

## Editorial ? Just what advice did Duffy get?

Perhaps it's a classic case where the two sides should enter a plea bargain, if only because memories will have faded. As those who have been following the recent news developments know, Senator Mike Duffy is facing no fewer than 31 criminal charges stemming from an RCMP investigation of his expense claims and receipt of a \$90,000 cheque from Nigel Wright, then Prime Minister Stephen Harper's chief of staff.

The most serious charge, an allegation of bribery, relates to the cheque, which Wright said he gave the senator so taxpayers would no longer be on the hook for disputed expense claims. It remains to be seen how the transaction could be seen to involve bribery, or why it is that no charge was laid against Wright.

But that's far from the only matter clouding the situation and making some sort of plea bargain attractive. Were we in Senator Duffy's shoes, we would offer to resign from the Senate and repay some of the expense items, in particular per diem payments for activities that bore no relation to his senate duties, such as a Florida vacation and campaigning for the Conservatives in the 2011 federal election.

In return, the Crown could offer a disposition similar to one an Ontario Superior Court judge recently decided upon in the case of Joe Fontana, who resigned as mayor of London, after admitting to having billed the taxpayers for \$1,700 in expenses for his son's wedding. The court meted out a conditional sentence that involves repayment of the \$1,700, plus a period of house arrest and an obligation to do 150 hours of community service.

Although a lot more money is involved in the Duffy case, most of that is for expense claims that flowed from the unusual nature of his appointment to the Senate and that of another former media star, Pamela Wallin, in January 2009.

Although both were then Ontario residents who had also spent most of their lives in this province working for the CTV television network, Duffy was appointed to represent Prince Edward Island and Wallin's appointment was as a senator for Saskatchewan. Under the Senate's rules as we understand them, senators are required to own property and spend most of each year in the province they represent, and may bill the government for expenses related to their time spent at Ottawa, including those of a secondary residence there.

That being the case, a senator from P.E.I. could appropriately claim expenses related to a secondary residence he or she had in Ottawa, and so could any senator whose permanent residence was too far from Ottawa to be considered within commuting distance. One question that no one seems to have asked is why the prime minister didn't appoint both Duffy and Wallin to represent Ontario. Although all 24 seats allotted to the province might have been filled at the time, openings would surely have occurred in a matter of weeks or months, thanks to the compulsory retirement age of 75.

In the unusual circumstances of their appointment, both senators must have asked around as to the rules for filing expenses, and in particular whether they could bill the government for expenses related to their Ottawa homes.

In the likely absence of any paper trail, much would depend on witnesses' memories from conversations that took place many years earlier.

In our view, the advice he probably got, and the apparent lack of clarity in the expense rules at the time, should make most of the 31 charges against Senator Duffy fall well short of the criminal standard of guilt beyond a reasonable doubt.