

CRIMINAL CHARGES AND PARLIAMENTARIANS

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Whenever members of the House of Commons or the Senate are charged or convicted of criminal offences, questions invariably arise as to the effect of such charges and convictions on the person's right to continue as a member of the House or Senate.

The laying of a criminal charge against a member of the House of Commons or Senate has no effect in terms of his or her eligibility to remain in office. Even if convicted, a Parliamentarian will automatically lose his or her seat only if sentenced to a term of imprisonment of two years or more. (Until 3 September 1996, Parliamentarians had to be sentenced to term of imprisonment exceeding five years before they automatically lost their seats.) In other cases, however, the House or Senate could take action to expel the member.

In the case of the House of Commons, the *Parliament of Canada Act* and the *Canada Elections Act* make certain people ineligible for membership. Those convicted of a corrupt or illegal practice under the *Canada Elections Act* within the previous five years, those not qualified to vote, or those who hold certain offices (such as judges, sheriff, Crown Attorney, member of the Council of the Yukon or the Northwest Territories) are prohibited from being candidates in an election. It is not possible to be a member of both the House of Commons and a provincial legislature at the same time.

In the Senate, the *Constitution Act, 1867* provides certain requirements of age, citizenship, residency and property that Senators must meet in order to be appointed, and continue to meet in order to retain their seats. Section 31 of the *Constitution Act, 1867* prescribes other circumstances in which a Senator loses his or her seat: bankruptcy, absence from two consecutive sessions of Parliament, being convicted of treason or "of Felony or of any other infamous Crime."

Once a person is elected to the House of Commons, there are no constitutional provisions and few statutory provisions regarding the ousting of the member. (The *Parliament of Canada Act* states, however, that a member who is elected to a provincial legislature automatically loses his or her seat in the Commons.)

Section 750 of the *Criminal Code*, which applies to both members of the Senate and the House, provides:

750. (1) Where a person is convicted of an indictable offence for which the person is sentenced to imprisonment for two years or more and holds, at the time that person is convicted, an office under the Crown or other public employment, the office or employment forthwith becomes vacant.

(2) A person to whom subsection (1) applies is, until undergoing the punishment imposed on the person or the punishment substituted therefore by competent authority or receives a free pardon from Her Majesty, incapable of holding any office under the Crown or other public employment, or of being elected or sitting or voting as a member of Parliament or of a legislature or of exercising any right of suffrage.

...

It is important to note that this section applies only in cases where a member of the House of Commons or Senate is *convicted* of an indictable offence and *sentenced* to a term of imprisonment of *two years or more*. Thus, if a Parliamentarian is charged with a summary offence, or an indictable offence with a maximum imprisonment of less than two years, the section has no application. A Parliamentarian may be charged with a hybrid offence (where the Crown can elect whether to proceed summarily or by indictment); if the decision is for indictment, it would still be the actual sentence that was relevant, not the potential penalty.

Section 750(2) provides that a person who is convicted of an indictable offence and sentenced to a term of imprisonment of two years or more is barred from being a member of Parliament. He or she is not entitled to be elected, or to sit as a member, or to vote in the House of Commons or Senate. Thus, Parliamentarians will lose their seats if they come within the terms of the section. The only example of this occurred in 1946; after Fred Rose had been convicted of treason and sentenced to six years' imprisonment, the House declared his seat vacant and ordered a new election.

(To the extent that section 750(2) disqualifies a person from voting, it could possibly be challenged as a violation of section 3 of the *Canadian Charter of Rights and Freedoms*, as have been the provisions of the *Canada Elections Act*, which restrict the right to vote of some prison inmates.)

Notwithstanding the legal provisions, however, by virtue of parliamentary privilege, the Senate and the House of Commons have the right to expel their members. This is a power that has seldom been exercised, partly because it is so extreme. On two occasions in the 1870s Louis Riel was expelled from the House of Commons and in 1891 Thomas McGreevy was expelled after being judged to be guilty of a contempt of the House. In the Senate, the procedure for removing a Senator appears to be somewhat different, since Senators are summoned by the Governor General. The Senate has declared seats to be vacant in the past – usually on the basis that the Senator missed two consecutive sessions – but it seems that an address to the Governor General seeking the removal of a Senator might also be required.

In the past, the authority of the House over its members was considered to be absolute; it was said that the House could expel a member “for such reasons as it deems fit.” This discretion may have been somewhat circumscribed with the advent of the *Canadian Charter of Rights and Freedoms*. It is arguable that the House would have to proceed in a reasonable and fair manner, giving the member involved an opportunity to answer any charges.

A Parliamentarian who is convicted of a summary criminal offence or an indictable offence carrying a sentence of less than two years could, therefore, still be expelled from the House or Senate, but expulsion would require a resolution of the chamber, rather than being automatic.

Someone who is in jail for an extended period of time is unlikely to be able to carry out his or her parliamentary functions or serve constituents properly. (A Senator who was sentenced to a lengthy prison term would risk having his or her seat declared vacant on the basis of missing two consecutive sessions.) Before taking action, however, the House or the Senate might want to await the outcome of any appeals. Whether or not the crime pertained to the Parliamentarian’s parliamentary functions might also be relevant, although making such a distinction is not always easy or appropriate.

It should be noted that currently persons imprisoned in correctional institutions are disqualified from being candidates in an election for the House of Commons. Thus, a person imprisoned for less than two years could remain a member of the House of Commons but could not stand for re-election while still in prison.

While members can be expelled from Parliament, it is not easy to prevent their running for re-election in any resulting by-election or election. In 1986, the Nova Scotia House of Assembly enacted a law disqualifying persons convicted of certain criminal offences from

being nominated as a candidate or standing for election to the legislature for a period of five years. The law had been precipitated by the case of William (“Billy Joe”) MacLean, who challenged it and succeeded in having it struck down by the Nova Scotia Supreme Court as a violation of his Charter rights and those of the voters who would have been denied a right to cast their ballots for him.

In summary, the laying of criminal charges against a member of the House of Commons or Senate carries no implications. If a member is convicted, he or she can continue to sit unless sentenced to a term of imprisonment of two years or more. The House and the Senate could choose to expel a person in other circumstances, but this power is very rarely used. Certain provisions of the *Canadian Charter of Rights and Freedoms* might be relevant in such cases.