

1 April 2015 – CP Preview of MD trial

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Duffy trial promises crash course in controversial
Senate expense, housing rules

Jennifer Ditchburn, The Canadian Press

OTTAWA - When lawyers arrive at the Ottawa courthouse Tuesday for the long-awaited start of the Mike Duffy trial, they'll be armed with the equivalent of advanced degrees in the rules governing Senate expenses.

Both sides will be armed with heavy binders packed with reams of notes on the guidelines provided to senators, and on the often confusing system that they use to file their claims.

It's shaping up to be a courtroom battle over interpretation and semantics — one that all senators are sure to be watching closely.

Duffy faces 31 charges of fraud, breach of trust and bribery, all associated with living, travel, and contracting expenses filed by the former Conservative appointee.

The spending scandal first began to unfold in late 2012, when a reporter for the Ottawa Citizen began asking questions about how much time Duffy actually spent in P.E.I., the province he represents in the Senate.

Duffy had been claiming living expenses for his longtime home in Kanata, Ont., in the national capital region, declaring it his secondary residence after his appointment in late 2008.

He designated a home in Cavendish, P.E.I., as his primary residence. A subsequent independent audit, commissioned by the Senate, found that he spent about 30 per cent of his time on the island.

Duffy has long insisted that he followed all the rules, but was extorted by the Prime Minister's Office into repaying \$90,000 in living expenses. That amount was in fact covered by Stephen Harper's former chief of staff Nigel Wright, after a series of secret negotiations.

Wright, who lost his job shortly after word of the cheque became public, always maintained he was acting in the public interest and that his only goal was to "secure the repayment of taxpayer funds."

Last April, investigators announced they would not pursue criminal charges against him.

The police allege that it was Duffy who twisted the arm of the PMO to foot the bill for the repayment, hence the bribery charge.

"I wish I had had the courage to say no back in February when this monstrous political scheme was first ordered," Duffy told the Senate in October 2013.

So what do Senate rules and statutes actually say about what constitutes a primary residence?

The Constitution says that a senator "shall be resident in the province for which he is appointed," and must own property worth at least \$4,000 in that province.

The Senate administrative rules, as they're known, leave it entirely in the hands of the senator to declare what they consider their primary residence.

An independent audit by Deloitte in 2013 pointed out the vagueness of the rules, that included no criteria for determining 'primary residence.'

"As such, we are not able to assess the status of the primary residence declared by Sen. Duffy against existing regulations and guidelines," the auditors wrote.

Duffy's lawyer Donald Bayne seized on these facts during a press conference in October 2013.

"Let me disabuse you of the impression that principal residence carries with it an automatic requirement of a certain number of days or proportion of the year of residence," Bayne said.

"That may be true for provincial health. It's not true, for example, under the Income Tax Act, where any one of you can designate a house you live in one day a year as your primary residence."

In the midst of the scandal, the Senate's internal economy committee voted to change the rules.

Senators are now required to show their driver's licence, health card, and income tax file to prove their province of primary residence.

Bayne is likely to point out those rules were brought in after the period covered by the charges. The same goes for the rules governing travel expenses, which were changed in 2012.

Duffy is also facing 18 charges related to travel expense claims he filed, as he attended political fundraisers, gave speeches and attended funerals.

Prior to 2012, the Senate travel policy didn't provide much specific guidance as to what was OK and what wasn't when travelling on Senate business.

"It was not mandatory for senators to provide the detail (sic) purpose of their trips," reads an RCMP report on an interview with Senate administrator Nicole Proulx. "The mention of 'Senate business' was sufficient."

Another audit firm, KPMG, told the Senate in 2013 that the housing and travel allowance systems were so vague that the "deficiency" could cause ineligible expenses to be paid out.

The Senate administrative rules refer specifically to partisan activities as "an inherent and essential part of the parliamentary functions of a senator." Those functions exclude, however, anything that has to do with candidates during an election campaign.

The 2012 travel policy includes an appendix with a description of what is fully funded for travel and what isn't.

"Party activities" are OK, as long as they relate to "the work of the senator or the Senate and its proceedings."

So are speeches "related to Senate work" or of "public interest." Speeches delivered at fundraisers are not covered.

These criteria were not in place when Duffy did most of his contested travelling, speaking at fundraisers for fellow Conservatives, for example.