

Commentary ? Mike Duffy?s strange lawsuit

The \$7.8 million lawsuit launched by Senator Mike Duffy must surely be one of the most unusual Canadian civil actions ever. Although the lawsuit names as defendants the RCMP and the Senate, almost all the grief Duffy suffered could be traced to actions by the Prime Minister's Office when it was occupied by Stephen Harper. It was that office, or more likely the PM himself, that ignored the Constitution Act provisions governing Senate appointments when Duffy was named to represent Prince Edward Island, a province he hadn't called home for at least four decades, and where the only P.E.I. property he owned was a cottage his family visited each summer. The law regarding Senate appointments includes two key requirements: the appointee must own property worth at least \$4,000 and must be a resident of the province he or she is to represent (the property could be located anywhere in Canada). Had the Harper government given Duffy one of the 24 seats assigned to Ontario (the same number assigned to Quebec, the four western provinces and the four Atlantic provinces), he would have faced few, if any, of the 31 charges brought before Ontario Court Justice Charles Vaillancourt, who wisely dismissed every one of them. Why? Because the main allegation ? that he had charged for living expenses in connection with his Ottawa-area home ? was predicated on his need to portray the P.E.I. cottage as his principal residence. As a senator representing Ontario, he would have had no such ability unless he lived beyond commuting distance of the national capital. To his credit, Duffy questioned the legitimacy of his 2009 appointment, as the Constitution clearly states that a senator ?shall be resident in the Province for which he is appointed.?

It seems that Harper, along with leading Conservative senators, reassured him that it would be fine, as long as he had the cottage. It seems he was also told that, in order to keep up appearances, he should bill for living expenses for his home in Kanata, lest failing to do so raised questions about his claim to reside in P.E.I. That Duffy has real grievances that need to be addressed goes without saying. But we wonder whether the lawsuit, as currently framed, is the way to go, and has much chance of success. There is no doubt, based on the evidence at his trial, that the Harper government set up Duffy to take a very public fall for a series of bad decisions stemming from his politically motivated appointment as a senator from P.E.I. Although not a criminal act, the appointment was a clear breach of the law, one that to this day has not been corrected. As readers probably already know, there is no magic in the number any plaintiff chooses in his or her claim for damages, and Duffy could have sued for hundreds of millions. Suspicious as we are that he named the Senate and RCMP as defendants only because of doubts that a political party can be sued, we think he would be happy to settle for a lot less if a way could be found to right all the wrongs he suffered. In the circumstances, an appropriate resolution would seem to involve little more than an agreement by the Senate to pay him and fellow senators the salary they lost while being suspended without pay by the Upper House, in addition to reimbursement for his legal fees involved in successfully defending against the 31 charges. But more important, surely, would be an agreement by the Trudeau government to eliminate the fiction of his being a P.E.I. resident by passing a new Order-in-Council amending the original order so as to make him a senator for Ontario and allow the appointment of a true P.E.I. resident to represent the island province.