

532/92



*m. munnell*

FROM: JONATHAN STEPHENS  
ECONOMIC AND SOCIAL DIVISION  
OAB EXT 6495  
8 JANUARY 1992

- cc PS/Mr Mates (L&B) - B
- PS/Mr Hanley (L, B & DENI) B
- PS/PUS (L&B) - B
- PS/Mr Fell - B
- Mr Thomas - B
- Mr Bell - B
- Mr Wood (L&B) - B
- Mr D J R Hill - B
- Ms Marson
- Mr Caine - B
- Mr Clayton, HOLAB

ASST SEC 12 JAN 1993  
CENT SEC  
*gmc639/1*  
*MM 362/1*

UNDER/ SEC 245/1  
11 JAN 1993  
CENT SEC

PS/SECRETARY OF STATE (L&B) - B  
ELECTION PETITION: DR JOE HENDRON

*Mr Watkins*  
*Mr McConnell for free*  
*Free 8/1/93*

The hearing of the petition against Dr Hendron was completed before Christmas. Judgement was reserved. It will be delivered soon - possibly next week.

2. We cannot predict what the outcome will be. It may be that Dr Hendron's election will be confirmed. But there is a possibility, if the election court finds that Dr Hendron substantially overspent and that this over-expenditure was knowingly incurred, that he will both lose his seat, and be incapable of standing for further election. There is no appeal from the findings of the election court so, in this event, a by-election would have to be held within about three months.

*m/s*  
*Ms Murphy*

3. I attach a detailed note on the legal position, cleared with our legal advisers, which was originally submitted when the hearing of the petition began in October.

Line to Take

4. Whatever the result of the election court, the Government will

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want to avoid being drawn into detailed comment. But, if pressed,  
I suggest the line to take should be:

- All election candidates have to abide by the law.
- The decision in this particular case is entirely a matter for the election court.
- Parliament has no discretion to override the decision of the election court.

(SIGNED): Jonathan Stephens

**JONATHAN STEPHENS**

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CN/ESL/14580

C O N F I D E N T I A L



FROM: D A HILL  
ECONOMIC AND SOCIAL DIVISION  
14 OCTOBER 1992

cc PS/Mr Mates (DFP, L&B) - B  
PS/Mr Hanley (DENI, L&B) - B  
PS/PUS (L&B) - B  
PS/Mr Fell - B  
Mr Thomas (L&B) - B  
Mr Bell (L&B) - B  
Mr Wood (L&B) - B  
Mr D J R Hill (L&B) - B  
Mr Maccabe - B  
Mr Caine - B  
Mr Clayton, HOLAB

PS/SECRETARY OF STATE (L&B) - B

ELECTION PETITION: DR JOE HENDRON (BELFAST WEST)

I attach a note on the law relating to election expenses and the effect of exceeding the limit on expenses. We have prepared this with the assistance of legal advisers. Ministers may be interested in the conclusions.

2. The petition against Dr Hendron is being heard now. I should stress that we do not know what the court will determine and it would not be possible to predict the outcome without a much greater knowledge of the facts than we have. But to summarise the position as we understand it, if the election court finds Dr Hendron has substantially overspent, and that the over-expenditure was "knowingly" incurred there is a possibility that he will lose his seat, and be incapable of standing for further election to that seat. A by-election would have to be held within about three months of the election petition hearing, (if not sooner) (see para 19 of attached note) there being no appeal from the decision of an election court.

(SIGNED): D A Hill

D A HILL  
ESL Division  
OAB Ext 6495  
14 October 1992

## ELECTION PETITIONS: FALSE RETURNS AND DECLARATIONS AS TO ELECTION EXPENSES

The legal position

The law provides that a candidate or election agent who knowingly exceeds the statutory limit on election expenses is guilty of an illegal practice (section 76(1) of the Representation of the People Act 1983); and that a candidate or election agent who knowingly makes a false declaration as to election expenses is guilty of a corrupt practice (section 82(6) of the 1983 Act). Either or both findings may be made by an election court in its deliberation of an election petition alleging overspending on parliamentary expenses (the current limit in a borough constituency such as Belfast West with about 55,000 electors is in the region of £6,400).

2. Under section 144 of the 1983 Act, at the conclusion of a trial of a parliamentary election petition the election court determines whether the member whose election is complained of was duly elected or whether the election is void. The court makes a report to the Speaker, and the House of Commons subsequently gives the necessary direction for confirming or altering the return of the member, for issuing a writ for a new election or for carrying the determination of the court into execution as the circumstances may require. The House has no discretion; it must follow the court's finding.

3. Under section 158 of the 1983 Act, the report of an election court under section 144 states whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt or illegal practice. If it is reported that a corrupt practice (other than treating or undue influence) or an illegal practice was committed with the knowledge and consent of a candidate, he is treated as having been reported

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personally guilty of the corrupt or illegal practice in question. The report under section 144 also states whether any of the candidates has been guilty by his agents of any corrupt or illegal practice.

4. Under section 159 of the 1983 Act, if a candidate who has been elected is reported by an election court personally guilty or guilty by his agents of any corrupt or illegal practice, then his election is void. In the case of a parliamentary election, such a candidate is incapable from the date of the report of being elected to and sitting in the House of Commons for the constituency for which the election was held -

- a) if reported personally guilty of a corrupt practice, for ten years;
- b) if reported guilty by his agents of a corrupt practice or personally guilty of an illegal practice, for seven years;
- c) if reported guilty by his agents of an illegal practice, during the Parliament for which the election was held.

6. A candidate reported by an election court as personally guilty of a corrupt or illegal practice is, in addition to the relevant disqualification described in paragraph 5 above, subject under section 160 of the 1983 Act to certain incapacities in relation to registering as an elector, voting or holding public office, depending on the nature of the practice in question.

7. Corrupt and illegal practices are also offences under criminal law. The Representation of the People Act 1985 repealed the provisions by which corrupt and illegal practices were triable by an election court. Corrupt practices are now triable only either summarily or on indictment; illegal practices are only triable summarily.

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8. Section 158(3) of the 1983 Act provides a saving in certain circumstances against the provisions of section 159. If a candidate is reported guilty by his agents of treating, undue influence or any illegal practice, and the court further reports that the candidate has proved to the court -

- a) that no corrupt or illegal practice was committed at the election by the candidate or his election agent and the offences mentioned in the report were committed contrary to the order and without the sanction or connivance of the candidate or his election agent, and
- b) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt and illegal practices at the election, and
- c) that the offences mentioned in the report were of a trivial, unimportant and limited character, and
- d) that in all other respects the election was free from any corrupt or illegal practice on the part of the candidate and of his agents

then the candidate shall not be treated for the purpose of section 159 as having been reported guilty by his agents of the offences mentioned in the report.

9. The 1983 Act confers on the courts the power of granting relief, in various circumstances, to an innocent candidate or election agent against the consequences of acts in which they have not participated, or which are due merely to inadvertence. Section 86 of the Act sets out authorised excuses for failures as to returns and declarations as to election expenses. The power to grant this relief is not, like that under section 167 of the Act

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(which relates to illegal practice, payment, employment or hiring), confined to cases of default from inadvertence, accidental miscalculation, or other reasonable cause, but extends to cases of default, error, and false statement caused by the misconduct of an agent or other person (although only an innocent person can obtain relief).

Election petition against Dr Hendron

10. It is impossible to say how the law would apply to Dr Hendron's case without full knowledge of the facts as they will be established by the election court. In particular we do not know how great any overspend might prove to be. But what follows is based on the assumption both that the limit on election expenses was exceeded by a substantial amount and that expenses which should have been included in the return were not.

11. It might be difficult for Dr Hendron or his election agent to argue successfully that he did not "knowingly" contravene section 76(1) of the 1983 Act. "Knowingly" is not the same as "intentionally". An illegal practice would be committed if the candidate or the election agent knew the expenditure was being incurred even though neither had formed an intention to exceed the limit.

12. Section 86 would appear to have no application in relation to a breach of section 76(1), as opposed to the existence of some error in the return. It is possible that section 167 might be used to obtain relief if Dr Hendron or his election agent could point to some accidental miscalculation and if the other requirements of section 167 have been satisfied. Section 158(3) would not be of assistance to Dr Hendron if either he or his election agent has committed a corrupt or illegal practice.

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13. There is the separate question of whether Dr Hendron has committed the more serious offence (under section 82(6)) of knowingly making a declaration falsely. The relief offered by section 167 would not be available since it does not apply in respect of corrupt practices. However, section 86 (in particular, section 86(3)(d), which refers to "inadvertence or any reasonable cause of a like nature") may provide relief.

14. The election court has no power to impose a fine or any other sanction under criminal law. As mentioned in paragraph 7 above, corrupt and illegal practices are no longer triable by an election court. The court's duty is to determine whether the member whose election is complained of was duly elected and to make a report stating whether any corrupt or illegal practice has or has not been proved to have been committed.

15. We understand that, in addition to the possible breaches of the law considered above, there were two further irregularities in connection with the return and declarations as to Dr Hendron's election expenses. First, Dr Hendron himself, rather than his election agent, signed the return as to election expenses. This is only appropriate where the candidate is his own election agent. Since Dr Hendron had a duly appointed election agent at the time when the return was made, the return was not in the form prescribed in Schedule 3 to the 1983 Act. Arguably this failure is an illegal practice under section 84 of the Act. Secondly, we understand that no declaration as to election expenses was made by the election agent and that the only declaration was the one made by Dr Hendron. The failure by the election agent to make a declaration is in breach of section 82(1) of the 1983 Act and accordingly is an illegal practice by the agent under section 84 of the Act.

16. Neither of the two irregularities described in paragraph 16 above was referred to in the election petition. They might nevertheless be picked up by the election court. An illegal practice can also be prosecuted in the criminal courts.

Consequences if Dr Hendron's election is declared void

17. An election court has the power in exceptional circumstances to declare the candidate with the next greatest number of votes to a successful candidate to be elected in his or her place. This only occurs when the successful candidate is, and was known to be, disqualified from membership of the House of Commons at the time of his election (with the effect that people who voted for the candidate are deemed to have thrown their votes away). Since this does not apply to Dr Hendron, there will have to be a fresh election (at which Dr Hendron, if he is reported guilty or guilty by his agents of a corrupt or illegal practice, would be unable to stand) if his election is declared void.

18. There is no appeal from the determination of an election court, which is final to all intents as to the matters at issue on the petition.

19. If Dr Hendron's election is declared void, then we can probably expect the House of Commons to be informed of the fact by the Speaker after the House returns on 19 October. The House will then be required to give the necessary direction for issuing a writ for a new election. The writ is normally issued on the same day as, or the day following, that on which a motion for the Speaker to make out his warrant for the issue of writ is moved. By parliamentary convention, the motion is normally moved by the Chief Whip of party to which the previous member belonged within three months of the date on which the vacancy occurred. However, it is possible that the effect of Section 144(7) of the 1983 Act is to require the writ of election to be moved without delay. This would be a matter for the House authorities.