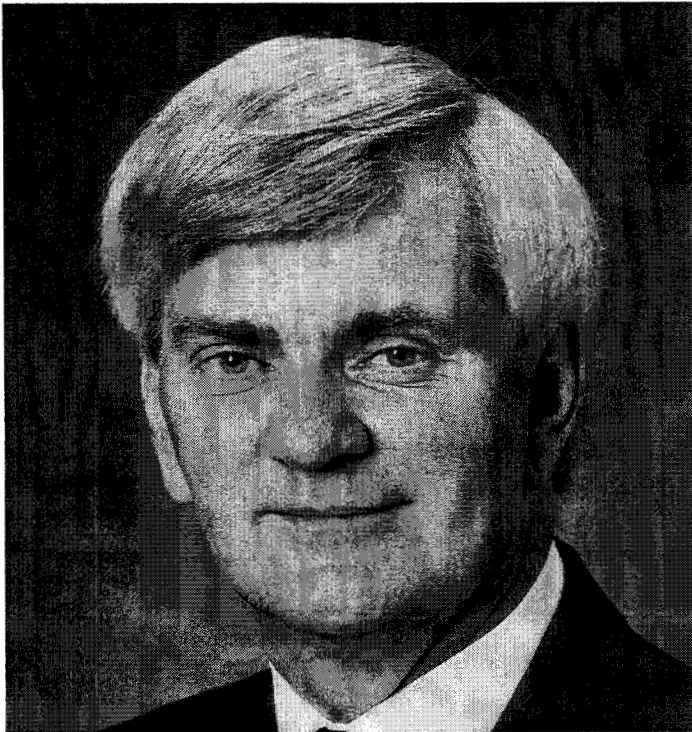


# Re-examining the Mythology of the Speakership

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by Dale Lovick, MLA

*It is generally agreed among students of Parliament that the Speakership is the most important safeguard to the effective working of the institution. There is less agreement, however, as to whether a Speaker must renounce all political ties in order to fulfil his or her duty as an impartial arbiter. This article outlines some arguments on both sides of the issue and concludes that while impartiality in the Chair is essential, complete renunciation of all political affiliation is unrealistic in Canada.*



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I am entirely mindful that I am a very new Speaker talking about a very old tradition. I want, though, to look critically – not irreverently – at one aspect of the tradition, what I have called the mythology of non-partisanship. I use the term mythology in its sense of being a rather romantic and attractive fiction designed to explain and simplify a complex concept.

*The impartiality of the Speaker is, and must be, a given. What is in question is whether the Speaker must be not only impartial and neutral in the Chair but must also be non-partisan out of the Chair.*

There is in fact an implicit contract between Members and the Speaker based on a clear understanding that the considerable powers a House gives to a Speaker will not be abused, that no favouritism to one side or the other will be shown. That is not in question.

But the idea that the Speaker must be non-partisan as well is one we have inherited from Westminster. The tradition of impartiality in the Speakership "is so strong that everyone accepts that a new Speaker will renounce his party allegiance and become genuinely independent."<sup>1</sup> Another authority on the British Speakership has written, "it is inconceivable today, that any Speaker would ever be consciously partisan. Once elected the Speaker must not only resign from his or her

political party, but must even resign from any clubs which have political affiliations".<sup>2</sup> And in case anybody still has any doubt about what is *de rigueur* for the Speaker at Westminster, here is what Selwyn Lloyd, Speaker from 1971 to 1976, had to say on the subject.

It is the convention that a Speaker must not only be impartial and separated from any Party political arguments during his Speakership, but he must also remain detached when his period of office is over.<sup>3</sup>

In Canada the notion of a non-partisan speakership has also been embraced in some quarters. Consider for example the comments of James Jerome, Speaker in the House of Commons from 1974 until 1979. He tells with obvious pride how he studiously avoided ever being in the presence of Members of only one political party. Here is his explanation of how he maintained the "independence" of the Speaker:

No matter how informal the event, I always made sure that if one Member of Parliament was to be there we invited another from each political party. I never attended so much as a testimonial dinner for any of my former Liberal colleagues, and indeed was never at any party function of any sort. Even in the 1979 election, my campaign literature dealt exclusively with local problems, and in public meetings, on radio or television, I did the same. During the campaign, I never made any reference to the performance of the Government or the Opposition parties.<sup>4</sup>

The same point of view about the Speakership and non-partisanship is expressed by another, more recent Canadian Speaker, John Fraser. In his book, published in 1993 while still Speaker, and described by the author as "a practical handbook" designed for high school students and their teachers, he says "the modern Speaker must abstain from party politics".<sup>5</sup> When we hear this I think we need to pose a very obvious and simple question: Why? What are the arguments to support that conclusion?

***Speakers in this country are politicians, and they forget that at their peril.***

The essential argument for non-partisanship is that the Speaker must not only be impartial, but must be perceived to be impartial – and that any kind of partisan connection will make this unlikely if not impossible.

It is worth noting that one will not find this precise argument stated in the literature on speakership. Even in Erskine May one will find no specific reference to non-partisan speakership. Instead, one finds only the following:

Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognised.<sup>6</sup>

May goes on to list a few of those conventions but makes no reference to non-partisanship.

The reason why one does not find clear expressions of the argument for non-partisanship in the speakership, it seems to me, is that the conclusion is so arguable. Instead one finds wonderfully articulate declarations of the need for impartiality, like the following by Horace King, Speaker at Westminster from 1965 to 1971:

...after a long period of evolution, the impartiality of the modern Speaker has become almost mathematical – certainly beyond doubt or question.

And this the British Parliament believes to be right – that, while the House of Commons is a place where, rightly, the fiercest controversy takes place, it shall take place within an ambit of mutual respect for each other's personal honour, for ordered and regular procedure, and for the protection of all opinions, even those of the smallest minority. And because this conception lies at the heart of parliamentary democracy, Parliament selects one of its Members, divests him of his political past, and hands over to him the dignity and authority to preserve this fundamental idea.<sup>7</sup>

This is perhaps the most eloquent and reasoned explanation I can find for the notion the Speaker must be non-partisan. Still, it does not argue the case. And indeed, nobody seems to do so. Instead, we encounter the assumption that one cannot be a member and supporter of a political party and at the same time be capable of impartiality. The following statement about Westminster will make my point:

What is...indisputable is the total impartiality of the Speaker once he has been elected. Once in the Chair he becomes in the truest sense a House of Commons man. He sheds all his party affiliations and dedicates himself exclusively to the impartial discharge of his functions. It is inconceivable today that any Speaker would ever be consciously partisan. He might err in a ruling or in his judgement; he might yield to the pressure of an aggressive Member arguing a point of order; but his every action and decision would be motivated by a zealous regard for impartiality and fair play.<sup>8</sup>

Presumably, to continue this line of logic, if you are a member of a political party you cannot have any regard for impartiality and fair play.

I suspect that the quintessential case for non-partisanship in speakership is really about perception. It is Speaker Onslow who is credited with articulating the principle that the Speaker must not only

be impartial, but must be perceived to be so – rather like Caesar's wife and blind Justice. Onslow was responding to a particular time and particular circumstances when, as one author has so memorably puts it, "the attainment of political power depended not so much on reaching for the stars as on raking through the dung".<sup>9</sup> And I doubt even the most jaundiced and jaded would seriously argue that case today.

*It seems to me that one's behaviour in the Chair and in the exercise of one's other duties as Speaker should be sufficient to combat any question of partisanship.*

In short, the notion that one cannot be impartial as Speaker unless one severs all partisan connections does not seem to me to be supportable. The argument that membership in and connection with a political party thereby renders one incapable of impartiality is a *non sequitur*.

One reason I think the mythology of non-partisanship needs to be challenged in the parliaments of this country, and perhaps in other Commonwealth parliaments as well, is that the Speakers in Canadian parliaments, and certainly in some other Commonwealth parliaments, do not have the same status as their counterparts in Westminster.

Many have written on the "Westminster Convention," as it is sometimes known, but the key point for my purposes is that the Speaker at Westminster is re-elected without serious opposition for as long as he or she chooses to hold the office. Despite various efforts by various Speakers in various legislatures in Canada, the idea has not exactly captured the imagination of Canadians.

In an essay published in 1976, Phillip Laundry noted that the concept of total political independence, though "much admired" in Canada, has, for practical reasons, "not been widely emulated in the legislative jurisdictions of this country."<sup>10</sup> And in a more recent book, he effectively dismisses the issue of non-partisanship as of little importance.

One of the issues addressed in this book is the political status of the Speaker. The fact that he himself may have political attachments is not in itself important, provided he is able to distinguish between a party allegiance and his duty to Parliament.<sup>11</sup>

I think he is quite right, and it is my view that the concept of a non-partisan Speaker is perhaps extra

baggage that ought to be thrown overboard. It is an extra and unnecessary burden.

Probably the most frank and ingenuous analysis of the predicament for Speakers outside Westminster is provided by the former Speaker of the Fijian House of Representatives, Tomasi Vakatora. In an essay written in 1986 he pushes very hard indeed against the restraints of non-partisanship.

Although a Member of Parliament is elevated to the high office of Speaker, he must not lose sight of the fact that basically he is a politician. This is very important to a member if he wants to continue with his political career. If he loses sight of that fact it could cost him dearly at the next election.<sup>12</sup>

He goes on to say that the Speaker should be able to attend political meetings as "a back-stage observer," should be able to explain to constituents the government's stand on "certain controversial issues," and should keep in close contact with party or government. His essay concludes with the observation that, in Fiji, "it would be futile to pretend that a Speaker will be elected for another term just because he is the Speaker."<sup>13</sup>

It is encouraging to note that Mr. Vakatora apparently succeeded in being both politician and Speaker. He served as a Minister of the Crown in a number of different portfolios before becoming Speaker of the House of Representatives in 1982, a position he held for five years before taking on another Ministerial portfolio. And in 1995 Mr. Vakatora became a member of the three-person Commission charged with reviewing and rewriting Fiji's post-coup Constitution.

I would also challenge the argument that the Speaker must be a non-partisan because of the work he has to do in the House. It is clear to me that the task I am called upon to perform as Speaker, and the task apparently performed by many other Speakers in this country and in other Commonwealth countries, differs in certain important respects from what is done by the Speaker at Westminster.

The main test of the Speaker's impartiality, according to the literature on speakership, is the choice of who speaks in debate. This makes perfect sense of course in a House like the British one where there are some 600 members, more members wishing to speak than can possibly be called. It also makes sense in a House where the standard practice is to allow oral questions from the Government as well as the Opposition benches. In our Legislature in British Columbia, however, we have 75 members and only very rarely will there be a question from a government Member. In fact, if a Member from the Government benches were to ask a question and were, by some minor miracle, to be recognised, the

Opposition benches would understandably cry out in protest, and the Press Gallery and other watchers would wonder aloud whatever was happening.

Moreover, in our Chamber the order of questions is more or less established in advance, thanks to what at Westminster would be termed "the usual channels." The Opposition House Leader choreographs the Question Period to ensure that the right person rises to ask the question at the right time. There is therefore not a great deal of room for partiality in Question Period on the part of the Speaker – except perhaps for enforcing the rules of order, and no experienced Speaker, I suspect, would ever fall into the trap of leaning too far in the direction of either Opposition or Government Members when invoking the rules of the House.

To summarise, then, the arguments for a non-partisan Speaker do not appear to stand up to scrutiny. First, the idea that membership in or connection with a political party renders one incapable of impartiality is a *non sequitur*. Second, the tradition of more or less automatic re-election of the Speaker in return for absolute non-partisanship which has been established at Westminster does not obtain in British Columbia, or Canada, or in most other Commonwealth parliaments. Third, the duties of the Speaker at Westminster are significantly different from those performed by her/his counterpart in the British Columbia Legislature, and I suspect in other Commonwealth parliaments as well.

***There are other reasons, too, why I do not think we need to transplant the Westminster convention of non-partisanship.***

The impartiality of the Speaker is in fact already satisfactorily protected by the normal procedures, practices and traditions of a modern parliament. I suspect that every Speaker becomes aware very early of what the office of Speaker requires and deserves. I cannot, frankly, imagine any Speaker with any modicum of understanding and appreciation of parliament who would not be mindful of his or her responsibilities to parliament, to parliamentarians, and to self. The Speaker who demonstrably favoured one side or faction over the other would have a career reminiscent of Hobbes' state of nature – nasty, brutish, and short.

The impartiality of the Speaker in British Columbia, and I am sure in many other Commonwealth parliaments, has also been assisted by the introduction of a secret ballot election. According to John Fraser, the election of Speaker by secret ballot is indeed "a guarantee of the Speaker's independence."<sup>14</sup>

Further, it seems to me the impartiality of the Speaker is adequately protected in our Standing Orders which read as follows:

Mr. Speaker shall preserve order and decorum and shall decide questions of order and practice. In deciding a point of order or practice, Mr. Speaker shall state his reasons for the decision and shall cite any Standing Orders or any other applicable authority. Mr. Speaker may invite submissions from members but no debate shall be permitted on any decision.<sup>15</sup> No decision shall be subject to an appeal to the House.

I suspect that most Commonwealth parliaments today have a similar standing order in place. Before such a rule was established the Speaker's decisions were subject to an appeal to the whole House. This, of course, allowed a majority to roll right over a minority. One of the principal factors that made it especially difficult for a Speaker to remain impartial was "the practice of permitting appeals to the whole House from rulings of the Chair."<sup>16</sup> Happily, in our Legislature at least, this problem has been solved.

The impartiality of the Speaker is also well entrenched in that the Speaker is obliged to rule on the basis of clearly defined and well-established practices. Speakers are not free agents who operate on whim or whimsy. What is more, though the point seems to be seldom acknowledged, the Speaker does not stand alone.

The Speaker is relieved of the burden of personal decision in many of the rulings he hands down thanks to the advice available to him through the professional expertise of the Clerk of the House and his colleagues.<sup>17</sup>

I conclude that it is neither helpful nor necessary for a Canadian Speaker to be non-partisan in the way of Westminster, or in the way suggested by the two Speakers from the Canadian House of Commons whose words I have quoted. To be sure, the Speaker must be impartial and scrupulously fair, and indeed perceived to be so. To suggest, however, that impartiality would be further enhanced by severing one's political connections challenges credulity. Nobody believes that donning a tricorne and "taking silk" is tantamount to a personality transplant.

I am not, it must be emphasised, suggesting that the Speaker should be an "ordinary" Member, by which I mean one whose duty in political life is to promote his or her party's interest and to assail the opposition as a matter of course. Indeed, I would not even go so far as Speaker Vakatora. For example, I do not think that I, as Speaker, can take part in a debate on "controversial issues". I do think, however, that, as Speaker, I can be known, and identified as a member of a political party and as an active supporter of that party.

The final test of one's neutrality in the Chair is how one is perceived by one's colleagues in the House. If the Speaker is unable to demonstrate by action and behaviour that she or he is fair and neutral and impartial, then nothings else matters.

Philip Laundy, surely the closest we come to an authority on the matter, says that the Speaker may have political attachments is, "not in itself important. What is important is that the Speaker be able to distinguish between a party allegiance and duty to parliament."<sup>18</sup>

#### Notes

1. Paul Silk, *How Parliament Works*, (London: Longmans, 1989) p. 22.
2. Phillip Laundy, "The Speaker and his Office in the Twentieth Century" in *The House of Commons in the Twentieth Century*, (Oxford: Clarendon, 1978) p. 125.
3. Selwyn Lloyd, *Mr. Speaker, Sir*, (London: Cape, 1976) p. 18.
4. James Jerome, *Mr. Speaker*, (Toronto: McClelland and Stewart, 1985) p. 144.
5. John Fraser, *The House of Commons at Work* (Montreal: Les Éditions de la Chenelière, 1993) p. ix.
6. Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 20th edition, (London: Butterworth, 1983) p. 235.
7. Horace King, "The Impartiality of the Speaker," *The Parliamentarian*, Vol. 47 (1966), p. 131.
8. Phillip Laundy, "The Speaker and his Office in the Twentieth Century" in *The House of Commons in the Twentieth Century*, (Oxford: Clarendon, 1978) p. 124.
9. Phillip Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, (London: Quiller, 1984) p. 261.
10. Phillip Laundy, "Legislatures" in David Bellamy et al., ed., *The Provincial Political Systems Comparative Essays*, (Toronto: Methuen, 1976) p. 282.
11. Phillip Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, (London: Quiller, 1984) p. 10.
12. Tomasi Vakatora, "The Political Position of the Presiding Officer Outside Parliament with Special Reference to General Election," *Journal of Parliamentary Information*, vol. 32 (1986) pp. 10-11.
13. *Ibid.*
14. John Fraser, *The House of Commons at Work*, (Montreal: Les Éditions de la Chenelière, 1993) p. 48.
15. *Standing Orders of the Legislative Assembly of British Columbia*, 1995, p. 3.
16. James Mallory, *The Structure of Canadian Government*, (Toronto: Macmillan, 1971) p. 247.
17. Phillip Laundy, "The Speaker and his Office in the Twentieth Century" in *The House of Commons in the Twentieth Century*, (Oxford: Clarendon, 1978) p. 185.
18. Phillip Laundy, *The Office of Speaker in the Parliaments of the Commonwealth*, (London: Quiller, 1984) p. 10.