



## Recognition of Official Opposition

Speaker Robert Bruce, Yukon Legislative Assembly, December 9, 1996.

**Background:** In the last election two opposition parties, the Yukon Party and the Liberal Party had an equal number of seats. On December 5, 1996, the member for Riverside, Jack Cable, raised the question of who should be the Official Opposition in the House. The member for Porter Creek North, John Ostashek, also spoke on this issue. In making his decision the Speaker relied upon the Standing Orders of the Yukon Legislative Assembly, the precedents of the Yukon Legislative Assembly, the relevant Yukon Statutes, and the precedents of the House of Commons of Canada.

The reason for using the precedents of the House of Commons is that Standing Order 1 of the Yukon Legislative Assembly states: "In all cases not provided for in these Standing Orders or by sessional or other orders, the practices and procedures of the House of Commons of Canada, as in force at the time, shall be followed, so far as they may apply to this Assembly."

**The Ruling (Speaker Robert Bruce):** The first basic issue to be addressed is whether there is a requirement that an Official Opposition be recognized in this House.

The Yukon Legislative Assembly has given recognition to either the Official Opposition or the Leader of the Official Opposition in several places in the Standing Orders and in the *Legislative Assembly Act*. The Chair, therefore, must assume that the Assembly intends that there should be an Official Opposition. This is backed by Speaker Parent of the House of Commons in a ruling he made on February 27, 1996. Speaker Parent said:

The position of Leader of the Official Opposition is firmly anchored in our parliamentary system of government through practice and the implementation of various statutes and rules of procedure. The importance of the Official Opposition and its leader has been commented on both in Canada and in other countries with Westminster style Parliaments for well over a century.<sup>1</sup>

The second basic issue is who makes the decision as to who the Official Opposition will be. There seems to be no disagreement that this is the responsibility of the Speaker. Both the Member for Riverside and the Member for Porter Creek North indicated they felt the

Speaker should make the decision. Also, again referring to the Speaker Parent decision:

The designation of the official opposition has never been decided on the floor of the House of Commons. As Speaker, I am entrusted with the responsibility of ensuring the orderly conduct of business in the House. To do so, I must now determine, in light of the tie situation and the point of order raised, which party shall form the official opposition.<sup>2</sup>

The Member for Riverside did qualify his remarks by saying that the House was not required to leave the matter up to the Speaker. He quite correctly said that the House could either deal with the matter directly or refer it to a committee such as the Standing Committee on Rules, Elections and Privileges. However, he also said that the Speaker had the option to follow the 1963 precedent of the House of Commons and to refer the matter, on his own initiative, to the Standing Committee on Rules, Elections and Privileges. This is a misinterpretation of the 1963 precedent as it is only the House itself that can make such a reference. Speaker Macnaughton, the Speaker of the

House of Commons at that time, did suggest that a certain matter be referred to a committee but that reference did not occur until the House passed a motion to that effect.

The Member for Riverside asked that consideration be given to setting up a rotation of Official Opposition status between the Liberal Party Caucus and the Yukon Party Caucus. He went on to suggest that the Speaker should broker a rotational arrangement between the two caucuses.

The Chair would agree to respect an arrangement made between the two caucuses but it would be up to the two caucuses themselves to come to an agreement. It would not be appropriate for the Chair to take an active role in negotiations between the caucuses. During the time that the Member for Riverside and the Member for Porter Creek North were discussing the point of order on December 5, the Chair did not hear either member indicate that they had reached or were working to reach an agreement on rotating Official Opposition status.

To repeat, if the two opposition caucuses make some kind of arrangement that does not violate any rules of the House, the Chair will respect that arrangement. However, no member should expect that the Chair will take on the role of a negotiator.

The result is that the Chair must select one of the opposition caucuses as the Official Opposition. The problem which arises is that there are few criteria for making such a decision. The standard deciding factor, of course, is the number of seats; however, here both parties in opposition have the same number of seats. Another factor sometimes relied on is party status. Members who were elected as nominees of a registered political party are more likely to receive official opposition status than a group of inde-

pendents. In this case, both the Yukon Party Caucus and the Liberal Party Caucus are equal.

Assessments of party policies cannot be used to make this decision. Speaker Parent of the House of Commons was very clear on this point when asked to select the Reform Party over the Bloc Québécois as the Official Opposition in the House of Commons.

Popular vote has been suggested by some as being a logical factor for the Chair to consider. It has been rejected by most Speakers required to make rulings similar to this one. For example, Speaker Parent quoted Speaker Dysart of New Brunswick. On December 16, 1994, she said:

Basing a decision on factors outside Parliament opens the door or invites future decisions with no basis in parliamentary precedents or practice. With the one noted exception, the Official Opposition has been determined by the number of seats held by the party, not by the popular vote.<sup>3</sup>

The exception was a decision of Speaker Amerongen in Alberta in 1983 when, immediately following a general election, he paid some heed to popular vote in making a decision about who would be the Official Opposition. Although popular vote has been rejected as a factor in every Speaker's decision after 1983, there are some who say it may have its place.

But popular vote is limited at best to the start of a legislature following a general election and then only as a supplemental factor. That is, if two or more parties are tied in standing, the Speaker may turn to the popular vote as the tie-breaker.<sup>4</sup>

The Chair cannot take popular vote into account because the direction to the Chair is that, in the absence of Yukon rules or precedents, direction should be taken from

House of Commons practices and precedents. If the House wishes to develop any guidelines for future Speakers to follow in similar situations it might give consideration to whether, as a last resort, popular vote could be considered as a deciding factor when a decision is required immediately following a general election.

There are a number of other factors which have been suggested for the Chair to consider including the gender of the members in each caucus, the mixture of rural and urban members and the presence or absence of leaders of registered political parties in the opposition caucuses. These kinds of factors cannot be relied upon by the Chair because their use would mean making political judgments about the qualities of various members and that would endanger the impartial position of the Chair.

In many other jurisdictions, including the House of Commons, incumbency has been a key factor in Speakers' decisions. The difficulty in applying it to the situation now before the Yukon Legislative Assembly is that these precedents are not totally comparable. They deal with situations in which a party with Official Opposition status falls into a tie with another party during the lifetime of a Parliament or Legislature.

In the Yukon Legislative Assembly today, there is one opposition party caucus which, prior to the election, formed the government. There is another opposition party caucus which, prior to the election, was a third party in the House. Neither are incumbents as the Official Opposition.

The Chair, then, has determined to make a decision in this matter which reflects the spirit and intent of the House of Commons' reliance on incumbency as a deciding factor. It is the Chair's judgment that that

spirit and intent is best satisfied by selecting an opposition party caucus which formed the government prior to an election to be the Official Opposition over an opposition party caucus that was a third party in the House prior to the election. That means that the Yukon Party Caucus will be the Official Opposition and that the Member for Porter Creek North will be the Leader of the Official Opposition. This decision is made in respect to the proceedings in this Chamber. Decisions on matters such as caucus funding and space allocation are made in another forum.

The Chair wishes the House to recognize that, although the Yukon

Party Caucus is now recognized as the Official Opposition, it still must be kept in mind that there are two caucuses in opposition with three members apiece. The Chair will ensure that both opposition caucuses and all members in both opposition caucuses are treated appropriately in such matters as order of speaking. As an example, during Question Period, the Leader of the Official Opposition will continue to be given the first two questions each day but the Leader of the Third Party will now be given the next two questions rather than just one.

The Chair urges the House to give consideration to certain Standing Orders which clearly do not reflect

the current makeup of the House. In particular, Standing Order 14.2 must be reviewed and amended to ensure that both opposition caucuses receive equitable treatment on private members' day.

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#### Notes

1. House of Commons, *Debates*, February 27, 1996.
2. *Ibid.*
3. New Brunswick Legislative Assembly, *Debates*, December 16, 1994.
4. Professor Stewart Hyson, "Determining the Official Opposition in New Brunswick and the House of Commons," *Canadian Parliamentary Review*, vol. 19 (Autumn 1996) p. 2-6.