

Research Paper

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Code of Conduct and Ethics for Parliamentarians: A Comparative Study of France, Australia and Canada



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Executive Summary

This paper examines parliamentary Codes of Conduct. The main focus is on comparative experience in the introduction and use of such codes, through the study of selected countries. The paper reviews the parliamentary Codes of Conduct in operation in Canada and France, and the Code being introduced in Australia, examining the following aspects: origin and emergence of the Code; objective of creating a Code; specific qualities of the Code; how the Code is enforced; operation of the Code of Conduct; whether the Code applies to both houses of parliament; any penalties included in the Code; and the issues surrounding the introduction and implementation of the Code. Based on this experience, the paper also details steps to be taken in producing a Code of Conduct, with application to the Cambodian Senate in mind.

Codes of Conduct are primarily a tool to foster public trust of parliamentarians. The reviewed Codes of Conduct achieve this through two means. Firstly, a Code of Conduct establishes a guide for acceptable behaviour which a parliamentarian should abide by, principally in political and economic relationships. Secondly, an independent officer is appointed¹, whose most important function is to investigate and publicise the parliamentarians' financial interests and economic relationships, as well as possible conflicts of interests and any breaches of the Code of Conduct. It can be argued therefore that a major deterrent against parliamentarians breaching the code is the effect on public opinion, rather than penalties defined in the Codes of Conduct.

The finding from this paper most applicable to the possible development of a Cambodian Code of Conduct is the need for broad political support and consultation for such a measure. This is particularly necessary for two reasons. Firstly, as a parliament itself is ultimately responsible for enforcing a Code of Conduct, it is necessary for all major political parties to support its introduction and continued operation. This requires that all major political parties are involved in its development. Secondly, it is important to undertake the necessary consultations and research to ensure that the correct balance is struck, between ensuring that parliamentarians' behaviour is ethical but not limiting the liberties necessary for them to fully and freely perform their duties as parliamentarians.

¹ With the exception of the French Senate, which instead, utilizes an internal committee to apply their Code of Conduct.

Introduction

Codes of conduct are a relatively new development in parliamentary affairs. Broadly speaking, discussion of their introduction commenced just over thirty years ago. Of the three countries surveyed, Australia has yet to introduce a Code of Conduct, Canada finalised theirs in 2005, and France introduced a Code of Ethics for the National Assembly in 2011 and Ethics Principles for the Senate in 2009.

Codes of Conduct, often also referred to as Codes of Ethics, can be separated into two categories: the prescriptive and the aspirational. Canada has adopted a prescriptive model, which details specific actions and relationships that are not permissible. This is in contrast to the aspirational approach adopted by Code of Ethics in France (and currently proposed in the Code of Conduct in Australia), whereby the code represents a set of values which parliamentarians should aim to abide by. This model does not attempt to comprehensively list what is improper, and instead allows for the relevant parliamentary body to determine impropriety on a case-by-case basis.

It should be kept in mind that explicit Codes of Conduct and Ethics only represent part of the regulations which govern parliamentarians' behaviour. This is true of France and Canada, where various criminal, civil and administrative laws, and parliamentary regulations also regulate parliamentarians. In Australia, such legal instruments are the only moderator of parliamentarians' actions, and there is no Code of Conduct.

Thus, as corrupt, unlawful actions are already prescribed through various laws and regulations, it is apparent that Codes of Conduct and Ethics are most often introduced as a tool to promote public trust in parliamentarians, and a guide for parliamentarians to measure their actions against. Lastly, the surveyed Codes of Conduct provide for a high degree of transparency regarding parliamentarians' vested interests and financial relationships. This transparency, and the public pressure that it places upon parliamentarians, further promotes behaviour which is in the public rather than private interest.

This paper will investigate Codes of Conduct, and their applicability to Cambodia, in five sections. The first section will provide a brief description of Codes of Conduct and Ethics. Sections two, three and four will deal with the status and nature of parliamentary Codes of Conduct and Ethics respectively in Australia, Canada and France. Finally, section five will discuss the possible steps toward establishing a Parliamentary Code of Conduct for the Cambodian Senate.

I. Code of Conduct versus Code of Ethics

The terms Code of Conduct and Code of Ethics are often used interchangeably and sometimes their meaning is hard to differentiate. It is hard to give a precise meaning of what is meant by a “*Code of Ethics*” and there is a certain ambiguity in defining it among practitioners. The term could cover various professional areas such as medicine, and the legal profession. However, it is usually interchangeable with the term “*Code of Conduct*”. Both terms are generally seen as “*any set of guidelines intended to inspire or impose proper conduct or ethical behaviour among an identifiable group*”².

However, there may be some difference regarding how prescriptive and specific they are, as “*more general documents are called Codes of Ethics, while more specific documents are called Codes of Conduct*”³. Under this view, a “*Code of Ethics*” could be defined as “*a set of ethical principles, ideals or values of an organization*”⁴, whereas a “*Code of Conduct*” is a “*set of rules or standard for behaviour, generally grounded in the functions of the organizations to which they apply. They are usually more specific in what they prescribe and proscribe than are Codes of Ethics*”⁵. As a consequence, a Code of Ethics would then, under this view, set out general principles which are usually vague in what it prescribes or prohibits and does not usually contain mechanisms for their implementation or enforcement⁶, whereas a Code of Conduct includes statements of inspiration, prescriptions and prohibitions associated with a sanction⁷. Despite these differences, both Codes of Conduct and Codes of Ethics generally try to achieve the same goal – i.e, to promote a set of principles to guide parliamentarians’ behaviour in carrying out their duties.

II. Code of Ethics and Ethics Principles: France

France has a bicameral parliament with the National Assembly as the lower house and the Senate as the upper house. Whereas the National Assembly is intended to represent the French people as a whole, the Senate aims to represent the French “*Collectivités territoriales*” (*local bodies*)⁸.

² King Prajadhipok’s Institute, *Codes of conduct for parliamentarians*, February 2008, p. 7.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*, p. 8.

⁶ Commission on Government. Commission on Government, Report No 3, Perth, Western Australia, 1996, p. 148.

⁷ King Prajadhipok’s Institute, *Codes of conduct for parliamentarians*, February 2008, p. 7.

⁸ They are local entities of France, comprising *Régions*, *Départements* and *Communes* along with *Collectivités d’outre-mer* (*French Overseas Territories*).

1. Origin and Emergence of the Code of Ethics and Ethics Principles

Until recently, France did not have a specific set of laws or a Code of Ethics regulating the performance of parliamentarians' duties. Their rights and duties were prescribed in the Constitution, in the Electoral Code, in general legislation and in the internal rules of the Senate and/or the National Assembly.

The French Constitution (the "French Constitution")⁹, it states that "[n]o Member [of Parliament] shall be elected with any binding mandate." (Article 27.1). The implication is that parliamentarians are supposed to represent people as a whole and not to defend any particular interest – whether local or personal.

Provisions of the Criminal Code dealing specifically with corruption¹⁰ otherwise apply to parliamentarians (and other elected officials)¹¹.

A 1988 law¹² first imposed financial disclosure requirements on, inter alia, parliamentarians – with limited success given that next-of-kins were for instance not covered by the requirement and that the law provided for no sanctions in cases of non-compliance.

Furthermore, the Internal Rules of the Senate¹³ (the "Senate Rules") set out the obligation that Senators must be present in Commission meetings (Article 15.1 of the Senate Rules). Non-compliance may result in sanctions being imposed by the President of Senate at the request of its Standing Committee (*Bureau*) (Article 15.3 of the Senate Rules). The sanction for three consecutive absences from a standing commission is expulsion from the commission together with a 50% reduction of the parliamentarian's indemnity until the next session (Article 15.3 of the Senate Rules). Similar provisions are also prescribed by Article 42 of the Rules of Procedure of the National Assembly (the "National Assembly Rules")¹⁴, which states that "[t]he presence [of commission members] in meetings of commissions is obligatory" and a 25% reduction of the parliamentarians' monthly indemnities is triggered by each absence.

⁹ For an official English translation – see: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october-1958.25742.html>

¹⁰ See, eg., Article 432-11 of the French Criminal Code.

¹¹ *Parliamentary Code of conduct in Europe, An overview*, Dick Toomstra, ECPRD, European Parliament, 2001.

¹² Law No. 88-227 of 11 March 1988 on Financial Transparency in Political Life (*Loi relative à la transparence financière de la vie politique*), available at : <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000321646&fastPos=1&categorieLien=cid&oldAction=rechTexte> (French only)

¹³ Rules of Procedure of the Senate available at: http://www.senat.fr/reglement/reglement_mono.html#toc40 (French only)

¹⁴ Rules of Procedure of the National Assembly available at: http://www.assemblee-nationale.fr/connaissance/reglement.asp#P718_60974 (French only)

The Internal Rules of both houses also prescribe disciplinary sanctions for “unparliamentary” conduct during plenary sessions, such as (in order of increasing seriousness) a warning, a warning recorded in the minutes, censure, and censure with temporary exclusion¹⁵ (Article 92 of the Senate Rules and Article 70 of the National Assembly Rules). “Unparliamentary conduct” may include “[a]ny personal attack, any demonstration or interruption that disrupts public order” (Article 40.1 of the Senate Rules) and “[a]ny demonstration or interruption that disrupts public order” and “[a]ny personal comment” or “[a]ny insults, provocations or threats” (Article 71. 2 and 71.5 of the National Assembly Rules).

2. Objectives of Creating the French Code of Ethics and Principals

A number of factors such as negative media coverage, a low image of parliamentarians by the public, poor attendance of parliamentarians during parliamentary meetings and economic difficulties experienced by French citizens all contributed to the realization that ethical questions needed to be addressed¹⁶. As noted above, this led to the adoption of Codes of Ethics and reinforced sets of rules of conduct for parliamentarians.

3. Specific Qualities of the French Code

The upper and lower house of the French Parliament each opted for a different approach. By decision of the Standing Committee of 6 April 2011 (the “2011 Standing Committee Decision”)¹⁷, the National Assembly adopted a general framework against conflicts of interest which includes:

- a 6-point Code of Deontology (*Code de déontologie*) (the ‘Code’)¹⁸ :
 - (i) public interest (*intérêt général*)
 - (ii) independence (*indépendance*)
 - (iii) objectivity (*objectivité*)
 - (iv) responsibility (*responsabilité*)
 - (v) probity (*probité*)
 - (vi) exemplarity (*exemplarité*)
- the compulsory filing by all incoming parliamentarians of a ‘declaration of interest’ listing their (and their spouse’s, partner’s, descendants and/or

¹⁵ Code de conduite et régime parlementaire en France, available at : <http://recueil.apf-francophonie.org/spip.php?article16> (Retrieved on 17 October 2013).

¹⁶ Marc Deschamps, *Quand la déontologie fait son entrée officielle à l’Assemblée nationale...des questions juridiques et institutionnelles surgissent*, available at : http://hp.gredeg.cnrs.fr/Marc_Deschamps/Pdf/AN.pdf (Retrieved on 17 October 2013).

¹⁷ Available at http://www.assemblee-nationale.fr/qui/bureau_deontologie.asp

¹⁸ Available at http://www.assemblee-nationale.fr/qui/code_deontologie.asp

ascendants) financial interests or assets that could create a situation of conflict in the performance of their duties¹⁹. Parliamentarians also have to declare, in the course of their mandates:

- (i) any modification to their declaration of interests’;
 - (ii) any gift or favour received which is in excess of 150 Euros; and
 - (iii) any travels financed (in whole or in part) by any individual or corporation.
- the appointment of an independent ethics commissioner (“*déontologue*”)²⁰.

The Senate’s Standing Committee (*Bureau*) had itself earlier adopted a decision on 25 November 2009 (the “2009 Standing Committee Decision”)²¹ by which a Senate Deontology Committee (*Comité de déontologie*) was formally established.

4. How the Code is Enforced

The Senate opted for an internal mechanism to assure ethics principles are adhered to. In doing so, it established an Ethics Committee composed of senators from all political parties: “[a]n Ethics Committee of the Senate comprising one senator per political group is established alongside the President and the Standing Committee (*Bureau*) of the Senate (Article 1.1 of the 2009 Standing Committee Decision)”. Once constituted, members of the committee elect their President and a Vice-President (Article 1.2)²². The composition of the committee is renewed every three years (aligned with the Senate 3-year half re-election period), and; one member cannot be re-appointed more than twice (Article 3). Committee members do not receive any extra indemnities or any special privileges for carrying out their duties as members of this committee (Article 4).

The Senate Ethics Committee is a consultative body, providing advice on the request of the President of the Senate or of its Standing Committee. It does not have authority to volunteer advice or opinions on ethics issues on its own initiative. Its jurisdiction is limited to dealing with “[...] ethics issues relating to the conditions in which Senators exercise their mandate and how the Senate functions” (“*les questions d’éthique concernant les conditions d’exercice du*

¹⁹Article 4 of the 2011 Standing Committee Decision and Article 5 (*Probité*) of the Code.

²⁰<http://www.assemblee-nationale.fr/qui/deontologie.asp>

²¹ Available at

http://www.senat.fr/fileadmin/Fichiers/Images/role/arrete_bureau_creation_comite_deontologie.pdf (French only)

²²Currently, the Senate Ethics Committee is presided over by Ms. Cathérine TASCA (Groupe PS), assisted by a Vice-President Mr. Jean-Léonce DUPONT (Groupe UC-Union des Démocrates et Indépendants) and composed of 4 members: Mr Nicolas ALFONSI (Groupe RDS-Rassemblement Démocratique et Social européen), M.s Eliane ASSASSI (Groupe communiste publicain et citoyen), Mr. René GARREC (Groupe UMP) and Ms. Hélène LIPIETZ (Groupe écologiste).

mandat des Sénateurs et le fonctionnement du Sénat”) (Article 2)²³. In practical terms, the Ethics Committee is only an advisory body with no powers to enforce sanctions passed against Senators for ethics violations.

The National Assembly’s 2011 Standing Committee Decision established an Ethics Commissioner (*déontologue*). The Ethics Commissioner is an independent person appointed by 3/5 of the members of the Standing Committee (*Bureau*) after being nominated by the Standing Committee’s President with the consent of at least one President of an opposition political group²⁴. The Ethics Commissioner is responsible for: (i) receiving from and advising parliamentarians on declarations of interests; and (ii) producing an annual report on implementation of the Code in the past year, together with any recommendations.

The Ethics Commissioner is also responsible for alerting the President of the National Assembly and the concerned parliamentarian on any breach of the Code (Article 5 of the 2011 Standing Committee Decision). If the parliamentarian challenges the Ethics Commissioner’s findings or does not intend to comply with the remedial measures proposed by the Ethics Commissioner, the latter reports the case to the President of the National Assembly, who will in turn submit it to the Standing Committee. The Standing Committee must decide on the case within two months. The procedure is, at this stage, confidential (paragraph 1 of Article 5 of the 2011 Standing Committee Decision). The Standing Committee may request to hear the parliamentarian who, in turn, is also entitled to be heard by the Standing Committee if he/she so requests (paragraph 2 of Article 5 of the 2011 Standing Committee Decision). If the Standing Committee concurs with the Ethics Commissioner that a breach of the Code has indeed been committed, its conclusions are made public and the parliamentarian is requested to take all measures to remedy the situation (paragraph 3 of Article 5 of the 2011 Standing Committee Decision).

Unlike the Senate Ethics Committee, the Standing Committee of the National Assembly, if and when notified of a breach by the Ethics Commissioner, has the authority to take action and/or make public its conclusions against any representative (*député*).

5. Operation of the French Code of Ethics

The National Assembly’s Code of Ethics is operated under the supervision of an independent Ethics Commissioner, whereas in the Senate, monitoring and evaluation of compliance with ethics principles are assigned to an internal Ethics Committee. The mechanism adopted by the National Assembly arguably guarantees greater independence and lesser risk of conflicts of

²³Art. 2 of the 2009 Standing Committee Decision.

²⁴The Ethics Commissioner is currently Mrs Noël Lenoir, a former civil servant of the Senate, lawyer, former member of Conseil d’Etat (administrative supreme court), a current member of the constitutional council and a professor of law <http://www.assemblee-nationale.fr/qui/deontologie.asp>.

interest than that of the Senate. However, neither the National Assembly nor the Senate as a whole have powers to pass and enforce sanctions. Implementation is in both instances left to the Standing Committee of each house which is solely entitled to take appropriate measures.

6. Does the Code Apply to both Houses of Parliament?

As stated above, each house of the French Parliament have adopted separate rules, through, respectively the 2009 Standing Committee Decision (for the Senate) and the 2011 Standing Committee Decision (for the National Assembly). Each has a different approach in dealing with ethical issues. The Senate has opted for an internal oversight mechanism, whereas the National Assembly has elected to delegate oversight to an independent individual and entrusted its Standing Committee with adjudication powers in case of an alleged breach of conduct by any of its members.

7. Penalties Included in the Code

Ethics principles are considered to be guidelines or moral values that should be adhered to in order to prevent conflicts of interest or corruption.

Rather than penalties being imposed under 2009 or 2011 Standing Committee Decisions, parliamentarians are ultimately accountable to their electorate to act in a proper and ethical manner.

Sanctions applicable under general legislation (eg. Criminal Code) (including sentencing to prison time, fines and/or ineligibility) may however also be triggered by disclosure of a breach of either parliament house's ethics rules.

8. Issues Surrounding the Implementation of the Code

A recent scandal involving a Budget Minister (and former head of the National Assembly's Commission for Finance, Economy and Budget Control) and secret foreign bank accounts highlighted the need for reinforced principles and guidelines for parliamentarians²⁵. This led to the adoption on 17 September 2013 by both houses of two draft laws initiated by the government aimed at 'moralising public life'- including one Organic Law applicable to parliamentarians only²⁶ and one ordinary law applicable to other elected officials, members of

²⁵ For more details: http://www.lemonde.fr/politique/article/2012/12/10/si-vous-n-avez-rien-suivi-de-l-affaire-cahuzac_1804062_823448.html.

²⁶ Organic law No. 2013-906 of 11 October 2013 relative to "Transparency in Public Life", available at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028056223&dateTexte=&categorieLien=id> (French only)

government and senior civil servants²⁷. The set of laws called for more transparency on the conduct, activities and possible conflicts of interest of parliamentarians, other elected officials, members of government and senior civil servants. The laws were published and became effective on 10 October 2013 following their review and partial amendment by the Constitutional Council²⁸.

Focusing on the organic law applicable to parliamentarians, key provisions of the law now includes:

- (1) the obligation for all parliamentarians to publish a stricter ‘declaration of interests’, by which they must declare all their private activities whether they are paid or unpaid and those declarations have to be made public and are available to the public on the internet with the aim of preventing conflicts of interest
- (2) Secondly, the law provides for the creation of a “*High authority of transparency*”(Haute autorité de la transparence)²⁹ composed of six high judges and four qualified persons from outside of parliament, elected by the National Assembly and the Senate for six years with authority to control the public declarations of parliamentarians³⁰.

This new legal measure adding to ethics principles and the Code of Ethics seem positively welcomed by French citizens. An opinion poll showed that six tenths of citizens approved it³¹.]

III. Australia

1. Origin and Emergence of the Code of Conduct

The Australian federal parliament does not have a Code of Conduct for either house, despite the issue having been discussed by parliament for over 30 years³². Instead, the conduct of

²⁷Law No. 2013-907 of 11 October 2013 relative to “Transparency in Public Life”, available at <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028056315&dateTexte=&categorieLien=id> (French only)

²⁸Constitutional Council Decision No. 2013-675 DC of 9 October 2013(organic law) available at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2013/2013-675-dc/decision-n-2013-675-dc-du-09-octobre-2013.138242.html> (French only); Constitutional Council Decision No. 2013-676 DC of 9 October 2013 (ordinary law) available at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2013/2013-676-dc/decision-n-2013-676-dc-du-09-octobre-2013.138228.html> (French only)

²⁹<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028056223&dateTexte=&categorieLien=id>

³⁰http://www.lemonde.fr/politique/article/2013/09/17/dernier-acte-pour-les-textes-sur-la-transparence-de-la-vie-publique_3478047_823448.html

³¹<http://www.bfmtv.com/politique/declaration-patrimoine-une-majorite-francais-sont-492204.html>

³²Deirdre McKeown. 2012. *Codes of Conduct in Australian and Selected Overseas Parliaments*. Department of Parliamentary Services. Canberra. p. 5.

parliamentarians is subject to a number of rules in the Constitution, civil and criminal law, *Commonwealth Electoral Act 1918*, *Parliamentary Privileges Act 1987*, standing and sessional orders (which stipulate the procedures and regulations of the House), resolutions of the House, and Register of Members' and Senators' Interests. Additionally, the conduct of ministers is also subject to the *Standard of Ministerial Ethics*³³.

However, Australia is in the later stages of implementing a parliamentary Code of Conduct. In late 2011 a draft Code of Conduct was compiled by the House of Representatives Standing Committee of Privileges and Members' Interests, in consultation with the Senate's Committee of Senators' Interests Committee³⁴, and submitted to both houses for discussion. Influenced by both the Canadian and United Kingdom experience of introducing parliamentary Codes of Conduct, the proposed Australian code would not be a prescriptive code with detailed rules, but rather an aspirational code that puts forward a set of principles to which parliamentarians must abide, as exists in the United Kingdom³⁵. Also like the United Kingdom's approach, an Australian Code of Conduct is expected to be created through a resolution of the house, which is an official decision, rather than a law, adopted by the house through a vote³⁶. The advantage of this approach is that the proposed code of conduct is sufficiently flexible to be applied to new issues as they arise, and the code remains under the jurisdiction of the parliament rather than the courts, thus preserving a separation of powers and allowing the parliament to modify the code as necessary³⁷.

2. Objectives of Creating the Australian Code of Conduct

The objective of an Australian Code of Conduct would be to raise both the standard and the public perception of parliamentary behaviour³⁸. This signifies that a Code of Conduct serves two purposes: one public and the other institutional. The public purpose of a Code of Conduct is to create a publicised standard by which to judge the acceptability or unacceptability of parliamentarians' behaviour, and to which parliamentarians are held to account, thus increasing the public's perception of parliamentarians' professionalism. Institutionally, a Code of Conduct can provide a basis to develop a standard of behaviour which can be enforced against parliamentarians', in order to establish norms of conduct which are beneficial to democratic government³⁹. A third, less significant, reason for establishing a Code of Conduct is to compile the collection of rules from various sources which currently regulate parliamentary behaviour into one definitive text.⁴⁰

³³ *Codes of Conduct*. p. 3.

³⁴ House of Representatives Standing Committee of Privileges and Members' Interests, 2011. *Draft Code of Conduct for Members of Parliament Discussion Paper*.

³⁵ *Draft Code of Conduct*. pp. 29-35.

³⁶ *Ibid.* pp. 8-9.

³⁷ *Ibid.* pp. 29-32.

³⁸ *Codes of Conduct*. p. 1.

³⁹ Andrew Brien, 1998. *A Code of Conduct for Parliamentarians*. Department of the Parliamentary Library, Canberra. p. iii.

⁴⁰ *Draft Code of Conduct*. p. 22.

3. Specific Qualities of the Australian Code

The proposed Australian Code of Conduct would apply to all aspects of parliamentarians' public lives, but not their purely personal lives⁴¹. The proposed code is aspirational, rather than prescriptive. This means that rather than including an exhaustive lists of do's and don'ts, it instead sets a standard of integrity for parliamentarians to aspire to. As such, the proposed code does not contain any new burdens, but instead compiles existing legal requirements and parliamentary customs into one document. Broadly, its key principles are: law abidance, diligence and economy; respect for the dignity of others; integrity; and the primacy of public over private interest⁴².

4. How the Code will be Enforced

The enforcement of the proposed Code of Conduct involves the creation of a new committee in each house, and a joint commissioner. The Committee of Privileges, Ethics and Members'/Senators' Interests would appoint an independent Parliamentary Integrity Commissioner who would take complaints, instigate and oversee investigations⁴³. The Commissioner's findings would then be reviewed by the Committee of Privileges, Ethics and Members'/Senators' Interests, who would recommend sanctions as necessary. These sanctions would be enforced by the Speaker or President of the respective house of parliament, under their powers granted in the Standing Orders⁴⁴.

5. Operation of the Australian Code of Conduct

The Australian Code of Conduct has not yet been introduced, and the proposed details of its operation are still vague. However, as dealt with in the above section, the Code of Conduct would be administered by an independent Parliamentary Integrity Commissioner, appointed by a parliamentary committee. This officer would be able to proceed with investigations of their own volition, as well as upon advice from parliament. This officer would report their findings back to the responsible parliamentary committee, who in turn would recommend the Speaker or President of the house to enforce any necessary sanctions⁴⁵. This process is outlined below in Fig. 1. Much like the Canadian system detailed below, Australia's proposed Code of Conduct helps to uphold public accountability, as any negative findings by the Parliamentary Integrity Commissioner would likely result in the loss of public support of a parliamentarian which would harm their chances of re-election.

⁴¹ Ibid. p. 75.

⁴² Ibid. p. 76.

⁴³ Ibid. p. 45-8.

⁴⁴ Ibid.

⁴⁵ Ibid.

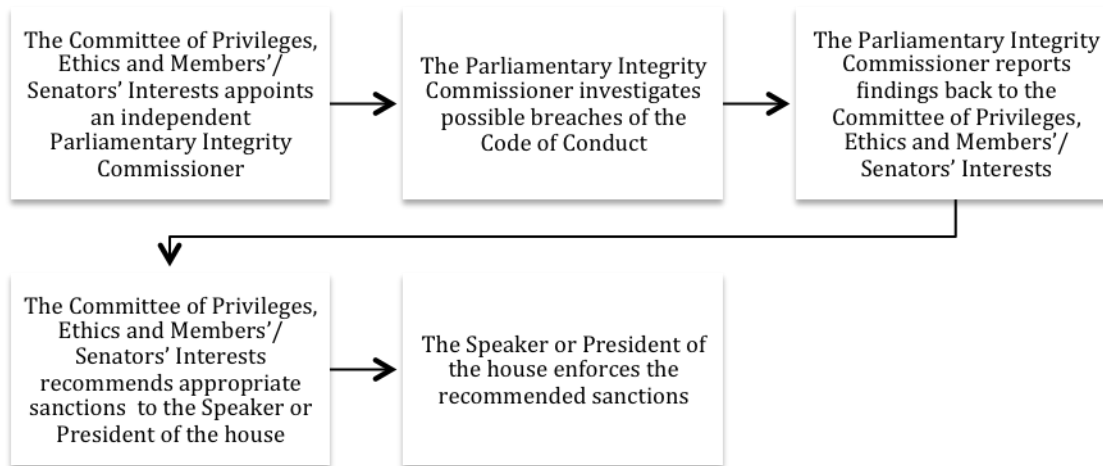


Fig. 1. Operation of an Australian Parliamentary Code of Conduct

6. Does the Code Apply to Both Houses of Parliament?

The proposed Australian Code of Conduct is envisaged to apply equally to both houses. However, the houses retain their constitutional rights to make regulations regarding the operation of their operation and functioning.

7. Penalties Included in the Codes of Conduct

The proposed Code of Conduct would not include a “sanctions regime... prescribed in exhaustive detail as there should be flexibility to respond to individual cases with sanctions that are appropriate to the circumstances”⁴⁶. Instead, it is suggested that possible sanctions should be put forward in only general terms, which could then be applied by the proposed Committee of Privileges, Ethics and Members’/Senators’ Interests to fit the circumstances. Possible penalties could range from seeking an apology to the imposition of a suspension. Provision for the protection of witness’ and their interests would also be included⁴⁷. Criminal misconduct would continue to be handled by public prosecutors and courts⁴⁸.

8. Issues Surrounding the Creation and Implementation of the Australian Code

As noted above, an Australian Code of Conduct has been discussed but not implemented for over thirty years. This is due to the lack of serious misconduct issues which are not already covered by Standing Orders, the *Criminal Code*, or the *Parliamentary Privileges Act*. Instead, a “change of the political environment, rather than a crisis”, was the origin of the most recent

⁴⁶ *Draft Code of Conduct*. p. 59.

⁴⁷ *Ibid*.

⁴⁸ *Ibid*. p. 9.

proposal of a Code of Conduct⁴⁹. Specifically, the reasons for the most recent proposal are due to an agreement whereby the minority Labor Party would support the passage of a Code of Conduct, in return for the support by a number of independent members, which was necessary to form a government⁵⁰. The adoption of this code was interrupted by a federal election and subsequent change of government. It is unclear whether the new government will support the code's adoption.

Australian parliamentarians are broadly supportive of the adoption of a Code of Conduct, largely as a means to improve their public perception by appearing to abide by a comprehensive set of rules⁵¹. The three main concerns raised by parliamentarians regarding a code of conduct are:

1. The scope for complaints to be pursued for political advantage between parties;
2. A code could interfere with parliamentarians' ability to freely and fully perform their duties; and
3. Parliamentarians are already subject to many rules, which make a Code of Conduct both unnecessary and complicating⁵².

IV. Canada

1. Origin and Emergence of the Canadian Code

In 2004 the Canadian Parliament passed into law *An Act to Amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in Consequence*⁵³. This followed over thirty years of parliamentary debate and discussion regarding the adoption of a parliamentary Code of Conduct, and facilitated both houses of parliament to adopt their own conflict of interest codes and ethics commissioners⁵⁴. These measures are augmented by the *Conflict of Interest Act 2006*, the *Lobbying Act 1985* and the *Federal Accountability Act 2006*. The obligations which these acts place on government are compiled into the *Accountable Government: A Guide for Ministers and Ministers of State* document, which comprehensively lays out the various standards which government ministers and senior officials must meet, such as the use of parliamentary expense accounts, the acceptance of gifts and travel, the declaration of financial interests and dealings with lobbyists and the legal origin of these standards⁵⁵.

⁴⁹*Draft Code of Conduct*. p. 20.

⁵⁰*Codes of Conduct*.p.5-9.

⁵¹ *Ibid.* p. 27.

⁵² *Ibid.* p. 27-9.

⁵³ Jean T. Fournier. 2009. 'Emergence of a Distinctive Canadian Model of Parliamentary Ethics'. *Journal of Parliamentary and Political Law*, Vol. 2 No. 3 May 2009, Ottawa. p. 3.

⁵⁴ *Ibid.*

⁵⁵ Privy Council Office. 2011. *Accountable Government: A Guide for Ministers and Ministers of State*. Canada.

2. Objectives of Creating the Canadian Code

Canada's Code of Conduct regime aims to both increase public trust in parliamentarians by ensuring they meet high ethical standards, and also to increase the effectiveness of parliament as a governance institution, by safeguarding the impartiality and fair dealings of parliamentarians⁵⁶.

3. Specific Qualities of the Canadian Code

The Canadian Senate's first ethics commissioner identified the four cornerstones of the Parliament's ethics regime as:

1. Independence of the commissioner;
2. Specific rules of conduct;
3. Accountability of the legislature; and
4. Emphasis on advice and prevention.⁵⁷

At the core of this regime is accountability and transparency. Parliamentarians must abide by clearly spelled out rules which regulate parliamentarians', ministers' and senior officials' dealings, to guarantee that they serve public rather than private interests. Adherence to these rules is overseen by well-resourced ethics commissioners in both houses, who operate independently of government and hold parliamentarians to account. There is an emphasis placed upon the commissioners' role in providing parliamentarians with advice and council, formally or informally, on potential breaches of the rules before they arise. However, the commissioner's are also empowered to undertake investigations on their own initiative or following the request of parliamentarians or members of the public into parliamentarians' conduct and recommend appropriate action for the parliament to take in the case of breaches being identified⁵⁸.

Perhaps the most clear outcome of this regime thus far has been to routinely publish a comprehensive list of parliamentarians' sponsored travel, and collect registers of gifts received by parliamentarians. Furthermore, if any of these activities warrant investigation, the findings are promptly published on an official website and made available to media and the public⁵⁹.

⁵⁶ Jean T. Fournier. 2009. 'Recent Developments in Canadian Parliamentary Ethics'. *Canadian Parliamentary Review*, Summer 2009, Canada. p. 9.

⁵⁷ Jean T. Fournier. 'Canadian Model of Parliamentary Ethics'. p. 3.

⁵⁸ Jean T. Fournier. 'Canadian Model of Parliamentary Ethics'. p. 3-8.

⁵⁹ For example, see 'Reports and Publications' on the House of Commons' Ethics Commissioner's website: <http://ciec-ccie.gc.ca/Default.aspx?pid=12&lang=en> and 'Public Registry' on the Senate Ethics Officer's website: <http://sen.parl.gc.ca/seoc-se/PublicRegistry.aspx?Lang=E&Year=2012-2013>

This transparency adds a further dimension of oversight to parliamentarians' conduct⁶⁰, with the investigation providing evidence for criminal proceedings against officials when necessary.

4. How the Code of Conduct is Enforced

Canada's parliamentary ethics system is overseen and enforced by an independent commissioner in each house of parliament⁶¹. The appointment procedure is stipulated in the *Parliament of Canada Act*. This states that the Governor General appoints the lower house's Ethics Commissioner and the upper house's Ethics Officer, in consultation with the leader of each recognised political party sitting in the parliament, and after the candidate is approved through a resolution of the house⁶².

5. Operation of the Canadian Code of Conduct

The Canadian Code of Conduct regime works as follows. The Ethics Officer and Ethics Commissioner, responsible for the upper and lower houses respectively, have their position guaranteed under the *Parliament of Canada Act*, which stipulates their independence and states that their primary duty is to interpret and apply the Code of Conduct. This responsibility is discharged by the Officer and Commissioner, both acting upon the advice of the relevant parliamentary ethics committee and by acting upon their own initiative. In practical terms, these duties are pursued in five ways:

- 1) Providing confidential advice on an ongoing basis to parliamentarians to assist their compliance with the code;
- 2) Compiling and making public annual disclosure reports required by the code, which include details such as parliamentarians sources of income, assets, liabilities, outside activities and government contracts;
- 3) Undertaking inquiries into parliamentarians' conduct where they can summons persons and records. Parliamentarians are expected to cooperate with such inquests as part of their responsibility to the parliament;
- 4) Recommending any measures necessary for parliamentarians to resolve any real or perceived conflicts of interest based upon their disclosures;
- 5) Submitting a yearly activity report of the Officer and Commissioner's inquiries to the Speaker of the house, who then tables it for public review⁶³.

⁶⁰ Mary Dawson. 2013. *The Conflict of Interest Act: Five-Year Review: Submission to the Standing Committee on Access to Information, Privacy and Ethics*. Office of the Interest and Ethics Commissioner, Ottawa. p. 67-8.

⁶¹ Ibid. p. 3.

⁶² Office of the Senate Ethics Officer. 2013. *About the Office*. Ottawa. <http://sen.parl.gc.ca/seo-cse/eng/Office-e.html>; Office of the Conflict of Interest and Ethics Commissioner. 2013. *Independence of the Commissioner*. Ottawa. <http://ciec-ccie.gc.ca/Default.aspx?pid=75&lang=en>

⁶³ Jean T. Fournier. 'Canadian Model of Parliamentary Ethics'. pp. 4-5.

6. Does the Code Apply to both Houses of Parliament?

Due to the houses' of parliament being constitutionally obliged to make their own regulations pertaining to their functioning, both houses have a separate Commissioner⁶⁴. However, the legislation (listed above) that comprises Canada's parliamentary ethics regime is overseen and applied by the Commissioners, and is effectively common to both houses⁶⁵.

7. Penalties Included in the Code of Conduct

Currently, the only penalty specifically included in the regime is a \$500 fine imposed for late reporting of sponsored travel, acceptance of gifts, interaction with lobbyists or further related information requested by the Ethics Officer or Commissioner. However, the regime does not impose any penalties when contravention of the *Ethics Act* has been found⁶⁶, instead relying on public shame⁶⁷, and the ability of parliament to agree to pass sanctions as is judged necessary⁶⁸. The courts also have a role to facilitate the investigation and punishment of any matters considered criminal.

8. Issues Surrounding the Creation and Implementation of the Canadian Code

Various conflict of interest guidelines, more limited in scope than Canada's current compressive Code of Conduct regime, had been debated, and introduced at the provincial level, following the 1974 Watergate political scandal in the United States. However, the instigation for Canada's current Code of Conduct was the 2002 'sponsorship scandal', which involved substantial amounts of government funds being misdirected or embezzled. Following this, the ruling Liberal Party aimed to mitigate the scandal's political damage by introducing the current robust Code of Conduct, complete with independent commissioners to enforce it⁶⁹.

V. Steps in Creating a Code of Conduct for the Cambodian Senate

It is important to understand that a Code of Conduct is not a technical document which is imposed on members of the legislature and which automatically alters their behaviour for the better. Rather, the Code must be a set of values and rules that the majority of lawmakers of the parliamentary body voluntarily commit to.

⁶⁴ Ibid. p. 2.

⁶⁵ Ibid.

⁶⁶ Ibid. p. 70.

⁶⁷ Ibid. p. 70.

⁶⁸ Jean T. Fournier. 'Canadian Model of Parliamentary Ethics'. p. 3-8.

⁶⁹ Ibid. p. 3.

As the Code of Conduct must be supported and approved by the majority of parliamentarians, it is necessary to involve a wide range of parliamentarians from all major parliamentary groups in the early stages of its development. In later stages it will be more effective to delegate the further establishment of detailed rules and a regulatory framework to a special group of parliamentarians or a parliamentary committee. However, they must continue consultation, reporting and discussion with parliamentarians of all parties during this process⁷⁰.

As set out in the Handbook on Parliamentary Ethics and Conduct, prepared on behalf of the Westminster Foundation for Democracy and the Global Organisation of Parliamentarians Against Corruption (GOPAC), five phases in the process of developing a regime of conduct can be discerned.

1. Political Will

First and foremost, the necessary political will for such reforms must be generated. As mentioned above, a system of rules within a Code of Conduct could end up not being adhered to if it is not supported by a sufficient number of parliamentarians.

In the case of Cambodia, it could be questioned whether or not a Code of Conduct needs to be adopted by the Senate (by an absolute majority of Senators) or whether it could be enacted by the Permanent Committee. This depends on the envisaged legal status of the Code. If it is to have the same status as the Rules of Procedure, the adoption by absolute majority of the Senators is necessary (see Art. 114 of the Constitution). If it contains any sanctions for breaching the Code, this would be the correct way forward. On the other hand, should the Code be less binding in character and only serve as an aspirational guideline for parliamentary behaviour, with no sanctions, it may be sufficient to have it adopted by the Permanent Committee under its powers granted by Art. 14 of the Rules of Procedure⁷¹. However, it should be noted, that in this context, that the current Permanent Committee does not contain any members from the opposition party. Therefore, to foster more legitimacy and acceptance by all parliamentarians, a vote by a majority of the plenary would tend to give it more weight.

The setting-up of a Code of Conduct must be seen as a chance to correct deficits in the performance of the legislative body that are perceived by the public. In some jurisdictions, misdemeanours by individual parliamentarians provided the reason for commencing the process, in other jurisdictions 'more general public concerns about the standards and behaviour

⁷⁰Handbook, p. 10.

⁷¹The provision reads: 'The Permanent Committee of the Senate shall have the following duties: (a) To lead, manage, monitor, and take decision in, all tasks and activities of the Senate...'

of politicians’⁷² were the cause. In yet other countries, the starting point was that parliamentarians knew about the procedures for the operations of the legislature as laid down in the Rules of Procedure, but not about appropriate behaviour as a member of that legislature. This is most common in younger democracies where clear standards of parliamentary behaviour have not yet developed.

The type of ‘crisis’ which triggered the discussion defines the scope of the Code of Conduct - does it only address conflict of interest issues, does it also intend to raise the public’s trust in the institution, or should it also address the proper behaviour of parliamentarians in a parliamentary session? As in the Cambodian context, some issues regarding proper behaviour of Senators are laid down in the Rules of Procedure⁷³, and this aspect does not need to be addressed by the Code of Conduct. Instead, the Code could focus on issues related to conflicts of interest and how avoiding these can increase the reputation of parliament and parliamentarians.

2. Agreeing on General Principles

The next step entails agreeing on the general principles that can be viewed as the essence of the Code of Conduct. It is generally easier to obtain consent on general principles whereas agreement on the details may be more difficult.

In general, three potential sources may exist from which principles can be drawn: the country’s own legal system (mainly the Constitution and the Rules of Procedure for the Senate); other parliaments in other jurisdictions; and international instruments.

In Cambodia, the Constitution and the Internal Rules do not provide much guidance as to the general principles for a Code of Conduct. One foreign parliamentary resource that is often referred to is the principles developed by the Committee on Standards in Public Life in the UK 1994. This committee’s seven principles entail: Selflessness, integrity, objectivity, accountability, openness, honesty, leadership⁷⁴. An important international source to draw from is the UN Convention against Corruption (to which Cambodia is a party). Art. 8 of the UNCAC demands that each state party should promote integrity, honesty and responsibility amongst public officials, possibly through a Code of Conduct. The Global Organisation of Parliamentarians against Corruption (GOPAC) is also an important player in this field and is committed to implementing the UNCAC. As such, GOPAC could be a useful resource for the Senate to call upon in developing a Code of Conduct.

⁷²Handbook, p. 13.

⁷³Internal Rules of the Senate, Chapter 13 on ‘Discipline in the Senate’, e.g. insulting a fellow senator could be sanctioned with a motion of censure.

⁷⁴ <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmstandards/724/72405.htm>

3. Setting up Comprehensive Rules

After establishing general principles, more detailed rules can be set up. They would define such things as what is a conflict of interest. Moreover, they usually provide for more transparency in order to minimize the risk of such conflicts of interest occurring. Finally, they usually set limits for activities of politicians in problematic areas such as receiving gifts which exceed a certain defined monetary limit.

While agreeing on the general principles as noted above in Step 2, as many parliamentarians as possible (e.g., the plenary membership) should be involved in agreeing on the general principles of the Code of Conduct. The preparation of more detailed rules is best delegated to a smaller group for practical reasons. The most common option for this would be the creation of an *ad hoc* Committee comprised of members from all parties represented in parliament in relation to their number in the plenary. In any case, in order to secure 'buy-in' by the opposition, their sufficient representation in such a Committee should be ensured. As with any other topic, outside expertise and advice should be taken onboard by this body.

While, in general, the emergence of conflicts of interests is inevitable for politicians, certain conflicts could potentially lead to unethical behaviour. Such conflicts of interests arise where the private interests of a parliamentarian conflict with the public interest that he/she is obliged to serve. This is the case when parliamentarians use their position for private gain. The Code of Conduct should contain examples of the conflicts that might occur. One example would be a parliamentarian voting for a project that his own company is bidding on.

Disclosure and transparency do not automatically resolve or remove potential conflicts, but they help to identify their existence. Therefore, virtually all Codes of Conduct require parliamentarians to provide certain personal data (i.e., a declaration) to a register or a body that oversees the Code so that the private interests of parliamentarians become apparent. In order to be most effective, as the personal circumstances of parliamentarians change declarations should be updated on a regular basis. In some instances, in order to prevent a circumvention of the rules, not only parliamentarians, but also their next of kin may be required to declare their interests. Privacy concerns can be addressed with a sliding scale approach whereby public access is limited as far as the family of the parliamentarian is concerned while information on the parliamentarian is made public.

Registers usually contain information on a parliamentarian's assets such as property, shares, etc. In addition, the register can include such items as:

- Sources of income other than from the parliament;
- Liabilities (debts); and
- Gifts (monetary limits are usually placed on the value of the gifts that can be received) and similar benefits (e.g., free travel from a source outside the parliament) received by parliamentarians.⁷⁵

When conflicts of interest are identified, clearly defined consequences that are set out in the Code of Conduct should be enforced (e.g. exclusion of parliamentarians from debates and voting). In addition, in some jurisdictions, MPs are barred from taking on certain or in some cases, any jobs or assignments outside the jurisdiction of parliament. To this end, Art. 103 of the Cambodian Constitution already contains some restrictions.⁷⁶

4. Mechanisms for Enforcement

Next, a system of regulations needs to be established that enables the enforcement and implementation of a Code of Conduct.

In other jurisdictions, three different models have been developed to enforce and implement a Code. One is an entirely external oversight body outside of parliament, although this is rare. Since in most countries (including Cambodia) this would interfere with the independent role of parliament enshrined in the Constitution, two other models are commonly used. One is based on purely internal control exercised by a parliamentary committee. The other is a hybrid model where an independent body outside of parliament is responsible for the investigation of a breach of the Code, and penalties are then imposed by a parliamentary committee. The disadvantage of the Committee-only solution is that the mechanism could become politicized and might therefore run the risk of losing public trust. This could at least partly be overcome by the hybrid model which also has the advantage of not turning legislators into investigators, a role they might not be fully equipped to take on. An important question in any system is how investigations are started – or in other words: who should be entitled to complain and thus start the investigative procedure – for instance, other MPs or members of the general public. These issues must be carefully considered when designing a Code of Conduct to ensure that it is effective and workable.

⁷⁵ See Handbook, p. 24 and Stapenhurst/Pelizzop. 9/10)

⁷⁶ Art. 103 reads: 'A Senator may not hold any active public function, be a Member of the National Assembly or be a member of other institutions provided for in the Constitution.'

With regard to possible sanctions, most jurisdictions apply sanctions similar to those laid down in Art. 76 of the Senate's Internal Rules⁷⁷. The Senate could look to these for guidance in creating a Code of Conduct.

5. Implementation

In implementing a Code of Conduct, it is crucial to secure the support of the parliamentary leadership and the political parties represented in parliament. Once there is 'buy-in' for a Code, and it is developed, there will have to be training sessions to inform parliamentarians on how the Code operates and the procedures that are in place if the Code is breached. This should be incorporated into orientation programs for both new and existing parliamentarians. In addition, a handbook could be developed that provides the relevant information and guidance on how the code operates. Finally, in other parliaments, it has also proven successful to establish a special office as a permanent source of guidance and advice for parliamentarians on Code of Conduct questions.

6. Conclusion

From the above it can be concluded that the process of developing and implementing a Code of Conduct is in itself a highly political one. It will be shaped by the existing political conditions, the cultural values within the institution and the attitudes of the key parliamentary figures⁷⁸. The process of developing a Code of Conduct is thus as important as the product. It can only be successful if parliamentarians feel a degree of ownership of both, the process and outcome. Therefore, it is necessary that they share the same values on ethics and basically agree on the problems associated with maintaining these values and the way to overcome them.⁷⁹

VI. Conclusion

This paper notes the relative novelty of Codes of Conduct to parliamentary politics. In fact, only two of the three surveyed parliaments have one in place. Generally speaking, there are two forms that a Code of Conduct can take: the prescriptive as in Canada or the aspirational as in France and proposed in Australia. Similarly, as examined in Chapter V Section 4, the application of a Code of Conduct can be left to an authority independent of the parliament, to the parliament itself, or a hybrid of the two. However, regardless of the exact form, in general, parliamentary Codes of Conduct share the same two basic goals: of raising public trust in their

⁷⁷ The sanctions reach from (a) Issue a warning regarding an action, to (b) Issue a warning that is recorded in the minutes, to (c) Issue a written motion of censure, to (d) Issue a written motion of censure plus ordering temporary excluding from sittings.

⁷⁸ Handbook, p. 41.

⁷⁹ Stapenhurst/Pelizzo p.16/17.

elected officials due to increasing transparency of parliamentarians' financial interests; and of assisting parliamentarians by providing them with an accessible code which they can measure their behaviour against. Due to an interest in separating the powers of the court and parliament, the successful operation of these codes largely requires the voluntary support of parliamentarians. The implications of this for a prospective Cambodian Code, is the need to engage in a development process which is broadly representative of the political spectrum.

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