

National and International Comparisons of Codes of Conduct for Members of Parliament



Discussion Paper 2023/03

**National and International
Comparisons of Codes of Conduct
for Members of Parliament**

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About the cover

Question time in the House depicted as a battlefield.
Trace Hodgson, *Listener*, 8–14 September 1984.
Source: Parliamentary Service.

About Bill Gray

Bill Gray worked on this discussion paper during an internship with the Institute as part of his Master of Philosophy, Politics and Economics degree at Victoria University of Wellington Te Herenga Waka in 2022. He completed that degree in 2023 with distinction; his thesis explored the potential of a social investment approach to climate change policy. Bill also has a Bachelor’s in History from the same university.

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1.0 Introduction

1.1 Purpose

The aim of this paper is to: (i) identify countries that have a code of conduct for members of Parliament (MPs); (ii) review common characteristics of codes of conduct; and (iii) discuss codes of conduct in New Zealand publications.

As New Zealand does not currently have a code of conduct for MPs, the purpose of this paper is to add to the dialogue on a prospective code of conduct for MPs. It suggests a list of topics that MPs and others may like to consider if they decide to create a code of conduct for MPs. These will not be recommendations so much as distillations of the key themes from best practice in the area of Westminster-style parliamentary ethical regulations.

1.2 Code of conduct vs code of ethics

Codes of conduct are regulations on ethical behaviour, typically embodied in a selection of key principles intended to guide and inspire. They are distinguished from a code of ethics by the presence of an extensive prescriptive component providing specific details of the nature of violations, the complaints process and enforcement mechanisms.

1.3 Background

The scope of this project largely precludes ministerial codes of conduct, professional, political party, public and parliamentary service codes, although reference is made in passing to such codes. Further, this paper does not provide a history of the development of codes of conduct, nor does it consider alternative structural reforms.¹ It is intended exclusively as an analysis of codes of conduct applying to members of Parliament.²

This paper is a follow-up to a think piece previously published by the Institute which was prompted by an incident occurring in the House of Representatives that demonstrated the inadequate nature of ethical regulations for members.³ In brief, Cabinet Minister Kelvin Davis played the personal rather than the political in his response to a question from ACT MP Karen Chhour (who has Ngāpuhi whakapapa).⁴ Minister Davis told Chhour to ‘cross the bridge that is Te Tiriti o Waitangi’ and that ‘it’s no good looking at the world from a vanilla lens’.⁵ This was correctly pointed out to be an ‘attack [on] the member and her world view’ by ACT leader David Seymour.⁶ The remedy consisted of an off-the-record apology on the phone. The Speaker’s judgement and the ethical content currently contained in the *Standing Orders of the House of Representatives* (Standing Orders) and Speakers’ Rulings were arguably insufficient to respond to the situation. This demonstrated that for the behaviour of MPs to improve, change is required.

The success of a code of conduct for MPs would be measured by a reduction in the severity and frequency of inappropriate and unprofessional behaviour, such as bullying, harassment, sexual harassment and other violations between members and those they interact with over time. This may require a drastic increase in the frequency and severity of sanctions for bad behaviour, especially initially. The frequency of these incidents and the frequency of punishments should not be conflated. An increase in one does not necessarily correlate with an increase in the other, despite general perceptions. Ideally both would decrease together so parliamentarians can work more effectively, to the benefit of all present and future New Zealanders, without being impeded by misconduct in the House. There is something of a silver lining to the New Zealand Parliament’s delay in adopting a code of conduct for MPs; there is an abundance of excellent and educational international examples in comparable parliaments to learn from. Although we are not starting from scratch, there remains considerable room for improvement and innovation. New Zealand has a real opportunity to introduce something that could lead the world.

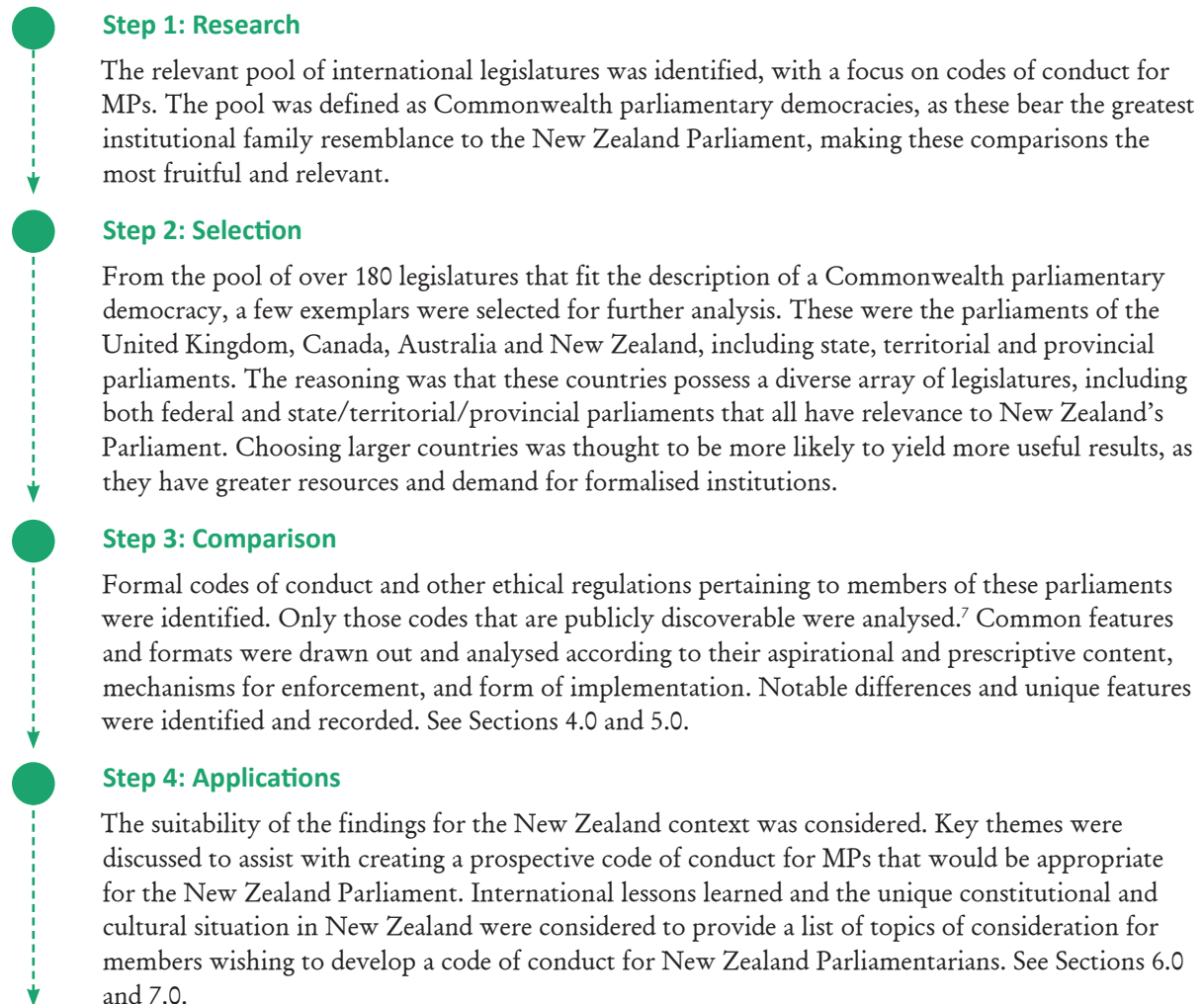
As part of the project *CivicsNZ*, the Institute has worked on various initiatives to build the social capital of New Zealand citizens. This project intends to contribute to the conversations taking place around strengthening the transparency, accountability and responsibility of Government. It should be of use to MPs who wish to create a code of conduct for MPs. It is thought that these measures will improve the efficacy and preparedness of Parliament and the wider government to handle the foreseeably turbulent times ahead.

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2.0 Methodology

The research within this paper is desk-based research of published and grey (non-commercial, non-academic) literature, in addition to relevant legislation and materials.

The following steps were taken in this process.



3.0 The New Zealand system

This section contains a diagram and explanation of the current system of codes of conduct in Parliament. There are different systems in place across different spaces and different groups of people, with some being subject to more than one code and some being subject to none.

Place

In terms of spaces, there are three distinct locations: (i) the Chamber during proceedings, (ii) the Parliamentary workplace (including off the precinct of Parliament) and (iii) outside the workplace.

(i) The Chamber during proceedings

Anyone inside the Chamber during proceedings is subject to the Standing Orders and Speakers' Rulings, and nothing else, save for the law (excepting privilege). This authority extends over everyone present. No codes not contained in these sources apply during proceedings.

(ii) The Parliamentary workplace (including off the precinct of Parliament)

Outside the Chamber, anyone working at Parliament (including off the precinct, such as at an electorate office) is subject to the *Behavioural Statements* (described in Section 4.1) and sometimes additional codes (i.e. Parliamentary Services, the Office of the Clerk, the public service and Ministers have their own codes that operate wherever they act in a professional capacity). This does not include visitors (who operate in a strictly personal capacity), but it does include the press when they are at Parliament. The *Behavioural Statements* extend to people like MPs when they are off the precinct in their electorate office working in a professional capacity, or when working for Parliament remotely.

(iii) Outside the workplace

Some codes, such as the Code of Conduct for the Office of the Clerk and the Ministerial Conduct regulations in the *Cabinet Manual* extend into the private and personal lives of those they apply to. Others, like the *Behavioural Statements* (mentioned earlier), do not.

People

In terms of people, there are seven categories:

- (i) Ministers,
- (ii) Members of Parliament (MPs),
- (iii) staff of the Office of the Clerk,
- (iv) members of Parliamentary Services,
- (v) members of a political party,
- (vi) members of the press, and
- (vii) visitors (such as foreign dignitaries and other guests, witnesses, visitors and constituents).

Codes of conduct/behaviour and related material

In terms of codes of conducts, there are a diverse range of codes, with different audiences, intents and levels of compliance. The current system results in a number of combinations; knowing which codes apply when and where is something of a skill. Figure 1 opposite illustrates the Institute's understanding; the coloured boxes are suitcases intended to represent a specific code someone must comply with:








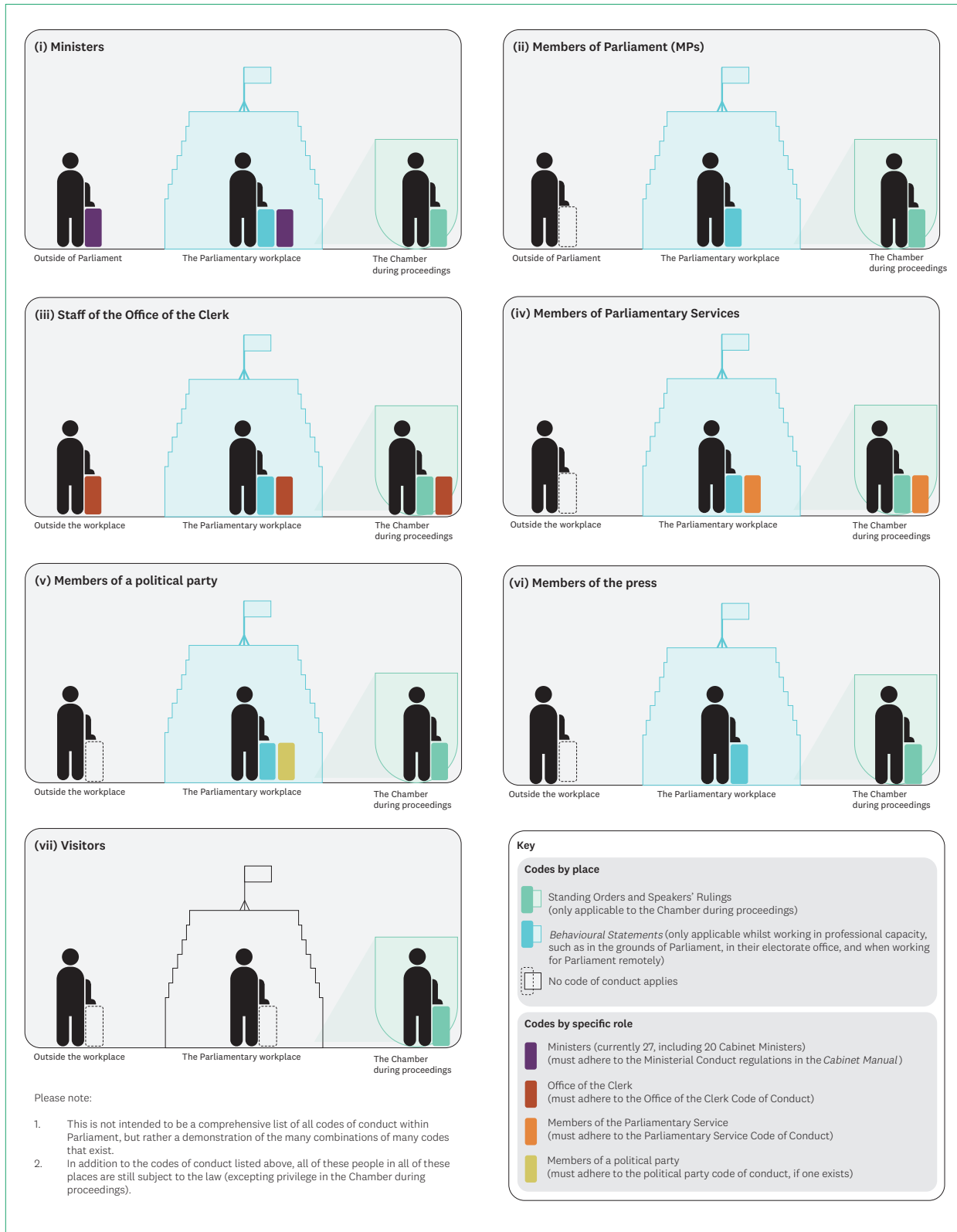
-  Standing Orders (184 pages)⁸
-  Speakers' Rulings (273 pages)⁹
-  *Behavioural Statements* (2 pages)¹⁰
-  Ministerial Conduct regulations (contained in paragraphs of the *Cabinet Manual*, 203 pages)¹¹
-  Office of the Clerk Code of Conduct (20 pages)¹²
-  Parliamentary Service Code of Conduct (32 pages)¹³
-  Political Party (see Section 4.1)

Figure 1: Codes of conduct in Parliament by place and specific role



4.0 National and international examples

4.1 New Zealand

Currently, ethical regulations for MPs in New Zealand are piecemeal and limited. Ministers are held to something of a mixed-bag code of conduct from the *Cabinet Manual*.¹⁴ A discussion of codes of conduct for Ministers goes beyond the scope of this paper, which is intended to focus on codes of conduct for all Parliamentarians, not just members of the Executive Council.

The Behavioural Statements

The *Behavioural Statements for the parliamentary workplace*, adopted after the *Independent External Review into Bullying and Harassment in the New Zealand Parliamentary Workplace* (the ‘Francis review’) recommended the creation of a code of conduct for MPs, are seven statements intended to shape the expectations for behaviour of all those who work in Parliament, including members.¹⁵ The author of the Francis review, Debbie Francis, is currently undertaking a review of that review, to evaluate its effects three years on.¹⁶ That said, the judge, jury and executioner are still largely the court of public opinion, the media and the ballot box.¹⁷

Standing Orders and Speakers’ Rulings

The *Behavioural Statements* have failed to curtail accusations and occurrences of bullying, harassment and sexual harassment. Unfortunately, the definitions provided for ‘bullying’ and ‘harassment’ do not include isolated incidents.¹⁸ This uniquely flawed definition would have been at fault for the failure to catch behaviour such as Minister Kelvin Davis’s response to Karen Chhour’s question. Or it would have, but the *Behavioural Statements* do not apply in the Chamber (proceedings in the Chamber are strictly governed by the Standing Orders and Speakers’ Rulings).¹⁹

Many recent cases have propelled discussion of members’ behaviour once again into the limelight (including Transport Minister Michael Wood’s ownership of Auckland Airport shares,²⁰ Meka Whaitiri’s defection from Labour to Te Pāti Māori,²¹ Marama Davidson’s comment about ‘white cis men’ regarding behaviour at the Posie Parker protest,²² Gaurav Sharma’s use of social media to make public allegations of bullying within the Labour Party,²³ candidate Stephen Jack’s sharing of a poem online comparing Jacinda Ardern to Adolf Hitler,²⁴ and Sam Uffindell’s premature announcement of his new portfolios on Instagram,²⁵ among many others).²⁶ However, the present standard of misbehaviour in Parliament is not a novel issue. In 2007 Hon Margaret Wilson (Speaker of the House at the time) made a speech in which she discussed two other attempts at creating a code of conduct for MPs, in 2001 and 2007.²⁷ Going even further back, in 1998, Hon Chris Finlayson, prior to becoming Attorney-General, wrote an article calling for a code of conduct for MPs.²⁸ And still, nothing of substance has been achieved. Public disapproval is mounting, but official scrutiny is lacking.

The lengthy history and apparently increasing number of instances of poor conduct points to the evolution of a systemic situation. This situation is not confined to our shores. Western parliamentary democracies in general have been rocked by scandals and poor behaviour in recent months. Boris Johnson, the former British Prime Minister, has recently resigned as an MP to avoid a verdict from the Commons privileges committee on whether he had misled Parliament.²⁹ In Australia, Federal Finance Minister Katy Gallagher has denied misleading Parliament after admitting she knew of Brittany Higgins’ allegations of rape against Bruce Lehrmann before they became public.³⁰ Well-behaved by comparison, even Canada has had trouble with an MP who provided secret advice to a Chinese diplomat.³¹ The seeming universality of the issue of members’ conduct should lend an increased sense of urgency to the calls for reform.

In addition to the *Behavioural Statements*, the Standing Orders make provisions for dealing with disorderly conduct and contempt as a matter of parliamentary privilege.³² The Parliamentary Privilege Act 2014 consolidates this information. What is said in the House is protected by absolute privilege, meaning one cannot be liable for defamation. Contempt and breaches of privilege are very serious; only the most troubling of conduct is likely to be considered. However, there is an argument that bullying, harassment and sexual harassment fulfil the criteria, that is, they obstruct and impede the House and its members in the performance of their functions in two ways. Firstly, they cause harm and distress to the victim, reducing their capacity to complete their duties. Secondly, the appearance of a hostile working environment and toxic culture reduces the public trust in the institution, making it more difficult for the House to function and for members to lead. The difficulty is that individual instances are what are addressed, but the impacts of a single instance of bullying and harassment do not often have a large enough impact to be noticed as a matter of privilege. It is the systemic effects of poor behaviour that cause the real damage, but it is difficult to address this aspect within the current framework. A potential remedy for this state of affairs would be for the Speaker or Standing Orders Committee to verbalise their systematic expectations for ethical conduct in the House and boundaries. This would introduce the code of conduct for MPs in a manner similar to the way common law is handled.

Codes of conduct for members of political parties

As in other countries, some of the political parties in New Zealand have codes of conduct for their members, including members of Parliament. Currently, the Labour Party is the only one with an explicitly titled Code of Conduct, currently three pages long, although every party must have a constitution or set of rules governing membership that usually have some ethical content.³³ All require declaration and registration of interests and most make at least a passing allusion to behaviour intolerable because it would bring the party into disrepute. Some, like Te Pati Māori, include ethical principles and expectations, without an extensive prescriptive component that details violations of these principles.³⁴ This would make it a code of ethics, but not a code of conduct.

In Chris Finlayson's previously mentioned article, he had a rather apt line describing the state of parliamentary conduct. '[R]ecent experience has shown one cannot rely on individuals to behave properly.'³⁵ Although written in 1998, this description of members' behaviour has not lost its relevance. The development of parliamentary ethical regulations has improved since then, but progress has been slower than one might have hoped.

4.2 The United Kingdom

House of Commons and House of Lords

The UK's House of Commons and House of Lords both have codes of conduct with extensive guidance.³⁶ Both are also subject to the behavioural code, a list of statements adopted two years after the *Behavioural Statements* were introduced in New Zealand, and bearing a striking similarity in both content and format.³⁷ An interesting feature of the behavioural code is that it applies across the entirety of Parliament, including to visitors. By extending the expectations of conduct to all that MPs are likely to interact with in their public lives, a sense of reciprocity and mutual respect may be inculcated.

The codes of conduct for the Houses of Commons and Lords tend to run along similar lines and are both excellent examples of the form and content to be expected in a complete code of conduct for MPs. Taking their principles from the Committee on Standards in Public Life and the *Behaviour Code*, both have well-defined and carefully selected aspirations for members. Both also have a detailed and accessible complaints process with clear provisions for enforcement and oversight. Both have undergone review since their inception and are clearly intended to be evolutionary and adaptive documents, rather than 'one and done' types.

One unique difference in the House of Lords, compared to all other parliaments analysed, is that the acceptance of any payment for services is prohibited. This is different from prohibitions on the acceptance of gifts, etc, found in other codes, as members of the House of Lords are not compensated for their work.³⁸ Additionally, the House of Lords is framed in terms of ‘personal honour’, reflecting its aristocratic history.³⁹ A vestige of this origin is present in the terms of address and definitions of unparliamentary language in parliaments of the Westminster tradition. These clauses are, obviously, ill-suited to the New Zealand House of Representatives, but they give some interesting insight into the ways different codes can suit different institutional needs and histories.

Criticism has been levied at the current state of the codes of conduct for the House of Commons and its Ministers, partly targeting the role of the Prime Minister in regulating the ethical conduct of their Ministers.⁴⁰ There are worries that this role has too much power to dismiss recommendations from the Parliamentary Commissioner for Standards, making enforcement of this code too arbitrary and open to political exploitation. Additionally, a review of this code by the Parliamentary Commissioner for Standards identified several areas for improvement and made recommendations.⁴¹ These included: misuse of social media, information, and parliamentary resources; lobbying; and outside work.⁴² This was addressing a general concern that ‘the current Code focusses too much on financial matters and too little on behavioural issues’.⁴³

Devolved parliaments

All the devolved parliaments of the United Kingdom also have codes pertaining to members’ conduct. These all bear a strong resemblance to the codes for the Houses of Commons and Lords, although with some key differences. The Scottish Parliament’s code does not adopt the same principles as the others, extending only to the basics of respect, courtesy and integrity.⁴⁴ Additionally, it applies to interactions with constituents and defines unacceptable behaviour from them.⁴⁵

The Welsh Parliament’s (or Senedd’s) code has a few fundamental differences from other codes.⁴⁶ It explicitly applies ‘at all times, including in Members’ personal and private lives’.⁴⁷ This is analogous with a requirement of New Zealand’s *Cabinet Manual*, which states, ‘In all of these roles and at all times, Ministers are expected to act lawfully and behave in a way that upholds, and is seen to uphold, the highest ethical and behavioural standards’, including when they are acting in a personal capacity.⁴⁸ The Welsh code also, uniquely, does not apply to Ministers, First Minister or Counsel General, who have their own code.⁴⁹

In Northern Ireland, the Legislative Assembly’s code is most similar to the UK Parliament’s codes, with a few extra principles.⁵⁰ All these legislative bodies share a definition of bullying and harassment that includes both persistent behaviour and isolated incidents.⁵¹

4.3 Canada

House of Commons

Owing to its federal nature, Canada has a variety of legislative bodies at different levels, each at a different point in its use of a code of conduct for MPs. The state of ethical regulations in the Canadian House of Commons is roughly like that of New Zealand, with the exception that a strong appendix to the *Standing Orders for the House of Commons* condemns sexual harassment.⁵² As with the Standing Orders of the New Zealand Parliament, the Canadian code gains strength from pertaining to conduct in the Chamber itself, which would otherwise be exempted from a code of conduct due to parliamentary privilege. Otherwise, Canadian regulations are spread across various pieces of legislation and resolutions, giving it an incomplete and fragmentary appearance.⁵³ However, the Canadian code falls short by failing to cover some of the areas that are covered by other codes, such as bullying and non-sexual harassment.

The Senate

Unlike the House of Commons, the Senate features a strong and comprehensive code of conduct for members.⁵⁴ The *Ethics and Conflict of Interest Code for Senators* is an exemplar code of conduct as a result of its extensive content and application. In this sense, it is a very complete code of conduct. Further, it instills a form of collective responsibility, acknowledging that one member’s poor behaviour will reflect poorly on the whole institution, reducing its ability to ‘carry out its functions’.⁵⁵ It is rare for this to be explicitly stated, although it may be generally implied in many codes of conduct.

Provincial and regional legislatures

In terms of provincial and regional legislatures, Ontario has a longstanding code of conduct in the form of the Member Integrity Act 1994, which has been regularly updated, to the extent of regulating members' use of social media.⁵⁶ British Columbia has the Members' Conflict of Interest Act 1996, which is a more basic integrity measure that does not extend to behaviours like bullying and harassment.

Summary

In general, Canadian codes of conduct are of an assorted quality; Canada leads the world in having an explicit prohibition against sexual harassment as an appendix to the *Standing Orders to the House of Commons*, giving it equal weight to the other appendix concerning conflicts of interest. However, beyond the basics of integrity that are implicit in conflict-of-interest codes, Canadian codes tend to be somewhat light on principles.

An interesting feature that appears to be unique to Canadian codes of conduct is that they often urge members 'to remain members of their communities and regions and to continue their activities in those communities and regions while serving the public interest and those they represent to the best of their abilities' or something similar.⁵⁷ This would help to ensure parliamentarians are truly 'of the people' and signals a desire to avoid the development, seen across western parliamentary democracies, of a class of career politicians.⁵⁸ This is generally contrary to the direction taken by other parliaments. Codes elsewhere often stress the commitment required to be a member of Parliament, especially for Ministers, such that it would preclude additional employment or engagements.⁵⁹ Whether such a standard can be reasonably applied in other cultural contexts would require further investigation and experimentation.

4.4 Australia

The Senate and House of Representatives

Australia, as another federal system, but one with mostly bicameral Houses of Parliament (i.e. having two chambers), features an even greater multiplicity of legislatures and diversity of codes than Canada. At the federal level, 'MPs and political staff ... are subject to very few codes of conduct'.⁶⁰ Neither the Senate nor the House of Representatives have implemented a code of conduct with proper independent oversight and enforcement mechanisms, despite the matter being long debated.⁶¹

State and territorial level

The situation at the state and territorial level is much more promising. All the relevant legislatures have a code of conduct for members in some shape or form or are in the process of developing one. These can vary in length from three pages (Western Australia Legislative Assembly) to 48 pages (Queensland Legislative Assembly).⁶² Most cover specific Chambers of Parliament, while others cover both the Upper and Lower Houses, like Victoria's.⁶³ Some lean heavily into the principles and aspirational-based content, such as in the Northern Territory Legislative Assembly, while others are more bare-bones integrity measures intended to manage conflicts of interest and other improper arrangements such as gifts and bribes.⁶⁴ This latter type is much less common in Australia than it is in Canada. In that sense, Australian parliaments may be said to be very aspirational in their expectations of members' conduct. That does not mean, however, that they are necessarily any less prescriptive. Registers of interests are common. Brevity does not equate to weakness, as dealing with breaches of a code as a matter of privilege can be a powerful sentiment to include as the enforcement mechanism.

There is great diversity in the expectations each parliamentary code places on its members. An example of this can be found in the Tasmanian Legislative Council; their code states that 'Members should promote reconciliation with Indigenous Australians', a unique commitment to be explicitly included in a code of conduct for MPs, reflecting Tasmania's unique historical context.⁶⁵ Some other codes require members to acknowledge differences of opinion and the strength of other forms of diversity, but this particular injunction is rare. As Canada, Australia and New Zealand have, to varying degrees, grappled with acknowledging, recognising and respecting their respective indigenous populations, Tasmania's inclusion of this requirement is unique, even more so in a code of conduct.

The South Australian House of Assembly's Code of Conduct is somewhat enigmatic. This Code is two-and-a-half pages (or four if including the aspirational section, which is explicitly noted as not part of the Code), which is long when compared to its counterparts. It has explicit condemnation of harassment, sexual harassment and discrimination, with clear definitions for each, and all the necessary backing of the Ombudsman Act 1972 to deal with breaches, which shows what can be done with a targeted approach. However, this Code defines harassment only as repeated behaviour and makes no mention of bullying.⁶⁶ Additionally, contraventions of the principles in the Act are neither punishable nor well-defined and only 'an intentional and serious contravention of a code of conduct by a public officer while acting in their capacity as a public officer ... constitutes a ground for disciplinary action against the officer'.⁶⁷ In its entirety, the Code does hold value, especially considering the South Australian House of Assembly's long delay compared with other Australian and international legislatures on this matter.

5.0 Analysis of common features and formats of codes of conduct for MPs

5.1 Principles

An aspirational component is present, to at least some degree, in virtually all codes of conduct for MPs. For some, it is the most important part. In a way, it is New Zealand's only part, in the form of the *Behavioural Statements*, and even that is only halfway done. By distilling the spirit of a code of conduct for MPs into a few key principles, it would become accessible and memorable, making it useful in day-to-day decisions, which is what has been done in the United Kingdom with the *Behaviour Code*. Unfortunately, all the following principles described must be taken with a grain of salt. Across the board, most codes of conduct fail to adequately specify what exactly a contravention of these principles would look like, leaving it to the discretion of the oversight and enforcement arms. This may afford them some degree of flexibility to handle things as they see fit; however, in practice this results in underserving all concerned. Some, like South Australia's House of Assembly, state explicitly that the principles are non-enforceable and do not form part of the code of conduct, which is arguably better than being deliberately vague.⁶⁸

Across all these codes of conduct, there are a wide variety of principles, although several are proven frontrunners.

- 'Integrity' leads the pack, largely because it has had a significant head-start in the form of interest declaration and conflict management.
- 'Dignity' enjoys a similar position due to the way it is used to frame parliamentary privilege and contempt. These measures tend to have been in place a lot longer than more general codes of conduct, mostly because they concern the basic functions of Parliament and its financial operations. As we shall see, many principles are implicit in the prescriptive components of codes of conduct, the way integrity is implicit in a conflict-of-interest section and dignity is implicit when members are urged to behave in a way that shall not bring their organisation (be it Parliament or their party) into disrepute. This section will largely deal with explicit mention of these terms as principles in clearly demarcated sections, although some implicit principles will be included.
- 'Responsibility' is often a key principle. Behaviour can only be improved so much by force. At some point, members will need to take responsibility for their and their colleagues' behaviour. There are measures, discussed below, that can make this as easy and simple as possible, but it is up to the members themselves to improve their conduct and become worthy of the trust placed in them that is so necessary to the success of their enterprise.
- 'Objectivity' is also a key principle and is reflected in Prime Minister Jacinda Ardern's observation that members should be 'debating the policy, not the personal'.⁶⁹ This idea is common among political party codes of conduct in the UK,⁷⁰ but enshrining it here should serve as a reminder of the role and responsibilities members have as they debate. Unfortunately, this remark is a nice soundbite that ignores much of the practical context of parliamentary debate. There is a world of difference between 'the member is lying' and 'the member's statement may be misleading', where a simple rewording in the cut-and-thrust of debate can make all the difference. The former is 'an offence against the dignity of the House' whereas the latter is not 'ordinarily ... out of order'.⁷¹
- Principles such as 'promoting good relations' and 'good working relationships' could also be helpful in creating a safe, non-hostile working environment that is not conducive to bullying. However, these are also not without difficulties.
- Other common principles include 'selflessness' (primacy of the public interest), 'openness', 'leadership', 'honesty', 'accountability', 'duty to uphold the law', 'courtesy' and 'stewardship'.

The selection of principles can demonstrate the priorities of the organisation. It would be nice to foster good working relationships and be objective, but there will be times where it must be clear which takes precedence. Maintaining good connections will sometimes require tact and concessions, give and take; being too objective can jeopardise these relationships. If objectivity is a principle and good working relationships are not, then one can understand that these sacrifices may be necessary to maintain impartiality, fairness and merit-based decision-making. In a perfect world, a code of conduct for MPs would also explain why these values and not others have been selected.

In addition to reflecting the internationally standard principles in a code of conduct for MPs, New Zealand parliamentarians may wish to incorporate ‘manaakitanga’ and ‘kaitiakitanga’ as a way to reflect our unique cultural context. In particular, kaitiakitanga bears strong similarities to the principle of stewardship, which is present in few codes explicitly but many codes implicitly when the code applies to MPs’ use of official information and public and parliamentary resources. It may also be implied by the caretaker convention present in New Zealand and overseas, whereby the Government acts with restraint during an election, and until the end of their term if the result is not in their favour.⁷² These principles must be accompanied by appropriate definitions to ensure they are not left open to loose interpretations that could jeopardise the enterprise.

The selection of these principles would embody and reinforce the spirit of Te Tiriti/The Treaty in the conduct and culture of the parliamentary workplace. As we have briefly touched on in *Think Piece 40 – The time is right! Why MPs need a code and oath fit for the 21st century*⁷³ and will explore in the Institute’s upcoming *Working Paper 2023/03 – Appearances of Te Tiriti/The Treaty in New Zealand Legislation*, there is some room for discussion on the extent to which MPs’ conduct is constrained by the principles of the Treaty. In the oaths taken by Parliamentarians, they must act ‘according to law’, which Hon Chris Finlayson has argued includes acting in accordance with the principles of the Treaty. In the current state of affairs, however, it is unclear what exactly this entails and how it is to be enforced. In strengthening the position of Te Tiriti/The Treaty through the selection of principles for a code of conduct for MPs, some of this confusion may be dispelled, a situation that is preferable for both MPs and the public that must ultimately hold them to account.

5.2 Independent oversight

Another feature that seems to be highly desirable is the presence of independent oversight. In the UK, the Parliamentary Commissioner for Standards fulfils this role for the House of Commons, while the House of Lords has a plurality of Commissioners for Standards.⁷⁴ Wales typically handles matters of conduct through the Llywydd (speaker or presiding officer), but they may refer the matter to the Senedd Commissioner for Standards.⁷⁵ Canadian and Australian legislatures have various ombudsmen, commissioners and privilege committees, as the case may be, owing to the diversity inherent in their federalised nature. Naturally, there is going to be some degree of variation in the strength of the independence of these officers.

New Zealand anticipates this role coming into effect in 2023, in the form of the independent Commissioner for Parliamentary Standards.⁷⁶ As it stands, there is considerable confusion over the role, since they are instructed to apply the principles of the *Behavioural Statements*, which have not yet been established (they are seven statements rather than principles). Supplying the Commissioner with a more substantial *Behavioural Statements*, and a code of conduct for MPs, would eliminate this confusion. To further improve this role, it should be made compulsory to bring reports of complaints and their resolution to the specific attention of the House or at least make them publicly available, rather than leaving this to the Speaker’s discretion. This would improve transparency and thus the health and fitness of Parliament. By reading these reports in the House, the Commissioner would also be protected by privilege from accusations of defamation, for example, as they make their report. This would improve confidence in the Commissioner to fully investigate and report on complaints.

Two main approaches might be: (i) setting up a dedicated independent external office that receives complaints, makes inquiries, reports back to the House and may recommend sanctions; and/or (ii) treating violations of the code as a matter of parliamentary privilege and using the pre-existing mechanisms. Importantly, both methods tend to preserve the ability of the House to discipline its members without external authority imposed on them.

Independent oversight is crucial to the effectiveness of a code of conduct for MPs. Without it, ethical regulations become mere political tools with which the powerful can protect their positions and damage the positions of their opponents. The perception of good independent oversight will strongly assist in restoring public trust and confidence in Parliament and its members, allowing them to fulfil their public duties to the best of their abilities. To be effective, a commissioner must demonstrate early that they are objective, impartial, active and reliable. When the members are confident that the Commissioner will possess these qualities, their mere expectations will alter their behaviour. In doing so, they respond to the information they have about the incentive structures of their institution.

Significant power imbalances can exist between MPs (and their staff), making the requirement for complaints to come from people in the parliamentary workplace overly restrictive. Without an independent complaints process and good employment relationship, it can be difficult for complainants to come forward.⁷⁷ What has been called ‘that bloody triangular thing’, where staff have two bosses in Parliamentary Services and their member, may be better than being directly employed by their member, but it is still an awkward and fragile arrangement.⁷⁸ Staff still feel that by making a complaint against their MP, they are jeopardising their continued employment.⁷⁹ Extending this ability to inquire, with adequate provisions for the Commissioner to dismiss inappropriate, frivolous, trivial or vexatious complaints, should ensure that more breaches of a code of conduct for MPs are properly investigated by the Commissioner, rather than being swept under the rug or left to fester.

5.3 Enforcement

Enforcement is as important to the success of a code of conduct for MPs as its principles. An appropriate range of punishments suited to the severity of transgressions will need to be identified. Drawing distinctions between misconduct and serious misconduct, as well as clarifying their place alongside breaches of privilege, contempt and criminal law, is necessary. The consequences of poor behaviour must be well understood in advance by all for these incentive structures to take effect. Too much improvisation would set poor and inconsistent precedents, although with the appropriate judgement and experience, systems like the Speakers’ Rulings and common law can be powerful practices. In the most effective enforcement sections, a reasonable effort to provide for most eventualities is made while acknowledging that a complete list is impossible. In terms of appearances, prevention will best serve the reputation of the House instead of punishment after the fact. This plays into the general desire of organisations like Parliament and political parties to resolve such issues quietly to preserve their dignity and reputation, to the detriment of transparency and justice.

Having an all-or-nothing system, where the only two options are inaction or expulsion, is too blunt a tool to be an effective method of enforcement. So unwieldy is it, that it may only lead to one of three scenarios: (i) total inaction, it is never used and conduct never improves; (ii) it is used in a draconian manner, even the most minor of misconducts demand blood; or (iii) it is used inconsistently and exploited politically to remove rivals and strike down opposition, especially if there is minimal or ineffective independent oversight. Balanced and reasonable enforcement is therefore impossible without an appropriate range of responses. These scale from mediation, to recorded apologies, to more extreme measures such as the declaration of a member’s seat as vacant, effectively removing them from the House (notwithstanding criminal offences, which are a matter for the police and the judiciary). Flexibility is necessary for many codes of conduct for MPs, to respect the ability of parliamentarians to solve such issues among themselves, but, in the New Zealand Parliament currently, it does not appear that such flexibility would be desirable.

All the best ethical regulations have well-considered and extensive descriptions of the complaints process and the kinds of actions that constitute an offence. While the principles might be (mostly) static, the prescriptive component of a code constantly evolves to keep up with new methods, tools and kinds of offence. The evolution of social media has created massive new opportunities for bullying, harassment and misconduct. Those codes of conduct for MPs that have included provisions for social media and technology use by members and Ministers are generally of a high standard. Their currency, adaptability and responsiveness are demonstrated by their ability to keep up with change and maintain the relevance of the code. In doing so, these codes continue to serve their purpose by maintaining the behavioural standards of parliamentarians.

There are three ways that codes of conducts for MPs are enforced.

1. Dealing with breaches of the code as a matter of parliamentary privilege. Bullying, harassment and sexual misconduct are treated as a contempt of the House and punished accordingly. Western Australia's Legislative Assembly uses the same mechanisms to handle matters of privilege and breaches of their code of conduct, along the lines of this model.⁸⁰
2. The House considers and implements sanctions on the recommendation of the Commissioner, the most common method for larger parliaments.
3. A less satisfactory (and far less common) way is that members are accountable to their party whips or leaders.⁸¹ Unfortunately, this is ill-suited to independent members and cases when the whip or leader is accused of misconduct. This problem may also arise if the Speaker is vested with the responsibility of enforcing the code, because they are also a member of Parliament and cannot enforce it on themselves.⁸² This may be circumvented by delegating responsibility to the Deputy Speaker when the Speaker is the subject of complaint, but it still concentrates too much power in the office of the Speaker when other options are available.

To create the grounds for enforcement, securing the members' consent is crucial. This can be done in several ways. In the Australian Capital Territory, the code of conduct, contained in the Standing Orders, requires the Assembly to 'reaffirm its commitment' within six months from the start of each parliamentary term, like taking an oath.⁸³ Members who fail to do so do not get to 'participate in parliamentary processes' until they do.⁸⁴ Another method is simply to create the code through a resolution or vote. The method of implementation is, therefore, closely linked to the House's ability to enforce the code on its members.

5.4 Codified implementation

Several methods of implementation have been used across the Commonwealth. The Canadian House of Representatives introduced parts of their code as appendices to the Standing Orders. This is also the case in some Australian legislatures. In several other Australian state and territorial legislatures, the codes have been adopted as a resolution, as in the parliaments of the United Kingdom. In yet others, codes came into being through legislation. Queensland's Legislative Assembly published its Code through a parliamentary committee.

In New Zealand, something of a Ministerial code of conduct is present in the *Cabinet Manual*, with other bits and pieces in the Standing Orders and the *Behavioural Statements* from the Parliamentary Culture Committee of the Parliamentary Services Commission. This splintered and piecemeal situation is not uncommon internationally, but it is certainly not ideal. It is in the interests of the members, the administration and the public that the code be as simple and accessible as possible, for the sake of transparency. When confronted with a difficult ethical decision, the last thing a member would want is to have to search through four different documents, each containing a fragment of the parliamentary ethical framework. Expounding this framework in a single document will help all involved.

Annoying as it may be, there are reasons for this. Including the code of conduct for MPs in the Standing Orders extends it into the Chamber, which is wholly the domain of the Speaker (and their rulings) and the Standing Orders. If the code is published by a committee other than the Standing Orders Committee or contained in legislation, it does not extend into the Chamber due to parliamentary privilege during proceedings. This speaks to another alternative for implementation. The Speaker could verbalise their expectations for behaviour, making clear the constraints. This is not without precedent; some of the Speakers' Rulings have been behavioural in their nature, such as allowing knitting except by a Minister whose Bill is in Select Committee.⁸⁵ By enshrining the code in legislation, other advantages might be accrued. The range of methods of implementation are not just about what the code will look like when it materialises. They also affect whether a code of conduct will materialise at all.

It must be acknowledged that concessions and compromise are likely to be necessary for the code of conduct for MPs to become established. It will be important, therefore, that concessions and changes are not made such that the code is wholly defanged, providing only the appearance of change while the status quo remains unchanged, leading to false celebration and the prevention of the issue being taken up again in future. There is no setback quite like the illusion of progress. Something is not always better than nothing. This is one of the key problems with the *Behavioural Statements* as they are. In order to secure the consent of all the relevant parties, the *Behavioural Statements* are left deliberately vague and toothless. In addition to this, an overly restrictive code of conduct for MPs is seen to be highly undesirable by parliamentarians, who wish to preserve the robustness of debate. The constant taking of points of order could damage this most basic of requirements for a functional parliament. That said, even the most strong and comprehensive code of conduct is worthless if it will not ever be implemented.

Adaptability and security

Adaptability and security, two values that mostly trade off against each other, are crucial to the successful use of a code of conduct for MPs. Societal expectations and cultural attitudes shift and blur with time. For the code to maintain its usefulness and authority, it must keep pace with change. However, making the code too easily alterable would lead members to create exploitable loopholes and maintain a poor standard of behaviour. The Legislative Assembly for the Australian Capital Territory provides an example of an attempt to strike the balance. It requires the code to be reviewed at the end of each term, but it is enshrined in the Standing Orders, making it at least somewhat secure.⁸⁶ The essence of a code is that, through the poor behaviour of a few individuals, the organisation has lost the faith and trust that was placed in it to operate at a high ethical standard, so they must be guided with a firm hand and forced, if necessary. This applies doubly so to organisations that operate in a high-trust environment, where the confidence of their stakeholders is key, like Parliament.

Educational measures

Some codes of conduct for MPs are implemented alongside educational measures and require regular confirmation from MPs that they will uphold it, in the same way that they must send in an annual return that discloses their interests to the Registrar for the *Register of Pecuniary and Other Specified Interests of Members of Parliament*.⁸⁷ Following the example of the UK House of Commons, there is an opportunity for the introduction of seminars on ethical conduct, behavioural expectations and intolerance of bullying and harassment for all new members and for members returning after a significant absence. Alongside these educational resources are often sources of advice, occasionally in the form of an ethical advisor, a role that works under the relevant Commissioner or in the Office of the Clerk. These measures help make the code a more complete package and foster a culture conducive to the highest standards of ethical conduct. Further reforms beyond this, however, would well exceed the scope of this paper and the powers of a code of conduct for MPs.

6.0 Reasons for caution and circumspection

This paper is mostly limited to the codes of conduct themselves, rather than the larger system that includes such features as culture and interpretation that play a significant part in the effectiveness of a code of conduct. In the interests of balance and intellectual honesty, it must be noted that codes of conduct are not perfect remedies for poor ethics. For example, the United Kingdom has extensive Codes of Conduct and regulations for Ministers and MPs, and yet it has been and continues to be plagued by scandals such as the recent furore over the Privileges Committee Report on the conduct of Boris Johnson for allegedly misleading the House of Commons over what has become known as Partygate, prompting the former Prime Minister to resign from Parliament.⁸⁸ Three main problems with codes of conduct will be briefly glossed here, although there are many others besides.⁸⁹ To answer any of them adequately would go beyond the scope of this paper; merely detailing them will be sufficient for our purposes.

6.1 Professionalism and the career political class

The first problem is that codes of conduct can contribute to the emergence of a career political class. Registers of interests and strong sanctions against conflicts can discourage experienced business owners and people with many strong interests and connections built from a long and successful career from joining. Integrity measures can, unintentionally, prevent these skilled and experienced people from entering Parliament, as they must sacrifice their business for the sake of appearances. This can be undesirable for several reasons, not least because it reduces the capabilities and efficacy of Parliament. It also means that salaries for parliamentarians (and local government, but that is well outside the current scope) must be competitive with the private sector or risk scraping the bottom of the barrel. This may unintentionally select for the power-hungry, rather than the competent. Without strong characters and defined principles cultivated through a lifetime of experience, new parliamentarians fresh out of their political science degree become susceptible to ideological and cognitive biases, not to mention pressure groups. Principles such as professionalism can subtly reinforce this trend, by encouraging the formation of the informal norms that define the role and its perceptions. This can take the form of a vicious cycle; as younger, more inexperienced members are funnelled into the House, a code of conduct will become more necessary to provide expectations for and controls on ethical practice. Lacking in managerial and people skills (which are often developed through experience), it is only to be expected that they will not be sure and stable in their conduct, leading to what has been described in the Francis report as a 'hostile working environment', prompting this paper.

If such a process is unavoidable, providing adequate civics education, as per Project *CivicsNZ*, will be necessary to equip future leaders with the skills and experience necessary to mitigate the disadvantages of their youth. This would allow them to bring all the strengths of innovation, fresh perspectives and responsiveness to current and future issues that make having youth in Parliament so valuable. This should be seen as more of a requirement than an afterthought if Parliament and its related systems intend to draw on new talent and human capital.

6.2 Culture

Secondly, codes do not, by themselves, create the environment they control. Rules do not dictate culture. Instead, it is largely dictated by tacit endorsement. This is the concept that the standard you walk past is the standard you accept. The behaviour that gets called out will diminish in frequency and severity over time. Note that it does not require a celebration of harmful behaviours for these to become features of the culture. These informal norms and institutions, as opposed to formal ones such as those contained in codified ethical regulations, are what most dictate standards for behaviour. There is much preparatory work to be done to ensure Parliament is ready to apply a code of conduct when it gets introduced. Codes can be viewed as an active process, rather than the single event of their introduction. Both before and after their introduction, there is much work to be done to ensure Parliament is ready to apply and subsequently does continue to apply and update the code.

The standard you walk past is the standard you accept.

It is not so much culture as working conditions, what the work entails, that is dictating the attraction of new talent. Members do not have good employment relations; they do not have a role description, nor are they provided with a good induction that sets and negotiates expectations. They do not have a higher employer that their staff can address, and the process of the activation of the ‘breakdown clause’ can be very difficult and costly.⁹⁰ Despite public perceptions and current trends in feminist institutional literature, Parliament is not quite the ‘Old Boys Club’ one might be led to expect.⁹¹ Damaging behaviours, such as bullying and harassment, do not tend to occur across demographics so much as occur within these groups. These behaviours are often a result of ‘intense competitive pressures’, occurring along professional rather than demographic lines.⁹²

There are, therefore, significant difficulties in raising matters of conduct, even with a code in place. For one, the desire from all involved to resolve matters quietly creates a tendency to avoid formal, discoverable complaints that could create scandal. This is in the interest of the organisation, not the individuals involved, who can be denied redress, or self-prevented from applying for it, out of political convenience. Also, the power imbalances that occur in the parliamentary workplace can be significant. Without healthy and secure employment relations and strong mediating entities, the ability to call out bad behaviour is reduced. This directly limits the potential for culture-change. Another factor, unique to the New Zealand context, is the small size of Wellington. In such an overgrown village, word gets around quickly. If you are seen as a troublemaker, you will find it difficult to secure employment opportunities.⁹³

These points speak to the demand for leadership and accountability to see the kind of cultural change that would allow a code of conduct to be effective. These are key themes from the literature. The assumption of personal and collective responsibility for the behaviour and conduct of MPs and their colleagues would dictate change. Change starts from the top.⁹⁴ But it can also start from the new. Through education, the fresh faces of Parliament can also become the fresh winds of change.

6.3 Defining the role of MPs

The final quandary is the existence of substantial differences across time and space in the definition of the role of members of Parliament. Constitutional arrangements, such as the electoral system, the function of the executive, can create significantly different roles in different countries. Even the size of Parliament is relevant, as it becomes more important and more difficult in larger parliaments to ensure individual voices are not drowned out, and to ensure standards of behaviour are upheld. Additionally, whether members are treated as delegates or trustees will shape expectations about their conduct. The difference lies in the amount of agency and personal judgement MPs are supposed to employ, with trustees exercising their best judgement and delegates following the expressed preferences of the public.⁹⁵ Even between nations with a strong institutional family resemblance like the UK, Canada, Australia and New Zealand, the differences can be striking. These kinds of differences can lead to inappropriate or unnecessary restrictions on behaviour or, as is probably more often the case, gaping holes in the regulations. For these reasons, conversations on the role of MPs will always be relevant to the implementation and review of a code of conduct. Conceptual ambiguity leads to ineffective regulations and guidance.

An evaluation of these difficulties, and whether they constitute enough of a challenge to cause an unfavourable stance on the introduction of a code of conduct, is not being offered at present but may be the subject of future research and discussion. If such an effort were to be undertaken as to create a code of conduct for MPs, it may be reasonably expected that such challenges would be addressed.

7.0 Conclusion

7.1 Summary

In recent years, Parliamentarians are beginning to be subject to more demanding expectations for their behaviour in their positions as leaders of the nation. In response to this, many of New Zealand's institutional cousins across the Commonwealth have adopted codes of conduct for their members of parliament.

New Zealand itself has a feeble code, in the form of the *Behavioural Statements for the parliamentary workplace*, which has not prevented the issues of bullying, harassment and sexual harassment from getting the media spotlight, indicating a failure of the statements to create the necessary changes in behaviour. One method of creating real systemic change would be to dramatically strengthen the ethical regulations governing the behaviour of MPs. This could be done by creating a new code of conduct for MPs, by MPs.

The parliamentary democracies of the Commonwealth provide a variety of examples of codes of conduct and other forms of ethical regulations for parliamentarians. Despite some constitutional and cultural differences, each of the selected examples from the United Kingdom, Canada and Australia bear a strong enough family resemblance to New Zealand to be instructive. The most complete codes of conduct from these legislatures tend to follow a general format, with aspirational principles, definitions of misconduct, a detailed complaints process, independent oversight and an appropriate mechanism for enforcement. Some codes are accompanied by a lengthy guide that provides all the necessary clarity to make the code practicable. Such a format is also advised for New Zealand, to improve on the lacking status quo. These features are necessary because they have the detail required to be effective, by providing adequate assistance to members in their duties. This would improve the transparency, responsibility and accountability of Parliament, ensuring it deserves the trust placed in it by the public and that it can deal with the raft of difficult issues ahead.

This topic promises a great variety of areas for further research and development. There is a great deal of information contained in the Speakers' Rulings of all the various parliaments, some of which may yield insight into their ethical regulatory frameworks. A review in depth of these documents might profit the enterprise of code-of-conduct formulation. An evaluation of the criticisms against codes of conduct could be undertaken and research could be done to prepare a discussion paper showing what a code of conduct for members of Parliament might look like for New Zealand. Going further, the possibility of the preparation of a Members' Manual to complement the *Cabinet Manual* has emerged. This would address the significant confusion and debate, at home and abroad, about what exactly it means to be a member of Parliament.⁹⁶ Another potentially fruitful area of research would be the increasing demands for professionalism in Parliament and local government, and the potential issues that can arise. An investigation into the evaluative processes of countries with codes of conduct might also be of use, as it would demonstrate their effectiveness and identify any divergence between policy and practice. New Zealand has a real chance to live up to the highest international standards for conduct and even surpass them. In exploring these questions and materials, the foundation for such a reality would manifest.

7.2 Topics for consideration

In the formulation of a new code of conduct, lessons should be learned from international examples regarding the principles, oversight, enforcement and implementation of their codes. A few points of advice are here provided:

1. Some codes of conduct openly acknowledge that the code is not a silver bullet.⁹⁷ This can be acknowledged in the 'purpose' section of a code when it describes the purpose of both *the* code and *a* code, and that it is designed to assist rather than restrict members. Other institutions are often necessary to supplement and complement the code which, itself, sits in a wider system to generate transparency, accountability and responsibility – a tool in the toolbox, rather than a final definitive measure.
2. Bullying and harassment, as contained in the *Behavioural Statements*, could be redefined to include both persistent behaviours and isolated incidents. This would bring the definition in line with international conventions.

3. The code itself should be clear and concise, with extensive guidance provided in a guide to the code. This would make the code accessible for members and the public alike while retaining the legal exactitude required to make it functional. To further improve this, codes of conduct are often published on the relevant parliamentary website or are at least publicly discoverable.
4. The code's standing in relation to other ethical regulations should be made clear. A code of conduct for New Zealand would not be starting from scratch; other parliaments around the world have cleared the way. There are also existing pieces of legislation, Standing Orders, Speakers' Rulings and other material that can be counted as ethical regulations.
5. A code of conduct must be careful in the ways in which it may infringe upon the freedoms of speech, expression and debate among our elected representatives.⁹⁸ These freedoms, protected by parliamentary privilege, are crucial to the health and functioning of New Zealand's political system. The adversarial nature of parliamentary debate is part and parcel of this fundamental feature of the Westminster system. The heavy law involved here should not be seen as a big obstacle to achieving something useful so long as it does not compromise fundamental principles.
6. Codes can generally be broken down into sections, with the most complete codes having all to a high standard. These sections are: a selection of aspirational principles; a prescriptive component with a detailed complaints process that allows for more than just the victim to make a complaint; provisions for independent oversight and enforcement by the House.
7. There are myriad principles mentioned implicitly and explicitly by codes of conduct. Some that would seem to be especially appropriate for New Zealand would be integrity, responsibility, respect, dignity, selflessness, objectivity, accountability, honesty, leadership, manaakitanga and kaitiakitanga.
8. Codes can be implemented in a variety of ways, including but not limited to an Act of Parliament, a resolution of Parliament, published by a committee, verbalised by the Speaker or appended to the Standing Orders. The latter two options have the advantage of applying during proceedings of the Chamber.
9. Codes of conduct usually only extend into members' public lives, leaving their personal and private lives out.⁹⁹ These areas may be subject to other codes, such as political party codes of conduct, but it is generally not seen as the role of a parliamentary code to cover this area.
10. Codes of conduct are expected to have longevity. They are often subject to review and are amended constantly to keep pace with technological and social change. It is also seen as desirable that they be protected from politicisation and frivolity, which could diminish their effectiveness.
11. Members may wish to consider the effects of the current constitutional arrangements on the code and their role as members. Conversations around whether members are seen as delegates or representatives will be relevant, as will the size, shape, function and electoral system of Parliament. For instance, mixed-member proportional representation has brought many minor parties into Parliament. It is important that they feel their voices are heard among the back and forth between the major parties.¹⁰⁰
12. Members may wish to consider expanding on the beginnings of the Ministerial code of conduct contained in the *Cabinet Manual*. Many of the parliaments analysed in this paper have Ministerial codes of conduct in addition to a code for all members, with some even making the Ministerial code entirely separate, exempting Ministers from the general code by giving them their own.¹⁰¹
13. It may be desirable for political parties to develop their own codes of conduct, requiring party members who are also MPs to adhere to the parliamentary code of conduct and take into account the other codes of conduct that they will encounter professionally: the *Behavioural Statements for the parliamentary workplace*, the *Code of Conduct – How things are done at the Office of the Clerk of the House of Representatives*, the *Parliamentary Service Code of Conduct* and the *Standards of Integrity and Conduct*.¹⁰²
14. There is an option to include a statement to adhere to and uphold the code of conduct in the oaths and declarations system. This would require MPs to act ethically and to the best of their abilities for all New Zealanders.

7.3 Discussion questions

This research will form only part of the puzzle, having prompted as many questions as it has answered. Some of these discussion questions are offered below.

- Is New Zealand in need of a new code of conduct for MPs?
- If so, how could it be implemented alongside existing regulations?
- Should the Ministerial code contained in the *Cabinet Manual* be strengthened?
- What are the major obstacles to a new code of conduct and how can they be overcome?
- What else can be done systemically to improve members' conduct?

It is recognised that even the most aspirational and exhaustively prescriptive code will not, of itself, solve all the behavioural issues of members. Other institutional reforms may be necessary, as is the choice of members to embody the spirit of the code beyond the letter. Culture is as important, if not more so, to see change. Holding oneself and others accountable for poor behaviour is the core of effective cultural change. It will take hindsight, insight and foresight to make correct ethical judgements and decisions in new and confronting situations. As part of the project *CivicsNZ*, the Institute has identified many significant challenges and areas of opportunity in the not-too-distant future. Ensuring that members of Parliament act faithfully and effectively in the public interest, without the distractions of scandal and poor behaviour, will be crucial when responding to these concerns. Long-term interests are only addressed appropriately when short-term concerns do not cloud one's vision. Stimulating the discussion around ethics for parliamentarians is just one way among many the Institute hopes to improve the health of New Zealand's democracy and safeguard its future. The implementation of a more extensive code of conduct for parliamentarians would be a measure to preserve and cultivate the dignity, integrity and trustworthiness of Parliament, so that it can be an effective legislature for current and future generations.

Appendix 1: The Behavioural Statements for the parliamentary workplace

Source: New Zealand Parliament (24 June 2020).



Upholding the

Mana of Pāremata Aotearoa, New Zealand Parliament

SHOW THAT BULLYING AND HARASSMENT, INCLUDING SEXUAL HARASSMENT, ARE UNACCEPTABLE

WHAT it means

- Bullying is defined as unreasonable and repeated behaviour towards a person or group that can lead to physical or psychological harm.
- Harassment is a pattern of behaviour directed at someone which makes that person feel distressed or unsafe.
- Sexual harassment is any unwelcome or offensive sexual behaviour that is repeated, or is of such a significant nature that it has a harmful effect, or that contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.
- We will hold people to account for incidents of bullying or harassment.

WHY it matters

- Everyone has a right to feel safe, both physically and mentally, at work.
- Preventing bullying, harassment and sexual harassment, is a requirement by law that we as Parliament have enacted.

SPEAK UP IF WE OBSERVE UNACCEPTABLE BEHAVIOUR

WHAT it means

- We all have a responsibility to speak up if we observe unacceptable behaviour, especially if we are in a position to help others.
- Speaking up may be simply pointing out to a colleague where they may have made a minor transgression, or it may mean making a formal report about something more serious.
- We can expect any complaints we raise to be heard and investigated without reprisals against the complainant.

WHY it matters

- A healthy workplace culture is everyone's responsibility. Providing support to one another by speaking up for them is one way of doing this.
- When issues are identified and addressed early, they are usually easier to fix than when addressed later.

USE OUR POSITION OF POWER OR INFLUENCE TO HELP OTHERS, AND AVOID HARM

WHAT it means

- Significant power imbalances are part of the parliamentary workplace; we need to ensure that power and other forms of influence or authority are used for good and not abused.
- If we are in a position to act for what is right then we should be exercising that ability.
- We must demonstrate empowering leadership, and treat others with dignity.

WHY it matters

- There is a significant risk that the power imbalances and authority structures inherent in Parliament could be exercised inappropriately.
- It is important that people feel empowered in their work, with some degree of autonomy and control, regardless of their position in the hierarchy.

ACT RESPECTFULLY AND PROFESSIONALLY

WHAT it means

- We show respect for all those we work with, recognising that every role contributes to Parliament's overall purpose.
- We apply the skills and behaviour expected of us in our roles, and we do not expect people to undertake work that is demeaning.
- We are considerate about people's personal boundaries and respect their right to a private life outside work.

WHY it matters

- Parliament should be a place where people want to come to work each day expecting to be treated with dignity and respect.

BEHAVE FAIRLY AND GENUINELY, TREATING OTHERS THE WAY WE WOULD LIKE TO BE TREATED

WHAT it means

- Being genuine in our actions, behaviour, and communication.
- Being trustworthy stewards of information and not unfairly withholding information from people who need it.
- We treat others fairly, and when we make a mistake we will do our best to put it right.

WHY it matters

- A workplace that treats people fairly engenders trust. With trust comes the ability to focus on the work we are called on to do at Parliament.

ENCOURAGE DIVERSE PERSPECTIVES, AND THE FREE AND FRANK EXPRESSION OF VIEWS

WHAT it means

- Free, constructive, and robust challenging of ideas is welcome in Parliament.
- We want to reflect New Zealand's diverse perspectives in and around Parliament, which means providing opportunities for people with different ideas and perspectives to participate.

WHY it matters

- We are all working towards New Zealand's best interests and it is our responsibility to ensure different voices are heard in all our work.

FOSTER AN ENVIRONMENT WHERE PEOPLE FEEL SAFE AND VALUED

WHAT it means

- We contribute to a positive work environment by being kind, and recognising the contributions of others.
- We are aware of the pressures people work under, and behave considerately.
- We recognise people's strengths and aspirations and provide practical ways for those strengths to be applied and developed.

WHY it matters

- Working at Parliament can be high-pressured and stressful but it is not okay to take our stresses out on others.
- Everyone deserves to feel safe, healthy, and valued, and will be at their best when they feel that way.

Endnotes

- 1 For further reading, see McKeown, D. & Sloane, M. (30 March 2022). *Parliamentary codes of conduct: a review of recent developments*. Parliament of Australia. Retrieved 1 December 2022 from www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2122/ParliamentaryCodesConduct#_Toc99455262
- 2 For a selection of exemplar codes of conduct:

See House of Commons. (10 October 2019). *The Code of Conduct together with The Guide to the Rules relating to the Conduct of Members*. UK Parliament. Retrieved 1 December 2022 from www.parliament.uk/business/publications/commons/hoc-code-of-conduct

See House of Lords. (7 June 2022). *Code of Conduct for Members, Guide to the Code of Conduct and Code of Conduct for Members' Staff*. UK Parliament. Retrieved 1 December 2022 from www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/house-of-lords-commissioner-for-standards-/code-of-conduct-for-the-house-of-lords

See Office of the Senate Ethics Officer. (3 August 2021). *Ethics and Conflict of Interest Code for Senators*. Senate of Canada. Retrieved 1 December 2022 from seo-cse.sencanada.ca/en/code/ethics-and-conflict-of-interest-code-for-senators

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For an overview of ministerial codes of conduct:

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- 89 Codes of conduct are, by design, not normatively neutral. This means that any selection of values is open to disagreement and controversy, particularly when those values deviate from the run-of-the-mill. The fact that members are forced to conform to externally imposed values at all is philosophically controversial in the Westminster tradition.
- Another point, it has been argued, is that codes primarily function as public relations tools, with any actual improvements in behaviour coming second. They serve as signals for the standards they value and that the relevant body has a means of enforcing ethical discipline, creating the implication of an ethical environment, encouraging the consumption of their products and services through elevated levels of consumer confidence. This applies to parliament as the focus becomes securing public trust and confidence first, improving conduct second. This is an approach which encourages deception and has caused the current preference to resolve matters quietly and internally.
- See Jamal, K. & Bowie, N. E. (1995). Theoretical considerations for a meaningful code of professional ethics. *Journal of business ethics*, 14(9), pp. 703–714. Retrieved 1 December 2022 from link.springer.com/article/10.1007/BF00872324
- 90 See Francis, D. (21 May 2019). *Independent External Review into Bullying and Harassment in the New Zealand Parliamentary Workplace – Final Report*. New Zealand Parliament, p. 17. Retrieved 1 December 2022 from www.parliament.nz/en/visit-and-learn/how-parliament-works/office-of-the-speaker/corporate-documents/independent-external-review-into-bullying-and-harassment-in-the-new-zealand-parliamentary-workplace-final-report
- 91 Personal communication with Office of the Clerk of the House of Representatives. (24 November 2022). [meeting].
- 92 See Francis, D. (21 May 2019). *Independent External Review into Bullying and Harassment in the New Zealand Parliamentary Workplace – Final Report*. New Zealand Parliament, p. 12. Retrieved 1 December 2022 from www.parliament.nz/en/visit-and-learn/how-parliament-works/office-of-the-speaker/corporate-documents/independent-external-review-into-bullying-and-harassment-in-the-new-zealand-parliamentary-workplace-final-report
- 93 See Francis, D. (21 May 2019). *Independent External Review into Bullying and Harassment in the New Zealand Parliamentary Workplace – Final Report*. New Zealand Parliament, p. 61. Retrieved 1 December 2022 from www.parliament.nz/en/visit-and-learn/how-parliament-works/office-of-the-speaker/corporate-documents/independent-external-review-into-bullying-and-harassment-in-the-new-zealand-parliamentary-workplace-final-report
- 94 See Francis, D. (21 May 2019). *Independent External Review into Bullying and Harassment in the New Zealand Parliamentary Workplace – Final Report*. New Zealand Parliament, p. 42. Retrieved 1 December 2022 from www.parliament.nz/en/visit-and-learn/how-parliament-works/office-of-the-speaker/corporate-documents/independent-external-review-into-bullying-and-harassment-in-the-new-zealand-parliamentary-workplace-final-report
- 95 See Loat, A. (2011). Member of Parliament: A Job With No Job Description. *Canadian Parliamentary Review*, 34(1), p. 24. Retrieved 1 December 2022 from canlii.ca/t/2csc

- 96 See Loat, A. (2011). Member of Parliament: A Job With No Job Description. *Canadian Parliamentary Review*, 34(1), pp. 23-9. Retrieved 1 December 2022 from canlii.ca/t/2csc
- 97 See Legislative Assembly of Queensland. (June 2018). *Code of Ethical Standards Together with the Guide to Code of Ethical Standards and Rules Relating to the Conduct of Members*, p. 2. Retrieved 1 December 2022 from www.parliament.qld.gov.au/Work-of-the-Assembly/Procedures
- 98 As established in the Bill of Rights 1688 that is part of New Zealand law, as decided by the case of *Fitzgerald v Muldoon* [1976] 2 NZLR 615 and included in the Imperial Laws Application Act 1988. It is also supported by section 14 of the New Zealand Bill of Rights Act 1990.
- 99 The exception to this rule is the Welsh Parliament or Senedd. See Welsh Parliament – Senedd Cymru. (24 March 2021). *Code of Conduct on the Standards of Conduct of Members of the Senedd*, p. 2. Retrieved 1 December 2022 from senedd.wales/how-we-work/code-of-conduct
- 100 See Wilson, M. (13 July 2007). Hon Margaret Wilson – A Code of Conduct. *Scoop*. Retrieved 1 December 2022 from www.scoop.co.nz/stories/PA0707/S00215.htm
- 101 See Welsh Parliament – Senedd Cymru. (24 March 2021). *Code of Conduct on the Standards of Conduct of Members of the Senedd*, p. 3. Retrieved 1 December 2022 from senedd.wales/how-we-work/code-of-conduct
- 102 See New Zealand Parliament. (24 June 2020). *Upholding the Mana of Pāremata Aotearoa, New Zealand Parliament* [also referred to as the *Behavioural Statements for the Parliamentary Workplace*]. Retrieved 1 December 2022 from www.parliament.nz/en/footer/about-us/parliaments-workplace-culture/behavioural-statements-for-the-parliamentary-workplace
- See Office of the Clerk of the House of Representatives. (2021). *Code of Conduct – How things are done at the Office of the Clerk of the House of Representatives*. New Zealand Parliament. Retrieved 1 December 2022 from www.parliament.nz/en/footer/about-us/parliaments-workplace-culture/codes-of-conduct
- See Parliamentary Service. (2019). *Code of Conduct*. New Zealand Parliament. Retrieved 1 December 2022 from www.parliament.nz/en/footer/about-us/parliaments-workplace-culture/codes-of-conduct
- See Public Service Commission. (June 2017). *Standards of Integrity & Conduct: A code of conduct issued by the State Services Commissioner under the State Sector Act 1988, section 57*. Retrieved 1 December 2022 from www.publicservice.govt.nz/guidance/integrity-and-conduct



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