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Chair

Mr. Dave MacKenzie

Subcommittee on Private Members' Business of the Standing Committee on Procedure and House Affairs

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•(1005)

[English]

The Chair (Mr. Dave MacKenzie (Oxford, CPC)): I call this meeting to order.

This is meeting number 7 of the Subcommittee on Private Members' Business of the Standing Committee on Procedure and House Affairs, and we are here for the determination of non-votable items pursuant to Standing Order 91.1(1).

I think everyone has a list.

Mr. Michel Bédard (Committee Researcher): The first motion on the order of precedence is motion M-432. It's a motion with respect to the enrollment and the registration process for the Qalipu Mi'kmaq First Nation band. It refers to an agreement that has been concluded between the Qalipu Mi'kmaq and the Government of Canada. This motion does not appear to be outside federal jurisdiction. It is not clearly against the Constitution, and there's no similar motion, private member's motion or government motion, on the order paper.

The Chair: Are there any questions? Mr. Dion? Mr. Armstrong?

Is everybody in favour of that?

Some hon. members: Agreed.

The Chair: Thank you.

Mr. Michel Bédard: The second motion, M-408, will condemn discrimination against females occurring through sex-selective pregnancy termination.

[Translation]

There are only a couple of lines.

[English]

This motion will ask the House to condemn discrimination against females occurring through sex-selective pregnancy termination. With respect to this motion, I will first underline that there is a fundamental distinction between a motion and an act of Parliament.

A motion does not enact in itself a rule of law; it's not an act of Parliament. It does not put in place rules. This motion refers to the deliberative functions of Parliament, which are protected by parliamentary privilege. If we look at the criteria, it is within federal jurisdiction, it does not clearly offend the Constitution, and there's no similar motion currently on the order paper.

The Chair: Mr. Toone, I knew that your leader had made some comments. I don't know whether you wanted to....

[Translation]

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): Maybe it is necessary to do a more detailed analysis to determine if this falls under federal jurisdiction. In the case of this kind of selection, I don't see where the federal jurisdiction comes in.

Mr. Michel Bédard: When it comes to federal jurisdiction, this is a criterion that is particularly relevant when dealing with bills. Indeed, motions do not establish prescriptive criteria. It only means that the House of Commons gives its opinion on the subject. This calls on the House's right to debate any matter and express its opinion on it. There are other motions on the list that we could study today, and some aspects of them could fall under provincial jurisdiction.

However, in the case of a policy statement, given that the House is simply being asked to give its opinion on a subject of public interest, it is difficult to establish if it falls under federal jurisdiction. This criterion is not really appropriate for motions. It is specifically intended for bills. However, it goes without saying that if a motion clearly interferes with a province's affairs, one could argue that that is under provincial jurisdiction, therefore contrary to the criteria. Nonetheless, since in this case the House is simply being asked to condemn a certain practice, I find it very difficult to say that that does not fall under federal jurisdiction.

Mr. Philip Toone: When it comes to jurisdiction and criteria for selecting bills, it is not only a question of determining if it seems to fall under federal jurisdiction at first glance. It seems to me that it's much more restricted than that. Is that right?

Mr. Michel Bédard: Yes indeed, the first criterion reads as follows: "1. Bills and motions must not concern questions that are outside federal jurisdiction."

The second criterion reads as follows: "2. Bills and motions must not clearly violate the Constitution Acts, 1867 to 1982 [...]".

Indeed the word "clearly" is used in the second criterion where it is not used in the first, which only deals with federal jurisdiction.

Mr. Philip Toone: And the second criterion specifies that these are matters relating to the Constitution rather than to jurisdiction.

Mr. Michel Bédard: There is some overlapping between the criteria given that the distribution of jurisdictions is part of the Constitution Act, 1867.

Hon. Stéphane Dion (Saint-Laurent—Cartierville, Lib.): I see another problem here.

We already addressed a motion on the same subject. For my party, the subject is abortion. No matter how one tries to sugarcoat it, that's the subject. We are being asked to open up this debate again, and yet we already refused to do so in the context of motion M-312. It seems to me that that is contrary to one of our criteria.

Mr. Michel Bédard: Motion M-312 instructed the committee to carry out a study, whereas in this case, the House is giving its opinion on a certain practice. The committee is free to interpret the criterion as it wishes, but I simply wanted to clarify that point.

• (1010)

Hon. Stéphane Dion: The fact is that it is being addressed from different perspectives.

We are being asked to open this debate again on the same subject.
[English]

The Chair: Mr. Armstrong.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): I would like to support my colleagues at the table in both instances. We're of the position that motion M-408 should not be deemed votable because it doesn't meet these two criteria. It involves ultrasound and health care delivery, and this is clearly in the jurisdiction of the provinces. This motion would impinge upon provincial jurisdiction.

Also, in our opinion this motion is very similar in nature to a former motion that was debated in the House, motion M-312. This was also voted on.

We agree with the positions of both of our colleagues at the table.

The Chair: Should motion M-408 be non-votable?

Mr. Dion, Mr. Toone, Mr. Armstrong?

Some hon. members: Agreed.

The Chair: We move on to Bill C-475.

Mr. Michel Bédard: This bill will amend the Personal Information Protection and Electronic Documents Act with respect to compliance orders, and also with respect to loss of information. Portions of this bill are already in Bill C-12, which is a government-sponsored bill, but there are also elements of Bill C-475 that are not in Bill C-12.

Based on the fact that there some elements in Bill C-475 that are not in Bill C-12, this bill, even if Bill C-12 is adopted, could nonetheless itself proceed and on its own amend the law. So I suggest that it is not substantially similar to Bill C-12.

The Chair: There is enough difference, you are suggesting, between them?

Mr. Michel Bédard: Yes. In Bill C-475, for example, there is a provision to authorize the commissioner to take action against an organization that has lost private information. There is no similar provision in Bill C-12. That's an example.

Also, if you want to proceed to a detailed analysis of the two bills, we could. For example, under Bill C-12, when there is a loss of

information the organization is compelled to notify the individual, whereas under Bill C-475 the notification would only be applicable if the Privacy Commissioner ordered that there be a notification.

So they are similar, but there are some distinctions as well, and there are also other provisions in Bill C-475 that are not in Bill C-12.

Hon. Stéphane Dion: Is what you mentioned an example of the main difference?

[Translation]

Mr. Michel Bédard: That is the biggest difference that jumped out at me. There are also smaller discrepancies, such as the one that I just mentioned.

For example, if Parliament were to adopt Bill C-12, Bill C-475 could still carry on through the legislative process. Some of its provisions would probably be amended because they would already be part of Canadian legislation. Certain ones, including those that I mentioned, could however amend the legislation. Those provisions would still be valid. Adopting Bill C-12 does not necessarily render Bill C-475 void.

Hon. Stéphane Dion: I don't like the fact that you are using the word "necessarily". You mean that it does not render it invalid?

Mr. Michel Bédard: That is right, it does not render it null and void.

Hon. Stéphane Dion: That does not require any amendments?

Mr. Michel Bédard: In the event that there are two bills, even if the subjects are different, it so happens that the same provisions are amended. Corrective amendments are made to bills during the legislative process. That is common practice and is to be expected.

• (1015)

Hon. Stéphane Dion: Does that not call into question criterion number 3? It reads: "Bills and motions must not concern questions that are substantially the same as ones already voted on by the House of Commons in the current session of Parliament [...]"

Criterion 4 reads as follows: "Bills and motions must not concern questions that are currently on the [...]"

Mr. Michel Bédard: Criterion 4 would in fact be the one that is in question since we are talking about a government bill. There are no committee precedents explaining the criteria in more detail that could help me interpret them.

In the case of bills that are designated as non-votable items, in the past, the subcommittee referred to decisions made by the chair pursuant to a standing order that is more or less the same. This was regarding a bill that sought to reach the same objectives by the same means. In the current situation, some objectives and some means are the same, but there are also other objectives and other means.

[English]

The Chair: Is Bill C-475 deemed votable?

Some hon. members: Agreed.

Mr. Michel Bédard: The next bill is C-479. It will make amendments to the Corrections and Conditional Release Act respecting parole review hearings.

This bill is not outside federal jurisdiction, it does not clearly violate the Constitution, and there is no similar bill on the order paper.

The Chair: Are we okay with that, Mr. Toone, Mr. Dion?

Is Bill C-479 votable?

Some hon. members: Agreed.

Mr. Michel Bédard: Next is motion M-422, with respect to the funding of the Last Post Fund. This is the program of Veterans Affairs Canada.

It is clearly within federal jurisdiction, it does not appear to be clearly against the Constitution, and there is no similar motion on the order paper.

The Chair: Is it votable?

Some hon. members: Agreed.

Mr. Michel Bédard: Next is motion M-230, with respect to anaphylaxis as a serious concern for the quality of life of Canadians.

It is within federal jurisdiction, it is not clearly against the Constitution, and there is no similar motion on the order paper.

The Chair: Okay.

Is it votable?

Some hon. members: Agreed.

Mr. Michel Bédard: The next item is Bill C-474, a bill for the enactment of the Transparency of Payments Made by Mining, Oil and Gas Corporations to Foreign Governments Act.

This bill will compel corporations to disclose some information. It is clearly within federal jurisdiction, it does not clearly offend the Constitution, and there is no similar bill on the order paper.

The Chair: Okay.

Is it votable?

Some hon. members: Agreed.

Mr. Michel Bédard: Bill C-473 will amend the Financial Administration Act with respect to representation of women and men on boards of crown corporations.

This bill is clearly within federal jurisdiction.

With respect to the other provision concerning the Constitution, an argument might be made under section 15 concerning equality rights. But also, subsection 15(2) of the charter authorizes affirmative action programs, so it would be difficult at this stage to conclude that it is clearly unconstitutional. There is no substantially similar bill on the order paper currently.

The Chair: Okay.

Is the bill votable?

Some hon. members: Agreed.

Mr. Michel Bédard: Motion M-431 will instruct the Standing Committee on Procedure and House Affairs to examine the rules and procedures relating to the election of committee chairs. This is clearly within federal jurisdiction. It does not offend the Constitution and there's no similar motion on the order paper.

The Chair: Okay.

Is it deemed votable?

Some hon. members: Agreed.

[Translation]

Mr. Michel Bédard: Bill C-478 would amend the Criminal Code to provide that an offender convicted of the abduction, sexual assault and murder of one victim would be sentenced to imprisonment and their parole eligibility would be affected.

This bill clearly falls under federal jurisdiction and clearly does not violate the Constitution. There is no similar bill that is currently on the order paper.

● (1020)

[English]

The Chair: Okay.

Mr. Toone, Mr. Armstrong, is it deemed votable?

Some hon. members: Agreed.

[Translation]

Mr. Michel Bédard: Bill C-480 would amend the Old Age Security Act where the Income Supplement and funeral arrangements are concerned. The bill states that if a person withdraws money from their RRSP account in order to pay for funeral arrangements, the person would not be penalized by way of the Income Supplement.

This bill falls under federal jurisdiction and clearly does not violate the Constitution. There is no similar bill that is currently on the order paper or the notice paper. This bill falls within federal jurisdiction. It clearly does not violate the Constitution. There is no similar bill currently on the order paper.

[English]

The Chair: Okay.

Is it deemed votable?

Some hon. members: Agreed.

[Translation]

Mr. Michel Bédard: Bill C-476 would amend the Parliament of Canada Act to make the Parliamentary Budget Officer an independent officer of Parliament. The bill falls within federal jurisdiction. There is no clear violation of the Constitution. There is no similar legislation on the order paper right now.

I would like to specify that a similar bill is before the House, but it is not on the order of precedence. If we go by what the criteria say, this bill should then not be taken into consideration. Only bills that are on the order of precedence should be considered.

Hon. Stéphane Dion: It is the other one that would be potentially redundant if it became—

Mr. Michel Bédard: Exactly.

If the other bill were to be added to the order of precedence, the subcommittee would be able to designate it as a non-votable item.

Mr. Philip Toone: Would a member usually be advised that there was a risk of redundancy? We should make sure people are notified before the issue goes before committee.

Mr. Michel Bédard: Since they are usually members from the same party...

Mr. Philip Toone: In any case, the whip's office...

Mr. Michel Bédard: ...people are already aware.

[English]

The Chair: Okay.

[Translation]

Mr. Michel Bédard: Motion M-425 is on the long-term health risks and costs of obesity in Canada.

This motion falls within federal jurisdiction. It does not clearly offend the Constitution. No similar motion was passed during this session. Actually, there is another motion on child obesity but its goals and the means it seeks to establish are different. The motions are not similar but both mention obesity.

[English]

The Chair: Mr. Toone and Mr. Armstrong? It's votable?

Some hon. members: Agreed.

[Translation]

Mr. Michel Bédard: Motion M-428 will instruct the Standing Committee on Procedure and House Affairs to examine electronic petitions. This is clearly within federal jurisdiction. It does not clearly offend the Constitution. No similar motion was voted on and none is currently on the *Order Paper*.

[English]

The Chair: Is it votable? Okay?

Some hon. members: Agreed.

[Translation]

Mr. Michel Bédard: Motion M-430 seeks the government's endorsement of the report of the Panel on Labour Market Opportunities for Persons with Disabilities entitled "Rethinking disAbility in the Private Sector." This working group was created by the government and issued findings on employment access for persons with disabilities. There are not really any problems with this motion.

It is within federal jurisdiction. It does not clearly offend the Constitution. No similar motion was voted on during the session and none is currently on the *Notice Paper* or the *Order Paper*.

[English]

The Chair: And we have one addition?

[Translation]

Mr. Michel Bédard: Yes.

Bill S-213, which you received earlier this week, was first tabled in the Senate and then in the House of Commons. Only one of the

four criteria applies to Senate bills, that is, whether a similar bill was voted on during the current Parliament.

Bill S-213 seeks to designate July 27 as a day to remember and honour veterans of the Korean War.

No other bill on this issue was voted on during this session.

● (1025)

Hon. Stéphane Dion: Do we celebrate anything else on July 27?

What time on July 27?

Mr. Philip Toone: My question is not related to the bill before us, but I would like to know, when we say a bill was not voted on in Parliament, if we are talking about the House of Commons specifically.

Mr. Michel Bédard: Yes, that is correct.

Mr. Philip Toone: We do not have to check whether the Senate has done something similar.

Mr. Michel Bédard: I used the word "Parliament" because we sometimes refer to the House of Commons that way.

Mr. Philip Toone: We take up a lot of room.

Mr. Michel Bédard: The House of Commons is not even supposed to know what happens at the Senate, aside from the messages it receives. We are therefore dealing with House of Commons bills only.

[English]

The Chair: Mr. Dion.

[Translation]

Hon. Stéphane Dion: I already asked that question, but I don't remember if I received an answer.

We have four criteria, but we are told that in the cases when Senate bills are submitted to us, the only relevant criterion is determining whether it is a question being studied in the House of Commons. There are three criteria left.

I would like to know if these three other criteria are examined by senators when they agree to study a bill. If they are not examined, does that mean that we never apply, for bills that come from the Senate, the same criteria as those applied to bills coming from the House?

Do you understand my concern?

Mr. Michel Bédard: Yes.

An equivalent subcommittee does not exist in the Senate. In other words, there are no parliamentarians who gather, as with the subcommittee, to determine if bills tabled in the Senate can be put to a vote before being debated. However, as with any bill submitted to a committee, Senate bills can certainly be studied and amended. Their constitutionality can also be called into question.

[English]

Hon. Stéphane Dion: I have no doubt that it's done, knowing some of the senators, but I still think there is something strange. We have criteria when it's coming from the House, and they're not the same ones when it's coming from the Senate. I'm sure it's not in our power to change it. I guess it is in the mandate of this committee, but it's something we should consider.

The Chair: I think it highlights that there are some differences between the House and the Senate with respect to process. There are others, too, that we're starting to see a difference in, not only in this kind of process but also in other processes. I expect that somebody is going to take a look at the bigger picture of what we're doing. I would agree with you: if they don't have the same criteria as we do, and we don't have that criteria to check it against, why do we do it with our criteria and not with theirs?

Hon. Stéphane Dion: I would just suggest that the House is the master of its own rules, as you've said. We have no power to ask the Senate to do the same as us. When it's coming to us, we should respect our four criteria.

The Chair: And that comes from that direction?

Mr. Michel Bédard: If I may, Mr. Chair, Standing Order 92.1(a) establishes the criteria for Senate public bills. Section 91.1 of the Standing Orders authorizes the standing committee to establish criteria that this subcommittee will use for House of Commons bills. If you would like to put in place new criteria for Senate public bills, you would need an amendment to the Standing Orders.

The Chair: Thank you.

Mr. Armstrong.

Mr. Scott Armstrong: We are about to commence a study on the Standing Orders at some point at the procedure and House affairs committee. This is definitely a topic that should be on the agenda when we do that review, which is coming up in the next several months.

Hon. Stéphane Dion: It's not major; it's just strange.

Mr. Scott Armstrong: Standing Orders aren't major. But if you don't review them, they'll never get fixed.

Hon. Stéphane Dion: Yes.

The Chair: Mr. Dion.

Hon. Stéphane Dion: We already voted on it. It's just that I'm still uncomfortable. I don't want to revisit the vote—it has been done. It's just when you say C-479, I think the following.

• (1030)

[Translation]

In French, you said: "It isn't quite null and void." That isn't very strong. If I had to revise my vote, I might vote differently. It's simply that I am concerned when I hear that one bill can amend another. In this case, we should wait to have voted on one of the bills before examining the other.

It is said that the House can do both things at the same time. Adopting or not adopting one bill has pretty significant effects on the other. Under these circumstances, it seems to me that we should have set the other one aside.

I don't know if I am being clear.

Mr. Philip Toone: Are you talking about Bill C-479?

An hon. member: Or Bill C-475.

[English]

Hon. Stéphane Dion: I don't want to revisit the decision; it has been made. I just want to say that in the future, we need to be careful about that. We have accepted that we will study this bill at the same time we are studying another bill that may make this bill partly irrelevant. And we have said that it will only be partly, so we will accept it. That's the decision we have made, and I was supportive of the decision. I'm still uncomfortable with it.

[Translation]

Mr. Michel Bédard: When I provide information to you, it is based on the committee's practices. The fact that meetings used to be held in camera must also be taken into account. Obviously, I provide information to you using the tools that are available. As you mentioned, the subcommittee is the master of its own proceedings and is quite free to interpret the criteria as it sees fit. If the subcommittee were to interpret—

Hon. Stéphane Dion: It is not your interpretation that I am calling into question, but rather my vote.

Mr. Philip Toone: If you will allow me, I would like to mention that, for the most part, this committee shows good reserve when it comes to private members' bills. We hesitate to make them non-votable. On the face of things, I think that should stay as is and that the advice was good. There wasn't just that point. The analyst raised others.

Hon. Stéphane Dion: Among all of your decisions, it is the most difficult one today.

[English]

The Chair: I need a couple of motions to be moved, the first that the committee present a report listing those items which it has determined should not be designated non-votable and recommend they be considered by the House.

This means we are presenting the ones that should be votable. The language is backwards.

Will we accept that motion?

Mr. Scott Armstrong: Can you say that again?

Voices: Oh, oh!

Mr. Scott Armstrong: You confused me with the reverse terminology.

The Chair: I know!

There is another motion coming, but the first is that the committee present a report listing those items which it has determined should not be designated non-votable and recommend they be considered by the House.

(Motion agreed to)

The Chair: The second is that the chair report the subcommittee's findings to the Standing Committee on Procedure and House Affairs as soon as possible.

That covers the non-votable items.

All in favour of that?

(Motion agreed to)

The Chair: Thank you.

That ends our subcommittee meeting.

The meeting is adjourned.

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