# *The Status of Small Parties in the House of Commons*

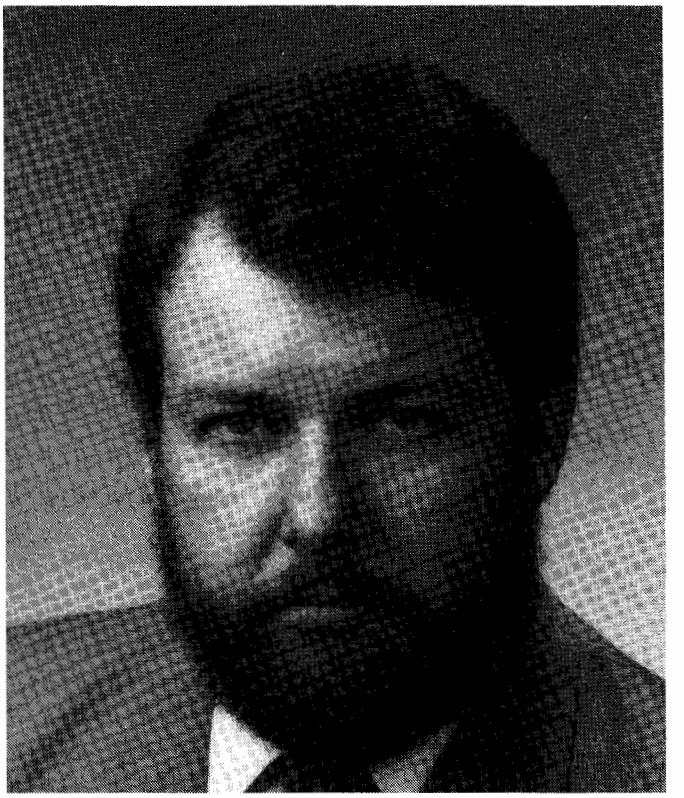
**by Bill Blaikie, MP**

*After the results of the federal election it was apparent that the New Democratic Party and the Progressive Conservative Party would lose the financial benefits of being recognized parties. The Parliament of Canada Act was clear that a party must elect 12 members in order to qualify for the financial benefits that go to parties in the House. When the House first met, however, it became evident that the loss of party status was being carried much further than was set out in the Parliament of Canada Act. In June the Chairman of the NDP caucus objected to the treatment of members of the NDP caucus as independents in procedural matters. His argument along with the Speaker's ruling of June 16, 1994 and a response to the ruling are outlined on the following pages.*

What I am seeking is not a change in those sections of the *Parliament of Canada Act* which pertain to money, but a recognition that that statute applies only to money and that all else is a matter of convention, practice and the discretion of the Speaker as the Chair seeks to fulfil its historic role as the protector of the House itself and the minorities therein.

There are no unambiguous definitions of parties in legislation, in the standing orders or in the procedural authorities, and yet parties are essential to the efficient operation of the House. Their officers, leaders, House leaders and whips try to facilitate what all of us do here as we discharge our public responsibilities.

Parties present themselves to the House as parties and are not created or disposed of by the House itself. Our membership in our respective parties is a matter between ourselves, our fellow caucus colleagues, our extra-parliamentary organizations and ultimately our electors. We can leave our parties or be asked to leave our



*Bill Blaikie was first elected to the House of Commons in 1979. He represents Winnipeg-Transcona and is Chairman of the NDP Caucus. This is a slightly edited version of his point of order which appears in Hansard of June 1, 1994.*

parties. We can create new parties, merge two parties into one, as did the Progressives and the Conservatives, or change the name of our parties as we in the New Democratic Party did.

The tradition of this place has been for the Speaker to accept the party affiliation that the parties and the members report to him or her. Yet since the beginning of this Parliament the Chair has not accepted the party affiliation that we in the New Democratic Party clearly possess.

The only possible precedent for this is the way in which the Bloc Quebecois was treated in the last Parliament. All other precedents, including the way the one Reform member was treated prior to the formation of the Bloc, points to the injustice and inappropriateness of the way the NDP is now being treated.

The authority for not treating us as a party has apparently been the *Parliament of Canada Act* which since 1963 has set out a threshold of 12 members for parties whose officers are granted special allowances and subsequently for parties whose members may sit on the Board of Internal Economy.

My point today is first to show that the wording of the *Parliament of Canada Act* does not empower or require the Chair to withhold recognition from parties with fewer than 12 members in spite of the conventional wisdom. Second, I am asking the Chair to follow the established practice of recognizing such parties in the House.

Let us then look at the wording in the *Parliament of Canada Act*. The words in section 62 read that the officers of "a party that has a recognized membership of 12 or more persons in the House" shall receive a variety of allowances. It does not say that a party must have 12 members to be a recognized party and clearly assumes that parties with fewer than 12 members are indeed parties.

In section 50 caucuses that do "not have a recognized membership of 12" are not entitled to have representatives on the Board of Internal Economy but are clearly to be construed as still being caucuses.

These clauses are worded in such a way that the question of other forms of recognition is at worst left open. At best the wording of the statute seems to imply that party as a concept is something independent of numbers and that 12 is the number of seats an already recognized party must have in order to qualify for money but not for recognition as such. Recognition of parties with fewer than 12 members is already implicit in the wording of the statute itself. If the *Parliament of Canada Act* says anything about official party status then it confirms rather than denies that party status itself is distinct from the financial provisions of the act.

There being no clear and precise legal definition of party status, we may ask how the financial provisions of the *Parliament of Canada Act* came to be confused with the acceptance of party status in the House.

Shortly after the passage of the 12-member threshold amendments in 1963, the Ralliement Créditiste divided themselves from the Social Credit Party which was left with only 11 members. In the ensuing debates about the new seating arrangements, the new 12-member threshold was loosely applied to questions of parliamentary practice as the House sought to deal with the fact that two parties had been created out of one, a situation quite unlike the one in which the NDP now finds itself.

Indeed, in the last Parliament the 12-member threshold was also used to deal with the formation of the Bloc out of defectors from the Liberal and Conservative parties, another situation totally different from that of the NDP in this Parliament.

John C. Courtney, a political scientist who published a paper on party recognition in March 1978 in a volume of the *Canadian Journal of Political Science*, explained the development of the misreading of the 12-member threshold very effectively:

> Technically the 12-member threshold in the 1963 act and parliamentary procedure had nothing to do with one another, yet the timing of the events was virtually certain to produce a combination that would lead to the injection of the phrase "recognized membership of 12 or more persons in the House of Commons" into future debates over regulations and statutes dealing with political parties. The term, indeed more specifically the number, would gradually assume an authenticity of its own.

The view that the 12-member threshold constitutes a hard and fast rule in law about party status in this House is in fact an illusion. However, in an illustration of the old maximum that hard cases make bad law, misapplications designed to deal with divided and/or new parties are now side swiping the NDP in the absence of an appropriate will to discern the difference between some previous situations and the situation we find ourselves in at the moment.

A more reliable legislative authority for determining party status can be found in the *Canada Elections Act*. In sections 24 through 42 of that act, it is clear that parties lose party status not when they fall below the 12-member threshold but only when they fail to file certain documents or when they fail to officially nominate candidates in at least 50 constituencies 30 days before polling day.

Even though there is no question that the New Democratic Party is now a registered party under that act, in the House we are treated as if we were

independents, no differently than some other members who do not belong to a party registered under the *Canada Elections Act*.

To this point, informal arguments against the way we are being treated are often met with the argument that real independents could make a similar claim, that it is primarily a question of degree and that a line had to be drawn somewhere. If the *Canada Elections Act* were taken into account this argument would hold even less water than it does now if that were possible.

There is therefore no legal authority, either in the *Parliament of Canada Act* or in the *Canada Elections Act*, for withholding recognition from us.

Past Speakers have not, moreover, applied the 12-member threshold to questions of party recognition. I would now like to direct your attention to a number of the relevant precedents.

The first and most relevant precedent is the party status accorded to the CCF after the 1958 election. Electing eight members to the House, the CCF was then in a very similar position to that of the NDP in this Parliament.

In 1958, the CCF continued to enjoy its full rights as an opposition party. CCF members were seated as a party in the House and were treated as a party in debate and during Question Period. The party leader was treated as a party leader in debate on the speech from the throne, being recognized immediately after Mr. Pearson and Mr. Diefenbaker. CCF members also sat as full members on committees.

After the 1963 introduction of the 12-member threshold, Speakers regularly interpreted the act as one that granted certain financial benefits to parties with more than 12 members. However that did not take away any other rights of parties that had fewer than 12 members.

On February 18, 1966 for instance, Speaker Lamoureux allowed representatives of the Social Credit Party and the Ralliement Créditiste to respond to ministerial statements under what is now Standing Order 33(1), even though they had only five and nine members respectively. He argued that he did not see how the standing order concerning the right of opposition parties to respond to ministers' statements could be "interpreted in light of the amendment to the *Parliament of Canada Act*".

The force of the tradition of protecting the rights and status of small parties can be seen again in the treatment of the Social Credit Party after the 1974 election. With only 11 members the Social Credit Party once again fell below the legal threshold of 12 members required in order to receive financial benefits. The Board of Internal Economy nonetheless granted the Social Credit Party $50,000 for research purposes at its meeting of October 22, 1974, a meeting attended by the present Prime Minister and by Mr. Mitchell Sharp.

I am raising this point not to ask for similar financial benefits, but to illustrate how previous Parliaments have protected the rights of small parties so assiduously that they sometimes have ignored the 12-member threshold on financial matters.

In 1979 in a Parliament in which I myself participated the Social Credit Party sent only five members to the House. A striking committee did not include a member from the Social Credit Party although they did sit in the front row of the House.

There was a motion by the Social Credit member that his party should have a representative on the striking committee. In the ensuing debate on October 9, 1979, it was made clear by the Conservative Government and Liberal Opposition that what was at stake was not only the particular issue of the membership of the striking committee but also the party status of the Social Credit caucus.

When the Social Credit motion failed, Speaker Jerome at first decided that the motion obliged him not to grant the Social Credit members party status. On October 10 he did not recognize their leader in the debate on the speech from the throne.

The next month Speaker Jerome revised his position and took into account the important responsibility of the Chair to protect minorities in the House. In debate on an opposition no confidence motion on November 6, 1979, Speaker Jerome recognized the leader of the Social Credit in debate immediately after the other opposition party leaders. He gave an eloquent justification for his decision from which I would like to quote. It is an important piece of evidence because it qualifies the original ruling.

> We ought to be clear at the outset that it is not a transgression of propriety to mention the name of the political party of the members who are involved; it is the Social Credit Party of Canada. Its members are members of this House of Commons and their leader is the hon. member from Beauce. Those are the realities. The vote — on the striking committee motion — under no circumstances, can be taken to pass out of existence a political party, nor can it be taken to render as independent members the group which has been recognized as a party and which has in fact been seated together as a political party. The Social Credit Party exists as a political party and the five members exist as members of that party under their leader.

He went on to say that even though the House had expressed itself on the question of the membership of the striking committee, he had certain responsibilities as Speaker.

> The responsibility of the Chair and the responsibility of the House of Commons is to protect whatever rights minorities do enjoy and therefore I must conclude what it is that the members of the Social Credit Party are entitled to. I think that what those members are entitled to respects the fact that they are members of a political party so long as it does not give them an advantage that they would not otherwise enjoy as five members and secondly so long as it does not deprive other members of their right to participate in some way.

This is the approach to the question of party status I am asking for myself and my colleagues in the New Democratic Party in the House. We are asking to be recognized as a party in the House just as previous Speakers have recognized small parties in the past.

One result of previous Speakers' recognition of small parties can be seen in the seating plans of past Parliaments. They show that parties with fewer than 12 members have indeed been designated as parties and seated as parties with representation on the front benches.

I draw attention in particular to the seating plan dated April 1989 where one member, the member for Beaver River, was designated as a member of the Reform Party. As I mentioned earlier however, this designation of the member for Beaver River disappeared with the advent of the Bloc and the decision not to treat it as a party. Currently the nine NDP members in the House are afforded no such appropriate nomenclature in the seating plan of this Parliament.

The weight of almost all the evidence in both law and convention therefore comes down in support of our claim to be recognized in this House as the party that we clearly are. The only precedent that breaks the pattern is the treatment of the Bloc in the last Parliament.

At this point I do not wish to open the question of whether a party that forms between elections as a result of defections from existing parties should enjoy the same status as a party of members who sought election under their party banner. I do not want to enter into that debate.

- We ask first that the seating arrangements be adjusted to seat us as a party with proper precedence given to our leader as a leader and as a Privy Councillor, and that the published seating plan identify us as New Democrats, as is already the case in *Hansard*.
- We ask that we be treated as an opposition party during question period where at present we are recognized only very rarely, systematically denied supplementaries and always relegated to the last question.
- We ask that we get the number of questions due to a party of nine members, that our leader be recognized after the leader of the Reform Party, that we be allowed supplementaries, and that we not always be relegated to the last question.
- Finally, we ask that in general we be treated as a party under the Standing Orders and that you work with our caucus officers in the customary ways to facilitate the operations of the House. My party colleagues and I are asking only that we not be discriminated against simply because we did not meet an arbitrary threshold of dubious relevance that has not even customarily been applied by previous Speakers to procedures in the House, against which there is ample parliamentary precedent for alternative approaches. ❖