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**Working Paper**

## Parliamentarians' expenses recent reforms: A briefing on Australia, Canada, United Kingdom and Brazil

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**Parliamentarians' Expenses Recent Reforms: a briefing on  
Australia, Canada, United Kingdom and Brazil**

Leany Lemos and Rosara Joseph

June 2010

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# *Global Economic Governance Programme*



Centre for International Studies | Department for Politics and International Relations

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- to create and maintain a network of scholars and policy-makers working on these issues;
- to influence debate and policy in both the public and the private sector in developed and developing countries.

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### **Leany Lemos**

Leany Barreiro Lemos has joined the GEG Team as an Oxford-Princeton Global Leaders Fellow. She holds a Masters in Political Science and a Doctorate in Comparative Studies on the Americas, both granted by the University of Brasilia, Brazil. At GEG, she will be conducting research on executive-legislative relations in Latin America. She is interested in how congresses in the region conduct oversight – or how they scrutinize the respective governments – especially on global issues as trade, environment and security. The sample includes Argentine, Bolivia, Brazil, Colombia, Peru and Venezuela.

### **Rosara Joseph**

Rosara Joseph is a DPhil candidate in public law at St John's College, Oxford. She holds law and arts degrees from the University of Canterbury, New Zealand, and a masters degree in law from Oxford. She has spent the past four months working for the Independent Parliamentary Standards Authority (IPSA).

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# **Parliamentarians' Expenses Recent Reforms: a briefing on Australia, Canada, United Kingdom and Brazil**

Leany Lemos and Rosara Joseph

## **I. Introduction**

In 2009, the Australian, Brazilian and UK parliaments faced strong criticism – to say the least – over the issue of parliamentarians' expenses. The uncovering of widespread misuses of public resources by parliamentarians in each of these three countries was the subject of intense media and public attention, and prompted reform to the regulation and administration of the expenses regimes. This briefing is a descriptive account of the main features of these reforms. It addresses three key issues: (1) the nature of the response (short or long term); (2) the type of control system the reform has implemented (parliamentary self-regulation or regulation by external bodies); and (3) the nature of the content of the regulatory scheme itself (based on rules or principles). We also provide some background information on each country and some more detailed information on how the arrangements and systems for publicity, investigation and enforcement have been redesigned.

The comparison of the three systems poses its challenges, as we have presidential and parliamentary systems with different historic backgrounds and traditions. Nevertheless, the similarities of the cases – both in how the misuses were uncovered and in how parliamentarians tried to placate public opinion by implementing immediate reforms – make the comparison worthwhile. More importantly, it identifies the experiences and lessons which may be useful for the ongoing reforms taking place in these countries. Canada was added for a different reason. Although its parliamentarians have not faced the same recent scandal and public scrutiny, we thought it might be useful to identify its approach to the regulation and administration of parliamentarians' expenses as potential solutions for the problems posed in the other countries.

What are the main findings? Table 1 sets out a summary of the main questions and answers. As expected, there is some degree of variation between the countries. On the nature of the reform, with the exception of Brazil, where the response has been short term in nature, Australia and the UK have chosen a combination of short and long term reforms: normally, an immediate response to the crises in the short term (such as changing entitlements and increasing publication), alongside the establishment of inquiries to consider long term and more fundamental systemic reforms. Of course there is no guarantee that these long term responses will be effective: as they are still in their early stages, it will be interesting to see whether they will sustain political and public support, and whether they will turn out to be effective, both in terms of cost and in preventing the repeat of misuses of public resources.

The second issue that interested us – the type of control – shows that self-control was the preferred option to all countries except the UK, which established an external body

(IPSA) to design and administer a new expenses scheme. Canada and Brazil both have a system of legislative self-control over parliamentarians' expenses. Australia has a combination of self and external control, with a complex framework that has evolved without proper integration, creating inconsistencies and ambiguities. The UK choice raises the question of what is the most legitimate and effective way to regulate and administer parliamentarians' expenses schemes. In particular, does self-regulation properly address the need to ensure proper investigation and enforcement of abuses of the expenses scheme? On the other hand, it could also be asked whether it is necessary to create an entirely new institution to deal with issues that perhaps could be managed more efficiently and cheaply with the help of existing institutions, like government auditing bodies. Further, external regulation potentially raises concerns about separation of powers and the independence of the legislature.

The third issue we addressed is the nature of the content of the regulatory scheme itself, and whether the scheme is based on rules or principles. A combination of both rules and principles was the choice of all countries. Take the Australian case, which is similar to the Brazilian one: there are general principles applying to parliamentarians, according to which, as elected officials holding public office, they are expected to act with integrity in accordance with the public trust. But the principles are very general and not objectively clarified. So, it is up to the parliaments or, in the case of the UK, the IPSA, to set rules and statutes which give effect to those principles in specific situations.

**Table 1.** Parliamentarians' expenses reforms in four countries, 2009

Country	Reform prompter	Nature of reforms	Type of control	Ground for legal framework
Australia	Scandal/ media	Short and long term	Self and external	Rules and principles
Brazil	Scandal/ media	Short	Self	Rules and principles
Canada	Self-inducted	Short and long term	Self	Rules and principles
UK	Scandal/ media	Short and long term	External	Rules and principles

We also addressed some other questions, especially concerning the investigation and enforcement of misuses of the expenses schemes. What we found out is that, with the exception of Brazil, which has focussed on short term reform, there is a general recognition of the need to prevent future misuses by creating institutions and systems which will properly deal with any misuses. Suggested reforms include the establishment of institutions or officers with powers of investigation and enforcement, the publication of expenses claims, and making the rules of the expenses scheme narrower and more

specific. There is no single answer for what the best design is, but the current reforms show it is a very complex issue with no guaranteed outcome.

The next four sections describe each country's current efforts. As said, we do not intend to bring a theoretical approach to the issues concerned, but rather a more modest briefing on the current state of how each country is dealing with issue of parliamentarians' expenses.

## **II. Parliamentarians' expenses in the Australian parliament**

### *Background*

The Australian Commonwealth Parliament is made up of the Senate, which has 76 members, and the House of Representatives, which has 150 members. Parliamentarians' support services and allowances are generally referred to as "entitlements".

In 2009, the Australian National Audit Office undertook a performance audit of the parliamentarian entitlements scheme, examining in detail its rules and guidance, its administration, and the effectiveness of its control and accountability processes. It found that the current entitlements framework is complex and overdue for reform, and that its shortcomings have been amplified by the approach taken to its administration. In response to the audit report, the government announced reforms of both a short and long term nature. First, it made changes (with near immediate effect) to particular entitlements, such as reducing the amount that Members can claim for printing entitlements, and changes to the systems of vetting, checking and publication of claims. Secondly, the government established an independent panel to consider broader systemic issues concerning parliamentarians' entitlements. That panel is due to report in April 2010.

### *Self regulation or external regulation?*

The parliamentarians' entitlements framework in Australia is a complex system which combines self regulation and external regulation. Parliamentarians' entitlements are based on several sources (as identified below), and are administered, regulated and controlled by a combination of different institutions. The two key institutions in the regulation and administration of parliamentarians' entitlements are the Department of Finance and Deregulation (Finance Department) and the Chamber Departments.

The Finance Department is responsible for administering the majority of entitlements for Parliamentarians. It is a central agency of the Australian government (part of the executive branch of government), which makes it an external regulator of the entitlements scheme. The Department of Senate and the Department of the House of Representatives, which together make up the Chamber Departments, are parliamentary departments responsible to the Senate and the House of Representatives respectively, not the Parliament or government of the day. The Chamber Departments pay the salaries or 'annual allowances' of parliamentarians and certain expenses incurred by

parliamentarians in their parliamentary work, specifically the costs relating to office accommodation and supplies within Parliament House.

Other key institutions in the parliamentarians' entitlements framework include: a) the Special Minister of State (SMOS), who is the government Minister with responsibility for parliamentary entitlements; b) the Remuneration Tribunal, which is an independent statutory body which has an advisory role in relation to the 'annual allowance' (salary) for parliamentarians; c) the Australian National Audit Office (ANAO), which has examined some or all aspects of the administration of parliamentarians' entitlements on five occasions; d) an independent committee, which has been convened by the government to report about broader systemic issues relating to parliamentarians entitlements.

#### *Regulation: a complex and inadequate legal framework*

The entitlements framework is based on a complex legal framework, sourced in a combination of statute, regulations, the Constitution, Remuneration Tribunal determinations, Ministerial determinations, procedural rules, convention and accepted practice. Thirteen statutes are identified as bearing on the provision of entitlements to parliamentarians. In many situations, statute law, regulations, and Remuneration Tribunal determinations create an entitlement, but do not lay down specific rules about the quantum of the entitlement or the circumstances of its use. These sources have been supplemented by rules and guidance issued by the Prime Minister and the SMOS, and certain aspects of entitlements are governed by convention or accepted practice. There are inconsistencies and ambiguities within and between various entitlements.

There are a large number of types of entitlements (27), and different purposes identified for the use of those various entitlements (including official purpose/business, 'Parliamentary, electorate or official business', and 'duties as a Member of Parliament (but not party political purposes)'). Some entitlements have no specified purpose.

#### *The role of principles*

Principles do not play a key role in the current expenses framework. The ANAO report recommends that principles should be used as a guide for the interpretation and application of the entitlements rules. In particular, the report recommends the identification of the overarching principles to guide how the entitlements support Parliamentarians in carrying out their duties and responsibilities.

#### *Problems with the current framework*

The key problems with the current framework are, firstly, the lack of integration of changes: piecemeal changes over the past decade have left a system which is difficult to understand and to manage for parliamentarians and the Department of Finance. Secondly, there is a problem of insufficient guidance as to proper use of entitlements, as there is an absence of principles-based legislation which establishes and defines the purposes for which entitlements are provided, or subordinate regulations and legislative instruments that provide clear boundaries to guide parliamentarians in the use of their entitlements and the Department of Finance in terms of their administration.



Thirdly, there is a lack of definition of key terms: ‘parliamentary’, ‘electorate’ and ‘party’ business have not been sufficiently defined, which means that the purpose to which relevant entitlements may be put remains open to interpretation, and the ability of the Department of Finance to undertake post-payment checks of entitlements is restricted.

#### *Publication*

Prior to 1984, there was no public disclosure of individual Parliamentarians’ use of entitlements. Since 1997, details of Parliamentarians’ air and car transport costs and Travelling Allowance payments have been tabled in Parliament every six months. There was no public reporting of the use and cost of other entitlements. In 2008, the Department of Finance estimated that Parliamentary entitlements totalled \$300 million in 2007-8, but only the travel costs (which made up 10 per cent of the total expenditure) were tabled in Parliament. Also, the Entitlements Handbooks prepared by the Department of Finance are not currently publicly available. The ANAO report recommends that they should be.

In response to the ANAO report, the government announced in October 2009 that it would expand the current reporting system to publish all expenditure of parliamentarians, former parliamentarians, and parliamentarians’ family members and employees.

#### *Investigation and enforcement*

The key components of the Finance Department control structure are:

- providing parliamentarians with guidance on their entitlements;
- use of an entitlement management system for processing of payments;
- reporting on entitlements use to parliamentarians via monthly and End of Financial Year Management Reports, and some public reporting on the cost of travel entitlements use;
- requesting certification of parliamentarians concerning their use of certain entitlements;
- pre and post payment checking of the use of some entitlements;
- a protocol for responding to allegations of entitlements misuse.

The ANAO report highlights the limitations and ineffectiveness of this control structure. The use of certifications is particularly problematic. Certification is where the Finance Department relies on a certification by a parliamentarian that a particular entitlement use, or a collection of entitlements use, is within entitlement. Certification arrangements were introduced on the basis that it was considered often not possible or desirable for departmental officers to make the independent inquiries that would be required to make an objective assessment about the entitlements use.

For a small number of entitlements, certifications are required in relation to individual claims before the Department of Finance will process and pay the claim. The majority of transactions relating to the use of a Parliamentarian’s entitlements, however, are not required to be individually certified by the Senator or Member, but are instead certified through a ‘global certification process’ in the Monthly Management Report. These reports are (by necessity) provided after payments have been made. The certification

certificates, which are of a standard form, do not ask the parliamentarian to certify that the amounts in the Management Report are correct, but rather, ask that the parliamentarian certify that the use of the funds was within the terms of the relevant entitlement.

There is no statutory or other obligation for parliamentarians to certify their use of entitlements, which means that the Department of Finance has few options when parliamentarians elect not to certify. The ANAO report stated that there had been improvements in the proportion of parliamentarians certifying the use of entitlements reported to them, but a significant proportion of parliamentarians continued to exercise their discretion not to certify.

ANAO concludes that the certification processes have been ineffective, because:

- the Management Reports certifications are voluntary;
- delays in the provision of certifications are common;
- a significant proportion of Management Reports are never certified;
- there are ambiguities in the terms and conditions applying to many entitlements, and in the meaning of key terms governing the purposes for which various entitlements can be used.

In 2005, the Department of Finance started making post-payment checks of the use of a small number of parliamentarians' entitlements, but this has been a largely ineffective check on entitlements uses. This post-payment checking is narrow in scope, not risk-based, and does not examine key aspects of entitlements use, focussing on relatively low value entitlements, and entitlements that are relatively clear and straightforward. In practise, the Department of Finance's checking may not extend further than the department writing to the parliamentarian asking him or her to certify that use was within entitlement.

#### *Responding to allegations of entitlements misuse*

A Protocol provides that a High Level Committee of Finance Officials operate in relation to serious allegations. Under the Protocol, the Committee has a range of options available to it, including:

- deciding whether or not to seek an explanation from the parliamentarian;
- seeking the advice of the Attorney General's Department as to whether the matter should be referred to the Federal Police;
- writing to the parliamentarian advising of the issue and providing them with an opportunity to address any irregularities (e.g. by making a voluntary repayment).

For all other allegations the Protocol requires that the parliamentarian be invited to comment on their use of entitlement - a 'please explain' letter. There are often long delays in the parliamentarian responding to these inquiries, and on some occasions, multiple follow-ups are required. It is uncommon for the explanation to clearly resolve the allegation or to result in any further investigation or repayment.

In July 2009, the government agreed that the procedure for investigating and enforcing allegations of misuse should be referred for consideration as part of a review of the entitlements framework.

### **III. Parliamentarians' expenses in the Canadian House of Commons**

#### *Background*

The Canadian House of Commons is made up of 308 parliamentarians. Unlike in the other countries being examined in this paper, there have not been allegations of widespread misuse of parliamentarians' allowances levelled against members of the Canadian House of Commons. The main criticisms of the allowances scheme in the Canadian context focus on a lack of transparency in the proceedings and decisions of the Board of Internal Economy (the key institution in the regulation of the allowances scheme). No major reforms have been made to the allowances scheme in recent years, and none are currently planned.

#### *Self regulation or external regulation?*

The Canadian House of Commons has a system of self regulation for the regulation, administration and enforcement of parliamentarians' expenses. The key body in the regulation of MPs' expenses is the Board of Internal Economy. The Board of Internal Economy is established by statute (the Parliament of Canada Act 1985), and is composed of Members of all recognised parties in the House of Commons. The Board has a broad mandate regarding the establishment and regulation of Members' expenses. Section 52.3 of the Act provides that the Board shall act on all financial and administrative matters respecting the House of Commons, its premises, its services and its staff, and the members of the House of Commons. Based upon historical precedent, and the necessity of maintaining the constitutional independence of the House of Commons, this section has been interpreted to mean that the Board of Internal Economy has the broadest powers to deal with all financial matters relating to Members, except for those that are provided for in statute.

The key body in the administration of parliamentarians' expenses is the House of Commons Administration, which conducts the day to day management of MPs' expenditures. It provides services to MPs in accordance with the by-laws and the Members' Allowances and Services Manual and reviews the expenditures made by MPs against the relevant criteria.

#### *Regulation: rules or principles?*

There are two broad categories of allowances and expenses for parliamentarians in the Canadian House of Commons: (1) allowances and expenses provided for by statute; and (2) allowances and expenses established through the Board of Internal Economy. The first category of allowances and expenses is governed by specific rules, while the second category is governed by both general principles and specific rules.

The first category (statutory allowances) is embodied by the Parliament of Canada Act 1985, which includes provision for ‘sessional allowances’ (pay), motor vehicle allowances for ministers, Speaker and Leader of the Opposition, severance allowances, and disability allowances. These amounts are fixed and payable according to the provisions of the Act. Pensions for former Members are provided under the Members of Parliament Retiring Allowances Act.

The second category (expenses and allowances by Board of Internal Economy decision) include a number of services provided for by the House of Commons, as well as funds for various expenses. The regime for establishing these eligible services, allowances, and expenses is provided for in the Parliament of Canada Act, which establishes the Board of Internal Economy. The principal mechanism used by the Board to regulate, and govern the administration of these financial matters relating to MPs is by making by-laws pursuant to s 52.5(1) of the Parliament of Canada Act. Section 52.5(1) provides that the Board may make by-laws to, amongst other things, govern the use by MPs of funds, goods, services, and premises made available to them for the carrying out of their parliamentary functions and to prescribe the terms and conditions of the management of and accounting of these funds by MPs.

The Board has adopted a series of by-laws that set out the general framework for expenditures, and general and specific rules of application. The general framework sets out the amounts available to each parliamentarian. It identifies a base amount and additional amounts for certain factors, such as the remoteness of certain constituencies and the number of electors. General rules of application also apply, such as the rule that expenditures may only be made in furtherance of parliamentary functions, and also rules for the accounting for expenditures. Finally, there are the specific rules, which apply to some major categories of expenditures, such as office expenditures (which includes matters such as furniture, computers, printing, mailing privileges, postal and messengers, telecommunications, rental and furnishing of constituency offices, and translation services), staffing costs (including maximum salaries and suggested terms and conditions of employment), and travel (including a points system).

In addition to these by-laws, which deal with broad categories of expenditure and general rules of expenditures, the Board is often required to provide policy direction on specific items or on processes within those by-laws. These various decisions have been collected and are maintained in the Members’ Allowances and Services Manual (MAS). MAS also summarises the applicable by-laws. This means that MPs have a convenient compilation of the current relevant policies and Board interpretations of the allowable expenditures.

#### *Publication*

In accordance with the by-laws, the Speaker tables annually before the House of Commons a consolidated report of Members’ expenditures. This report summarises expenditures charged against the Member’s Office Budget and the cost of goods and services provided to each Member by the House Administration. The sessional allowances and travel expenses incurred by each Member are also reported annually in

the Public Accounts of Canada report. Members' office and travel expenses are available on the Parliament of Canada website.

#### *Administration and enforcement*

The House of Commons Administration conducts the day to day management of parliamentarians' expenditures. It provides services to Members in accordance with the by-laws and the MAS, and reviews the expenditures made by Members against the relevant criteria. If the Administration considers that a particular use of funds or request for services is not provided for in the by-laws or the MAS, the Administration will advise the Member. If the disagreement persists, the matter can be referred to the Board for a determination. The Board can decide to interpret the by-law or MAS to allow the expense (in which case the instrument will be amended accordingly), to allow the expense as an exception or to disallow the expense. The power of the Board in this regard is absolute and exclusive.

Since 2003, there has been an annual audit of the House of Commons' financial statements carried out by an independent external accounting firm. In addition, the Parliament of Canada Act requires that a commission be appointed by the Governor in Council after each general election, to review the adequacy of Members' allowances and to make recommendations if deemed necessary.

#### *Sanctions*

The by-laws provide that MPs are personally responsible for any expenditures made that are outside of the scope of the by-laws, which would mean that the Member would have to pay for any item not paid for or permitted by the House Administration or the Board. In some cases, MPs could also be subject to discipline by the House itself if it was determined that the expenditure was contemptuous of the House or of one or more of its Members.

## **IV. Parliamentary expenses in the United Kingdom**

### *Background*

In May 2009, the *Daily Telegraph* published a series of revelations about MPs' expenses claims. Widespread abuses of the expenses scheme were uncovered, and there was intense media and public criticism. In response, the Prime Minister announced in May 2009 that an external regulator of MPs' expenses would be established. He also ordered an audit of all MPs' second-home claims over the past four years, and immediate changes were made to the current expenses and allowances entitlements. In July 2009, the Independent Parliamentary Standards Authority ('IPSA') was established by the Parliamentary Standards Act 2009 ('PSA 2009'). The IPSA, which will be up and running following the general election in May 2010, will regulate, administer and enforce rules governing MPs' salaries and expenses.

In addition to these responses initiated by the government, the Committee for Standards in Public Life (CSPL) launched an inquiry into MPs' expenses in April 2009, and

published its report on MPs' expenses and allowances (the 'Kelly Report') on 4 November 2009. The Kelly Report identified the key failures and problems of the previous expenses scheme, and made a number of recommendations as to how the new expenses scheme should be regulated, administered and enforced. In response to the Kelly Report's recommendations, amendments were made to the PSA 2009, including amendments which established a 'Compliance Officer' with strengthened investigative and enforcement powers.

*Self regulation or external regulation?*

The PSA 2009 creates a scheme of external regulation of parliamentarians' expenses by establishing the IPSA, which will regulate and administer parliamentarians' expenses and salaries, and a Compliance Officer, who will investigate complaints about parliamentarians' expenses use. The IPSA and the Compliance Officer will be independent of Parliament and the government.

The IPSA is an independent body, but it must consult with certain members of the House of Commons in the exercise of its function of regulating parliamentarians' expenses. The PSA 2009 provides that, in preparing and revising the parliamentarians' expenses scheme, the IPSA must consult with, amongst others, the Speaker of the House of Commons, the Leader of the House of Commons, any committee of the House of Commons nominated by the Speaker, and members of the House of Commons. The PSA also provides that the Speaker must lay the scheme or revision before the House of Commons. The final say on the rules in the expenses scheme, however, lies with IPSA.

*Regulation: rules or principles?*

IPSA published its expenses scheme on 29 March 2010. The scheme lays out detailed rules as to the reimbursement of expenditure made by MPs in the performance of their parliamentary functions. The scheme also identifies twelve 'fundamental principles', to which IPSA had regard in the development of the expenses scheme. These fundamental principles are included in a schedule to the scheme, and the scheme's introduction requires MPs to certify yearly that they complied with the rules of the scheme and 'had regard to' the fundamental principles identified in that schedule. These principles include, for example, the principle that MPs should always behave with probity and integrity when making claims on public resources; and the presumption that, in matters relating to expenses, MPs should be treated in the same manner as other citizens.

Although the overarching fundamental principles of the scheme are identified, the scheme departs from a proposal made by IPSA in its consultation document published in December. The consultation document proposed that, in relation to each category of expense and payment, the principle which was particularly pertinent to that category would be identified. The fact that the final expenses scheme did not in fact adopt this approach of combining specific rules with applicable general principles perhaps highlights the difficulties inherent in trying to mesh fundamental general principles with specific rules in a sufficiently clear and workable regulatory scheme.

### *Publication*

Apart from imposing a general duty of transparency on IPSA, the PSA does not prescribe what and how material relating to parliamentarians' expenses should be published, and leaves the issue to IPSA to determine. The IPSA has not yet released detailed guidance as to its publication scheme, but it is clear that openness and transparency will be the overriding considerations. The recently-published expenses scheme states that IPSA will publish on its website expenses claims and its decision on each claim. IPSA's consultation document provides further information, stating that IPSA will intend to publish claims as quickly as possible after they are made and to publish all claims, whether or not they are approved. Both the expenses scheme and consultation document recognise the privacy and security considerations which must be taken into account when publishing information about expenses claims.

### *Investigation and enforcement*

As originally enacted, the PSA 2009 established a Commissioner for Parliamentary Investigations with the power to investigate any allegations of overpayments under the allowances scheme, but with no powers of enforcement or sanction. The original PSA provided that, if the Commissioner found that the member was overpaid an allowance, the Commissioner would refer his or her findings to the Committee on Standards and Privileges. The PSA has since been amended (following the Kelly Report) to establish a 'Compliance Officer' with strengthened powers of enforcement and sanction. The Compliance Officer will be able to conduct an investigation into a member's expenses claims on the request of the IPSA or the member concerned, on the receipt of a complaint by an individual, or on his or her own initiation.

The Compliance Officer will have significantly bolstered powers of enforcement. He or she will, for example, have the power to compel MPs to co-operate with an investigation (by providing information relevant to the investigation); the power to require the repayment of 'wrongly paid or misclaimed sums', with associated costs if appropriate; and the power to impose penalty orders if MPs fail to comply with certain directions.

## **V. Parliamentarians' expenses in the Brazilian Senate**

### *Background*

The Brazilian Congress is made up of the Senate, which has 81 members, and the House of Representatives, which has 513 members. It has been under heavy public criticism of the handling of its finances since January 2009, when newspapers started to uncover extensive misuses of public resources by senators. The information set out here is about the Brazilian Senate scandal only, and does not refer to the Chamber of Deputies (although misuse was also an issue there)

In the Brazilian case, it is important to note that, before the scandals which were uncovered from January 2009 on, a Supreme Court decision of August 2008 against nepotism had a strong impact on the Senate. The decision established that the hiring of relatives for the public service was against the Constitutional principle of "impersonality"

and that this ruling applies to all three branches of government. Nepotism in government has been the subject of huge popular criticism and media attention (with newspapers publicizing cases of resistance), but the reforms described here were prompted by scandals unrelated to nepotism.

*Self regulation or external regulation?*

The Brazilian response to the expenses scandals came mainly in the form of self-regulation. Once the first scandals were uncovered in January 2009, the speaker of the Senate, Senator Jose Sarney, ordered the contracting of a respected higher education institution in Brazil – Fundação Getulio Vargas – to conduct a study on administrative reform of the Senate. This administrative review proposes a cut in the number of permanent staffers, among other measures.<sup>1</sup> Although the review was undertaken by an external body, its recommendations are not binding on the Senate, and it must be debated and approved as is any other legislative bill. It is under debate now (April 2009).

In addition, Senate administrators internally made a series of decisions in response to the media findings. A board of senators (Comissão Diretora) is responsible for the administration of the Brazilian Senate. One member (the First Secretary) has particular responsibility for administrative measures, including the Senators' expenses system. He often shares this responsibility with the entire group, on a voting basis, but usually, members follow the First Secretary's recommendations and reports. Therefore, most of the decisions taken as responses to the scandals were either signed by the First Secretary or by the board, and sometimes by the speaker himself.

Brazil's Constitution dates from 1988, before which the country had been under military dictatorship. The fact that Brazil is a new democracy may explain why senators have not even considered the creation of an external body to control internal expenses: external control could threaten the institution's independence. In addition, there is a history, as emphasized in scholarly literature, of an imbalance of power between the executive and the legislature, with strong legislative powers being concentrated in the hands of the executive branch. Both features of the Brazilian system – a history of authoritarianism and a strong executive branch – might be in the roots of the decision of choosing self-regulation.

Self-regulation might present some disadvantages, particularly the potential issue of members lacking the necessary independence to conduct investigation and punish wrongdoers. However, it does have a number of advantages, particularly in the Brazilian context. First, it keeps costs low. It also means a simpler process – having an internal body to administer expenses can be quite efficient if rules are clear and there are controls. Most importantly, perhaps, in new democracies like Brazil it has the additional advantage of insulating Congress from undesired political pressures. Nevertheless, the settling of a system in which existing institutions, like the Higher Auditing Court (TCU) could be used for auditing the internal accounts on a permanent and systematic basis, as well as the creation of an ombudsman (politically independent figure) elected by the majority of senators but indicated by the minority would help to bring more independence and credibility to the Federal Senate.



*Regulation: rules or principles?*

The Brazilian response was based on rules rather than on principles: changes have been made to the rules governing what expenses and allowances senators are entitled to and what information is published about those entitlements.

It would be helpful first to explain the Brazilian expense system. Brazilian senators are entitled, besides their monthly salary, to other indirect benefits.<sup>2</sup> These benefits have no reimbursement system: the member is granted an annual lump sum for air tickets, a monthly home allowance for accommodation, and a car (and its fuel) for transportation. Also, since 2003, senators are entitled to reimbursement for expenditure incurred in their constituency activities, specifically, the costs to set up one or more home offices in their home states (rent, office material, phone, internet etc) and costs for services relating to their official activities (e.g., publishing newsletters). As uncovered in 2009, there was abuse of both the indirect benefits and the monthly allowance for the offices<sup>3</sup>. There were abuses relating to air tickets, senators receiving double their home allowance, and a lack of transparency in the use of the resources for the home offices and in the reimbursement system.

Reforms have been made since January 2009. Two major initiatives were taken. First, expenses using the monthly allowance now can only cover members, not their families or third parties. Similar changes were made to the use of air tickets. Senators can still claim the benefit in relation to selected employees when they are on duty, but only after it is authorized by the Senate authority. Although it does not sound a very big step, this was a major reform, and very difficult to accomplish, given the patrimonial nature of the Brazilian state. The second major initiative was to set more transparent procedures in the publication of claims. This has meant that information is available on the internet in relation to each member (as detailed below).

*Administration and publication*

In response to the scandals of 2009, major changes were made as to what information is published about senator's expenses and allowances. The process works as follows. First, an employee in the Senator's office is responsible for collecting all the member's receipts and sending them with a member's letter to the Secretary of Internal Control, a body within the Senate. At the same time, all details are entered into the computer system (such as the name of the company, total amount, company/ person insurance number etc). Reimbursement is made in approximately three days, and information can be assessed on the internet on a monthly basis, under generic categories, and without the name of the beneficiary. Only accepted expenses are published: declined claims and other documentation are not published<sup>4</sup>. This system has been criticised on the basis that it does not allow the public to check who the beneficiaries are. The anonymity of the beneficiaries has been justified on the basis that publicizing their names could be a breach of commercial rights. Although a regulation was recently approved, stating that all information with the details of the beneficiaries should be published 90 days after the end of the month, the regulation has not yet been implemented.

This system of reimbursement and publication presents a problem as to storage and archiving of the information. In the Brazilian Senate, a senator's mandate lasts eight years, and turnover estimates are around 68%. So, what will happen to all this information regarding expenses once the session changes and the majority of senators are out? This is valuable information for the institution and also for future researchers, not to mention the citizens who have their right of information guaranteed in the Constitution. However, storing all this information presents a challenge to the archives.

#### *Administration and enforcement*

A second problem with the reformed expenses scheme reforms relates to enforcement and investigation. The Brazilian system is very efficient in the reimbursement aspects of the scheme, but that efficiency and the speed of the reimbursement process prompt questions as to the quality of controls and scrutiny of the claims. There are questions, in particular, as to the effectiveness of procedures to guarantee compliance with the rules and regulation – are receipts credible and is the claim legitimate? The Brazilian system has the strength of processing receipts and reimbursement quickly and of publicizing information on the internet in a very accessible manner. However, it lacks the rules and procedures to ensure that investigation can be made if there are allegations made of misuse of the expenses scheme. If, for instance, the media broadcasts some wrongdoing with some senator's claims there are serious questions as to how that allegation would be dealt with: who will investigate? How? Would it be effective? The regulations provide for the Ethics Committee – a committee made up of senators themselves - as the body responsible for investigating and sanctioning misuses. However, at present there is no identified procedure or clear rules setting out how an allegation as to misuse of expenses is referred to the Ethics committee or another intermediate body. There are serious gaps in the investigation and enforcement parts of the process.

One suggestion has been to use the resources of the existing Brazilian Higher Auditing Court (Tribunal de Contas da União – TCU), which in Brazil is constitutionally an arm of the legislative branch. They already conduct oversight of executive programs, but can be called to duty at any moment by Congress to conduct any kind of investigation. It could be easily used, in the Brazilian case, in the task of scrutinizing its own expense system. However, existing processes and operations would have to be adapted to become suitable for administering and enforcing the senators' expenses scheme.

Lastly, it should be noted there is no formal auditing of the expenses scheme in the Brazilian system. It is suggested that the Senate and the Chamber should consider following the Canada model, where since 2003 there has been an annual audit carried out by an independent external accounting firm.

## **VI. Final Remarks**

In this briefing, we described the ongoing reforms to the parliamentarians' expenses schemes in Australia, Brazil, and the United Kingdom, and described the parliamentarians' expenses scheme in the Canadian House of Representatives, which,

unlike the other systems, has not been the subject of recent scandal or reform. In the Australian, Brazilian and UK contexts, misuse of the expenses schemes has been the subject of massive media and public attention. In all three countries, the misuses were uncovered by the press, and in all three countries, parliamentarians tried to placate the deep public anger by introducing immediate reforms, which varied as to nature (short or long term), type (self-control or external body), and content (if based on rules or principles). Although a lot of effort has been expended on these reviews and reforms, it is yet to be seen whether or not these responses will be effective, both in terms of efficiency and cost and in terms of preventing the repeat of misuses of public resources.

There is no single answer for what the best design is, but we think it is clear that further reforms will be necessary, and that periodical reviews of the systems, rules and procedures should become part of the process, rather than something prompted by external events. We also think it is clear that the reforms should include the establishment of institutions or officers with powers of investigation and enforcement (whether internal or not), the publication of expenses claims, and the narrowing and specification of the rules of the expenses scheme. As to the nature of the rules themselves, we think that general principles of conduct should be complemented by detailed regulation as to what is allowed, how much, under what circumstances, and what punishments are imposed for non-compliance. It is not sufficient to rely on open-ended and general principles or rules, because they are too open for subjective interpretation and thus more easily manipulated. Besides these recommendations as to necessary reforms, we would also like to make some more general remarks.

First, scandals of the type that have occurred in Australia, Brazil and the UK may provide an opportunity to promote more fundamental reforms and to develop new and better institutions, that are more legitimate and accountable to the public. That is true for both new and old democracies. In this sense, the expenses scandals can be seen in a positive light: they have provided an opportunity and the political motivation and willingness to review institutions, systems and procedures that had become obscure, obsolete, or illegitimate.

Further, the changed political circumstances and the decline in trust and confidence levels caused by the expenses scandals may lead to broader reforms on other functions and systems of parliament, beyond the expenses schemes themselves. That is the case in the UK, where the crises have prompted reviews of the composition and functions of parliamentary committees and of the way that time is allocated in the House of Commons (Kelso, 2010), allowed an emerging consensus around future reforms to enhance backbench members' power to propose bills (Brazier and Fox, 2010), as well as opened debate on other political, constitutional and parliamentary reforms that would indirectly affect parliamentary expenses – such as elections for the upper chamber, new electoral rules and new measures of direct, participatory decision-making (Fox, 2009). However, these consequent opportunities for review and reform are double-edged: it is an opportunity to tackle old and well-known problems in a system; but too much distraction can lead to insufficient or inefficient reforms on parliamentary expenses themselves. The

key issues - transparency of information and the proper use of public resources - must not be lost or side-lined.

Secondly, the expenses scandals have reinforced and heightened general public mistrust in politicians (Fox, 2010). Politicians have rarely been held in high regard, but an opinion poll carried out in the UK in spring 2009, just after the scandals broke, showed that levels of trust in the British Parliament were halved as a result of the expenses scandal, falling from around 30 per cent (a figure roughly in line with average levels of trust in national parliaments across the European Union) to just 17 per cent, according to survey data from Eurobarometer (Kelso, 2010). Although we do not have comparable data, it is feasible to conceive a similar response in the other countries. There are also real concerns about whether the general anti-politics sentiments may give way to extreme politics, for example increasing support for the extreme right in the European elections in England, and to general disenchantment or crisis of confidence within the political system (Crawford, 2010).

Thirdly, it is important to stress the role of the media. In the three countries where scandals prompted reforms, it was the media who pursued and uncovered the allegations of misuse and systemic failures, working sometimes against a culture of secrecy. We understand that free media coverage is essential for transparency and a key aspect of any democracy. Media coverage of the scandals, particularly in the UK and Brazil, was absolutely essential for the uncovering of serious and widespread abuses of the system. However, we think there is also opportunity for improvement in future media coverage of parliamentarians and their use of public resources. We think it is important, when analyzing parliamentarians' use of public resources, to identify the roles of parliamentarians and to assess how well they are performing those roles. It is important to take into account the particular demands placed on parliamentarians by, for example, the size or remoteness of their constituency, and to take into account the quality of the work that parliamentarians do (Besley & Varcinese, 2005; Leyland, 2009). Parliamentarians must be provided with adequate resources to enable them to fulfil their vital representative functions. People should not be prevented from getting involved in politics on the grounds that they do not have sufficient personal wealth, and nor should they be deterred by the prospect of unreasonable media attention on their use of public resources. It is essential that people from all backgrounds (not just the wealthy) are able to become parliamentarians.

Reforms to parliamentarians' expenses schemes raise very difficult political and constitutional questions and must reconcile differing values and divergent priorities. As Kelso (2010) puts it, "even when there is agreement on how institutions and processes should be changed, securing such change is incredibly challenging (...). It is frequently difficult, even impossible, for actors simply to chart a straight course between identifying a problem and then implementing a solution that corrects it." However, beyond the immediate problem of reforming expenses schemes, the scandals have also prompted more fundamental questions about the functions and systems of parliaments and parliamentarians, the role of the media, and the increasing public scepticism and resentment of politics and politicians. The reforms that have been made in the UK,

Brazil and Australia might address the systemic failures that were evident in their expenses schemes, but these reforms will need to be supplemented by more fundamental change in order to fully address the problems of political legitimacy and accountability exposed by the expenses scandals in these countries.

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<sup>1</sup> The Brazilian Senate has about 10,000 staffers, including permanent and temporary, Library of Congress and research services. One third of that are professional staffers (civil service career), one third are political appointees and one third are support service employees.

<sup>2</sup> They include an exclusive pension system, special health insurance, and resources for printing and mailing.

<sup>3</sup> Today, this amount sums up 15,000 reais/ monthly, or about 8,000 US dollars/ monthly, and they are subject to a reimbursement system: members spend their own resources and present receipts for their reimbursement.

<sup>4</sup> The five accepted categories of expenses are: a) rent and related expenses for the home office; b) transportation, accommodation, food, gas; c) material for the home office, including software, posting, acquisition of publications and books, renting of equipment and furniture; d) consultancy, research or any technical work (payment of services); and e) advertisement of parliamentary activities.

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