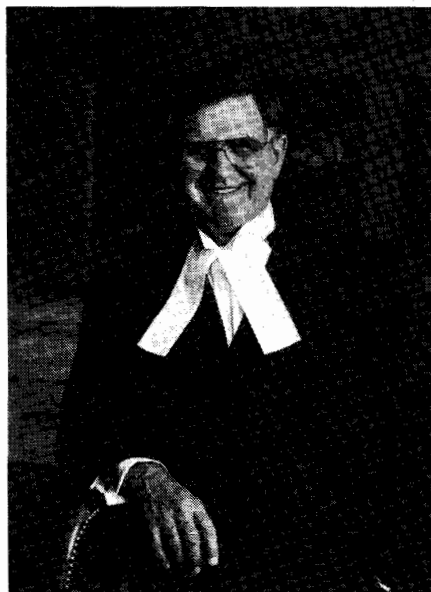


Speaker's Ruling

The Designation of Party Status, House of Commons, June 16, 1994



Background: Following the point of order raised on June 1, 1994 by Bill Blaikie (see previous article) the Speaker of the House of Commons made the following ruling on June 16.

The Ruling (Speaker Gilbert Parnter): First, let me deal with the question of what constitutes a party for procedural purposes, a question which has long preoccupied the House. The hon. member argued at length that the definition of "recognized party" in the *Parliament of Canada Act* and the Board of Internal Economy bylaws applies only to certain matters of money and allowances. He maintained that the definition should not be used to define the meaning of "party" or "recognized party" in our standing orders or our practice.

He noted, for example, that Section 50(3) of the Act which sets the composition of the Board of Internal Economy makes specific reference to a caucus which "does not have a recognized membership of 12 or more". That reference, he claimed, implies the possibility of a caucus without 12 members, yet identified as such.

The hon. member presented detailed accounts of the situations which existed in the House of Commons in 1963, 1966 and 1979 when smaller parties were recognized in various ways for purposes of procedure and practice. He also argued that the same rights should be extended to members of the New Democratic Party today.

Having studied the circumstances of each of these cases and having reviewed the rulings referred to by the hon. member as well as others touching on this matter, the conclusions I draw are quite different.

The status granted to minor parties for procedural purposes in certain of these cases was the result of the political exigencies of the time. In none of these instances did the Chair act unilaterally.

In his ruling of September 30, 1963, Speaker Macnaughton, while dealing with the status of a New Democratic Party in the House, pointed out that the status of a party in the House was for the House itself to decide.

Speaker Macnaughton also made two comments which I feel are very important and which I would like to quote to the House. He said:

It is in consequence among the duties of the Speaker to see that the Standing Orders of the House are followed in the course of its procedures and that the privileges of the House, once they have been defined and recognized, are protected. It is also the duty of the Speaker to be impartial and removed from politics, which has already been my aim since, honourable members, you did me the honour to elect me as your Speaker.... It seems to me that having in mind the authorities from Sir Erskine May to Lord Campion, from Bourinot to Beauchesne, and from Anson to McGregor Dawson and many others, a situation such as that now facing the House must be resolved by the House itself. It is not one where the Speaker ought by himself to take a position where any group of members might feel that their interests as a group or a party have been prejudiced. Nor should the Speaker be put in the position where he must decide, to the advantage or to the disadvantage of any group or party, matters affecting the character of existences of a party, for this surely would signify that the Speaker has taken what is almost a political decision, a decision where the question involves the rights and privileges of the House itself.

On February 18, 1966 Speaker Lamoureux, in the ruling on ministerial statements referred to by the hon. member for Winnipeg-Transcona, was loath to institute any change in the practices of the House at that time and indicated that he would not veer from the contemporary practice until such time as the House amended the Standing Orders to do otherwise.

In October 1979, when the issue of party status was again raised, Speaker Jerome returned to the 1963 ruling of Speaker Macnaughton to reiterate that this matter is not the responsibility of the Speaker to decide but rather, a matter for the House. I would draw attention of member to the words of Speaker Jerome on October 11, 1979.

In his presentation, the hon. member for Winnipeg-Transcona quoted from a subsequent ruling of Speaker Jerome given on November 6, 1979. This ruling concerned the Chair's responsibility to protect the rights of members of small parties.

One of the portions of the ruling quoted only in part by the hon. member is worth repeating:

The House will recognize in what I have tried to do, I think both representing the spirit of the protection of minorities in the House and also, I think the generosity of the House, that what those members are entitled to can be given to them with a generosity and a recognition that 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.

Yet again, Speaker Jerome declined to go beyond the contemporary practices of the House while ensuring that the rights of the individual member were protected.

This important theme was once again taken up in a ruling by Speaker Fraser given on December 13, 1990. At that time the Speaker declared in very strong terms that the basic rights and privileges of individual members of whatever political persuasion are fully protected by the Chair. "The Chair pledges to do its utmost to continue to serve this House in as even-handed and impartial a manner as possible".

In the current circumstances, the existence of the New Democratic Party caucus has not been denied and the Chair will continue to ensure that each member of the House is treated fairly by the rules.

In arguing his case, the hon. member acknowledged that his party's situation could not be resolved without, what he called, "an appropriate will to discern the difference between some previous situations and the situation we find ourselves in at the moment".

I find myself agreeing with the hon. member up to a point. In my view, what he called "an appropriate will" to resolve the situation must be found not in your Speaker acting alone but in the House acting as a whole.

The status of minority parties in the House has always been determined in general by the political make-up of the House.

If the hon. member's argument persuades his colleagues to the solutions he seeks, then the House will have to give new guidance to the Chair.

As your Speaker and the guardian of the rights of minorities and each individual member, I remain fully aware of the grave responsibilities of the Chair in this regard. Indeed, an analysis of the last two months shows that a member not belonging to a recognized party has participated almost every day during the period reserved for members' statements and, on the average, every other day during question period. The House may be assured that I and my deputies pledge to continue to do everything we can to facilitate the fair and active participation of each member in the work of the House.

In my view unilateral action by the Chair would mark a significant departure from the interpretation of our rules and practices as they have evolved over the last decade. As

your Speaker and the servant of the House, I believe that I cannot arbitrarily impose a new interpretation but must wait until the House as it is now constituted indicates to me what, if any, action it wishes the Chair to take.

Let me now address the two other matters: the designation of members as members of the New Democratic Party and their wish to be seated together.

The hon. member for Winnipeg-Transcona complained that his party is not designated, as it should be, as a caucus on the seating plan of the Chamber. He presented copies of seating plans from previous parliaments to support his view. He did, however, acknowledge that his party is clearly designated as the New Democratic Party in the *Debates*.

Let us review the current situation. The Members of Parliament belonging to the New Democratic Party are identified as such in the *Debates* and on the televised proceedings of the House. They are designated as "others" in the back row to the left of the Speaker on the seating plan of the Chamber.

Seating arrangements in the House have traditionally been decided following negotiations among the recognized parties.

The Chief Government Whip places members of the government in seats to the right of the Chair and, when there is not enough room on the right to accommodate all government members, some may also be placed to the left of the Chair.

Of the remaining places, the Whip of the Official Opposition assigns seats to the members of that party and the whip of the third party then assigns seats to members of that party. The responsibility for assigning to other members the seats that remain vacant has traditionally fallen to the Speaker.

To determine the seating arrangements for those members who do not belong to a recognized party, the Chair follows the order of their seniority as elected members.

In considering the NDP's request, the New Democrats' request that they be seated together and that their leader be granted the rank due her as a Privy Councillor, I was struck by a phrase of the hon. member for Winnipeg-Transcona. Explaining the timing of his point of order he stated:

I thought it was appropriate for the House to become acquainted with itself after the unprecedented upheaval of the last election.

I applaud the wisdom of that comment. The Chair has made every effort to accommodate members fairly in the present situation. Having now been your Speaker for some five months, I have received various representations from members of Parliament and their constituents on this matter and I have carefully reviewed the precedents. For example, on September 24, 1990,

Speaker Fraser noted on a ruling dealing with seating arrangements that the Speaker can exercise some discretion on these matters. He stated:

I also think members should understand that as your Speaker, I have some discretion in dealing with the rights of every person in this House who is in a minority position. I think we have a great tradition of protecting the rights of minorities, and I can assure the hon. member that the rights of minorities will be protected by the Speaker in a way that is fair and equitable for all other members.

Having concluded that some remedy does lie within the purview of the Speaker, I have therefore asked my officials to modify the seating plan as of the return of the House on September 19 to implement the following changes in the seats that the Speaker assigns:

- The hon. members for Sherbrooke and Saint John will be seated together and identified as the Progressive Conservative caucus on the seating plan.

- The hon. members of the New Democratic caucus will also be seated together and be identified as such on the plan.
- The hon. member for Beauce will be identified as Independent and the hon. member for Markham-Whitchurch-Stouffville will be identified as Independent Liberal.

This appears to the Chair to be a fair response to competing claims. Members of the same party will be identified and seated together, with the precedence of their respective leaders determining their place in the sequence. The two other members will be assigned the two remaining seats according to their seniority and designated according to their express wishes.

I hope the steps I have taken to solve matters within my discretion will go some way to remedy the situation. The hon. member for Winnipeg-Transcona and his caucus colleagues may be assured that if the House indicates to me that it has been persuaded by his arguments I stand ready to be guided accordingly.



Reflections on the Speaker's Ruling

Some media coverage of the ruling suggested that the Speaker had "dismissed" our point of order. My own reading was not so drastic. For instance, where the Speaker felt he had autonomy, on the seating plan, he recognized our party and agreed to amend the seating arrangements and have a new seating plan published when the House returned in September. He also quoted from Speaker Jerome's ruling on the need for the House to show generosity to minorities.

However, he did not assume the activist role of some previous Speakers' in protecting the rights of minorities, preferring to see his role more as the passive servant of the House. He argued that Speakers had never acted "unilaterally" without the expressed will of the House, could not himself recognize us as a party under the Standing Orders, and invited us to solve what her characterized as a political question in negotiation with the other parties.

The Speaker's defence of such a passive role was not entirely convincing. He did not address the issue of whether the *Parliament of Canada Act* provided any legal authority for depriving small parties of status under the Standing Orders. Serious arguments calling the conventional interpretation of the law into question were left hanging.

He did address the precedents raised but did so in a way that did not confront the central issues. He argued, for instance, that in the 1966 precedent where Speaker Lamoureux ruled on the question of which parties were entitled to make a response to Ministerial Statements, the Speaker was "loath to institute any change in the practices of the House at that time..." But the practice of the House that he was loath to change was to consider par-

ties with fewer than twelve members to be parties under the Standing Orders, exactly what we were asking him to acknowledge!

The November 1979 ruling of Speaker Jerome was also presented as a case where the Speaker had declined to act unilaterally. This reading of the episode does not stand up on two counts. First, Speaker Jerome did clearly act *unilaterally*. One month after the House expressed its will that the Social Credit Party not be recognized as a party, Speaker Jerome recognized the party leader in debate as a party leader. Secondly, the "rights of the individual member" that Speaker Jerome sought to protect were "the fact that they are members of a political party...."

On our request for fair treatment during question period, the Speaker declined to alter the frequency with which he recognizes NDP members in question period. In response to our request that he follow a simple rule of granting us a proportion of opposition questions relative to the size of our Caucus, he responded that he was already treating us fairly by recognizing one among all so-called independents "every other day during question period".

In the absence of an alternative rationale for not allocating questions on a traditional mathematical basis, one has to wonder why such a mathematical formula is not being employed, a formula which would give the NDP Caucus one question and one supplementary a day. The Speaker's silence on his reasons for abandoning the traditional formula begs one to ask what is the source of such unfairness. If we are a party, as he says we are, then why in his own domain does he treat some parties differently than others, applying the formula to some and not to others.

Perhaps the most disturbing implication of this ruling is that the rights of small political parties are to be left in the hands of the large political parties. The rights of some members now will be circumscribed by the political interests of their political rivals. This is not fair to the members of small parties, nor, more importantly, to the Canadian public. For the House of Commons is fundamentally a talking shop that exists to vent the whole array of voices that have been sent to Ottawa by the voting public. With the large parties elbowing the small parties out of almost any meaningful participation, the House has come to resemble an unsupervised playground rather than a national legislative assembly.

Finally it seems that the effect of this ruling is that the treatment of Bloc in the last Parliament will be used as the bench-mark for all future treatment of small parties by Speakers. Speaker Parent's decision treats Speaker Fraser's rulings on the Bloc as if they embodied the conventions of the House, when in fact the situation created by the Bloc and the consequent rulings themselves broke with all precedent and occurred at a highly unusual moment of Canadian political history where tolerance for a minority party was at a low point in the Canadian experience. Ironically for a decision made out of a refusal to break with practice, its effect is to elevate one unconventional episode into the norm so that its shadow of intolerance will obliterate the long history of tolerance towards small parties that has been the practice of Speakers in the Canadian House of Commons.

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