
The Casting Vote

by Maurice Vellacott, MP and John Earnshaw

Normally the Speaker of the House of Commons does not vote; however, in the event of a tie the Speaker votes to break the tie. Although it is rare, such an event occurred in September 2003 when Speaker Peter Milliken cast the deciding vote on an amendment to a Canadian Alliance motion relating to the definition of marriage. This article looks at the legal basis and conventions that have developed surrounding the use of the casting vote.



The legal basis of the casting vote is found in section 49 of the *Constitution Act (BNA Act)*, 1867. It states: "Questions arising in the House of Commons shall be decided by a Majority of Voices other than that of the Speaker, and when the Voices are equal, but not otherwise, the Speaker shall have a Vote." The words "but not otherwise" mean that in no other circumstance is the Speaker

permitted to vote.

Standing Order 9 of the House of Commons provides that "The Speaker shall not take part in any debate before the House. In case of an equality of voices, the Speaker gives a casting vote, and any reasons stated are entered in the *Journals*."

For the House to function properly members must have confidence in the Speaker's impartiality, so it is important that he or she not take sides in partisan debate. When there is an evenly split vote, and the Speaker casts the deciding vote, this could involve the presiding officer in taking a partisan stance. Thus the casting vote creates

the danger of making the Speaker appear partisan. Certain conventions have developed to shield the Speaker from the appearance of partisanship (even though in theory the Speaker has the same freedom as other members to vote according to conscience).

Conventions to Avoid Partisanship by the Chair

Even before Confederation, there are examples of a Speaker casting the deciding vote and giving reason for his vote: "...in case of an equal division, the practice was, that the Speaker should keep the question as long as possible before the House in order to afford a further opportunity to the House of expressing an opinion upon it."¹

This meant that the Speaker was to vote, if possible, in a way that would put the issue under debate back and in the hands of the other members rather than deciding an issue with his vote. Thus it was a form of deferring to the other members rather than "casting the deciding vote" as we usually understand that phrase. This convention has been summarized by saying that the Speaker should vote to maintain the status quo.

Marleau and Montpetit have described what this entails as follows:

- whenever possible, leaving the matter open for future consideration and allowing for further discussion by the House;
- whenever no further discussion is possible, taking into account that the matter could somehow be brought back in the future and be decided by a majority of the House;

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- leaving a bill in its existing form rather than having it amended.²

Another parliamentary authority has put it this way. John George Bourinot explains the convention by stating that if voting one way would settle the issue once and for all, and voting the other way would not settle the issue but leave it unsettled and still before the House then the Speaker should avoid settling the matter with his vote. In some cases the casting vote would decide with finality the matter under debate, such as determining whether or not a bill should progress. In that case the Speaker may refuse to cast the deciding vote, which would stop the bill from progressing.³

It would be the equivalent of voting nay. The House could always bring a new measure for consideration in the future. The point is that the passage of any such bill would be the responsibility of the House, not the Speaker.

Because the conventions relating to the casting ballot have not been codified, Speakers have been left on their own to interpret the conventions of the casting vote. This has led to questions of inconsistency.

For example one Speaker voted for a three-month hoist amendment to the motion for 3rd reading of a bill "to keep the Bill before the House." Yet another Speaker voted against a hoist amendment for the same reason (to give the House a further opportunity for consideration).⁴

In two instances Speakers voted against amendments to clauses of a bill "in order to leave the matter open". Yet another Speaker voted for an amendment (without giving a reason). One Speaker voted against a motion for second reading of a bill (without giving a reason). Another Speaker voted against a dilatory motion to rise, report progress and ask leave to sit again.

Recent Example of the Casting Vote

On September 16, 2003 the Canadian Alliance used an Opposition Supply Day to bring in a motion relating to the Definition of Marriage. The motion stated:

That, in the opinion of this House, it is necessary, in light of public debate around recent court decisions, to reaffirm that marriage is and should remain the union of one man and one woman to the exclusion of all others and that Parliament take all necessary steps within the jurisdiction of the Parliament of Canada to preserve this definition of marriage in Canada.

During the debate it became clear that the entire cabinet was prepared to oppose the motion, however, several

private members on the government side might be prepared to support it if the last part of the motion was deleted since some viewed those words as directing Parliament to use the Notwithstanding Clause to maintain the traditional definition of marriage. Since some members did not want to open that door a Canadian Alliance member, Vic Toews, introduced an amendment to delete the words *and that Parliament take all necessary steps within the jurisdiction of the Parliament of Canada to preserve this definition of marriage in Canada* in order to make the motion more palatable to these MPs.

The vote on this amendment was evenly split (134-134). The Speaker voted against the amendment (i.e. to retain the original, longer version of the motion) saying:

The Clerk has announced that there is an equality of votes for and against the motion. In these circumstances the duty of the casting vote, as it is called, now falls on me as your Speaker.

I should make it clear that I am casting my vote tonight on purely procedural grounds. The precedence and practice of the House of Commons are designed to ensure that if the House cannot make a definitive decision on a question, the possibility should be left open for the question to come again before the House if members so choose.

Therefore, since the House has been unable to take a decision tonight, I will vote so that members may be given another opportunity to pronounce themselves on the issue at some future time and accordingly, I cast my vote in the negative. I declare the amendment defeated.⁵

The question was then put on the main motion, which was defeated 132-137. The Speaker's casting vote ruling seems to conform to the convention of "leaving a bill [in this case a motion] in its existing form rather than having it amended."

Notes

1. See Journals of the Legislative Assembly of the United Province of Canada, August 19, 1863, p. 33. Also John George Bourinot, *Parliamentary Procedure and Practice in the Dominion of Canada* 4th edition edited by Thomas Barnard Flint, Canada Law Book Company, Toronto, 1916, p. 384.
2. See Robert Marleau and Camille Montpetit, *House of Commons Procedure and Practice*, Chenelière/McGraw, Montreal, 2000, pp. 268-269.
3. See Bourinot, *op cit*.
4. In 1870 Speaker James Cockburn did not follow convention properly. He seems to have voted according to his own opinion. Mr. Bellerose moved 3rd reading of a bill that was controversial because it set an interest rate of 8%. The

members could not agree on what the rate should be or that it should even be set. Mr. Oliver, an opponent, moved the three months hoist, which would have killed the bill for that session. The votes were equal on the hoist. The Speaker said that since he wanted to keep the bill before the House he should therefore vote yea. Mr. Ross asked, "Is the Bill then still before the House." The Speaker replied, "It will be before the House next session." There was great laughter and cheers. He essentially killed the bill for the current session. See House of Commons *Debates*, May 6, 1870, col 1401-2.

On February 28, 1889 Speaker J-A Ouimet followed convention properly and voted in a way that deferred to the House. Mr. Brown moved that the House consider Bill no. 3 (concerned with cruelty to animals) in the Committee of the Whole. He wanted to explain his bill to members in the

context of this Committee to satisfy the concerns of some members. If they were not satisfied, he would be willing to modify the bill. Mr. Tisdale, an opponent, wanted to dispose of the bill and moved in amendment that the words after "That" be struck and the following substituted: "Bill no. 3 be considered this day six months." He complained that the original motion, if defeated, could be brought back to the House. To avoid that he wanted to dispose of the bill. There was a tie vote The Speaker said, "There being a tie, I shall vote nay, so as to leave the question before the House." Now that Mr. Tisdale's amendment was defeated, they returned to the original motion of Mr. Brown. It passed. See House of Commons, *Debates*, February 28, 1889, 368.

5. House of Commons, *Debates*, September 16, 2003.