



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

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

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**EVIDENCE**

**Thursday, November 22, 2018**

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**Chair**

**Ms. Linda Lapointe**



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

Thursday, November 22, 2018

• (1315)

[*Translation*]

**The Chair (Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.)):** Welcome to the 18th meeting of the Subcommittee on Private Members' Business of the Standing Committee on Procedure and House Affairs, which concerns the determination of non-votable items pursuant to Standing Order 91.1(1).

We can consult the chart of items in the order of precedence.

Ms. Blaney, do you have the document?

[*English*]

**Ms. Rachel Blaney (North Island—Powell River, NDP):** Yes, I've read it. Can you pass it on?

**Mr. David de Burgh Graham (Laurentides—Labelle, Lib.):** I'd like to make a motion to dispense. Can I move for now to dispense with the 10 items that I have no problems with right away? They are M-111, M-206, M-203, M-207, Bill C-278, M-174, Bill C-417—

**Ms. Rachel Blaney:** Whoa. I was at M-207. Now you may continue.

**Mr. David de Burgh Graham:** Sorry about that.

It was Bill C-278, M-174—I'm waiting for somebody to say, "Bingo"—Bill C-417, M-201, Bill C-415, and M-208. I have no problems with any of these, nor do the analysts, from what I can tell.

[*Translation*]

**The Chair:** Did you list Bill C-415?

**Mr. David de Burgh Graham:** Yes, and I listed Bill C-208. I think there are 10 of them in the list.

**The Chair:** Which ones are left?

**Mr. David de Burgh Graham:** Bills C-331, C-419, C-420, C-421 and C-266.

**The Chair:** Are there four left?

**Mr. David de Burgh Graham:** There are five.

**The Chair:** Right. So Bills C-331, C-419, C-420, C-421 and C-266 remain.

Does everyone follow?

[*English*]

**Mr. David de Burgh Graham:** Are you okay with letting those first 10 be done, and we'll just discuss the other five?

I move:

That all items, except for Bills C-331, An Act to amend the Federal Courts Act (international promotion and protection of human rights), C-419, An Act to amend the Bank Act, the Trust and Loan Companies Act, the Insurance Companies Act and the Cooperative Credit Associations Act (credit cards), C-420, An Act to amend the Canada Labour Code, the Official Languages Act and the Canada Business Corporations Act, C-421, An Act to amend the Citizenship Act (adequate knowledge of French in Quebec), and C-266, An Act to amend the Criminal Code (increasing parole ineligibility), not be designated non-votable.

(Motion agreed to [*See Minutes of Proceedings*])

[*Translation*]

**The Chair:** We're going to start with Bill C-331.

[*English*]

**Mr. David de Burgh Graham:** Do you want me to very briefly identify the concern that we have?

The issue on Bill C-331 is that the bill legislates exterior to Canada, and there have been some concerns raised that the law would have no force or effect and is therefore outside of the authority of Parliament. I want to get the analyst's opinion on that matter.

**Mr. David Groves (Committee Researcher):** As always, my analysis is non-binding on you. You can disagree with me as much as you'd like. Ultimately, it's your decision.

With Bill C-331, I did not assess there to be an issue on the level of constitutionality, and that's for the reason that Parliament is capable of legislating extraterritorially, outside of its borders. The provincial legislatures are not, but the federal Parliament can legislate across the planet. If you look in the Criminal Code, you see there are actually several provisions that deem actions that take place outside Canada to be a crime within Canada.

[*Translation*]

**The Chair:** Does anyone have any comments?

[*English*]

**Mr. David de Burgh Graham:** Do you have any thoughts on that?

**Ms. Rachel Blaney:** I think that makes sense. In that case it's nothing new, so I agree with you.

I move:

That Bill C-331, An Act to amend the Federal Courts Act (international promotion and protection of human rights), not be designated non-votable.

**Mr. David Groves:** All right. That's one.

[Translation]

**The Chair:** Shall I proceed to the vote?

Shall we set aside Bill C-331?

[English]

**Mr. David de Burgh Graham:** Let it go on division if you want.

(Motion agreed to on division [See Minutes of Proceedings])

Are we on Bill C-419?

[Translation]

**The Chair:** We are now moving on to Bill C-419.

[English]

**Mr. David Groves:** Bill C-419, an act to amend the Bank Act, the Trust and Loan Companies Act, the Insurance Companies Act and the Cooperative Credit Associations Act with regard to credit cards would make a series of amendments to those acts around credit cards. It would, for example, regulate how banks allocate payments across different credit accounts with different interest rates, require that a credit card provider seek express consent before increasing a credit limit, and require that the credit card advertisements include information on fees and rates.

I have noted the bill in my analysis because of some overlap in substance with Bill C-86, a second act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures. Division 10 of that bill, which is entitled “Financial Consumer Protection Framework”, would make a series of amendments to the Bank Act, some of which touch on credit cards as well. It would, for example, amend the Bank Act to add proposed section 627.35, which would regulate the allocation of payments across credit accounts with different interest rates, just like Bill C-419. It would also include a requirement that bank advertising be “accurate, clear and not misleading”, and would require that express consent before providing any product or service.

To summarize, both bills would regulate, among other things, the ways in which banks administer, offer and advertise credit card accounts. However, while Bill C-419 extends to cover credit card providers that are regulated under four acts—the Bank Act, the Trust and Loan Companies Act, the Insurance Companies Act and the Cooperative Credit Associations Act, Bill C-86 only amends the Bank Act.

One condition that this committee considers in assessing the votability of private members' items is that an item—this is the quote —“must not concern questions that are currently on the *Order Paper* or *Notice Paper* as items of government business”. In this case we have a situation of some degree of overlap between Bill C-419 and Bill C-86, which is on the Order Paper and is a piece of government business, but there are differences in scope. Bill C-419 has a broader statutory ambit. It would extend its provision to three other acts and to the institutions that would ultimately be covered under those acts.

**Mr. David de Burgh Graham:** I have just a very quick question, because I don't want to take all day with it.

When we had the issue with the derelict vessels act, there was a much greater overlap than there is here.

**Mr. David Groves:** I believe so. I would have to refresh my memory specifically on that, but yes, there was a great deal of overlap there.

**Mr. David de Burgh Graham:** The objective doesn't overlap; there just happens to be overlap.

**Mr. David Groves:** Yes. If I could categorize it this way, the objective of this act would be to cover a much broader array of institutions around credit cards, regulating the way they use credit cards, whereas the government's bill is only focused on the Bank Act and on institutions in the Bank Act.

You're right that the subject matter is distinct.

• (1320)

**Mr. David de Burgh Graham:** Do you guys want it to go forward?

**Mr. John Nater (Perth—Wellington, CPC):** I agree with the analyst's analysis.

I move:

That Bill C-419, An Act to amend the Bank Act, the Trust and Loan Companies Act, the Insurance Companies Act and the Cooperative Credit Associations Act (credit cards), not be designated non-votable.

**Mr. David Groves:** Thank you. Good. I appreciate it. It was not a recommendation.

Thank you for speeding me along. If I am taking time, just wave your hands.

**Ms. Rachel Blaney:** You're doing a good job. Carry on.

**Mr. David Groves:** Should we move on to...?

[Translation]

**The Chair:** Bill C-419 is deemed votable.

(Motion agreed to. [See Minutes of Proceedings])

We will now move on to Bill C-420.

[English]

**Mr. David Groves:** Bill C-420, an act to amend the Canada Labour Code, the Official Languages Act and the Canada Business Corporations Act, seeks to make three amendments that, from my analysis, I understand to be distinct in terms of subject matter.

First, it would amend the Canada Labour Code to prevent employers from hiring replacement workers during a strike.

Second, it would amend the Canada Labour Code to allow for the incorporation of provincial law into federal law for occupational health and safety issues involving pregnant and nursing employees.

Third, it would make amendments to a few statutes to incorporate the Charter of the French Language, which is a Québecois act, into federal law in some respects, and it would apply to Quebec only.

In my briefing note, I flagged two issues. The first is that the language in Bill C-420 that addresses the hiring of replacement workers, the first subject I mentioned, is with minor exceptions identical to the language of Bill C-234, a bill that was previously considered by the House and defeated at second reading on September 28, 2016.

The second issue is that the language in Bill C-420 that addresses occupational health and safety, the second of the three subject matters that I laid out, is, again with minor exceptions, identical to the language of Bill C-345. That bill was considered by the House and defeated at second reading.

The issue here is thus that there is an open question as to whether Bill C-420, in the words of the votability criteria, concerns “questions that are substantially the same as ones already voted on by the House of Commons in the current session of Parliament”.

As I said before in my assessment, the bill has three distinct goals or questions, as the language of the provision allows. Two of them, in both substance and means, are extremely similar to bills the House has previously considered and rejected.

I've spoken a bit with the clerk. She can correct me if I misunderstood, but if I understood her correctly, the position of the House of Commons in regard to the admissibility of a motion, amendment or bill is that so long as it is not more or less verbatim a repeat of something upon which the House has already deliberated, it is admissible. As such, the inclusion of new subject matter in this bill and the change in the wording would make this bill admissible.

That said, I interpret—and I want to reiterate again that my interpretations are not binding—that this criterion of votability is broader than admissibility. I say that because, were that the case, the criterion itself would be redundant. It would require this committee to do work that the House of Commons would already be doing. However, again, that's my assessment; it's not binding.

Go ahead.

**Mr. David de Burgh Graham:** There are also other issues in this bill. As I understand it, as you've mentioned, the act would incorporate provincial legislation into federal law, which would bind the federal government to a piece of provincial legislation.

Are there jurisdictional issues on the other point of—

**Mr. David Groves:** There is a provision. I don't want to dig up this big book and go through it—

**Mr. David de Burgh Graham:** Rachel will kill me if you do.

**Mr. David Groves:** Yes...there are some issues around what's referred to as “interdelegation”, but the federal government is entitled to incorporate by reference provincial acts into federal statutes. That is a power that's available in both directions. In some instances, you could even do it with statutes that come from outside of Canada.

**Mr. David de Burgh Graham:** If the provincial act changes, does the federal act necessarily change with it, or does it follow the version that existed at that time?

**Mr. David Groves:** If I'm correct on that, it would follow the version that is in force.

**Mr. David de Burgh Graham:** Then if it changes, it would have to follow that.

**Mr. David Groves:** Yes.

Putting aside the issue on that first criterion, which is whether it concerns a question that has already been voted on, Mr. Graham flagged another issue for me that he wanted me to discuss. I apologize that I didn't include it in my note. I did consider it.

There are some constitutional issues raised by this bill, specifically the portion that is substantially new, the portion about importing the Charter of the French Language into federal law. The issue here is essentially whether or not this bill would be in compliance with two provisions of the charter. The first is section 16(1), which I'll read quickly:

English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.

The second is section 20(1), which says:

Any member of the public in Canada has the right to communicate with, and to receive available services from, any head or central office of an institution of the Parliament or government of Canada in English or French....

It continues on from there.

Bill C-420 would, as I said, incorporate the Charter of the French Language into federal law, in regard to Quebec in particular. Of note is that it would amend the Official Languages Act to require that the federal government undertake not to obstruct the application of the Charter of the French Language, and that every federal institution has the duty to ensure that positive measures are taken for the implementation of that undertaking not to obstruct the charter.

The Charter of the French Language is quite long, but it contains a number of provisions around the status of language in Quebec, including requirements that the civil administration and the government shall use French in their written communications with each other and with legal persons. The issue here would be whether those provisions of the charter would be affected by importing the Charter of the French Language into federal law and requiring—potentially—that federal entities engaging with legal persons or internally in Quebec would be obliged to use written communications in French only.

The criterion at issue here—I just want to flag this really quickly—is that bills and motions must not clearly violate the Constitutions Act, 1867 to 1982, including the Canadian Charter of Rights and Freedoms. I stress the word “clearly” there because constitutionality is a fuzzy subject, even for bills that receive the full vetting of the government, its drafters and its lawyers. I am only one small cog compared to all of that. I understand that “clearly” has been inserted here so that in “unclear” cases, Parliament has the opportunity to debate the issue fully. Everyone can speak as to how they interpret its relationship to the charter.

As such, when I analyze bills under these criteria, I ask myself whether a plausible case could be made, at the level of basic principles, that the bill complies with the charter. I say “basic principles” because these are frequently highly technical contexts, in which even trained experts would disagree. I would never want to hold myself out as a technical expert on every subject that might appear before the subcommittee.

●(1325)

When it comes to language rights under the charter, it is worth noting that section 16(3) states:

Nothing in this Charter limits the authority of Parliament or a legislature to advance the equality of status or use of English and French.

Courts have also recognized that the protection and promotion of the French language in Quebec is a “pressing and substantial objective”, and as a result it may allow for some balancing vis-à-vis other charter rights. It could thus be argued that this act reflects a permissible intrusion on the rights of Quebecers who wish to receive services in English. That said—and again, this is purely a plausible interpretation that I’m offering—I might also add that it may be possible to read this bill so that it doesn’t impose any restrictions on the federal government’s provision of services in Quebec.

The Charter of the French Language often refers to the government, the government departments and other agencies of the civil administration, but these could—could—be understood to be references to the provincial government only, to which section 20 of the charter does not apply. As a result, it may be possible to read this bill to simply require that the federal government not obstruct the provincial government’s operations in French.

I want to reiterate, as I understand it, the “clearly violates” standard allows a bill that has raised clear and complex constitutional issues to not be found non-votable, but my standard would be, in my assessment, that this is the case and that this does not clearly violate, as those words are meant in the provision, the charter. However, my standard, as always, is not the standard that matters here.

**Mr. David de Burgh Graham:** I’m particularly sensitive to constitutional issues, given that I am from Quebec—

**The Chair:** I am too.

**Mr. David de Burgh Graham:** —as is the chair. My opinion and my vote on this would be to make it non-votable on the basis of constitutional issues, so I move:

That Bill C-420, An Act to amend the Citizenship Act (adequate knowledge of French in Quebec), be designated as a non-votable item.

However, this is a consensus committee, and I leave it to your opinions.

**Ms. Rachel Blaney:** Of course, I take it as a great compliment that two of our members’ bills were thrown in this, with some minor changes. It’s nice to know that they support us, but some of the language is a little concerning, and from your assessment—your analysis—it’s not your recommendation.

It sounds as though it’s a little bit hard to know what the impact’s going to be on the ground in terms of implementation. I’m pretty neutral on this one, unfortunately.

●(1330)

**Mr. David de Burgh Graham:** I need a deciding vote.

**Mr. John Nater:** I guess I would err on the side of letting it go to the House and letting the House deal with it. If the will of Parliament is to vote it down, I think that would be an even more effective way to deal with it.

Let it go to the House. That would be my opinion, but...

**Ms. Rachel Blaney:** I always love an opportunity to talk about the great work that my colleagues have done, so yes, I’m fine with it going to the House. It will give everybody an opportunity to talk about the work that the folks in my party have done.

**Mr. David de Burgh Graham:** I think there’s enough to go on division.

[*Translation*]

The vote needs to be called, but it will be carried on division, in any case.

**The Chair:** Right.

(Motion agreed to on division. [*See Minutes of Proceedings*])

We will now move on to Bill C-421.

[*English*]

**Mr. David Groves:** This is another bill that would raise the same criteria, that bills and motions must not clearly violate the charter. It would be presumably the same provisions of the charter—section 16 and section 20.

Bill C-421, an act to amend the Citizenship Act on adequate knowledge of French in Quebec, would amend the Citizenship Act to require that permanent residents who reside in Quebec would, in applying for citizenship, be required to demonstrate an adequate knowledge of French. Typically, under the act, permanent residents are allowed to demonstrate an adequate knowledge of either French or English.

I would first note that as with my comments with Bill C-420, subsection 16(3) of the charter allows for laws that “advance the equality of status or use of English and French”, and that courts in the past have found that the promotion and protection of French—which is arguably the purpose behind this bill—is substantial and pressing. I would also note that Quebec has a great deal more control over immigration than other provinces and so has some unique powers in that regard.

Of course, immigration and citizenship are not necessarily the same, but it’s to say that this is a slightly different relationship between the federal and provincial governments. As such, it could—could, again—be argued that this presents a minimal and justifiable intrusion into the section 20 rights of permanent residents who would then be applying for citizenship.

It could—could—also be argued—and again this is hypothetical and simply being offered for this analysis—that the intrusion is particularly minimal since it does not bar a citizen who took the test in English in Ontario or elsewhere from subsequently moving to Quebec. Section 6 of the charter is about how once you become a citizen you can move within the country freely, and that would be untouched by this bill.

As with Bill C-420, there are complex constitutional issues raised by this bill. I would nonetheless, in my assessment, assess that it could be determined not non-votable, but as always, that standard is not mine to interpret or apply.

[Translation]

**The Chair:** Any comments?

[English]

**Mr. David de Burgh Graham:** This raises an issue that we had in the last one.

[Translation]

**The Chair:** There are citizens in Quebec who speak English and who have permanent resident status. I know many of them. Does this mean that these people could no longer be permanent residents?

[English]

**Mr. David Groves:** It would apply to—

**Ms. Rachel Blaney:** Permanent residents.

**Mr. David Groves:** Yes, they could be permanent residents. Yes. They wouldn't be allowed to apply for citizenship and then ask that their demonstration of competence in language be done in English. When you apply for citizenship, you have to demonstrate competence in a language, and then I also believe you have to demonstrate knowledge of Canadian civics.

[Translation]

**The Chair:** There are permanent residents in my riding who would like to apply to become Canadian citizens, but they speak English. That would mean that they wouldn't be entitled to.

•(1335)

[English]

**Mr. David Groves:** Yes, that's right, unless they were to move or learn French. They would have to move to a different province.

**Mr. David de Burgh Graham:** I would like to make a point on that.

My wife speaks five languages. French is not one of them. When she got her Canadian citizenship, we had just moved to Quebec. I had already lived there; she came to Quebec with me. She would have had to return to Ontario or stay in Ontario to get her citizenship, and I think that's against the values of our Constitution, our charter. I cannot support that on constitutional grounds. I cannot vote to allow this to be votable.

I therefore move:

That Bill C-421, An Act to amend the Citizenship Act (adequate knowledge of French in Quebec), be designated as a non-votable item.

**Ms. Rachel Blaney:** As a person who ran an organization that served newcomers to Canada for many years, I remember helping people in our very anglophone part of the world, in B.C., who spoke

only French, and they would still be able to get their citizenship by using the French language, so I am not going to vote in support of moving forward with this, because it simply is not...well, I don't think it's constitutional, and it totally undermines the fact that Canada is a multilingual country. That's something we should all be proud of.

[Translation]

**The Chair:** So this would be non-votable?

**Mr. David de Burgh Graham:** Exactly, and this gives the mover a right of appeal.

**The Chair:** Okay.

[English]

**Mr. David de Burgh Graham:** That's non-votable, yes.

(Motion agreed to)

[Translation]

**The Chair:** Bill C-266 remains.

**Mr. David de Burgh Graham:** I have no objection to this bill, but I think the analyst has some comments.

[English]

**Mr. David Groves:** It's the last one, as far as I know.

Bill C-266, an act to amend the Criminal Code with regard to increasing parole ineligibility, seeks to amend the Criminal Code so that a person who has been convicted of abducting, sexually assaulting and murdering someone is ineligible for parole for at least 25 and at most 40 years. This would raise the period of parole ineligibility for individuals who commit this pattern of crimes from where it sits now.

Bill C-229, an act to amend the Criminal Code and the Corrections and Conditional Release Act and to make related and consequential amendments to other acts with regard to life sentences would, among other things, have amended the Criminal Code to make parole entirely unavailable for individuals who are convicted of certain types of crime. This would have included individuals who are convicted of abducting, sexually assaulting and murdering someone. Bill C-229 was considered by the House and defeated at second reading on September 21, 2016.

To summarize, Bill C-266 would extend the period of parole ineligibility that would apply to someone convicted of abduction, sexual assault and murder. Bill C-229, among other things, would have prevented someone who is convicted of sexual assault and murder or abduction and murder in respect of a single individual from parole eligibility entirely.

The reason I'm flagging these two is for the same reason that I've flagged others today: it's because private members' items 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. There's a possibility, then, a question that Bill C-266 concerns a question substantially similar to the question contained in Bill C-229, on which the House has already voted. Both would reduce parole eligibility for a certain type of offender.

There are, however, differences. Bill C-229 would have covered a much broader array of crimes and would have removed parole eligibility entirely. Bill C-266 is more targeted to a specific type of crime and would provide for an extended period of ineligibility to be determined at the discretion of a judge.

The mechanisms are different in that one would have been automatic and would have lasted for life, while the other is an extension that has some flexibility within it at the discretion of the judge, after considering submissions from a jury, if they would like to make those submissions.

**Mr. David de Burgh Graham:** I won't support the bill, but I don't have a problem with it being votable, if I can put it that way.

I therefore move:

That Bill C-266, An Act to amend the Criminal Code (increasing parole ineligibility), not be designated non-votable.

**Mr. John Nater:** I concur. Well, I support the bill; I concur with your analysis of letting it be votable. I don't want Mr. Bezan tracking me down on this one.

**Mr. David de Burgh Graham:** There would be minimum sentence for him; don't worry.

**Ms. Rachel Blaney:** I concur as well.

[*Translation*]

**The Chair:** So it would be votable.

(Motion agreed to. [*See Minutes of Proceedings*])

**Mr. David de Burgh Graham:** Madam Chair, I move:

That the Subcommittee present a report listing those items that it has determined should not be designated non-votable and recommending that they should not be considered by the House.

(Motion agreed to. [*See Minutes of Proceedings*])

**The Chair:** The following motion is moved:

That the Chair report the findings of the Subcommittee of the Standing Committee on Procedure and House Affairs as soon as possible.

(Motion agreed to. [*See Minutes of Proceedings*])

[*English*]

**Mr. David de Burgh Graham:** If there's an appeal, it goes to PROC, not to us, right? It's not to us.

[*Translation*]

**The Chair:** The meeting is adjourned.









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