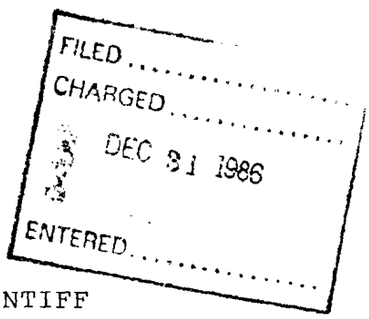
1986 S. H. No. 59231

IN THE SUPREME COURT OF NOVA SCOTIA

TRIAL DIVISION



BETWEEN:

WILLIAM JOSEPH MACLEAN

PLAINTIFF

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA
representing Her Majesty the Queen
in Right of the Province of Nova Scotia

DEFENDANT

HEARD: at Halifax, Nova Scotia before the Honourable Chief Justice Constance R. Glube, Trial Division on Monday, December 22nd, 1986

DECISION: January 5, 1987

COUNSEL:

J. E. Sexton, Q.C. Douglas A. Caldwell Joel E. Fichaud	)	for the plaintiff
Reinhold Endres Allison Scott	)	for the defendant

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GLUBE, C.J.T.D.:

This is an action commenced by an originating notice (application inter partes), to challenge the validity of and strike down an Act Respecting Reasonable Limits for Membership in the House of Assemby, S.N.S., 1986, c. 104 (referred to as the "Act") on the grounds that it infringes sections 3, 7, 11 and 15(1) of the Canadian Charter of Rights and Freedoms (referred to as the "Charter") of the Constitution Act, 1982. The plaintiff applies for relief under sections 24(1) and 52(1) of the Charter. The impugned Act was promulgated and assented to on October 30th, 1986.

Mr. MacLean was first elected to the Nova Scotia House of Assemby for the Electoral District of Inverness-South in 1981. He was re-elected in the Provincial Election held in 1984. Prior to the Act being passed, he held the portfolios of Minister of Culture, Recreation and Fitness and Minister in Charge of the Administration of the Lottery Act. He was also a member of the Select Committee of the Offshore.

On October 3rd, 1986, Mr. MacLean pleaded guilty to four counts of using documents knowing they were forged, contrary to s. 326(1)(b) of the Criminal Code, R.S.C. 1970, c. 34. These charges covered varying periods from August 1st, 1982 to February 28th, 1986, and related to some of the travelling and living expenses he had claimed in conjunction with his duties as Minister and Member of the Legislative Assembly. On October 3rd, 1986, he was sentenced to one day imprisonment deemed served by his appearance in Court, plus a fifteen hundred dollar ($1,500.00) fine for each of the four counts. These fines have been paid.

On October 30th, 1986, the House of Assembly expelled Mr. MacLean from the Assembly:

> "...by reason of his conviction on four counts of using forged documents in respect of money received by him in his capacity as a member..." [emphasis added]

The Act is as follows:

" WHEREAS electors are entitled to be assured that persons seeking election to the House of Assembly and members of the House of Assembly are worthy of the public trust;

AND WHEREAS there is need to prescribe by law reasonable limits for membership in the House of Assembly;

AND WHEREAS section 45 of the Constitution Act, 1982 authorizes the Legislature exclusively to make laws amending the constitution of the Province;

AND WHEREAS it is demonstrably justified in a free and democratic society to prescribe reasonable limits by law;

NOW THEREFORE be it enacted by the Governor and Assembly as follows:

1 Chapter 128 of the Revised Statutes, 1967, the House of Assembly Act, is amended by adding immediately following Section 25 thereof the following Sections:

25A(1) A person who stands convicted of an indictable offence that is punishable by imprisonment for a maximum of more than five years is not eligible

(a) to be nominated as a candidate for election as a member of the House; or

(b) to be elected as a member of the House,

for a period of five years from the date of the conviction and, if the sentence imposed for the offence or substituted by a competent authority has not been fully served at the end of that period, for the further time remaining to be served in that sentence.

(2) Where a conviction is set aside by a competent authority, any disability imposed by this Section is removed.

25B Where a person who is a member of the House is convicted of an indictable offence that is punishable by imprisonment for a

maximum of more than five years, that member forthwith ceases to be a member, and the seat of that member is and is deemed to be vacant until an election is held in that electoral district according to law.

25C For greater certainty, Sections 25A and 25B apply in respect of persons convicted before as well as after the coming into force of those Sections.

2 The House of Assembly, in the exercise of its historic right to expel a member in appropriate circumstances, hereby expels from the Assembly the member last elected before the coming into force of this Act for the electoral district of Inverness South by reason of his conviction on four counts of using forged documents in respect of money received by him in his capacity as a member, and the seat of that member is and is deemed to be vacant until an election is held in that electoral district according to law.

3 Nothing in this Act affects or shall be construed to affect the right of the Assembly to expel, suspend or discipline a member according to the practices, rules and procedures of the Assembly or otherwise."

The Act purports to expel Mr. MacLean immediately and prohibits him or any person from being nominated or elected for a period of at least five (5) years from the date of conviction, after a person has been convicted of an indictable offence punishable by more than five (5) years. The Act automatically expels a member upon such a conviction and it purports to be retroactive.

Mr. MacLean participated in the debate prior to the Act being passed but did not vote against it as it appears to have passed unanimously (Nova Scotia House of Assembly Debates

and Proceedings, Thursday, October 30th, 1986).

Proper notice of this action was given to the Federal Crown on December 1st, 1986. By a letter from the Department of Justice, Canada, dated December 12th, 1986, the plaintiff was advised that the Attorney General of Canada would not be represented at these proceedings.

In his brief to the Court, the plaintiff raised for the first time, the issue that the Act is ultra vires as it purports to deal with a criminal matter already occupied by s. 682 of the Criminal Code. The defendant submitted that the plaintiff should amend his pleadings and if this argument was to be received at this time, then the defendant required additional time to prepare its response. The plaintiff advised the Court that they were not pursuing that ground at this time but wished to reserve the right to possibly pursue it in another Court at a later date. The Court granted the amendment and ruled that the defendant now had notice of this ground but for the purposes of this application in this Court, the ground would not be argued, nor would the Court rule on this issue. However, the issue is preserved for the plaintiff if this decision is appealed.

A second preliminary issue is the request by the plaintiff for a final and interlocutory order, that the Government of Nova Scotia be enjoined from preventing the

plaintiff from running in a provincial election. The Court ruled that at this time there was no need to deal with this, as no by-election has been called. Should the need arise before this decision is rendered, counsel will be given an opportunity to present their arguments to the Court.

Before I can deal with the arguments raised by the plaintiff, it is necessary to deal with the Crown's first position; namely, that the Act in its preamble, states that the Act is an amendment to the Constitution of the Province of Nova Scotia made pursuant to s. 45 of the Constitution Act and as such, it is not reviewable by the Court.

Part V of the Constitution Act deals with the procedure for amending the Constitution of Canada. S. 45 (in Part V) states:

> "Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province."

The defendant argues that the Constitution of the Province of Nova Scotia is a part of the Constitution of Canada and as such, is part of the "supreme law of Canada" referred to in s. 52(1) of the Charter.

S. 52(2) of the Charter provides:

> "(2) The Constitution of Canada includes
> (a) the Canada Act, including this Act;
> (b) the Acts and orders referred to in Schedule I; and
> (c) any amendment to any Act or order referred

to in paragraph (a) or (b)."

Schedule I is headed "Modernization of the Constitution". It lists a number of acts which do not include any specifically related to Nova Scotia. The argument is that since s. 52(2) uses the word "includes", the list which follows is not exclusive.

In the case of Reference Re An Act to Amend the Education Act (1986) 25 D.L.R. (4th) 1 (Ont. C.A.), the majority stated at p. 54:

> " The Canadian Charter of Rights and Freedoms was made part of 'the Constitution of Canada' by virtue of para. (2)(a) of s. 52 of the Constitution Act, 1982, as were the pre-existing British North America Acts, 1867 to 1975 (renamed as Constitution Acts, 1867 to 1975 by the Schedule) by virtue of para. (2)(b) of the said s.52. Therefore, it is all of these Acts, as well as others mentioned in the Schedule and amendments to these, that are, by s-s. 52(2) proclaimed to be part of 'the Constitution of Canada' which, in turn, as proclaimed by s-s. 52(1) 'is the supreme law of Canada'. No part of the Constitution is made, by virtue of s.52, paramount over any other. Each provision which is part of the Constitution of Canada, must be read in light of the other provisions, unless otherwise specified." [emphasis added]

I do not dispute the proposition that there is, in part, a written Constitution of the Province of Nova Scotia made up of several pieces of legislation, including the House of Assembly Act, R.S.N.S. 1967, c. 128. Nor can I disagree with statements found in Reference Re Resolution to Amend the Consitution, [1981] 1 S.C.R. 753 at p. 785:

" How Houses of Parliament proceed, how a provincial legislative assembly proceeds is in either case a matter of self-definition, subject to any overriding constitutional or self-imposed statutory or indoor prescription. It is unnecessary here to embark on any historical review of the 'court' aspect of Parliament and the immunity of its procedures from judicial review. Courts come into the picture when legislation is enacted and not before (unless references are made to them for their opinion on a bill or a proposed enactment.) It would be incompatible with the self-regulating - 'inherent' is as apt a word - authority of Houses of Parliament to deny their capacity to pass any kind of resolution. Reference may appropriately be made to art. 9 of the Bill of Rights of 1689, undoubtedly in force as part of the law of Canada, which provides that 'Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament'."

and at p. 876:

" A substantial part of the rules of the Canadian constitution are written. They are contained not in a single document called a constitution but in a great variety of statutes some of which have been enacted by the Parliament at Westminister, such as the British North America Act, 1867, 1867 (U.K.), c.3, (the B.N.A. Act) or by the Parliament of Canada, such as The Alberta Act, 1905 (Can.), c.3, The Saskatchewan Act, 1905 (Can.), c.42, the Senate and House of Commons Act, R.S.C. 1970, c. S-8, or by the provincial legislatures, such as the provincial electoral acts. They are also to be found in orders in council like the Imperial Order in Council of May 16, 1871 admitting British Columbia into the Union, and the Imperial Order in Council of June 26, 1873, admitting Prince Edward Island into the Union."

However, note the further statement at p. 877:

" Those parts of the Constitution of Canada which are composed of statutory rules and common law rules are generically referred to as the law of the constitution. In cases of doubt or dispute, it is the function of the courts to declare what the law

> is and since the law is sometimes breached, it is generally the function of the courts to ascertain whether it has in fact been breached in specific instances and, if so, to apply such sanctions as are contemplated by the law, whether they be punitive sanctions or civil sanctions such as a declaration of nullity. Thus, when a federal or a provincial statute is found by the courts to be in excess of the legislative competence of the legislature which has enacted it, it is declared null and void and the courts refuse to give effect to it. In this sense it can be said that the law of the constitution is administered or enforced by the courts."

However, I do not agree that the Constitution of Nova Scotia is part of the Constitution of Canada as set out in s. 52(2) of the Constitution Act, 1982. Part V of that Act deals with the procedure for amending the Constitution of Canada. S. 45 is within Part V. What is its meaning? In my opinion, s. 45 deals with the process of amending provincial constitutions. To say otherwise, would allow more power to the provinces than is given to the Parliament of Canada (see s. 44). Although amendments to provincial constitutions do not have to proceed under s. 38 and other sections, nowhere in the Charter does it permit provinces to individually pass legislation which contravenes the Charter. Every law passed by a province purporting to amend its constitution, and passed since 1981, must be in agreement with, and conform to, the Constitution of Canada and in particular, the sections of the Charter.

Thus, in my opinion, s. 45 refers to process, i.e. there is no amending formula applicable to the provinces when

dealing with their own constitutions. However, s. 45 does not go further than that, and does not permit laws to be passed which violate the Charter (note s. 32(1)). I conclude that since the Charter, any provincial laws purporting to deal with the eligibility of persons to be elected to individual provincial legislative assemblies must comply with s. 3 of the Charter and the Court has the power to review the legislation and, if necessary, to test the legislation under s. 1.

If it were otherwise, a province could, for example, amend its constitution by passing a law that only blue-eyed, brown-haired persons could qualify for membership in the legislative assembly, and there would be no way to challenge that law. Amendments to provincial constitutions must be capable of being tested and the challenge must take place in the courts.

Finally, on this point, I agree with the positions expressed by McEachern, C.J.S.C., of the Supreme Court of British Columbia in Dixon v. The Attorney General of British Columbia (B.C.S.C.) October 28th, 1986, (unreported) at p. 18 and 19:

> " Thus I conclude that the definition in s. 52(2) is indeed a narrow one and although it is not necessary to decide the question, I expect it is an exhaustive one in spite of the word 'includes' in the section. Great difficulty may be encountered if the Constitution Act of British Columbia is read into the Constitution of Canada for if it becomes part of the supreme law and thus inviolable even by the Charter then it is arguably entrenched and could only be altered by the combined efforts of Parliament and the Legislature pursuant to s. 43. This seems to be an unusual result. I respectfully agree with Professor Hogg in his Canada Act 1982 Annotated (1982) at p. 105 where he said:

> ' The definition of s. 52(2) uses the words "includes" (instead of "means") which in Canadian legislative enactment usually indicates that the definition is not exhaustive. But, considering the specificity of the lists of Acts and orders, and the grave consequences (entrenchment and supremacy) of the inclusion of the instruments, surely no court would be so bold as to make additions to the thirty instruments in the schedule. It seems only realistic, therefore, to regard the definition as exhaustive.'

Further, I think technical arguments should not lightly be permitted to authorize escape from the scrutiny of the Charter. It is the latter and not the definition of the Constitution that should be given a generous construction. I agree with Howland, C.J.O. and Robins, J.A. (both dissenting) in Re Education Act (supra) at p. 40 where they say:

> '...If any doubt exists as to whether an exception to the guaranteed fundamental rights and freedoms is authorized by the Charter, the doubt must be resolved in favour of the application of the Charter and not the extension of the exception. Much was said during the hearing about the Charter being a "living tree" whose growth ought not to be stunted by narrow technical interpretations. In our opinion, the consequences that flow from the construction the proponents of Bill 30 would have the Court place on the words "or under" run contrary to the spirit of that concept. To accept that in this post-Charter era of our constitutional development Bill 30 can escape scrutiny under the Charter on that narrow technical basis, in our view, is to give the clock's hands a backward turn.'"

and at p. 23 and 24:

> " Applying the foregoing to this case I conclude that the authority of the legislature to enact or amend the Constitution Act of B.C., particularly s. 19 and Schedule 1, is 'constitutional' in the sense that no other body may interfere with such jurisdiction and no body can change that arrangement without a constitutional amendment. How the

> legislature exercises this authority, and the validity of such provisions in the sense of conforming to the Charter, is quite a different matter. It is the Court's reluctant responsibility to examine the result of the exercise of such authority to ensure that it conforms with the Charter. Thus, although the constitutional tree may be immune from Charter scrutiny, the fruit of the constitutional tree is not. If the fruit of the constitutional tree does not conform to the Charter, including s. 1, then it must to such extent by struck down."

The next matter I propose to deal with is whether s. 2 of the Act, even without any legislation, is a valid exercise of provincial power. The question is, does the legislative assembly have the power to expel a member. The plaintiff argues that the expulsion of Mr. MacLean is one section of an act which contravenes the Charter and should not be severed. The defendant submits that insofar as the Act relates to privilege, the expulsion is valid, as it is merely expressing the privilege of the Assembly to discipline its members and regulate its affairs.

S. 28(1) of the House of Assembly Act, R.S.N.S., 1967, c. 128, is as follows:

> "(1) In all matters and cases not specially provided for by an enactment of this province, the House and the committees and members thereof respectively shall hold, enjoy and exercise such and the like privileges, immunities and powers as are from time to time held, enjoyed and exercised by the House of Commons of Canada, and by committees and members thereof respectively."

The power to expel a member has long been a part of the prerogative of legislatures. In Parliamentary Procedure

and Practice in the Dominion of Canada by Sir John George Bourinot (4th ed.) 1916 at p. 64:

> " The right of a legislative body to suspend or expel a member for what is sufficient cause in its own judgment is undoubted. Such a power is absolutely necessary to the conservation of the dignity and usefulness of a body."

Beauchesne's Rules and Forms of the House of Commons of Canada, (5th ed.) 1978 states at p. 16 s. 37:

> " There is no question that the House has the right to expel a Member for such reasons as it deems fit."

In Erskine May's, Treatise on The Law, Privileges, Proceedings and Usage of Parliament, (20th ed.) 1983, at p. 139:

> " The purpose of explusion is not so much disciplinary as remedial, not so much to punish Members as to rid the House of persons who are unfit for membership. It may justly be regarded as an example of the House's power to regulate its own constitution. But it is more convenient to treat it among the methods of punishment at the disposal of the House."

Other material was put forward documenting the expulsion of a number of members of the Nova Scotia House of Assembly in the 17 and 18 hundreds. In 1802, there is one expulsion by statute.

The plaintiff agrees there is an historical right to expel, but says it is qualified by the Charter.

In my opinion, the power to expel a person by resolution

of the Assembly remains a valid function of the Assembly, and if by resolution, would normally not be reviewable by the Court. In my opinion s.3 of the Charter on its plain meaning does not emcompass s. 2 of the Act which I find is severable and could stand on its own.

If I am wrong in this conclusion, then the Act, including the expulsion, must be looked at under s. 3 of the Charter, which states in part, "Every citizen of Canada has the right....to be qualified for membership...." in a legislative assembly.

I accept that Mr. MacLean is a Canadian citizen.

The defendant makes the following submissions concerning s. 3 of the Charter as it relates to the Act:

- the legislature is not impeded from establishing proper qualifications or standards for its members;
- s. 3 does not guarantee an absolute right, but rather, permits limitation;
- the aim of the Act is to preserve the traditional dignity of the House of Assembly by setting down standards of morality;
- if there are sufficient reasons to expel a member, it follows that the House of Assembly has the power to set the same standards for entry into the House, to preserve the dignity and usefulness of the House,

thus preventing the immediate return of an expelled member even by the elected process.

I agree that proper standards for its sitting members may be set by the House. In my opinion s. 3 deals with the right to vote and the right to be elected and that is different from setting standards for sitting members. In my opinion no breach of s. 3 occurs by the House expelling one of its members.

The same cannot be said for the attempt by the House to impose restrictions on future members of the House. Bourinot, Beauchesne and Erskine May all agree that the legislature has the power to expel a member for "such reasons as it deems fit". They also all agree that "such expulsion does not affect the right of a Member to run again and be re-elected".(p.16 - Treatise on The Law, Privileges, Proceedings and Usage of Parliament, supra,)

The Act attempts to not only expel Mr. MacLean, but also to keep him out of the House using the same criteria. The Act purports to make the criteria for qualification for membership (in the future) retroactive. At this time, the Act not only expels Mr. MacLean, but also prevents his candidacy in a provincial election for five years from October 3rd, 1986.

Does the Act have an unconstitutional purpose or an unconstitutional effect which should invalidate the legislation?

(R. v. Big M Drug Mart Limited (1985), 58 N.S.R. 80 (S.C.C.)). If the answer is yes, the onus shifts to the Crown to demonstrate under s. 1 of the Charter that the Act is a reasonable limit "prescribed by law as can be demonstrably justified in a free and democratic society". (R. v. Oakes (1986), 26 D.L.R. (4th) 200 (S.C.C.)).

For the purposes of this analysis, I am including both the expulsion of Mr. MacLean as a sitting member and his right to be a candidate for the legislature, that is, as a citizen, his right to be qualified for membership.

As a citizen, the Act prevents Mr. MacLean from sitting in the House today and from being qualified to be a member if an election was called tomorrow. On the plain meaning of the words in s. 3 of the Charter, I find that an attempt to put limits on membership qualification violates Mr. MacLean's right as a citizen to be qualified for membership in the House of Assembly of Nova Scotia.

Clearly the effect of the legislation is unconstitutional. It attempts to retroactively set standards for future members, which are over and above the requirements of s. 3 of the Charter. Probably its purpose is unconstitutional as well which seems to have been recognized by the framers of the legislation by the words used in the preamble, namely:

> "AND WHEREAS there is need to prescribe by law reasonable limits for membership in the House of

Assembly;

....

AND WHEREAS it is demonstrably justified in a free and democratic society to prescribe reasonable limits by law;...."[emphasis added]

The Act uses the words of S. 1 of the Charter which only needs to occur if there has been a violation of Charter rights.

The defendant suggests the legislation is both protective and disciplinary. If it is disciplinary, expulsion would accomplish that and anything more would be excessive and not demonstrably justified in a free and democratic society. Expulsion will protect the integrity of the House. The offences in which Mr. MacLean was involved were offences directly related to his role as a member of the House. He was defrauding the House of Assembly by claiming and obtaining funds for alleged expenses as a member by using forged documents. For that, the House chose to expel him. The argument that the House must declare in advance that a person who is a member should not forge documents or he will be expelled is not necessary. The law is found in the Criminal Code, namely, that a person shall not forge documents. Until Mr. MacLean pleaded guilty, he was charged, but innocent until proven guilty. In my opinion, expulsion before conviction or before his guilty plea would have been wrong and no doubt could have been challenged. What the House did in expelling him, met their stated purpose of protecting the integrity of the House and was demonstrably

justified in a free and democratic society.

As to the conditions for nomination and election contained in s. 1 of the Act, these have been made retroactive. At the time Mr. MacLean pleaded guilty there were no statutory standards in place. Standards must be prescribed by law and clearly set out so that they can be known to all. Mr. MacLean could not know of the limitations found in s. 1 of the Act on October 3rd, 1986.

Peter W. Hogg, author of Constitutional Law of Canada (2nd ed.) 1985, deals with the issue "prescribed by law" at p. 684. He deals with the argument that a statute enacted by a provincial legislature is one way of satisfying "prescribed by law" and then puts forth an alternative view which I prefer:

> " An alternative view of the purpose of the phrase 'prescribed by law' is that it is designed to ensure that citizens are plainly advised of any restrictions on their guaranteed rights, so that they can regulate their conduct accordingly. On this basis, the phrase would be satisfied by any law that fulfilled two requirements: (1) the law must be adequately accessible to the public, and (2) the law must be formulated with sufficient precision to enable the citizen to regulate his conduct by it."

In Black v. Law Society of Alberta [1986], 3 W.W.R. 590 (Alta. C.A.) Kerans J.A., at p. 630 in dealing with s. 1 stated:

> " The first is settled law. The words 'prescribed by law' in s. 1 affirm that aspect of the rule of law which does not permit the capricious or arbitrary exercise of power. More specifically, they indicate that a violation is not protected unless it is

> permitted by some authority which is recognized as having a law-making function in our society and that all members of society could know in advance, upon reasonable inquiry, what the rule is..."

The present legislation although accessible now, was not known to Mr. MacLean at the time he pleaded guilty on October 3rd, 1986. The legislation attempts to regulate conduct which in Mr. MacLean's case took place before the Legislation was passed. It is a serious matter to retroactively take away a democratic right found in the Charter and the Court should not condone such an action unless there was an overwhelming reason to do so. If for some reason I should look further, what could that reason be and does the legislation achieve that reason (proportionality test)?

The reason for the legislation was protective. (I have dealt with its disciplinary reason). It is said that the legislative should be able to set its own standards and determine what people it does not want to have in the House. The content of s. 1 of the Act affects Mr. MacLean and others to run and be elected. It also impinges on the rights of voters to elect a member of their choice by a majority vote. Surely the citizens of this province should be given credit for having the sense to determine who is a proper member. The voters now know the facts about Mr. MacLean and should he chose to run, it should be the voters who decide whether he is the person they want to represent them in the House. The legislation

is paternalistic and excessive and under the proportionality test is unnecessary to protect society.

The prohibition has turned from protection to punitive. The defendant even suggests the Act has merely set minimum acceptable standards and conduct essential to lend finality to the expulsion. However, the criteria proposed would eliminate people who are not involved in breaching the trust of the House. The first and second preamble of the Act states:

> " WHEREAS electors are entitled to be assured that persons seeking election to the House of Assembly and members of the House of Assembly are worthy of the public trust;
>
> AND WHEREAS there is need to prescribe by law reasonable limits for membership in the House of Assembly;"

What is proposed, in my opinion, is excessive and exceeds the stated purpose. Thus it does not meet another ground of the proportionality test, namely, impairing as little as possible the right in question.

I find the prohibition is penal and is not demonstrably justified in a free and democratic society.

This is not to suggest that the legislature cannot pass valid legislation qualifying membership in the legislature. I believe it can. It is not appropriate for the Court to speculate, nor to suggest particular legislation but the Court can say that:

- the legislation must not be retroactive;

- the legislation must be reasonable for the stated purpose;

- that for the stated purpose it may only be necessary to include a few specific offences.

Naturally, any legislation would have to be analysed, after it was drafted, in light of s. 1 of the Charter.

Although the plaintiff argued against the severability of legislation, sections 2 and 3 of the Act do not need s. 1. They stand on their own. I find they are severable.

To ensure public trust is maintained in the membership of the House, expulsion is demonstrably justified in a free and democratic society. The restrictions in s. 1 of the Act are not. S. 1 of the Act is null and void.

Having found that the Act violates s. 3 of the Charter and having then analysed the Act under s. 1 of the Charter and having found that sections 2 and 3 of the Act meet the test of s. 1 of the Charter but s. 1 of the Act does not, I do not propose to discuss the arguments presented under sections 7 and 15 of the Charter.

I wish to thank all counsel for their comprehensive material and clarity of arguments which assisted me greatly.

The application is successful in part as stated above.

C.J.T.D.

Halifax, Nova Scotia

January 5, 1987