



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

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

SMEM • NUMBER 004 • 1st SESSION • 41st PARLIAMENT

EVIDENCE

Tuesday, June 19, 2012

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Chair

Mr. Harold Albrecht

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

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•(1105)

[English]

The Chair (Mr. Harold Albrecht (Kitchener—Conestoga, CPC)): I'd like to call to order this meeting of the subcommittee on private members' business.

We have 15 items under consideration today. We will be proceeding through them as the order on your sheet indicates. Do you all have the worksheet?

An hon. member: Yes.

The Chair: We have the worksheet and the actual bills accompanying them.

Let's begin with Bill C-399.

We'll ask our analyst to comment on the four criteria, and then we will proceed with an indication of our wishes on allowing it to be votable.

Mr. Michel Bédard (Committee Researcher): This bill would amend the Income Tax Act to provide for a tax credit for travel expenses for volunteers.

The bill is not outside federal jurisdiction. It does not appear to violate the Constitution, including the charter. It is not substantially similar to a private member's bill already voted on in the current session, and it is not similar to a government bill already voted on in the current session.

The Chair: Are there any concerns?

Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Actually, I agree with all of those criteria, but am I not right that a tax credit would run afoul of another problem about votability and the royal recommendation?

The Chair: Mr. Reid, normally we allow bills that may require royal recommendation to proceed. They may be stopped at another point down the road; I think it's prior to third reading.

Our analyst can confirm that.

Mr. Michel Bédard: According to section 54 of the Constitution, and the Standing Orders, the House of Commons cannot adopt a bill that requires a royal recommendation, but it may debate it. During the process the Speaker will be called upon to rule on a bill if there's an argument, a point of order, to the effect that there might be a need for royal recommendation. Even when there is a ruling, the bill could

continue through the process until the question is put at third reading.

There's always a possibility that the bill will receive royal recommendation during the process, as happened a month or so ago with one bill.

Mr. Scott Reid: That answers my question.

The Chair: Great. Thank you.

As I see no opposition, we'll consider the motion on Bill C-399 votable.

Moving on to M-381.

Mr. Michel Bédard: This motion concerns various measures with respect to asbestos in the industrial sector. It would, among other things, call for the implementation of an industrial restraint plan for the communities, depending on the asbestos.

This motion does not appear to be outside federal jurisdiction. It does not clearly violate the Constitution, including the charter.

With respect to its similarity to another motion, there was a motion on asbestos that was already negated by the House of Commons in the current session, on November 1. I have asked that the motion be distributed to all members of the subcommittee.

The subject matter of asbestos is the same, but there are some differences between the two motions. The motion that was just distributed was negated on the opposition day, November 1, 2011.

If you look at Motion M-381, I will bring your attention to paragraph (b), which is about public consultation; paragraph (c), which is about the publishing of a comprehensive list of public and quasi-public buildings containing asbestos; and also paragraph (e), "stop financially supporting the asbestos industry within six months...".

These paragraphs were not part of the motion that was negated on November 1 of last year. So there is some distinction between it and the motion already voted on by the House of Commons.

I looked at the precedents. The only precedent I could find in recent history was the motion by Mr. Dion that was deemed non-votable in 2007. The motion called for the restoration of the court challenges program. It was seen as non-votable because there had already been a report of a committee, substantially the same, restoring the court challenges program.

So this is the only precedent that we found with respect to this motion before us.

•(1110)

The Chair: We've heard the comments of our analyst. There seems to be a fair number of differences with the previous opposition day motion. However, I'm at the will of the committee.

Are there any comments?

Mr. Reid.

Mr. Scott Reid: I know it's a bill and not a motion. We dealt with Candice Hoepfner's bill regarding the firearms registry. It was somewhat similar, was it not? There was a push, which I opposed, to make it non-votable on that basis. Sebastian, you were there.

Mr. Sebastian Spano (Committee Researcher): That meeting could have been in camera, so I'm reluctant to—

Mr. Scott Reid: No, in part only. It was in public.

Mr. Sebastian Spano: I recall Ms. Hoepfner's bill, and at the time there was also Breitzkreuz's bill. Mr. Breitzkreuz's bill had been dropped from the order paper the day before the subcommittee met. When the subcommittee met, Mr. Breitzkreuz's bill was no longer in existence.

Mr. Scott Reid: So it's not something that's been negated. It's something that's been dropped from the order paper. Is that the distinction?

Mr. Sebastian Spano: The criterion is that it must not have been voted on. Mr. Breitzkreuz's bill had not been voted on; it had been dropped.

The Chair: Okay. I see the distinction you're making.

Mr. Sebastian Spano: Of course, it's from memory.

The Chair: All in favour of allowing Bill C-381 to proceed?

Some hon. members: Agreed.

The Chair: Okay. So ordered.

Next is bill C-427.

Mr. Sebastian Spano: This bill would amend the Income Tax Act to establish an income averaging system for artists. This bill is clearly within federal jurisdiction. It does not appear to violate the Constitution, including the charter. It is not similar to a private member's bill already voted on in the current session, and it's not similar to a government bill already voted on in the current session.

The Chair: Are there any concerns?

Seeing none, we'll proceed to bill C-425.

Mr. Sebastian Spano: This bill would amend the Citizenship Act with respect to the residency requirement for permanent residents who are members of the Canadian armed forces. It also provides for the consequences of an act of war against the Canadian armed forces. This bill does not appear to be outside federal jurisdiction and does not violate the Constitution, including the charter. It is not similar to a private member's bill already voted on in the current session, and it is not similar to a government bill already voted on in the current session.

The Chair: Are there any concerns?

Seeing none, we will proceed to M-382.

Mr. Sebastian Spano: This motion with respect to Canadian foreign policy on the right of freedom of religion and conscience does not appear to be outside federal jurisdiction. It does not appear to violate the Constitution. It is not substantially similar to a motion already voted on in the current session, and it's not similar to a government motion already voted on in the current session.

The Chair: Any concerns?

Seeing none, we'll proceed to C-420.

Mr. Sebastian Spano: This bill will establish the Office of the Commissioner for Children and Young Persons in Canada. The measures provided in this bill do not appear to be outside federal jurisdiction. It does not appear to violate the Constitution, including the charter. There's no similar private member's bill that had been voted on in the current session, and there's no government bill already voted on in the current session. Once again, there might be a need for a royal recommendation for the adoption of this bill, but that is not a question for the subcommittee to decide.

The Chair: There are no concerns regarding C-420 to proceed, so it will proceed.

Next is C-424.

Mr. Sebastian Spano: This bill would amend the Canada Elections Act to increase fines for certain offences. It would also permit the Chief Electoral Officer to contest the election of a candidate. This bill does not appear to be outside federal jurisdiction. It does not appear to violate the Constitution, including the charter. There's no similar private member's bill that had been voted on in the current session, and there's no government bill that had already been voted on in the current session similar to this bill.

The Chair: Mr. Toone, go ahead.

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): Is there a question of royal recommendation here?

The Chair: Yes. Again, I think some of these will require that, but that doesn't come into consideration by this committee.

Mr. Scott Reid: Why would they need a royal recommendation? Is expenditure involved?

Mr. Philip Toone: There are fines. It's possibly a form of taxation.

•(1115)

Mr. Scott Reid: I think that's okay.

My point was a different one. I'm wondering at what point you make a penalty high enough that it can no longer be dealt with by summary conviction. It needs to be treated as a criminal matter. Some of these numbers are pretty large, a year in prison and \$20,000. Does that not create a problem?

Mr. Sebastian Spano: I'm not sure there is a criterion or given threshold upon which summary procedure is no longer permitted. With regard to the criteria, this committee is—

Mr. Scott Reid: No, what would happen is it would relate to... Let's say for the sake of the argument, to make the point in a very stark fashion, that for the summary conviction the fine were hanging or imprisonment for life. That would be problematic. You would have to have a criminal proceeding before you could carry out something so severely punitive. The line is drawn somewhere, but I'm just not sure where the line is drawn. I don't know if it's a bright line or a fuzzy one.

Mr. Sebastian Spano: I mentioned the bill. If you look on the first page, at the proposed paragraphs 500(5)(a) and (b), the first of those paragraphs is with respect to summary convictions, and the amount of the maximum fine is increased to \$20,000. The second paragraph is with respect to conviction on indictment. Then the fine is established at the maximum of \$50,000. The bill makes a distinction, as currently the act does too.

Mr. Scott Reid: At some point you are making a distinction between being hanged and being hanged, drawn, and quartered, right, if it's severe enough?

The Chair: I think we're getting into the content of the bill. At this committee we need to limit ourselves to the question of votability. If I could ask us to limit our remarks to that, are there any further remarks on all four criteria? Seeing none, I am assuming that you are all in agreement to allow this to proceed? Okay.

Mr. Scott Reid: I actually have a reservation about that. My criterion is the Canadian Charter of Rights and Freedoms. The question is that at some point you—

The Chair: You want to make that point? That's what the committee is for.

Mr. Scott Reid: Yes, I guess I am making the point that I have this concern.

The Chair: Okay. We're about ready to vote on this one, then.

Mr. Philip Toone: Can I just point out that you might be going into the cruel and unusual punishment section, right?

Mr. Scott Reid: Obviously pain is cruel and unusual punishment, so you actually can't do that. I'm aware of that. But you see my point that—

Mr. Philip Toone: I understand the point.

Mr. Scott Reid: I'm just not sure where the line is drawn.

The Chair: Can we just have a semblance of order here?

Mr. Toone, make your point, and then we will go back to Mr. Reid.

Mr. Philip Toone: I'm just not sure that it falls within the criteria. I see your point, but frankly I think that would be up to debate. Maybe this bill could stand a bit of improvement in committee, frankly.

The Chair: I think that's what I was trying to point out earlier, that we are getting into the content. But Mr. Reid feels that we are in the constitutional area.

Mr. Reid.

Mr. Scott Reid: No, the content is what makes it constitutional, Mr. Chairman. I do think Mr. Toone has a good point. In general, I think things should go through, and Parliament has the ability to deal intelligently with issues of constitutionality; and, of course, issues of unconstitutionality ultimately get dealt with intelligently by the courts. So we have several layers of protection in addition to this committee, thank goodness.

The Chair: At this point, we are going to proceed on the basis of the question of votability. I'm going to ask those members who are in favour of allowing it to proceed to raise their hand. Those opposed?

(Motion agreed to)

The Chair: Now we move to M-388. I must admit a little affinity to this particular motion, because it's the same number that I had one on a couple years ago. I declare a conflict of interest.

Some hon. members: Oh, oh!

The Chair: Seriously, go ahead.

Mr. Sebastian Spano: This motion calls on the House of Commons to express its support for various measures regarding Canadian firefighters. This motion does not appear to be outside federal jurisdiction. It does not appear to violate the Constitution, including the Canadian Charter of Rights and Freedoms. It is not substantially similar to a motion already voted on in a current session. It's not substantially similar to a government motion already voted on in the current session.

The Chair: Okay. Are there comments or concerns? Seeing none, M-388 will proceed.

Now we go to M-387.

Mr. Sebastian Spano: This motion calls upon the House of Commons to express the opinion that the government should further the success of its 2006 blue sky policy. This motion does not appear to be outside federal jurisdiction. It does not appear to violate the Constitution, including the Canadian Charter of Rights and Freedoms. It is not substantially similar to a motion already voted on in a current session, be it a private member's motion or government motion.

• (1120)

The Chair: Are there any comments or concerns? Seeing none, we will proceed to M-385.

[Translation]

Mr. Sebastian Spano: Motion M-385 seeks the creation of a House of Commons committee whose mandate would be to develop a national bullying prevention strategy. This motion does not appear to be outside federal jurisdiction. It does not appear to violate the Constitution, including the Charter. This motion is not substantially similar to a private member's motion already voted on in the current session, and it is not similar to a government motion already voted on in the current session.

[English]

The Chair: Thank you.

Are there any comments or concerns?

Seeing none, we'll move to Bill C-398.

[Translation]

Mr. Sebastian Spano: This bill would amend the Patent Act to make it easier to manufacture and export pharmaceutical products to developing countries. It seeks to eliminate some of the administrative constraints under Canada's Access to Medicine Regime.

This bill does not appear to be outside federal jurisdiction. It does not appear to violate the Constitution, including the Charter. It is not similar to a private member's bill already voted on in the current session. And it is not similar to a government bill already voted on in the current session.

[English]

The Chair: Okay. Are there any concerns or comments?

We'll move to Bill C-400.

[Translation]

Mr. Sebastian Spano: Bill C-400 seeks to establish a roadmap in order to develop a national housing strategy. The measures set out in this bill do not appear to violate the Constitution, including the Charter. They also appear to be within federal jurisdiction. There is no similar private member's bill already voted on in the current session. And there is no government bill already voted on in the current session.

[English]

The Chair: Are there any concerns?

Seeing none, we'll move to Bill C-428.

[Translation]

Mr. Sebastian Spano: This bill amends the Indian Act to require band councils to publish their by-laws, repeals certain outdated provisions of the Act and requires the Minister of Indian and Northern Affairs to report annually on the work undertaken to develop new legislation to replace the Indian Act.

This bill does not appear to be outside federal jurisdiction. It does not appear to violate the Constitution, including the Charter. It is not similar to a private member's bill already voted on in the current session. And it is not similar to a government bill already voted on in the current session.

[English]

The Chair: Thank you.

Mr. Toone.

[Translation]

Mr. Philip Toone: On the contrary, I feel that the bill before us could raise a constitutional problem. Section 35 of the 1982 charter says:

[English]

The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed...

For greater certainty...“treaty rights” includes rights that now exist by way of land claim agreements or may be so acquired.

[Translation]

This bill expands the requirements for band councils. But without the authorization of those councils, we cannot change the Canadian Constitution. There is a mechanism to amend the Constitution. We are amending section 35 without following the amendment procedure. I think section 35 would have to be changed.

I do not agree with moving forward without the authorization of Shawn Atleo from the Assembly of First Nations, for example. It needs to be debated. I feel that this committee has gone too far in changing the requirements for band councils. I don't think we can do that. First, we have to obtain their approval through the constitutional mechanism, not through a private member's bill.

● (1125)

[English]

The Chair: Are there any other comments?

Do you want to respond to that at all?

Mr. Scott Reid: Why don't you respond first?

[Translation]

Mr. Sebastian Spano: Mr. Toone, are you talking about the requirements to publish by-laws?

Mr. Philip Toone: New requirements are being imposed on band councils. Many of these band councils are already subject to treaties. According to Canada's constitutional convention, requirements must be given a restrictive rather than broad interpretation. But in this case, we are creating new broader requirements, which is not constitutional.

[English]

The Chair: Mr. Reid, did you want to comment?

Mr. Scott Reid: If I understand correctly—and you can correct me if am wrong about what you just said, Mr. Toone—you're saying that effectively, certain of the treaty rights that are constitutionally entrenched via section 35 of the Constitution Act of 1982 are effectively repealed by virtue of certain sections of this act. I'm just trying to figure out now which....

There are certain obligations placed upon the bands that in some respects would cause a retrenchment of those treaties. Is that sort of what you're getting at, or am I missing the point?

The Chair: Mr. Toone.

Mr. Philip Toone: Right. That's essentially what I'm saying: if we have treaty rights, and we create new obligations on top of those treaty rights, we're essentially abrogating those treaties or are at least fundamentally modifying them. And that can't be done, because the treaties are now entrenched in the Constitution.

We don't necessarily have to go through the amendment system of seven provinces that require 50%. It is a federal jurisdiction, so there are possibly other ways to do this. But I don't think a private member's bill is the correct vehicle.

Mr. Scott Reid: If I may speak to that, I have some knowledge of this subject, being the only person, as far as I know, to have actually formally submitted an amendment to the Constitution as a private member's motion. It was a 7/50 amendment—that is, requiring seven provinces and 50% of the population. That's done by motion, but amendments to the Constitution under federal jurisdiction I think are done by section 45, I think it is. Forgive me. I'm not sure which section it is.

Let's just find that out, and I'll continue my thought once we have that done. I'm not sure that it's a section 45 amendment. That really deals with the executive government.

I think it's section 44. That's done by bill. An example is the Nunavut Act, which effectively amended the Constitution to create the new territory of Nunavut. There was a bill, and part of the bill was constitutional in its implications, but not the whole thing. So it has been done. That's how it's done.

That particular kind of amendment is done through a bill as opposed to being done through a motion. Most constitutional amendments are done by means of a motion, but this is the exception.

The Chair: We'll go to Mr. Spano.

[*Translation*]

Mr. Sebastian Spano: I am going to quickly talk about the impact of section 35 of the Constitution Act, 1982. At this point, since the criterion is clearly constitutional and since we are citing a treaty, it could obviously have some impact, but that has to be claimed and demonstrated. In some cases, the legislation might not apply if they violate treaties. Requirements are already imposed on band councils, and I don't think it is unconstitutional to change those obligations.

In terms of the procedural process by which the private member's bill can amend the Constitution, there is really no constitutional constraint. A member of Parliament can introduce a bill to amend the Constitution directly because it is allowed through the amending formula, section 44, that is. In addition, the Constitution Act, 1871, allows the Parliament of Canada to explicitly legislate on territories.

When other amending formulas apply, a member of Parliament could obviously introduce a motion to amend the Constitution. In that case, the appropriate number of provinces would have to adopt the motion as well.

• (1130)

[*English*]

The Chair: Okay, M. Dion.

[*Translation*]

Hon. Stéphane Dion (Saint-Laurent—Cartierville, Lib.): It is possible that this bill contravenes some provisions in some treaties; it is also possible that it does not. It will be up to the committee to determine that. In my view, the bill in itself does not violate the Constitution. It has to comply with it just like any other bill. That is something the committee will have to check in order to ensure that a bill is agreed to on its substance. The only remaining problem is to make sure that it complies with the existing treaty. That could be established in the parliamentary process.

[*English*]

The Chair: Okay, I'm going to say that we've had adequate debate, but I will not make that judgment. Does anyone want to comment further?

We need to move ahead with a decision on whether or not to allow this to proceed.

Mr. Toone.

Mr. Philip Toone: Can we have a recorded vote?

The Chair: Sure.

All in favour of allowing this to proceed?

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

The Chair: Now we'll move to Bill C-429.

[*Translation*]

Mr. Sebastian Spano: Bill C-429 would amend the Radio-communication Act and the Telecommunications Act with respect to antenna system infrastructures. Basically, the bill legislatively codifies a circular policy already applied by Industry Canada.

This bill does not appear to be outside federal jurisdiction. It does not appear to violate the Constitution, including the Charter. It is not similar to a bill already voted on in the current session, be it a government bill or a private member's bill.

[*English*]

The Chair: Are there any concerns or comments?

Seeing none, we will move to motion M-386.

[*Translation*]

Mr. Sebastian Spano: Motion M-386 seeks the guidance of the House on the Indian Act as the embodiment of colonial and paternalistic policies, which have denied First Nations their rights and fair share in resources. It essentially asks that the act be eliminated.

This motion does not appear to violate the Constitution, including the Charter. It appears to be within federal jurisdiction. It is not similar to a motion already voted on in the current session, be it a private member's motion or a government motion.

[*English*]

The Chair: Are there comments or concerns?

Seeing none, motion M-386 is considered votable.

Now we need a motion by one of our members that the subcommittee present a report listing those items which it has determined should not be designated non-votable and recommending that they be considered by the House.

That's moved by Mr. Reid.

All in favour?

(Motion agreed to)

The Chair: Okay. Thank you.

I declare the meeting adjourned.

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