Committee Annual Report 1995
41. Rules of the Legislative Ethics Committee
42. Senate Ethics Manual, Select Committee on Ethics United States Senate, 104th Congress 2nd Session, September 1996
43. Report of the Ethics Reform Task Force on H. Res. 168, Recommending Revisions to the Rules of the House and the Rules of the Committee on Standards of Official Conduct with Additional Views, June 17th 1997
44. Historical Summary of Conduct Cases in the House of Representatives, Committee on Standards of Official Conduct, April 1992
45. Financial Disclosure Instructions, Committee on Standards of Official Conduct, US House of Representatives 1997
46. House Ethics Manual, 102d Congress 2d session. April 1992, Committee on Standards of Official Conduct
47. A Guide to Laws on Official Conduct for Legislators and Legislative Staff, March 1997, Senate of the State of California
48. California's Statewide Initiative Process by Charlene Simmons, California Research Bureau, California State Library, Sacramento
49. California's Statewide Initiative Process, California Research Bureau, California State Library
50. Ethics Orientation Course for Lobbyists, Assembly Legislative Ethics Committee Senate Committee on Legislative Ethics
51. Lobbying Disclosure Information Manual, Fair Political Practices Commission
52. Political Reform Act 1997, Fair Political Practices Commission

UNITED KINGDOM

53. Standards in Public Life, Standards of Conduct in Local Government in England, Scotland and Wales
54. Register of Members' Interests as at 31st January 1997, The House of Commons

COMMITTEE MEETING ATTENDANCE RECORD**48TH PARLIAMENT-2ND SESSION**

MEETING DATE	MEMBERS *					
	WARWICK	CAMPBELL	FOURAS	ROSE	ROWELL	SPRINGBORG
4 APRIL 1996	✓	✓	✓	✓	✓	✓
15 APRIL 1996	✓	✓	✓	✓		✓
29 APRIL 1996	✓	✓		✓	✓	✓
13 MAY 1996	✓	✓	✓	✓	✓	✓
24 MAY 1996	✓	✓	✓	✓		✓
8 JULY 1996	✓	✓	✓	✓	✓	✓
22 JULY 1996	✓	✓	✓	✓		✓
24 JULY 1996	✓	✓	✓	✓	✓	✓
5 AUGUST 1996	✓	✓	✓	✓	✓	✓
2 SEPTEMBER 1996	✓	✓		✓	✓	✓
9 SEPTEMBER 1996	✓	✓	✓	✓	✓	✓
7 OCTOBER 1996	✓	✓	✓	✓	✓	✓
14 OCTOBER 1996	✓	✓	✓	✓	✓	✓
15 OCTOBER 1996	✓	✓	✓	✓	✓	✓
28 OCTOBER 1996	✓	✓	✓	✓	✓	✓
11 NOVEMBER 1996	✓	✓	✓	✓		✓
13 NOVEMBER 1996	✓	✓	✓	✓	✓	✓
22 NOVEMBER 1996 (AM)	✓	✓	✓	✓	✓	✓
22 NOVEMBER 1996 (PM)	✓	✓	✓	✓	✓	✓
2 DECEMBER 1996	✓	✓	✓	✓	✓	✓
4 DECEMBER 1996	✓	✓	✓	✓	✓	✓
13 JANUARY 1997	✓	✓	✓	✓	✓	✓
27 JANUARY 1997	✓	✓	✓	✓	✓	✓
30 JANUARY 1997	✓	✓	✓	✓	✓	✓
17 MARCH 1997	✓	✓	✓	✓		✓
24 MARCH 1997	✓	✓	✓	✓	✓	✓
28 APRIL 1997	✓	✓	✓	✓	✓	✓
7 MAY 1997	✓	✓	✓	✓	✓	✓

MEETING DATE	MEMBERS *					
	WARWICK	CAMPBELL	FOURAS	ROSE	ROWELL	SPRINGBORG
26 MAY 1997	✓	✓	✓	✓	✓	✓
2 JUNE 1997	✓	✓	✓	✓	✓	✓
7 JULY 1997	✓	✓	✓	✓	✓	✓
9 JULY 1997	✓	✓	✓	✓		✓
18 AUGUST 1997	✓	✓	✓	✓	✓	✓
25 AUGUST 1997	✓	✓	✓	✓	✓	✓
19 SEPTEMBER 1997	✓	✓	✓	✓	✓	✓
6 OCTOBER 1997	✓	✓	✓	✓	✓	✓
23 OCTOBER 1997 (AM)	✓	✓	✓	✓	✓	✓
23 OCTOBER 1997 (PM)	✓	✓	✓	✓	✓	✓
27 OCTOBER 1997	✓	✓	✓	✓	✓	✓
MEETING DATE	MEMBERS**					
	WARWICK	CAMPBELL	FOURAS	LAVARCH	ROWELL	SPRINGBORG
17 NOVEMBER 1997	✓	✓	✓	✓	✓	✓
24 NOVEMBER 1997	✓	✓	✓	✓	✓	✓
26 NOVEMBER 1997	✓	✓	✓	✓	✓	✓
16 DECEMBER 1997	✓	✓	✓	✓	✓	✓

*Mr Luke Woolmer MLA was also in attendance at committee meetings held on 4 and 15 April 1997. With the reduction in committee membership from seven to six following the introduction of the *Parliamentary Committees Legislation Amendment Act 1996*, Mr Woolmer was discharged from further attendance on the Members' Ethics and Parliamentary Privileges Committee and appointed to the Parliamentary Criminal Justice Committee on 18 April 1996.

**Upon her appointment to the Opposition Shadow Ministry, Ms Merri Rose MLA resigned her position on the committee on 30 October 1997, and Mrs Linda Lavarch MLA was appointed to the committee on 30 October 1997.