The Canadian Provincial Integrity Commissioner: An assessment for adoption in Australia's states*

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Abstract

In contemporary Australian politics parliamentarians continually face media and community accusations concerning conflicts of interest, integrity and ethics. The ratings on honesty and ethics scales of Australian politicians, from a comparatively low historical base, have been continually slipping. An effective institutional response in Australia's States may reside in the appointment of an independent Parliamentary Integrity/Conflict of Interest or Ethics Commissioner, as established in Canada's Provinces and Territories. During the last decade the apparent success of the functioning of the office, creating a body of precedents for the guidance of parliamentarians, has led to its permanence in Canada's Provinces and Territories.

Introduction

The conduct of Members of Parliament and ministers is often the focus of media attention, particularly when the public duty and private interests of parliamentarians conflict. Sometimes, too, these concerns are extended to encompass the institution of Parliament, although it is often viewed separately and frequently accorded higher prestige. Similar sentiments have been expressed in Canada (and other Western polities, including the United States of America). As Canada is a Westminster based

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federal nation, with ‘a similar skeleton’ to Australia,[1] parliamentary reform in Canada invariably has relevance and significance for Australia. During the last decade Canadian provincial parliaments have introduced legislation to create an Office of Integrity Commissioner (or Conflict of Interest or Ethics Commissioner). On this basis it is instructive to review its applicability to Australia’s State parliaments.

Questions about conflict of interest, integrity and ethics in government are not new. Concerns about the propriety of public officials (whether elected or unelected) is something of a perennial concern in the Western democratic tradition, with the actions of the Athenian statesmen Aristedes and Themistocles at times questioned.[2] The duty to exercise the powers of government in a manner which is in accordance with the public interest has been recognised for centuries by philosophers such as Plato, Aristotle, Jean-Jacques Rousseau and Edmund Burke. Plato’s Guardians, who were to rise to their positions based on natural talents, of which a corollary was the inclusion of women, were to live with Spartan simplicity under a kind of military monasticism without private property. This would remove them from the chief temptation to sacrifice the welfare of the whole commonwealth to personal interests. Some of Plato’s prescriptions, typified by his view that the Guardians be shielded from family responsibilities, appear too removed from reality for modern consideration. However, it is reminder that political structures to help ensure integrity in government have a long history.

Without ignoring the prescriptions of the great Western thinkers, key features of the contemporary integrity commissioner legislation from the Canadian provinces will be tabulated before an assessment is made of the utility of this office. In the absence of a critical literature on the topic this exercise will be tentative as the Canadian provincial legislatures are unicameral, whereas the Australian pattern (with the exception of Queensland) is bicameral in each of the States. The continued documentation of low public perceptions of the ethics and honesty amongst Australian parliamentarians suggest that some reforms should be considered. Some steps, particularly the adoption of codes of conduct and registration of members’ pecuniary interests, have been made in several States, but to date the Canadian provincial integrity commissioner model has not been adopted.

Ethics Ratings: Canada and Australia

In the late 1980s and early 1990s several Canadian provinces experienced a series of scandals. Indeed the first ethics commissioner in Canada was appointed in Ontario in 1988 as a result of a series of conflict of interest claims by the Ontario

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1 A. Birch (1955), Federalism, *Finance and Social Legislation: In Canada, Australia and the United States,* Clarendon Press, Oxford, p. xiii.

2 A. Brien (1998), ‘A Code of Conduct for Parliamentarians’?, Research Paper No. 2, 1998–1999, Parliament of Australia, Parliamentary Library, p. 2.

government in the previous two years. British Columbia soon followed suit as it had been rocked by no fewer than seven conflict of interest scandals involving cabinet ministers in the late eighties. Alberta (1991), Saskatchewan (1993) and Newfoundland (1994) then legislated for such an office variously called a Conflict of Interest, or Integrity, or Ethics Commissioner. In Saskatchewan, for instance, a recent book titled *Saskscandal: The Death of Political Idealism in Saskatchewan*,[3] documented how fraud and abuse of public trust by some members of the provincial Progressive Party government between 1982 and 1991 led to more than a dozen convictions and some jail sentences. A few years earlier, two Canadian political scientists, Greene and Shugarman, under the title *Honest Politics: Seeking Integrity in Canadian Public Life*, prefaced their book with the observation that:

> Surveys tell us that Canadians have lost confidence in politicians. After two decades of blatant corruption and ethics scandals both in Canada and abroad, the public's trust in its elected representatives is at an all-time low. Voters are cynical about the likelihood of politicians behaving ethically and dismiss any expectation of honesty in public life as naïve. Yet if we can't rely on our public representatives to act with integrity we are in a serious crisis.[4]

David Zussman, a Canadian public policy expert, recently told an Australian Senate conference focussed on confidence in public institutions of the results of a survey conducted in July 2000 across Canada. It found that 92 per cent of Canadians expressed trust in friends and families. More than 70 per cent trust voluntary organisations and the police. Around 40 per cent of trust in the legal system and, as individuals, public servants. Twenty-nine percent trust the government — one per cent less than the media, and exactly the same for special interest groups. And politicians? They are trusted by 11 per cent of Canadians. Only car dealers are less trusted than politicians. Zussman further claimed that in the 1960s, 80 per cent of Canadians trusted governments to do the 'right thing'. Today this level of support has fallen to 30 per cent.[5]

Many similar findings can be documented in Australia. The Roy Morgan Research Centre has conducted surveys on the ratings for Ethics and Honesty for a wide range of professions over the last quarter of a century. At the top end of the scale are the nursing (predominantly a women's occupational category at 88 per cent in 2000) and pharmacy professions (83 per cent in 2000). There are generally high ratings for dentists, police, State Supreme and High Court Judges, Ministers of religion, engineers and university lecturers. At the bottom end of the scale are State Members of Parliament (12 per cent in 2000) and Federal Members of Parliament (11 per cent in 2000) along with car salesmen, newspaper journalists, advertising

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[3] G. Jones (2000), *SaskScandal: The Death of Political Idealism in Saskatchewan*, Fifth House Ltd., Calgary.

[4] I. Greene and D. Shugarman (1997), *Honest Politics: Seeking Integrity in Canadian Public Life*, James Lorimer, Toronto, p. i.

[5] D. Zussman (2000), 'Confidence in Public Institutions: Restoring Pride to Politics', Department of Senate, Papers on Parliament, No. 38, Parliament House, p. 62.

people, union leaders and estate agents.[6] One approach that drives the readings even lower is to use the term politician rather than parliamentarian. For this reason Members of Parliament sometimes speak of their preference for the label parliamentarian rather than politician.[7] At an individual level there are many exceptions to these ratings, but as a 'class' Members of Parliament have image problems on the important measures of ethics and honesty.

Australian social attitudes researcher Hugh McKay has reported that 'esteem for politicians is so low . . . that voters are dealing with the problem by insulating themselves from it. They repeatedly talk of the need for leadership, of the mongrels in Parliament, of pollies with snouts in the trough . . .'.[8] A recently published research book by Michael Pusey, *The Experience of Middle Australia*, also had one of its themes, the decline of confidence in political institutions, emanating in part from public perceptions of the performances of parliamentarians.[9] The public standing of politicians in Australia has historically been very low. Decades ago Dominion historian, Alexander Brady had said:

> Although British parliamentary practices were accepted, Australians have historically displayed an irreverence towards their politicians. While this is part of a broad reticence to accept authority, a widespread cynicism has been acquired towards politics and government. Politicians themselves are given low status ratings and poor scores on ethics and honesty.[10]

Earlier Lord Bryce, in one of his comparative works, was contemptuous of the low quality of debate and the poor public image of parliamentarians in Australia and Canada. These observations helped K.C. Wheare to claim,

> There is a myth of a golden age of legislatures, and wisdom and oratory and gentlemanly behaviour and public spirit all seemed somehow to flourish and to flourish together. It is difficult to know when this could have been.[11]

There is a need to be conscious of the Brady and Bryce position which contends that standards and images of the past were much poorer than the myth of the golden age suggests. Perhaps it can be asserted that the scholars who visited such Westminster type parliaments in the past recognised that the government versus opposition adversarial model induced antagonistic behaviour. One political scientist has contended that the community's lack of political knowledge means that when the

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[6] Morgan Polls (2000), Finding Number 3349, 9 November 2000 (http://www.roymorgan.com/polls accessed 5/10/2001)

[7] H. Turnbull (2000), in D. Black, and H. Phillips, *Making a Difference: Women in the Western Australian Parliament 1921–1999,* Parliament of Western Australia, Perth, p. 162.

[8] H. Mackay (1998), *Mind and Mood*, Mackay Research Pty Ltd, Lindfield, Sydney, p. 39.

[9] M. Pusey (2003), *The Experience of Middle Australia: The Dark Side of Economic Reform*, Cambridge University Press, Cambridge.

[10] A. Brady (1958), *Democracy in the Dominions: A Comparative Study in Institutions*, Toronto University Press, Toronto, p. 1.

[11] K.C. Wheare (1968), *Legislatures*, 2nd edn, Oxford University Press, p. 156.

ethical issues of parliamentarians' and Minister' daily work suddenly burst onto the television news, many members of the public can't put those issues into an adequate framework of understanding. The public, it is argued, will generally be unaware of political processes and institutions (particularly the dynamics of party competition) within which the political actors work and the potential for unethical activity (perceived or overwise) generated by those processes and institutions. Hence most of the public are likely to fall back on black and white judgements, particularly on matters such as conflict of interest, travel 'rorts', salary and superannuation benefits, allowances, 'branch stacking', the failure of politicians to stick to their promises and even the number of parliamentary sitting days.[12] Some faith may be placed in better political and civic information. However, in addition to greater accountability measures some institutional response should be considered to provide meaningful guidance to parliamentarians and Ministers.

The Canadian Provincial Model: A Conflict of Interest/Integrity/Ethics Commissioner

The response across Canada's provinces to the low ratings of politicians and the undermining of confidence in political institutions, including Parliament, was the creation of the office variously called a Conflict of Interest, Integrity, or Ethics Commissioner. Apart from obligations under the rules and procedures of parliament and the Criminal Code of Canada, the various Integrity Acts provided for a Commissioner to give greater certainty and advice in the reconciliation of private interests and public duties. Importantly, parliamentarians (with minor variations between the Provinces and Territories) are required to file with the Commissioner a confidential statement of pecuniary interests including information as it relates to the Member, the Member's spouse or partner and dependent children and private companies controlled by any of them. The information required includes: all assets, liabilities, and financial interests; all income received from any source; all government contracts; and any fees, gifts or personal benefits exceeding $200 received from the same source in the 12 month period.

From the detailed private returns, the Commissioner prepares an annual public disclosure statement. However, the public disclosure statement does not include specific dollar amounts, unless it is deemed by the Commissioner to be in the public. Once prepared the public disclosure statements are delivered to the Clerk of the Legislative Assembly with these statements being available for public examination. It is a breach of the Act for Members to fail to file a disclosure statement or statements of gifts or benefits, or to fail to comply with the legislation in any way. Surprisingly, the annual reports from the Commissioners indicate some of the Members are tardy with the completion of their disclosure statements by the required dates. This is most prevalent with new Members, perhaps unaware of the

[12] R. Smith (1999), 'Australian solitudes: Citizens, parliamentary party politics, corruption agencies and political ethics', *Legislative Studies*, 14(1), p. 40.

political minefield they have to traverse with conflict of interest, integrity and ethical issues.

Members are prohibited from knowingly being a signatory to a commercial contract with their provincial governments and from accepting gifts or personal benefits connected directly or indirectly with the performance of their duties. If the gift is received as an incident of protocol, customs or social obligations, a disclosure must be made within 30 days of receiving such a gift if it exceeds $200 dollars in value. In Ontario, the Act specifically precludes Members from personal use of promotional awards or points from airlines, hotels, or commercial enterprises as a consequence of their parliamentary duties.

Despite the restrictions, some of the various Acts are specific about the rights preserved by 'backbenchers', who are not members of the various Ministries or Cabinets. In Ontario the *Members Integrity Act* indicates that Members may engage in employment or in the practice of a profession; receive fees for providing professional services; engage in the management of business carried on by a corporation; carry on a business through a partnership or sole proprietorship; hold or trade in securities, stocks, futures and commodities; and hold shares or an interest in any corporation, partnership, syndicate, cooperative or similar commercial enterprise.

On the other hand, Ontario's Members of Cabinet, are intentionally precluded from outside activities. It is specified they shall not engage in employment or the practice of a profession; engage in the management of a business carried on by a corporation or hold an office or directorship, unless holding the directorship is one of the members' duties as a Member of the Executive Council, or the office or directorship is a social club, religious organisation or political party; and a Cabinet Minister shall not hold or trade in securities, or stocks of future commodities.

However, a Minister is permitted to create, subject to the satisfaction of the Commissioner, a 'blind trust' for the management of his or her shares and assets. This may help to erase any conflict of interest accusations although, as Ministers may be reimbursed from the Consolidated Revenue for reasonable fees paid for the establishment and administration of the trust the cost of such transactions has become a cause for concern.[13] Another provision that has created conjecture, this time on behalf of Ministers who have left office, is the requirement that they may not for a period of 12 months (or six months in some instances) accept government contracts, make representations to government on his or her own behalf or on another persons' behalf. Nor are former Ministers able to 'take advantage' of the confidential information they may have acquired in office.

[13] L. Morrison, Interview with Lynn Morrrson, Executive Administrative Officer, Ontario Office of the Integrity Commissioner, by author, Toronto, Ontario, 12 July 2001.

In most provinces requests for the Commissioner to give an opinion as to whether the specified Acts have been contravened can arise from a Member of the parliamentary Assembly who has reasonable and probable grounds for such a request; the Assembly itself may, by resolution, request that the Commissioner give an opinion; and the Cabinet (Executive Council) may also request an opinion.

In Ontario the Commissioner is not only requested to decide if a Member has contravened specific provisions of the *Member's Integrity Act*, but also the broader category of 'Ontario parliamentary conventions'. Alberta, it should be noted, permits members of the public to request reviews. According to its Ethics Commissioner, this provision has not become a vehicle for scores of public attempts to challenge the ethical standards of Members.[14] Of course the Commissioner, in Alberta and the other Provinces, does have scope to reject a request on the basis that it may be trivial or vexatious. However, the Commissioner does not have the authority to initiate an investigation on his or own accord. What does appear to be prevalent is the seeking of 'informal' advice from the Commissioner on a range of potential conflict of interest, integrity and ethical issues. However, as mentioned, formal reviews providing written advice, arise from written requests.

After nearly a decade of operation in the Canadian provinces there appears to be no suggestion that the new institution should be significantly modified or removed from the statute books. Statutory reviews of the operation of the legislation after five years have been favourable, revising public disclosure forms for Members, providing them with compensation for the preparation of returns and extending similar restrictions as Ministers to the Leader of the Opposition (in Alberta). It appears the institution of the integrity commissioner may have halted the decline in the public's perceptions of parliamentarians, or at least prevented more serious instances of conflict of interest in provincial politics. The provincial model, as mentioned, requires the various Commissioners to report to the respective Legislative Assemblies on an annual basis. A Canadian Conflict of Interest Network (CCOIN) has also been established facilitating co-operation between the provinces and developing a valuable body of precedents.

As one review panel member assessing the Alberta Office of the Ethics Commissioner's role said 'the Commissioner ought to be 90 per cent priest and 10 per cent policeman'.[15] This has proven to be very useful advice particularly as the legislation permits Members and Ministers to publish, with their agreement, the written opinion of a Commissioner on any conflict of interest, integrity or ethical matter. Indeed advice and recommendations of the Commissioner are deemed confidential until released by or with the Member's or former Minister's consent. The focus of the office is upon prevention rather than cure.

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[14] R. Clark, Interview with Ethics Commissioner Robert Clark, by author, Edmonton, Alberta, 9 July 2001.

[15] Ethics Bulletin 1997, 'The Role of Alberta's Ethics Commissioner', Office of the Ethics Commissioner, April 1997, Number 6.

While the role of the respective Commissioners is mostly advisory, formal reports must be tabled in Parliament when an authentic inquiry is requested from Members, the Parliament or Ministers (or members of the public in Alberta), concerning an alleged contravention of provisions in the various Integrity or Conflict of Interest Acts. In his or her report the Commissioner may recommend that no penalty be imposed; that the Member be reprimanded; that the Member's right to sit and vote in the Assembly be suspended for a specified period, or under a condition imposed by the Commissioner; and/or that the Member's seat be declared vacant.

It is then the responsibility of the Assembly to approve or reject the recommended penalty. However, the Assembly does not have the power to inquire further into the contravention and impose a penalty other than the one recommended. The Annual Reports include resumes of most of the regular inquiries from parliamentarians and Ministers about the conundrums they face in public life. In most instances the Commissioners appear to adopt a very cautious stand, recommending that Members avoid any suspicion of a conflict of interest. With respect to referred questions, usually from opposing party members, the broad assertion can be made that the Commissioners have been extremely reluctant to deliver adverse reports about Ministers and Members.[16]

To date none of the provincial Assemblies has rescinded a recommendation from a Commissioner. If the Commissioner's recommendation was not adopted it could bring into question the authority of the Office. It may lead to a different perspective being given to the otherwise successful operation of the institution. It is an outcome that needs to be considered if such a newly developed institution was to be transplanted to the Australian political culture of the respective States. The debate over the advantages and disadvantages of such legislation may take the following directions.

Integrity Commissioner Advantages

- Ministers and Members are annually reminded of their individual sources of potential conflicts of interest. The broader question of integrity and ethics in public life would presumably be given focus;
- The public and media have access to a resume of each Member's pecuniary interests and associations and can be confident that procedures are in place to monitor the interests of parliamentarians on an on-going basis;
- Ministers and Members have access to the informed guidance of the Commissioner (senior judges or experienced politicians) on the range of ethical conundrums that can arise;
- A body of provincial precedents has begun to develop to assist parliamentarians across Canada;

[16] Annual Report 1998–1999, Office of the Integrity Commissioner, Legislative Assembly of Ontario, pp. 18–19.

- A set of sanctions is prescribed with the emphasis being upon prevention rather than cure;
- The Office in each jurisdiction has remained necessarily small for confidentiality purposes being limited to the Commissioner, Executive Officer and Secretary. As such the cost of the Office has been is relatively low;
- The Commissioners, with their pronouncements, can contribute to the parliamentary and public awareness of integrity matters; and
- The institution has spread across Canadian provinces and territories. Given the dearth of critical literature, and absence of calls for its abolition, it appears to be filling a possible vacuum in the political system. Indeed the statistical returns indicate an increasing use of the office for advisory opinions.

Integrity Commissioner: Disadvantages

- The institution can be seen to reduce the primacy of parliament;
- The respective Commissioners have been reluctant to make adverse judgements/decisions in their reports, although in Alberta the impact of findings for some politicians has been profound;
- Members have proven (in some provinces) recalcitrant in completing their statements within 60 days.
- The inclusion of spouses and /or family members may raise objections or result in delays;
- The Disclosure Statements when made available to the public do not contain specific details. Critics believe these Statements are inadequate;
- In some provinces the members of the public are able to refer matters to the Commissioner on the grounds that contravention of the Act has taken place. If such a provision was inserted in the legislation for the Australian States it could provide a platform for the influential ‘talk-back’ radio audiences to overload the Integrity Commissioner with investigative roles;
- Enforcement provisions could easily become ‘another battleground’ but this does not appear to have been the case in the Canadian provinces. Although, vexatious and frivolous claims can be ruled out, Members can lodge objections against other Members on the prescribed grounds. In British Columbia the law provides for an investigation on the grounds of a ‘perception’ of conflict of interest;
- Unlike a court of law there is no appeal mechanism despite the discretionary nature of the various Ethic Commissioners opinions;
- The Ontario inclusion of adherence to ‘parliamentary conventions’ could be regarded as extremely broad, giving rise to a range of vague expectations; and
- The Integrity or Ethics Commissioner is an institution primarily to remedy the conflict of interest conundrum for parliamentarians. Its ambit does not encompass other reasons for the lowered ratings of parliamentarians, such as

a lack of decorum in parliament, unfulfilled electoral promises, salary or superannuation levels, or general disenchantment with government.

Some Steps in the States

In the Australian States, as Brien has pointed out, there have been various types of inquiry that have examined the abuse of public trust and ways to prevent its abuse. Whereas in the Canadian provinces an independent office of Integrity Commissioner has been promulgated and implemented, it has been observed in the Australian States that probity may be achieved, by the creation of parliamentary (and public service) codes of conduct.[17] In all State and Territory jurisdictions there are legislative provisions for registers of Members and Ministers interests.

For nearly two decades the Victorian Parliament was the only Australian legislature with a code for members, beyond the Standing Orders, which covered conflict of interest and integrity matters. In 1974 the Qualifications Committee of the Victorian Parliament published a report recommending a code. This was eventually enshrined in the *Members of Parliament (Register of Interests) Act 1978.* As a brief code it focuses on conflicts of interest and includes the statutory requirements for disclosure of interests (including any direct pecuniary interests). There are also two clauses pertaining to Members who are Ministers. The code has not been revisited or revised since 1978. It contains penalties, including a monetary fine, for any 'willful contravention' of the Act as 'a contempt of the parliament'. However, in 1996, when then Victorian Premier Jeff Kennett was accused of confusing private and public interests in his wife's acquisition of 50,000 shares in the Guandong Corporation, the code enshrined in the Act was ineffective (except as a reference) in the political debate surrounding allegations of the Premier's misuse of office.

In Tasmania, after pressure from a minority Greens (who held the balance of power) and a recommendation from the Reform of Parliament Committee 1994 Report, a code was adopted via the device of Standing Orders. This code came into force after the 1996 election and consisted of a preamble (or statement of commitment) followed by an eight-clause Declaration of Principles, including one that stated: 'to promote reconciliation with indigenous Australians'.[18] However, the code did not include any sanctions or disciplinary actions that would transpire if it was not followed, although under legislation, Members are required to report on their interests with a failure to comply leaving them in danger of being held in contempt of Parliament.

In the Australian Capital Territory there is no Code of Conduct for Members, although a Standing Committee on Administration and Procedure has tabled two reports on the issue with a recommendation to adopt such a measure. Members,

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[17] Brien, 'A Code of Conduct for Parliamentarians', p. 7.

[18] See G. Carney, *Members of Parliament: Law and Ethics*, Prospect Media, St Leonards, 2000, p. 406.

however, are required to report their pecuniary interests in accordance with a 7 April 1992 Resolution. Moreover, a Code of Conduct governing Ministers was tabled by the then Chief Minister Kate Carnell on 2 May 1995, with further revisions tabled on 26 August 1998. In the Northern Territory, the Chief Minister, Claire Martin, has recently moved that a draft Code of Conduct and Ethical Standards be referred to the Standing Orders Committee. Members are required to report on their interests under the provisions of the *Legislative Assembly (Register of Members' Interest) Act 1982*.[19]

In South Australia, soon after his election, Premier Mike Rann, announced the introduction of a Code of Conduct for Ministers. The code came into effect on 1 July 2002 and interestingly contains a statement, common in the Canadian provincial legislation, on post separation employment of ministers. Also set in train in February 2003 was a joint committee to introduce a Code of Conduct for all Members of Parliament. Indicative of some of the difficulties was the removal of the 1 October 2003 deadline. Such Members are required, under the provisions of the *Members of Parliament (Register of Interests) Act*, to declare their interests with failure to comply resulting in a fine not exceeding five thousand dollars. Significantly, despite a major public constitutional forum in August 2003, there does not appear to be any momentum for an Integrity Commissioner in South Australia.

Perhaps the most significant development concerning parliamentary codes of ethics has taken place in New South Wales. The impetus came from the so-called Greiner-Metherell Affair, which eventually led to the resignation in 1992 of Premier Nick Greiner after adverse rulings by the Independent Commission Against Corruption (ICAC). The subsequent successful judicial appeal identified the need for a parliamentary code, suggesting the types of behaviour that would be grounds for a Member's or Minister's dismissal or resignation. Thereafter, with Independents playing a prominent role, the Code of Conduct cause was pursued, resulting in 1994 in amendments to the *ICAC Act 1988*. These amendments provided for the establishment of Standing Committees in each House with the specific purpose of drafting codes of conduct for its Members of Parliament. Under the purview of the ICAC and the media the Committees pursued the question through research, several public hearings and various reports, which helped prompt interest in MPs' codes with other Australian parliaments.

The codes formulated by the respective New South Wales Houses were markedly different and there were reports of tensions between the Committees.[20] Different functions and procedures in the two Houses are features of bicameral Parliaments and this gave ammunition to members who held doubts about the merits of the code. It also led to Executive intervention in the process, with Premier Carr and his upper

[19] D. McKeown (2003), 'Codes of conduct in Australian and some overseas parliaments', Parliament of Australia, Parliamentary Library, p. 6.

[20] N. Preston (2001), 'Codifying Ethical Conduct for Australian Parliamentarians 1990–1999', *Australian Journal of Political Science*, 36 (1) p. 50.

house Attorney General releasing their less discursive version of a Code of Conduct. In fact it was labeled 'the credit card code' because the Deputy Clerk had it printed on the size of a credit card, demonstrating how limited it was in length.[21] The respective Standing Committees, particularly that of the Legislative Council, responded with concern about the government's action.

Eventually, though, on 1 July 1998 the Legislative Council, following the endorsement by the Legislative Assembly of what became known as the Premier's Code, approved that code as an amendment to section 9 of the *ICAC Act*. The code as adopted covered six topics: disclosure of conflict of interest, bribery, gifts, use of public resources, use of confidential information and duties as a Member of Parliament.[22] Following the adoption of the code in New South Wales, both Houses resolved in September 1998 to appoint a Parliamentary Ethics Adviser. However, this emanated from a resolution of both houses and was not a statutory appointment. No clear picture has emerged about the impact of the Ethics Adviser but it has been generally thought that an adviser lacks sanctions and status 'to make a difference' and is a far cry from the Canadian Provincial model.

The idea of an Ethics Counsellor, or Independent Commissioner, for Parliamentarians was suggested by the Commission of Government (COG) appointed in Western Australia in the wake of the Royal Commission into Commercial Activities of Government and Other Activities (1992), widely known as the WA Inc. Royal Commission. As the latter had painted a dark picture about the ethical standards of public officials, including Ministers and parliamentarians, more detail has been provided. Drawing on the influential House of Commons Nolan Report (1995), which had sought the appointment of a Parliamentary Commissioner for Standards, the Western Australian COG set down a series of steps. Both the Legislative Assembly and Legislative Council, after establishing respective Standing Committees, should prepare a code of conduct for Members. Once approved a Code of Conduct (including a ministerial code of conduct) should be tabled in the Parliament. Importantly, too, COG considered the Standing Committees should prepare and conduct induction programs and continuing education on ethical issues for new Members. If regular reviews of the effectiveness of the approved Codes of Conduct, and the performance of respective Standing Committees, was found to be inadequate, then the Parliament was to appoint an Independent Commissioner to be responsible for overseeing the ethical standards for members of Parliament.[23]

The Court-Cowan Coalition did not follow the recommendations concerning Parliamentary Committees and a Code of Conduct or an Independent Commissioner. However, on the advice of the WA Inc. Royal Commission the

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[21] M. Burgmann (2000), 'Constructing Legislative Codes of Conduct', Department of Senate, Papers on Parliament, No. 35, Parliament House, Canberra, p. 81.

[22] Preston, 'Codifying Ethical Conduct for Australian Parliamentarians 1990–1999, p. 51.

[23] Commission on Government, Report No. 3, Western Australia, Perth, 1996, p. 173.

Coalition Government had acted as early as 1994 to introduce a *Public Sector Management Act* and to establish a Commissioner for Public Sector Standards. The Commissioner has the responsibility to produce a code of ethics for the public sector and to assist individual agencies in developing Codes of Conduct.[24] This public sector ethics regime was in broad terms similar to that which had been adopted in Queensland in the post Fitzgerald reforms. In Queensland, the ethics provisions did not initially apply to State Parliamentarians or elected local government officials, though local government employees were covered. However, in 1999 legislation was passed to establish an Integrity Commissioner under the *Public Sector Act 1994*. A range of designated persons may seek access to the Integrity Commissioner. Included in this list of designated persons is the Premier, Ministers, Parliamentary Secretaries and Members of Parliament, in addition to a range of public servants and ministerial staff. The Integrity Commissioner is not an officer of the Parliament but in 2001 the Queensland Legislative Assembly introduced a Code of Ethical Standards for Members. Included in a 'Statement of Fundamental Principles' was a requirement that Members strive to avoid any action which may diminish the standing or dignity of the Parliament.

During the campaign in early 2001 which led to the election of the Gallop Labor government in Western Australia, the party had produced a pamphlet headed 'Restoring Integrity in Public Policy'. The *Members of Parliament (Financial Interests) Act 1992* was to be strengthened and a parliamentary code of conduct introduced. Within weeks of taking office a Ministerial Code of Conduct was implemented, to be administered by a senior public servant as recommended by COG. It appears, however, that the Premier has the final determination as to whether a conflict of interest exists. This may be a weakness in the schema, avoided in the Canadian provincial model, as the Premier is often likely to be driven in his considerations by the political outcomes of his decisions. The Premier's task should not be underestimated. One of the reasons given for the eventual electoral demise of previous Premier Richard Court was his determination to retain Ministers, despite apparent breaches of probity (including those of the National Party over which he had less 'control'). Even on the eve of the 2001 State election, a backbencher, Geraldton MLA Bob Bloffwitch, had become entangled in conflict of interest allegations (emanating from an internet probe by an Independent candidate). Under the Canadian Commissioner model the financial interests of the backbencher would have been known to the Parliament and public. This damaging episode, which helped to cement a public impression that the incumbent government had not given sufficient attention to integrity matters, could have been avoided. Even in this case the provisions of the *Members of Parliament (Financial Interests) Act 1992*, requiring Members to declare their pecuniary interests, could have been exercised although failure to comply renders the member guilty of contempt, requiring the appropriate House to take action.

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[24] Report of the Royal Commission Into Commercial Activities of Government and Other Matters: Part 11, 1992, Western Australia, pert, 6.5.

The Gallop government on 28 August 2003 did incorporate a Code of Conduct in the Legislative Assembly Standing Orders, but an earlier Procedure and Privileges Committee Report explicitly rejected the creation of an Ethics Advisor. A dissenting Minority Report, a bitter personal debate in the Assembly and the failure of the Legislative Council to adopt a Code of Conduct did not auger well in Western Australia. The Gallop Labor Ministerial Code requires Ministers, upon appointment, to resign from all directorships in public and/or private companies (although there are to be some exceptions for family farms and family businesses). Ministers are required to disclose to the Premier on a confidential basis all pecuniary and other interests of his/her spouse and dependent family. There is a requirement for Ministers to resign from all positions held in business, professional associations and trade unions. Standards, too, have been specified governing Ministerial expenses, travel, gifts, official conduct, use of confidential information, relationship with the public service and conduct during the caretaker period. Should, however, the Gallop government have grasped the opportunity to opt for the Canadian Commissioner model?

Conclusion

Conflicts of interest, integrity and ethics in government concerned the ancients. In contemporary politics it is a problem that cannot be ignored. The ratings on honesty and ethics scales of politicians have been slipping, from a comparatively low base, over the last quarter of a century. All parliamentary jurisdictions in Australia require a register of pecuniary interests. The formulation and adoption of parliamentary and Ministerial codes, may be a step in the right direction although the parliamentary Codes of Conduct have not been accompanied with enforceable sanctions. Induction programs incorporating greater awareness of the ethical responsibilities of elected officials appear to be long overdue. More significantly, though, an effective institutional response for Australia's States may be the appointment of the Canadian model's Provincial Integrity/Conflict of Interest or Ethics Commissioner. This office would also have educational, induction and advisory functions and develop a body of precedents for the guidance of parliamentarians. Its benefits, however, would tend to be restricted to the conflict of interest and travel entitlements dimensions of the low ratings of parliamentarians. It may also undermine the primacy of parliament and raise a range of compliance issues. Poor decorum, the remuneration of politicians, broken promises and the performance of parliament would be outside the jurisdiction of the office. Perhaps the answer may become clearer if the functions of such an institution could be linked to a broader body of evidence from Canada, particularly any future higher ratings of parliamentarians and parliament in the Canadian provinces. ▲