

## Editorial ? What happens now that charges are dismissed against Senator Duffy?

Now that all 31 criminal charges against him have been appropriately dismissed, Senator Mike Duffy still has a serious problem. He remains a victim of what to us was an illegal appointment by a non-lawyer prime minister who seemingly failed to read the British North America Act's clear provisions for appointments to the Senate.

Those provisions made three basic requirements: that the appointee be at least 30 years old; that he (until the famous 1929 ?persons? case only males could qualify) have unencumbered property somewhere worth at least \$4,000, and that he be a resident of the province he was to represent in the Upper Chamber.

Duffy clearly met two of the three requirements. He was well past 30, and had long owned a house in an Ottawa suburb worth much more than \$4,000, but for many years he had not been a resident of his birthplace, Prince Edward Island, save for visits to his summer cottage near Summerside, which is apparently on a road that never sees a snowplow.

Nevertheless, then prime minister Stephen Harper insisted that the celebrated CTV political commentator sit in the Senate as a member from PEI, not Ontario. And now that last week's ruling by Ontario Court Justice Charles Vaillancourt has permitted the senator to return to Parliament, the question of the legality of his appointment, and that of colleague Pamela Wallin to represent Saskatchewan, remains unaddressed.

In the circumstances, we think Prime Minister Justin Trudeau would earn more than a few brownie points by having his cabinet pass an Order-in-Council declaring the two 1999 appointments invalid and re-appointing the two senators to fill a couple of the 24 seats reserved for Ontario residents.

Although obviously there is no precedent for such action, the BNA Act (now known as the Constitution Act) at least implicitly permits it by requiring Senate appointments to be by the federal Cabinet by order-in-council. In this case, we couldn't imagine anyone challenging such an order, let alone the challenge being successful.

For one thing, it would allow the PEI and Saskatchewan governments to recommend real residents of their province for the vacated Senate seats while presumably encouraging Senators Duffy and Wallin to serve as independents.

In the aftermath of the Vaillancourt decision, it will be interesting to see whether the Crown pursues the prosecutions of any other senators, including those already launched against former Liberal senator Mac Harb and Patrick Brazeau, a Quebec senator appointed as a Conservative who now sits as an independent, as does Senator Wallin, who has not been charged but along with the others has been suspended without pay since 2013.

So much for the actions needed (or not needed) by the federal government and the Crown. Assuming that the 304-page Vaillancourt ruling will be required reading for all senators, surely some action is also required by the Senate itself.

The first action surely ought to be the payment of the cancelled salaries of Duffy, Wallin and Brazeau and that of Harb up to the point where he resigned. As we see it, any employer who suspends an employee without pay because he or she is charged with a criminal offence is finding the employee guilty before the charges have been tested judicially.

Beyond that, the Senate should surely rein in its members' spending habits by establishing clear rules as to what personal expenses can be charged to the taxpayer as having been made necessary by their duties as senators.

Such rules should at least attempt to differentiate between expenses required by one's office as a senator and those resulting from loyalty to the political party that appointed them or has since won their support.

The rules should also stipulate that any senator's travel by air should be on economy, or at most business-class fares, and that each senator's overall billings should be published annually, ideally on the Internet.

Who knows? If the provinces approved a constitutional change upping representation for Western Canada, the Senate might one day be seen coast-to-coast as truly a place for ?sober second thought? that's worth keeping.