

## **Recognized Parties: The 8 Member Critical Mass Question in Ontario**

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**ABSTRACT:** The Legislative Assembly of Ontario is run by, and for, its political parties. House Business is entirely predicated upon the existence of political parties to divvy up duties among their members. Not just a creature of convention, the standing orders place a great deal of emphasis on the importance of the political party in the day-to-day functioning of the house. Although the political party is like to be a permanent fixture in Ontario politics, the current procedural structure leaves no room for effective independent MPPs. In order to have resources, funding, and even a guaranteed question in question period, a member must have party status. The intent of this study is to evaluate the 1999 decision to create an 8 member critical mass for recognized parties in the Standing orders, and the repercussions this decision had on the Ontario NDP following the 2003 provincial election. This paper seeks to answer the question: should there be a critical mass for recognized parties in Ontario?

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## Introduction

The political party is a fixture of Westminster style parliaments. By integrating the government with the legislature, Westminster parliament necessitates – at the very least – a governing party and an opposition party to both govern and hold the government to account. Unlike its American counterpart however, Canadian legislatures have rarely been dominated by just two parties. Both provincially and federally, Canadians are used to, on average, three major parties to choose from.

Ontario is no exception to the three party rule. Ever since the 1908 election, which saw the first Labour Party member elected to the legislature, Ontario has consistently had at least three parties represented in the house. As a permanent fixture of Westminster style parliaments, the House gives parties special rights and privileges. Federal and provincial parties are allocated additional funding for the purposes of maintaining a staff capable of meeting the needs of the caucus. Most party caucuses support research and communication teams as well as providing other services to their members. Additional funds are also allocated to augment the salaries of party leaders, House leaders and whips, to better reflect the additional duties they must perform.

Funding is not the only benefit of belonging to a recognized party. In many provincial legislatures, the standing orders – the rules by which the House operates – directly reflect the supremacy of political parties within the legislature. Committee chairs and members, as well as the right to questions in Question Period, often fall under the purview of political parties.

In a system where three parties prevail, it is important for any legislature to define the number of members a party must have in order to be recognized by the House. A considerable amount of funding, as well as the right to participate fully in House business, depends on attaining *recognized party status*.<sup>1</sup> Currently, section 2 of Ontario's standing orders states that a "Recognized Party" means a Party caucus of eight or more members of the Legislative Assembly."<sup>2</sup>

Ontario's standing orders reference a recognized party over fifty times, a unique quirk of the Ontario system. Recognized parties govern virtually all House business – in order to respond to the budget and throne speech, one must be a member of a party. The appointment of presiding officers, the ability to make member's statements, the right to a question in Question Period, the right to belong to a committee, and to chair that committee, are just some of the powers

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<sup>1</sup> Recognized Party Status refers exclusively to a collection of members recognized by the house as a party; it does not refer to a registered political party. Registered parties are exclusively under the purview of Elections Ontario and have no bearing on house business.

<sup>2</sup> Standing Orders of the Legislative Assembly of Ontario, January 2009.

that recognized parties hold exclusively. Independent members, or members not belonging to a recognized party have, by comparison, little ability to participate and influence House business. This observation was made by the Report on the Role of the Independent Member by the Standing Committee on the Legislative Assembly in 1993. This report observed that “independent members should be less inhibited from participating in proceedings,” and suggested that the standing orders should be modified to better accommodate members not belonging to a recognized political party.<sup>3</sup>

In their current incarnation, Ontario’s standing orders virtually necessitate membership to a recognized party in order to be effective within the House. In order to be a recognized party, a caucus needs eight members. The number eight first appears in the standing orders following the 1999 revisions under Premier Mike Harris. Prior to the 1999 revisions there was no definition of recognized party status within Ontario’s standing orders at all; instead it was found in the Legislative Assembly Act. Up until this point, the term ‘recognized party’ technically only pertained to funding, and not House business. Prior to 1999, the Legislative Assembly Act defined a party as a caucus of twelve or more members in the legislative assembly.

Between 1967 and 1999, Ontario’s Liberal, Conservative and New Democratic Parties always had sufficient members to qualify for the twelve-member threshold as outlined in the Legislative Assembly Act. Following his election in 1995, Premier Mike Harris passed the *Fewer Politicians Act*. At the time of Harris’ election, Ontario was divided into 130 separate ridings for provincial representation. The *Fewer Politicians Act* revised the boundaries to match the 103 federal ridings, thus reducing the size of the legislature by 27 seats. The effects of this Act were only fully felt in the 1999 election.

In part as a result of the reduction in provincial ridings, the NDP only won nine seats in the 1999 election. Soon after the election, Conservative House Leader Norm Sterling announced a revised version of the standing orders which defined a recognized party as having eight members, as opposed to the twelve required by the Legislative Assembly Act.

This temporarily remedied the NDP’s insufficient caucus size, but their victory was short lived. In the following 2003 election, the NDP were reduced to a seven-member caucus and were stripped of their party status. They remained independent members of the legislature for eight months until NDP candidate Andrea Horwath won in the Hamilton East (now Hamilton Centre) by-election. With Ms. Horwath’s win, the NDP were restored to full recognized party status.

It is only in recent years that recognized party status has become a contentious

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<sup>3</sup> Standing Committee on the Legislative Assembly, “Report on the Role of the Independent Member” *3<sup>rd</sup> Session 35<sup>th</sup> Parliament*. Legislative Assembly of Ontario.

issue in Ontario. The eight-member threshold stripped a party that has existed, in one incarnation or another, since the early 1930's. To the NDP members at the time, most of whom were former ministers in Premier Rae's government, the idea that they were no longer recognized by the legislature as a party was unfathomable.

Ontario is uniquely situated on the issue of recognized party status. As will be discussed later, Ontario has one of the highest recognized party thresholds in the country, as well as one of the most restrictive sets of House rules. Ontario's standing orders were used to strip a well-established, popular political party of its ability to participate fully in House business. The events of 1999 and 2003 beg the question; is an eight-member threshold for recognized party status too high?

This paper seeks to evaluate the events of 1999 and 2003 in an effort to determine whether or not the standing orders should be revisited, and the threshold for recognized party status lowered. First, section one will compare Ontario's threshold and standing orders with the nine other provinces, as well as the Federal House of Commons. This section will endeavour to prove that Ontario is unique in its high threshold and restrictive standing orders, and that a revision of the standing orders to bring them more in line with the Canadian average is academically advisable.

Section two will look at the events of 1999 through the perspective of the members, clerks and journalists who were present at the time. Through personal interviews, this section seeks to uncover the reasoning behind the decision to lower the threshold to eight, why it was included in the standing orders, and what political gains were made. By way of conclusion, section two will prove that the policy decision to move to an eight-member threshold was entirely politically motivated and lacked the proper foresight to function as a legitimate threshold to hold future parties against.

Section three will discuss the events surrounding the 2003 election of Premier McGuinty's government, with a focus on the fallout for the NDP. Again, through personal interviews with members, clerks and journalists, this section will discuss the political motivations of the NDP, the Liberals and the Conservatives in terms of the party status question. This section will endeavour to prove that, as with the 1999 decision to revise the standing orders, the decision to uphold the standing orders was politically – not policy – oriented.

Finally, section four will look at the eight-member threshold in light of the 1999 and 2003 elections to determine the best way to move forward. This section will draw two conclusions: (1) from an academic perspective, the threshold for recognized party status should be lowered to 5.6% membership in the legislative assembly (a 5 member threshold); and (2) from a policy perspective, the way that standing orders are amended should fall under the exclusive purview of an all-party select committee.

Political Parties are just that, political - but the power to determine whether or not a party should be recognized within the Legislative Assembly of Ontario should not be a political decision. Leaving party status in the hands of the government of the day will rarely result in long-term policy decisions. Instead, the rules will be changed (or not changed) to suit the political needs of the current government. Members represent voters, and voters have the right – regardless of who is in power – to have their voices heard in the legislature.

### **Section One: Comparing Ontario’s Eight-Member Threshold to the National Average**

Excepting the territories – two of which have no political parties at all – most provinces have an institutionalized definition of a recognized party. Before looking at Ontario in isolation, it is first prudent to view Ontario’s eight-member threshold through a national lens. The following section will begin with a comparison of Ontario’s threshold for recognized party status to the other nine provinces, as well as the federal House of Commons, with the intent of holding Ontario’s eight member threshold up against the national average.

This section will also evaluate the weight of party status within each province’s standing orders. A high threshold for recognized party status, coupled with institutionalized rules placing the party at the heart of House proceedings, holds the potential to muzzle members who do not belong to a recognized political party. Ontario’s standing orders place great emphasis on the role of the recognized party within the legislature – this section determine whether this is the norm across Canada, or if Ontario is unique in this regard.

#### **Recognized Party Status**

The definition of party status can be found in one of two documents; (1), within the standing orders of the legislature, or (2) within the assembly act. The standing orders are the rules that the house must abide by in order to conduct its business; the assembly act is an act passed by the legislature governing – among other things – the allocation of funds to parties.

**Figure 1.0 – Provincial Thresholds for Recognized Party Status**

Province	Threshold for party status – total seats in legislature	% of the House	Additional Requirements
Alberta	4 - 83	4.8%	And 5% of the vote
British Columbia	4 - 85	4.7%	
Manitoba	4 - 57	7.0%	
New Brunswick	5 - 55	9.1%	Or 20% of the vote
Newfoundland and Labrador	3 - 48	6.3%	
Nova Scotia	2 - 52	4.0%	And 10% of the vote
Ontario	8 -107	7.5%	
Prince Edward Island	1 - 27*	3.7%	
Quebec	12 -125	9.6%	Or 20% of the vote
Saskatchewan	2 - 58	3.4%	
Federal	12 - 308	4.0%	

\*PEI has a precedent of recognizing a party caucus of one, but there is no accepted threshold for recognized party status.

For the purposes of comparison, figure 1.0 has translated the threshold to total seats ratio into a percentage. Ontario's eight member threshold translates to the requirement that a party must have at least 7.5% of the seats in the legislative assembly to be recognized. Ontario has the third highest percentage in the country, just below Quebec at 9.6% and New Brunswick at 9.1%. Interestingly, in both Quebec and New Brunswick, the threshold comes with a caveat that recognized party status may also be attained through achieving 20% of the popular vote if a party lacks the required number of seats following an election.

When held up against the Canadian average, 5.8% of the seats in a legislature, Ontario's threshold is well above the norm. Moreover, Ontario has no additional caveats for parties who do not meet necessary threshold of members, but still have considerable popular support. Due to the distorting effect of Canada's first-past-the-post electoral system, the case may arise where a party has large public support but only gains a marginal percent of the seats in the legislature. Quebec and New Brunswick have ensured that, should an election produce a party with less than the 9.0% threshold of members but gain at least 20% of the popular vote, that party could retain status and funding.

Ontario's definition of recognized party is the third highest in the country, and contains no additional qualification to account for the distortion of the first-past-

the-post electoral system. As a result, from a purely academic perspective, it is advisable that the Standing Orders be revisited by the legislature to bring Ontario more in line with the Canadian norm.

### **Party Prevalence in the Standing Orders**

The Standing Orders are those rules agreed upon by the house that outline the way in which house business is conducted. Standing Orders are not laws, and are easily amendable in a majority government legislature by the passage of a simple motion. Ontario's Standing Orders have been amended three times since the 1999 overhaul by Premier Harris' government, the latest of which came into force on January 1, 2009.<sup>4</sup>

Currently, Ontario's Standing Orders reference a recognized party more than fifty times, accounting for 28 separate provisions (figure 1.1). Of the total 145 provisions in the standing orders, recognized party status plays a role 19.3% of the time. Ontario's percentage of standing orders that reference recognized parties is the highest in the country, followed by Quebec at 17.1% and the Federal House of Commons at 14.5%.

All other provinces come in at under 10%; their standing orders making only marginal reference to recognized parties. Despite having a total number of standing orders that roughly approximates that of Ontario's, Alberta, British Columbia, New Brunswick, Saskatchewan, Newfoundland and Nova Scotia all reference recognized parties less than ten times. In these provinces, party status does not play a large role in House business.

Interestingly, although Quebec has by far the most extensive set of Standing Orders in the country with 327 provisions, the province falls behind Ontario with 17.1% of their provisions referencing recognized parties. Although both provinces place clear emphasis on the importance of the political party within the functioning of house business, Ontario's rules remain more party-centric than Quebec's.

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<sup>4</sup> Standing Orders of the Legislative Assembly of Ontario

**Figure 1.1 – Standing Order Provisions that Reference Recognized Parties**

Province	Number of provisions in the standing orders referencing recognized parties <sup>5</sup>	Total Provisions in Standing Orders	% of Standing Orders that reference recognized parties
Alberta	5	119	4.2%
British Columbia	8	120	6.7%
Manitoba	14	161	8.7%
New Brunswick	6	123	4.9%
Newfoundland and Labrador	3	128	2.3%
Nova Scotia	8	85	9.4%
Ontario	28	145	19.3%
Prince Edward Island	0	114	0%
Quebec	56	327	17.1%
Saskatchewan	6	161	3.7%
Federal	23	159	14.5%

In isolation, a high threshold for party status and a system of standing orders that places great importance on the role of the political party are not necessarily detrimental to the functioning of parliament. However, when paired together – as with the case in Ontario – they serve as a very effective muzzle for any members not belonging to a party caucus. In effect, Ontario’s Standing Orders and eight-member threshold for recognized party status serve as a noose for any members outside of the party system.

The NDP narrowly avoided this noose in 1999, when the government of the day temporarily granted them party status until the standing orders could be revised, and the definition re-written. However, in 2003 the NDP felt the full force of disenfranchisement. For eight months they functioned without recognition as a party under the standing orders, and for eight months the seven member caucus could not properly participate in house proceedings.

From a comparative perspective, this is a serious problem with Ontario’s Standing Orders. Ontario’s threshold for recognized party status is one of the highest in the country, and Ontario’s Standing Orders place the greatest

<sup>5</sup> In some standing orders, ‘recognized parties’ is used interchangeably with ‘recognized parliamentary group’. This table accounts for the difference in terminology. For those standing orders that do not define recognized party status, the chart accounts for mentions of “party” or “parties” with reference to political parties in the house.

importance on the role of the political party within House business. There are three possible remedies for this situation. As mentioned previously, the first possibility is to lower the threshold either by:

- (1) amending the standing orders and adopt a threshold of 6 members (5.6% of the legislature); or
- (2) adopting a secondary qualification where if a party does not achieve the required eight members, that if a party gains 20% of the popular vote, they gain recognized party status.

If not amenable to the idea of lowering the threshold for recognized party status, an alternative remedy would be an overhaul of the Standing Orders to reduce the power of political parties to influence and determine house business. The former two remedies may be simpler to achieve than the latter.

## **Section 2: 1999 revisions to the Standing Orders – Why Eight?**

Politics and policy aside, the root cause of the 1999 revision of the standing orders, specifically the redefinition of a recognized party as having eight members, was ultimately the result of Premier Harris' *Fewer Politicians Act*.

Following his election in 1995, Premier Harris introduced the *Fewer Politicians Act, 1996*. This act would redraw the provincial riding boundaries to bring them in line with current federal boundaries; as a result, the legislature would be reduced from 130 members to 103. This act was passed in 1996, and was set to come into effect following the first general election a year following the bill's proclamation date. The effects of the *Fewer Politicians Act* were not felt until June 3, 1999 to elect Ontario's 37<sup>th</sup> Legislative Assembly.

Premier Harris won his second majority in the 1999 election with 59 members. The official opposition was formed by Dalton McGuinty's Liberals with 35 seats. The NDP, under Howard Hampton's leadership, was reduced to 9 seats in the legislature – well below the 12 member threshold for recognized party status as defined in Ontario's Legislative Assembly Act.

When the House resumed in October of 1999, there was some concern on behalf of the NDP that they would not have recognized party status. Following the election of Gary Carr as the Speaker, David Christopherson (NDP House Leader) rose on a point of order arguing that the NDP should have recognized party status, and that there needs to be a definition of recognized party status included in the Standing Orders for the purposes of clarity.

Mr. Christopherson's fears may have been unfounded. Norm Sterling, PC House Leader, rose in response to Christopherson's submission, stating, "I will say that both the leader of my party and the leader of the opposition party have said they are going to recognize, or would like to recognize, the NDP as a party, so I think

this point is somewhat moot.”<sup>6</sup> Nevertheless, Christopherson’s motion put the Speaker and the Clerks in an awkward position. Deborah Deller (former deputy clerk) recalls,

There was confusion after the election regarding how the Speaker should treat the NDP. The Speaker couldn’t rely on the twelve member definition because it was created to define the funding parameters, not house business. The speaker shouldn’t be in the position to make an arbitrary ruling like the one Christopherson was calling for – the only real solution was to include the definition within the standing orders.<sup>7</sup>

Just five days later, Mr. Sterling passed a motion with unanimous consent granting the NDP recognized party status for the purposes of “any other standing order that refers to the words ‘recognized party’.”<sup>8</sup> Although this motion provided a temporary reprieve to the party-status debate, it was clear to all parties that major revisions needed to be done to the standing orders to help accommodate a smaller legislature. In the week between the 20<sup>th</sup> and the 27<sup>th</sup> of October, there were many discussions between the three parties on what the new standing orders would look like.

On October 27, 1999, Norm Sterling, then Minister of Intergovernmental Affairs as well as the PC House Leader introduced a new version of the standing orders by way of a motion to the house. Within the new provisions was a new definition of a recognized party. Section 2 of the Standing Orders was revised to state “for the purpose of these standing orders, ‘recognized party’ means a party caucus of eight or more members of the legislative assembly.”<sup>9</sup> The Assembly passed the motion with unanimous consent.

### **Why Eight?**

At first glance, eight appears to be an entirely arbitrary choice of number for recognized party status. Most other provinces have a four or five member threshold, and only Manitoba shares a similar percentage point (see figure 1.0). Moreover, at the same time that the recognized party threshold was amended, so too was the quorum, to reflect the smaller legislature size. Quorum was changed from 24 to 12; there is no logical correlation between a 4 member reduction for recognized party status and a 12 member reduction for quorum.

The prevailing opinion of regular members at the time was that the decision to change the threshold from recognized party status from 12 to 8 was entirely arbitrary. Deputy Clerk Todd Decker, who was partially involved with drafting the wording of the amendments to the Standing Orders, stated that the “driving force

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<sup>6</sup> Hansard, 20 October 1999.

<sup>7</sup> Deborah Deller, Personal Interview, 2 February 2011.

<sup>8</sup> Hansard, 25 October 1999.

<sup>9</sup> Standing Orders for the Legislative Assembly of Ontario.

to amend the definition of a recognized party was the fewer politician act. With the redistribution of the ridings, it made sense to change the threshold; the number 8 was entirely arbitrary.”<sup>10</sup>

Howard Hampton, leader of the NDP at the time of the 1999 revisions, flatly dismissed the idea that there was a specific reasoning behind the decision to choose eight as the threshold. Mr. Howard stated, “Premier Mike Harris made the decision unilaterally. The decision to choose 8 as the threshold was made in his caucus.”<sup>11</sup>

Gary Carr, speaker at the time, tells a different story. “Howard appeared to be happy with a threshold of 9, to match the current makeup of the NDP Caucus. There were some voices in the NDP that were worried, however, that they couldn’t count on Peter Kormos’ continued support. So they created the ‘Kormos Cushion’, and reduced the number to eight.”<sup>12</sup> Norm Sterling<sup>13</sup> and Gilles Bisson<sup>14</sup> also confirmed that eight was chosen to provide the NDP with a safety ‘cushion’, to prevent Peter Kormos from having the power to reduce the party to non-status.

The entire seven day affair, between the election of Carr on October 20<sup>th</sup>, and the accepted amendments to the standing orders on October 27<sup>th</sup>, was all very civil politics. Immediately following NDP House Leader Christopherson’s point of order asking for NDP recognition in the house, Norm Sterling rose to assure the opposition parties that a deal was in the works and that the NDP would retain recognized party status for the purposes of the standing orders. Ian Urquhart, columnist for the Toronto Star, argues that the civility of the decision was not good policy, but merely good politics. “In 1999 it suited the Conservative majority to have a strong NDP. A strong NDP typically means less votes for the Liberals, which can often put the NDP and Conservative parties on the same page.”<sup>15</sup>

Speaker Carr summed up the events of 1999 quite succinctly: “this was no grand design; this was pure politics.”<sup>16</sup> The decision to change the definition of a recognized party from twelve to eight was not done with the future health of the political system in Ontario in mind. No weight was given to the norms adopted in other provinces – eight was chosen to prevent one member in the 1999 NDP Caucus from holding the party hostage against the threat of non-status.

It is problematic to leave a decision that has the potential to exclude specific

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<sup>10</sup> Todd Decker, Personal Interview, 15 March 2011.

<sup>11</sup> Howard Hampton, Personal Interview, 11 April 2011.

<sup>12</sup> Gary Carr, Personal Interview, 6 April 2011.

<sup>13</sup> Norm Sterling, Personal Interview, 11 April 2011.

<sup>14</sup> Gilles Bisson, Personal Interview, 10 March 2011.

<sup>15</sup> Ian Urquhart, Personal Interview, 6 April 2011.

<sup>16</sup> Carr, 2011.

groups of members from participating in house business up to the whims of the current political fancy. As will be seen in section three, there are serious repercussions for short term remedies as opposed to long term solutions.

### **Section 3: The 2003 Fallout – What happened to the NDP?**

After the standing orders were amended in 1999, the party status problem for the NDP Caucus appeared to be resolved. Unfortunately, the results of the 2003 election brought the definition of a recognized party back into sharp focus.

After Ernie Eves replaced Mike Harris as premier, the PC government faced several scandals and tragedies leading up to the October 2, 2003 election. The deaths from the contaminated water in Walkerton, the SARS outbreak, as well as the controversy that followed releasing the provincial budget outside of the legislature all contributed to the loss of support for the Eves government. As a result, the Liberals won a large majority, and the Conservatives were reduced to 24 seats. The NDP, despite increasing their percentage of the popular vote from the 1999 election (12.6% to 14.7%) were reduced to seven seats in the legislature.

The House returned a little more than a month later, and this time there was no reassurance from the government that the NDP would be granted recognized status. On election night, Dalton McGuinty stated that that the government would “[abide] by the rules that we’ve all agreed to play by,” implying that the threshold would not be changed.<sup>17,18</sup>

By the time the house resumed sitting on November 19<sup>th</sup>, the NDP had lost their funding as an official party. This meant that there were no additional funds allocated for research or communications, or for the salaries of the Leader, House Leader and Whip. Over 22 NDP staffers had been let go, and the official seating plan placed the NDP members in the traditional space left for independents – in the back corner behind the “rump of Liberal backbenchers.”<sup>19</sup> The NDP Caucus had also been split up in the main legislature building. Traditionally, caucuses are given specific wings so that members belonging to a specific party could work in close proximity to each other, but the NDP were given offices in different wings. According to NDP member Michael Prue, “we lost everything - right down to the photocopier, fax machine, and even a room to hold caucus meetings.”<sup>20</sup>

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<sup>17</sup> Urquhart, Ian. “Stifling voice of NDP is hardly democratic” *Toronto Star*, 29 October 2003.

<sup>18</sup> Urquhart, Ian. “No Silencing the NDP” *Toronto Star*, 26 Nov 2003.

<sup>19</sup> *ibid.*

<sup>20</sup> Michael Prue, Personal Interview, 8 March 2011.

The NDP also lost privileges in the House. Most noticeably, Howard Hampton, then leader of the NDP, was not afforded the honour of being recognized by the Speaker as the leader of a party. Mr. Hampton was not permitted to ask more than one question during question period, since he – along with his NDP colleagues – were considered independents. Independent members do not have the unconditional right, under the Standing Orders, to a question in question period; they must request a question of the speaker prior.

Don Guy, then Chief of Staff to Premier McGuinty stated, “the NDP didn’t ask to negotiate the number of members needed to be a recognized party prior to election night; they were prepared to live with the results of the election.” As a result, the newly elected McGuinty Government was not aware of the NDP desire to have the standing orders revisited to redefine recognized party status. Mr. Guy also argues that it is a bit of a misnomer to say the Liberal Government *denied* the NDP party status. “The Premier didn’t take a position on this issue, he merely stated what the standing orders required and abided by them within the house.”<sup>21</sup>

The NDP did not quietly accept their loss of party status. Despite having no right to questions in question period, positions on committees, or the right to have a house leader negotiate their interests, as per the rules outlined in Ontario’s Standing Orders, the NDP employed many tactics to stall the legislative proceedings. On the first sitting day after the election, the NDP nominated 10 liberal members to take the role as speaker, as well as refusing the traditional dispense the second reading of the throne speech, thus forcing speaker Alvin Curling to re-read the throne speech in its entirety. Marilyn Churley, a member of the NDP Caucus at the time, threatened publically to change her name to Marilyn Churley-NDP, so that the party would have to be recognized in the house, when her name was mentioned. These tactics, which continued for several months, stalled legislative business where possible and garnered a great deal of publicity for the NDP.

Although there were no meetings on record between the NDP and the Liberal Government, there were some negotiations going on behind the scenes. According to the Toronto Star, near the end of November 2003 Mr. Duncan offered the NDP, in a letter, \$420 000 additional funding provided they accept their status as independents. A Liberal MPP stated of the offer “The NDP didn’t meet the threshold. We offered them a compromise with funding proportional to the size of their caucus.”<sup>22</sup>

The offer, however, was turned down by the NDP. By this time the press was largely on side with the NDP’s push for party status. Christina Blizzard, with the Toronto Sun argued that “the NDP should have been granted official party status by the Liberals in the name of good democratic debate. I think it would have been

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<sup>21</sup> Don Guy, Personal Interview, 14 April 2011.

<sup>22</sup> Anonymous, Personal Interview, 12 April 2011.

detrimental to democracy in the long run if the government effectively silenced the far left.”<sup>23</sup> Robert Benzie with the Toronto Star said that general consensus among the press gallery was to try and ensure the NDP had a voice in the news, and to not focus exclusively on the Liberals and the Conservatives.<sup>24</sup>

Ian Urquhart with the Toronto Star, followed the NDP-Liberal negotiations closely. “Peter Kormos,” argued Urquhart, “was in charge of the negotiations for the NDP. He’s a very polarizing figure and he and Dwight Duncan just couldn’t see eye to eye.”<sup>25</sup> The issue, he argues, wasn’t about coming to a good decision for the appropriate functioning of the house, but rather strictly about politics. “It’s not surprising that the NDP weren’t offered party status by Dwight Duncan, whose major political competition in his Windsor riding is the NDP, not the Liberals.”<sup>26</sup> Christina Blizzard echoed Urquhart’s sentiment, “it makes political sense for the Liberals to want a weak NDP. I wouldn’t be surprised if they hoped to eradicate the NDP.”<sup>2728</sup>

There was a block of the Liberal Caucus that felt the party was being too harsh on the NDP, including Greg Sorbara and Jim Bradley.<sup>29</sup> Eventually, Gilles Bisson and Marilyn Churley from the NDP, and Sorbara from the Liberals, took over the negotiations.<sup>30</sup> “We negotiated a deal with the government to provide additional funding to the caucus. We also worked out a rotation for debate that was more or less equivalent to the NDP percentage in the house. We were able to ask four questions per day,” said Bisson regarding the negotiation process.<sup>31</sup>

The NDP finally regained full party status eight months after the 2003 election, when Andrea Horwath won the Hamilton East (now Hamilton Centre) by-election. “Everyone knew what the stakes were,” said Ms. Horwath. “We had a lot of people get involved. McGuinty appointed a candidate to run against me, and this decision wasn’t well received by the people of Hamilton; I had a lot of support.”<sup>32</sup>

Despite the months of political posturing and the NDP’s fight for party status, there was no move by the legislature to revisit the definition of a recognized party within the standing orders. To revisit Speaker Carr’s insightful sentiment, the events of 2003 mirror the events of 1999 in that there was no grand design in place, it was all ‘pure politics’. The decision to maintain the standing orders as is

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<sup>23</sup> Christina Blizzard, Personal Interview, 4 April 2011.

<sup>24</sup> Robert Benzie, Personal Interview, 11 March 2011.

<sup>25</sup> Ian Urquhart, 2011.

<sup>26</sup> *ibid.*

<sup>27</sup> Blizzard.

<sup>28</sup> Bisson.

<sup>29</sup> Benzie.

<sup>30</sup> Ian Urquhart, 2011.

<sup>31</sup> Bisson.

<sup>32</sup> Andrea Horwath, Personal Interview, 4 April 2011.

following the 2003 election was not about sticking to the rules, so much as it was politically expedient for the Liberals to have a weakened NDP party, just as it was politically expedient in 1999 for the Conservatives to change the rules and give the NDP Party status.

#### **Section 4: Conclusion – Should we change 8?**

Almost all NDP members interviewed for this study were of the opinion that the 2003 Liberal Government was in the wrong, and that the NDP should have been granted recognized party status. However, with the exception of Mr. Prue and Mr. Bisson, those same NDP members, when asked if the standing orders should be amended and the recognized party threshold lowered, were comfortable with the number eight.

Rosario Marchese offered the best explanation for this conflicting perspective: “We were reduced to 7 seats in 2003 not because we had lost popular support, but because of strategic voting. Many people were tired of the Harris government and wanted a change, as a result a lot of NDP voters voted for the Liberal candidate in order to ensure a conservative didn’t win.”<sup>33</sup> The NDP actually saw an increase in their percentage of the popular vote, between the 1999 and 2003 elections from 12.6% to 14.7%, but due to the distorting effects of the first past the post electoral system, the NDP ended up losing two seats. The outcry from the remaining NDP members was not because eight was unfair, but because they had less support in the 1999 election but qualified for party status, yet when they gained support in the 2003 election they did not qualify. Ultimately it came down to the inconsistency.

When asked about his opinion on the current definition, Howard Hampton responded that eight is probably appropriate for the legislature. “We need a system where it is not so difficult to win party status that you stifle debate, but you also don’t want to cater to the fad of the day.”<sup>34</sup> Andrea Horwath, current leader of the NDP, refused to speculate on whether or not eight should be revisited. “I think it is incumbent upon any party leader to try and get the best deal for their members, and there are pros and cons of any threshold, but at the moment there is no need to revisit the standing orders.”<sup>35</sup>

Norm Sterling summed up the current dilemma with the standing orders quite succinctly: “You have to have opposition to make parliament work. We should take a measured approach to the standing orders depending on the outcome of the next election; its difficult to speculate on what the appropriate action is

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<sup>33</sup> Rosario Marchese, 8 April 2011.

<sup>34</sup> Hampton.

<sup>35</sup> Horwath.

now.”<sup>36</sup> The prevailing opinion of the members interviewed is that the current threshold of eight is working for this parliament, and that there is no need to revisit the standing orders at this time.

In contrast to the opinions of the members, from a comparative perspective Ontario’s current standing orders fall well outside the Canadian provincial and federal norms. Almost 20% of the Ontario’s standing orders make specific reference to recognized party status. Ontario’s standing orders create extreme limits on the ability of members not belonging to a recognized party to participate in house business. Furthermore, Ontario has the third highest threshold in the country, and has no contingency threshold to adjust for the distortions created by a first past the post electoral system. With standing orders that place house business almost exclusively under the jurisdiction of the parties, and a high threshold, Ontario’s Legislature is an unfriendly place to any member not belonging to a recognized party.

Perhaps the most interesting argument for revisiting the standing orders came from Christina Blizzard, reporter for the Toronto Sun. “How do you ever change the status quo, if you have restrictive rules?” she asked. The current standing orders put large parties at a disproportionate advantage; small parties lack the tools necessary in the standing orders to become established enough to perform the scrutiny function required of them. “We need rigorous debate, and I think the current rules don’t allow for that. I’d recommend a threshold of 3 or 4 members.”<sup>37</sup>

Section one proposes that Ontario’s high threshold, coupled with a set of standing orders that are highly exclusive to members not belonging to a recognized party should be addressed. A simple remedy to bring Ontario’s standing orders more in line with the norms of the rest of the country could either come in the form of (a) lowering the standing orders to reflect the national average of 5.8% of the house, (roughly six members as opposed to eight) or revisiting the standing orders as a whole to reduce the barriers to participation in house business for members not belonging to a recognized party.

These recommended remedies are insufficient to provide lasting change for the parties in the Ontario legislature. As seen by the majority responses by the members in the legislature, there is no current political will to revisit the definition of a recognized party, even from NDP members. Standing orders are creatures of the government of the day. They can be changed and amended by a simple motion passed with a majority vote. As a result, Ontario’s governments have been changing the standing orders to reflect their best interests.

As was demonstrated in sections two and three of this paper, the decision to

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<sup>36</sup> Sterling.

<sup>37</sup> Blizzard.

change the definition of a recognized party in 1999, and to not change the definition in 2003, was purely political in nature. There was no consideration for the long term health of Ontario's political parties within the legislature; merely what was politically expedient at the time. Gary Carr summed up this point nicely; "politics doesn't make for good public policy."<sup>38</sup>

The problem facing small political parties in Ontario is not so much the definition of a recognized party in Ontario's standing orders, nor the high frequency with which the standing orders reference and place precedence on the recognized parties in the legislature; the real problem is the standing order amendment process. Since the standing orders are largely a creature of the government of the day, it will almost never be in the government's best interests to dilute the power of the political parties, or to change the definition of a recognized party.

For this reason, this author concludes that the amendment process to the standing orders should be revisited. Instead of passing a simple motion in the house, the standing orders should only be amendable through adopting recommendations made by an all-party committee of equal representation for each political party – recognized or no – in the legislature. This process would accomplish two goals; (1) it would increase the difficulty of amending the standing orders and thus ensure that governments of the day could not change the house procedures to suit their interests and (2) would hopefully result in a revisiting of the standing orders to lower the threshold for recognized party status in the event that a party gained less than the eight seats required by the current standing orders in Ontario.

## **Conclusion**

By way of conclusion, 'eight' as the magic number for recognized party status is entirely arbitrary. Although we have learned that eight was selected based on a specific set of circumstances that arose following the 1999 election, those circumstances merely reflected an instance in time. No far reaching policy implications were considered when eight was chosen, rather the decision was made in response to the number of seats the NDP had in 1999, and the political makeup of NDP caucus.

The challenge with eight is not so much the number itself, but the ramifications of a recognized party status enshrined within the standing orders. Ontario's standing orders have one of the highest thresholds in the country, and place the greatest importance on the role of the political party within house business. Furthermore, as the standing orders are largely creatures of the government of the day, the decision to lower the definition of a recognized party in 1999, and to leave it unchanged in 2003, were political, not policy driven.

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<sup>38</sup> Carr.

As a result, this paper concludes with three recommendations for Ontario's Legislature:

- (1) The Standing Order amendment process be changed to a process by which the government may only introduce a motion to change the standing orders on the recommendation of an all-party committee; and
- (2) amend the standing orders and adopt a threshold of 6 members (5.6% of the legislature); or
- (3) adopt a secondary qualification where if a party does not achieve the required threshold of members, that if a party gains 20% of the popular vote, they gain recognized party status.

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## Appendix A

### Definition of Recognized Party by Province

Province	Act	Section
Alberta	Legislative Assembly Act, November 1, 2010	42(1) In this section, "recognized opposition party" means a party that (a) is represented in the Assembly by at least 4 Members, and (b) received at least 5% of the popular vote in the general election immediately preceding the year in which the allowance in subsection (2) is to be paid.
British Columbia	Constitution Act [RSBC 1996]	1. In this Act, " <b>leader of a recognized political party</b> " means a member of the Legislative Assembly other than the Premier or Leader of the Official Opposition, who is the leader in the Legislative Assembly of an affiliation of electors comprised in a political organization whose prime purpose is the fielding of candidates for election to the Legislative Assembly and that is represented in the Legislative Assembly by 4 or more members.
Manitoba	Standing Orders	1(3)(h) " <b>a Recognized Opposition Party</b> " means a party, other than the Official Opposition, represented in the Legislative Assembly by four or more Members;
New Brunswick	Standing Orders	1. "recognized party" means any registered party that elects five Members or receives twenty percent of the vote at a general election;
Newfoundland and Labrador	Standing Orders	2. To be recognized as a parliamentary group in the House of Assembly, the group must be a registered party in accordance with the Elections Act, 1991, must have contested two-thirds of the number of seats in the House of Assembly at the preceding General Election and have elected at least three Members, at the preceding General Election or at a by-election.
Nova Scotia	House of Assembly Act	2(c) "leader of a recognized party" means the leader in the House of a party represented by two or more members, other than the Premier or the Leader of the Opposition, whose party was a recognized party in accordance with the Elections Act and had candidates standing for election for three quarters of the seats of members in the House and whose party received ten per cent or more of the votes officially recorded in the latest general election of members of the House;
Ontario	Standing Orders	2. "Recognized Party" means a Party caucus of eight or more members of the Legislative Assembly. ("parti reconnu")
Prince Edward Island	none	
Quebec	Standing Orders	13. "Parliamentary group" defined as Any group of not fewer than twelve Members returned to the Assembly by the same political party, or any group of Members returned by a political party that shall have received not less than twenty percent of the popular vote in the most recent general election, shall form a parliamentary group. Members who do not belong to any parliamentary

		group, save the President, shall sit as independent Members.
Saskatchewan	Legislative Assembly and Executive Council Act	(b) that caucus is composed of individuals affiliated with a political party that is registered pursuant to <i>The Election Act, 1996</i> and each of at least two of the members of that caucus had the endorsement of the registered political party with respect to the general election or by-election at which he or she was elected to serve in the Legislative Assembly and was, in that regard, a candidate to whom subsection 45(3) of <i>The Election Act, 1996</i> applied. (« caucus du troisième parti »)
Federal	Parliament of Canada Act	50(a),(b); 62(h),(j),(l); 62.3(h), (j), (j.1), (l), (m), (o) a recognized party is "a party that has a recognized membership of twelve or more persons in the House of Commons"