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The Utility of an Integrity Commissioner*

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Government, Parliament and the People: Principles and Practice

Low Public Ratings of Parliament and Parliamentarians: The Utility of an Integrity Commissioner

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Introduction

In recent years there has been a new wave of concern about the low public ratings in terms of conflict of interest, integrity and ethics associated with Australia's political institutions, particularly parliament and its parliamentarians. A similar sentiment has flooded across Canada (and other 'Western polities, including the United States of America').¹ As it has often been observed how Canada, as a Westminster based federal nation, "has a similar skeleton"² to Australia, parliamentary innovation in Canada invariably has relevance and significance for Australia. On this basis, as during the last decade the Canadian provincial parliaments have introduced legislation to create an Office of Integrity Commissioner (or Conflict of Interest or Ethics Commissioner), it is the purpose of this article to review its utility for Australia's State parliaments.

To speak of conflict of interest, integrity and ethics in government is not new. 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 in the Western political tradition 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 a reminder that political structures to help ensure integrity in government have a long history.

Without ignoring the prescriptions of the great Western thinkers the contemporary key features of the 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, especially as it needs to be remembered that the Canadian provincial legislatures are unicameral, whereas the Australian pattern (with the exception of Queensland) is bicameral in each of the States.

Ratings of Parliament and Politicians in Australia and Canada

Many traditional statements about the functions of Westminster-model parliaments contain nostalgic rhetoric about their prestige and what they are believed to have once done or what they should be able to do. Because the reality falls well short of this, parliaments, and especially parliamentarians, are often criticised as 'sadly deteriorated and ineffective' and even not meeting the expected standards of decorum and behaviour.³

In Australia it must be remembered that the public standing of politicians 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.⁴

Earlier Lord Bryce in one his comparative works was contemptuous of the low quality of debate and the poor public image of politicians and parliaments in Australia and Canada. These observations helped K.C. Wheare to later 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.⁵

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. In contemporary times such behaviours have become more exposed, specifically through the electronic media including the televising of parliament, talkback radio and the internet. Goote has also suggested "that publicity given to ... superannuation benefits, the number of parliamentary sitting days and the growth of rorting and branch stacking may also be part of the answer as well".⁶ Another dimension mentioned by Goote is the decline over the last 30 years is the proportion of the public who believe politicians try to stick to their promises.⁷ Perhaps, too, travel entitlements should be included in the equation.

There is constant reference to the diminishing ratings of parliament and parliamentarians. Within the ambit of the ratings come a range of different measures such as trust, ethics, honesty, integrity, confidence, standards and status. The various surveys are rarely about the same measure but the sum total of the findings all have the common denominator of giving the impression that the public ratings of Parliament and Parliamentarians are accepted as low with private interests commonly prevailing over public interests. It is also asserted that one approach to drive 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.⁸

Admittedly using the term politicians two Canadian political scientists, Greene and Shugarman, in 1997 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.⁹

Recently a Canadian public policy expert David Zussman 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 percent of Canadians expressed trust in friends and families. More than 70 per cent trust voluntary

organisations and the police. Around 40 per cent of Canadians trust the legal system and, as individuals, public servants. Twenty-nine percent trust the government-one percent less than the media, and exactly the same as special interest groups. And politicians? They are trusted by 11 per cent of Canadians. Only car dealers are less trusted than politicians. Zussman further claims 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.¹⁰

Across Australia the well known 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.¹¹ At the top end of the scale are the nursing (predominantly a women's occupational category at 88 in 2000) and pharmacy professions (83 in 2000), with 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 in 2000) and Federal Members of Parliament (11 in 2000) along with car salesmen, newspaper journalists, advertising people, union leaders and estate agents. Indeed the general trend for both Federal Members of Parliament and State Members of Parliament has been downwards, save some arrest in the last few years. At an individual level there are many exceptions to these ratings but as a 'class' politicians have image problems on the important measures of ethics, trust, honesty and integrity.

Another Morgan poll indicated that 91 per cent of the public thought that politicians twisted the truth to suit their arguments, 66 per cent thought that politicians placed most emphasis on looking after themselves or their party.¹² A host of other surveys

and observations by social commentators confirm these observations and trends which includes a decline in confidence in the political system.¹³ A recently published research book by Michael Pusey titled, *The Experience of Middle Australia*, also had one of its themes the decline in the confidence of political institutions, although he noted Goote's finding that trust in government rises immediately after a change in government and falls during its life.¹⁴

One political scientist has contended that the community's lack of political knowledge means that when the ethical issues of parliamentarian's and Minister's 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 thought, will generally be unaware of the political processes and institutions, especially the dynamics of party competition, within which the political actors work and the pressures for unethical activity 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 and travel 'rorts', and allowances, that can provide little guidance to the parliamentarians and Ministers.¹⁵ Some faith may be placed in better political and civic information, but clearly some institutional response must be considered.

An Integrity Commissioner: The Canadian Provisional Model

In the late 1980s and early 1990s several Canadian provinces, as had been the case in some Australian States, had 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 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.¹⁶ In Saskatchewan, for instance, a recent book titled *Saskscandal: The Death of Political Idealism in Saskatchewan* (2000) documented how fraud and abuse of public trust committed by some members of the provincial Progressive Party government between 1982 and 1991 had led to more than a dozen convictions and some jail sentences.¹⁷

Apart from obligations under the rules and procedures of parliament, 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 to be in the public interest by the Commissioner. 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 Acts in any way. Surprisingly, judging by the annual reports from the Commissioners, 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 political minefield they have to traverse with conflict of interest, integrity and ethical issues.

Members are prohibited from knowingly being a party to the contact with their provincial governments and denied 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.
- hold shares or an interest in any corporation, partnership, syndicate, cooperative or similar commercial enterprise.

Members of Cabinet, according to the Ontario *Member's Integrity Act*, are specifically 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, 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.¹⁸ 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.

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 which shall be set out in writing setting out the grounds for the alleged contraventions.
- The Assembly itself may by resolution request that the Commissioner give an opinion.
- Likewise, 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.¹⁹ 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, but 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 compensation for the preparation of returns and extending to the Leader of the Opposition (in Alberta) the same restrictions as Ministers. It appears the institution has halted the decline in the public's perceptions of parliamentarians, or at least prevented more serious instances of conflict of interest. Perhaps the prevalence of scandals has been reduced although that reckoning sets aside the recent controversy surrounding, Jean Chretien, the incumbent Canadian Prime Minister. The latter became embroiled in a controversy concerning his shares in a golf course in his Quebec electorate despite the Canadian Government's Office of the Ethics Counsellor clearing the Prime Minister of any wrong doing. In Ottawa, as the Ethics Counsellor reports directly to the Prime Minister, it is widely considered this weakens the office. The provincial model, as mentioned, requires the various Commissioners to report to the respective Legislative Assemblies on an annual basis. However, through the efforts of Office of the Ethics Counsellor in Ottawa, provincial jurisdictions have been included on the Federal website (strategis.ic.gc.ca/ethics). A Canadian Conflict of Interest Network (CCOIN) has also been established (www.cogel.org) 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% priest and 10% policeman".²⁰ 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.

While the role of the respective Commissioners is mostly advisory formal reports must be tabled when an authentic inquiry is requested from Members, the Parliament or Ministers, or even 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:
- 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 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 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.²¹

To date none of the provincial Assemblies have 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. If this was to happen the debate over advantages and disadvantages of such legislation would probably 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. The same public 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 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.
- A set of sanctions is prescribed with the emphasis being upon prevention rather than cure.
- Given the necessary small office, for confidential purposes, the total cost of the office is relatively low. The office in each jurisdiction has remained small being limited to the Commissioner, Executive Officer and Secretary.
- The Commissioners, with their pronouncements, can contribute to the parliamentary and public awareness of integrity matters.
- The institution has spread across Canadian provinces and territories. A resume by two researchers, Greene and Shugarman, have made favourable observations about the function of the office in each Canadian provincial jurisdiction. Starting with Ontario they stated:

Ontario's original experiment with an independent ethics commissioner has been successful by any measure. There have been no major conflict-of-interest scandals since 1988, as compared with several crises during the preceding few years. Members of the legislature are now educated about the nature of conflicts of interest and how to avoid them and receive consistent advice. Ordinary MPPs are using the service as much as cabinet ministers and parliamentary assistants.²²

There is a dearth of critical literature on the subject but some the problems need to be explored under the heading of Integrity Commissioner: Disadvantages.

Integrity Commissioner: Disadvantages

- The institution as an additional arm of parliament, 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.
- Some of the published opinions, in accordance with the respective acts, appear to have been cautious to avoid any suggestion of a conflict of interest, begging the question upon which matters parliamentarians can represent their constituents.
- Members, particularly many new Members have proven in some provinces, recalcitrant in completing their statements within 60 days. Of course the inclusion of spouses is one explanation for both delay and perhaps objection.
- The Disclosure Statements when made available to the public do not contain specific details. Some critics believe these Statements are inadequate.
- In some provinces the members of the public are unable 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 busy the Integrity Commissioner with investigative roles.
- The 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

even 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 ethics commissioner's opinions.
- The Ontario inclusion of adherence to 'parliamentary conventions' could be regarded as extremely broad giving rise to a range of vague expectations.
- The Integrity or Ethics Commissioner is an institution to primarily 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 Australian States and Territories

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

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 a eight-clause Declaration of Principles including one that stated: "to promote reconciliation with indigenous Australians".²³ However, the code did not include any sanctions or disciplinary actions that would transpire if it is not followed. Promise of a more enforceable code was included in the platform which witnessed the election of Clare Martin as Chief Minister of the Northern Territory in 2001. It was promised that "a strong and enforceable code of conduct" for Ministers and Members of Parliament, to be regulated by the Auditor General would be implemented. Moreover, the Government's electoral platform also included a proposal to overhaul the Act governing the Register of Members' Interests.²⁴

Perhaps the most significant development concerning parliamentary codes of ethics has taken place in New South Wales. The impetus came from the so-called Griener-Metherell Affair which eventually led to the resignation in 1992 of Premier Nick Griener after an adverse rulings by the Independent Commission Against Corruption (ICAC). The subsequent judicial findings 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. Subsequently, with Independents playing a prominent role, the code of conduct cause was pursued resulting in 1994 in amendments to the 1988 ICAC Act. 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 MP's codes with other Australian parliaments.

The codes formulated by the respective houses were markedly different and there were reports of tensions between the committees.²⁵ Different functions and procedures are features in 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 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, to show how limited it was in length.²⁶ 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, the Legislative Council 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.²⁷

Following the adoption of the code in New South Wales, both Houses resolved in September 1998 to appoint a Parliamentary Ethics Advisor. However, this emanated from a resolution of both houses and was not a statutory appointment with the standing of the Commissioners in the Canadian provinces. Interestingly in New South Wales in 1999 the Standing Committee on Ethics was reconstituted and three new community members were appointed in line with the Independent Commission Against Corruption Act.²⁸ No clear picture has emerged about the impact of the Ethics Advisor, or the inclusion of community members on the relevant parliamentary committee but it has been generally thought that an advisor lacks sanctions and status 'to make a difference'. This has been the experience with such an office for the Parliament of Canada in Ottawa.

The idea of an Ethics Counsellor, or Independent Commissioner, for Parliamentarians was suggested by the Commission of Government (COG) which had been appointed in Western Australia in the wake of the recommendations of the Royal Commission into Commercial Activities of Government and Other Activities (1992), widely known as the WA Inc. Royal Commission. The latter had painted a dark picture about the ethical standards of public officials, including Ministers and parliamentarians. 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.²⁹

The Court-Cowan Coalition did not follow the recommendations concerning Parliamentary committees and a code of conduct or an Independent Commissioner. However, it is important to remember that the Coalition Government had acted as early as 1994 on the advice of the WA Royal Commission to introduce a *Public Sector Management Act* and to establish a Commissioner for Public Sector Standards with a responsibility to produce a code of ethics for the public sector and to assist individual agencies in developing codes of conduct.³⁰ 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 government member 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 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 of dignity of the Parliament.

During the campaign in early 2001 which led to the election Labor government in Western Australia, headed by Premier Dr Geoff Gallop, 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 as one of the reasons given for the eventual electoral demise of previous Premier Richard Court was his determination to retain Ministers (including those for the National Party over which he had less 'control'), despite apparent breaches of probity. 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. The 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.

While a draft parliamentary code of conduct has been tabled for the Legislative Assembly 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 requirement for Ministers to resign from all positions held in business of 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 Integrity Commissioner model?

Conclusion

Conflicts of interest, integrity and ethics in government concerned the ancients. In contemporary politics it's a problem that can't 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. The formulation and adoption of parliamentary and Ministerial codes, may be a step in the right direction. Induction programs incorporating greater awareness of the ethical responsibilities of elected officials are now being widely implemented. More significantly, though, should an effective institutional response for Australia's States be the appointment of the Canadian 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

restricted to the conflict of interest and travel entitlements dimension of the low ratings of parliamentarians. Poor decorum, the remuneration of politicians, broken promises and the performance of parliament would be outside the jurisdiction of the office. However, it may also undermine the primacy of parliament and raise a range of compliance issues. 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 parliament and parliamentarians in the Canadian Provinces. A lesser number of scandals is clearly a step in the right direction.

- For the preparation of this paper the author expresses appreciation for the interviews given to him by the following officers: Robert South, Ethics Commissioner for Alberta and Karen South, the Executive Assistant for the Alberta Ethics Commissioner (9 July 2001); Gerald Gerrand QC, Saskatchewan Integrity Commissioner (11 July 2001); Lynn Morrison, Executive Administrative Officer, Ontario Office of the Integrity Commissioner (12 July 2001); Ian Dickson, Parliamentary Ethics Advisor, Parliament of New South Wales (3 May, 2002); John Price MP, Legislative Assembly of New South Wales (3 May, 2002); and Ronda Miller, Clerk to Legislative Assembly Standing Ethics Committee of New South Wales (3 May, 2002)

References

Annual Report 1998-1999, Office of Integrity Commissioner, Legislative Assembly of Ontario.

Black, D. and Phillips, H.(2000), *Making a Difference: Women in the Western Australian Parliament, 1921-1999*, Parliamentary History Project, Perth.

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

Brady, A. 1958 *Democracy in the Dominions: A Comparative Study in Institutions*, Toronto University Press: Toronto.

Burgmann, M 2000 'Constructing Legislative Codes of Conduct', Department of Senate, Papers on Parliament No. 35, Canberra: Parliament House.

Carney, G 2000, *Members of Parliament: Law and Ethics*, Prospect Media, St Leonard's.

Clark, R. (2001), Interview with Ethics Commissioner Robert Clark by author, Edmonton, Alberta (9 July 2001).

Commission on Government 1995, Discussion Paper No. 9, Codes of Conduct, Perth: Western Australia.

Commission on Government, Report No. 3, 1996, Perth: Western Australia.

Davis, G 1995 'The Public Sector Ethics Movement in Queensland: Guest Editors Introduction', *Australian Journal of Public Administration*, 54 (4): 437-441.

Edwards, R 1998 'A code of ethics for parliament', *Legislative Studies*, 12 (2): 9-13.

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

Greene, I. and Shugarman, D. (1997), *Honest Politics: Seeking Integrity in Canadian Public Life*, James Lorimer and Company, Toronto.

Jones, G. 2000 *SaskScandal: The Death of Political Idealism in Saskatchewan*, Fifth House Ltd, Calgary.

Morgan Polls (2000) Finding Number 3349, 9 November, 2000,
(<http://www.roymorgan.com/polls>, 5/10/2001)

Morrison L. (2001) Interview with Lynn Morrison, Executive Administrative Officer, Ontario Office of the Integrity Commissioner, by author, Toronto, Ontario (12 July 2001).

Preston, N. (2001) 'Codifying Ethical Conduct for Australian Parliamentarians 1990-99', *Australian Journal of Political Science*, 36, (1): 45-59.

Preston, N. (1998) 'Politics, prudence and principle: codifying the conduct of parliamentarians', *Legislative Studies*, 12 (2): 1-8.

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

Report of the Royal Commission Into Commercial Activities of Government and Other Matters: Part 11, 1992 Perth: Western Australia.

Smith, R. 1999 'Australian solitudes: Citizens, parliamentary party politics, corruption agencies and political ethics', *Legislative Studies*, 14(1): 36-46.

Endnotes

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- ¹ See A. Rosenthal, *The Decline of Representative Democracy: Process, Participation, and Power in State Legislatures*, Division of Congressional Quarterly, Washington, D.C. 1998.
- ² A. Birch, *Federalism, Finance and Social Legislation: In Canada, Australia and the United States*, Clarendon Press, Oxford, 1955, p. xiii.
- ³ K. Turner, 'Parliament', in Rodney Smith and Lex Watson (eds), *Politics in Australia*, Allen and Unwin, Sydney, 1990, p.65.
- ⁴ A. Brady, *Democracy in Dominion: A Comparative Study in Institutions*, Toronto University Press, Toronto, 1958, p.1
- ⁵ K. Wheare, *Legislatures*, second edition, Oxford University Press, Oxford, 1976, p.156
- ⁶ M. Goot, 'Distrustful, Disenchanted and Disengaged? Polled Opinion on Politics, Politicians and the Parties: an Historical Perspective', Department of Senate, Papers on Parliament, No. 38, Parliament House, Canberra, 2002, p. 32.
- ⁷ Ibid. p. 32.
- ⁸ D. Black and H. Phillips, *Making a Difference: Women in the Western Australian Parliament 1921-1999*, Parliamentary History Project, 2000, p. 164
- ⁹ I. Greene and D. Shugarman, *Honest Politics: Seeking Integrity in Canadian Public Life*, James Lorimer, Toronto, 1997, p. i.
- ¹⁰ D. Zussman, 'Confidence in Public Institutions: Restoring Pride to Politics', Department of Senate, Papers on Parliament, No. 38, Parliament House, Canberra, 2002, p.62
- ¹¹ Morgan Polls (2000), Finding Number 3349, 9 November 2000 (<http://www.roymorgan.com/polls>)
- ¹² R. Edwards, 'A Code of Ethics for Parliament', *Legislative Studies*, Vol. 12, No. 2, 1998, p. 13.
- ¹³ R. Smith, 'Australian solitudes: Citizens, parliamentary party politics, corruption agencies and political ethics', *Legislative Studies*, Vol. 14, No. 1, 1999, pp. 37-38.
- ¹⁴ M. Pusey, *The Experience of Middle Australia: The Dark Side of Economic Reform*, Cambridge University Press, Cambridge, 2003, p.150.
- ¹⁵ Smith, 'Australian solitudes: Citizens, parliamentary party politics, corruption agencies and political ethics', p. 40
- ¹⁶ I. Greene and D. Shugarman, *Honest Politics: Seeking Integrity in Canadian Public Life*, James Lorimer and Company, Toronto, 1997, pp.129-158
- ¹⁷ G. Jones, *SaskScandal: The Death of Political Idealism in Saskatchewan*, Fifth House Ltd., Calgary, 2000.
- ¹⁸ L. Morrison, Interview with Lynn Morrison, Executive Administrative Officer, Ontario Office of the Integrity Commissioner, by author, Toronto, Ontario, 12 July 2001.
- ¹⁹ R. Clark, Interview with Ethics Commissioner Robert Clark by author, Edmonton, Alberta, 9 July 2001.
- ²⁰ Ethics Bulletin 1997, 'The Role of Alberta's Ethics Commissioner', Office of the Ethics Commissioner, April 1997, Number 6.
- ²¹ Annual Report 1998-1999, Office of the Integrity Commissioner, Legislative Assembly of Ontario.
- ²² Greene and Shugarman, *Honest Politics: Seeking Integrity in Canadian Public Life*, p. 141
- ²³ G. Carney, *Members of Parliament: Law and Ethics*, Prospect Media, St Leonards, 2000, p. 406.
- ²⁴ Standing Ethics Committee, Legislative Assembly of New South Wales: Review of the Code of Conduct, June 2002, p. 24
- ²⁵ N. Preston, 'Codifying Ethical Conduct for Australian Parliamentarians 1990-1999', *Australian Journal of Political Science*, Vol. 36, No. 1, 2001, p. 50
- ²⁶ M. Burgmann, 'Constructing Legislative Codes of Conduct', Department of Senate, Papers on Parliament No. 35, Parliament House, Canberra, 2000, p. 81
- ²⁷ Preston, 'Codifying Ethical Conduct for Australian Parliamentarians 1990-1999', p. 51
- ²⁸ See Standing Ethics Committee, Legislative Assembly of New South Wales: Review of the Code of Conduct, June 2002.
- ²⁹ Commission on Government, Report No. 3, Western Australia, Perth, p. 173
- ³⁰ Report of the Royal Commission Into Commercial Activities of Government and Other Matters: Part 11, 1992, Western Australia, Perth, 6.5.