



House of Commons
CANADA

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

SMEM • NUMBER 003 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Monday, June 15, 2009

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Chair

Mr. Harold Albrecht

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• (1205)

[English]

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

At our last meeting, the subcommittee dealt with six items on the order of replenishment.

Our first item of business today will be Ms. Hoepfner's bill, Bill C-391. You're probably all aware that the Speaker has ordered that Bill C-301, which was Gary Breitung's bill, is to be dropped from the order paper and removed from the order of precedence. According to the criteria by which we're able to deem items non-votable, some members argued this based on perceived similarities between Bill C-301 and Bill C-391. Since that impediment has now been removed and is no longer an issue, I'm going to rule that Bill C-391 is votable, and we'll move on to the subsequent items.

We'll move on to M-386.

Ms. Chris Charlton (Hamilton Mountain, NDP): Mr. Chair, I'd like to ask a question.

The Chair: Madam Charlton.

Ms. Chris Charlton: I suppose it's a question for the analyst. Bill S-5 is still before Parliament. It's in the Senate. It's identical to Bill C-391. It's my understanding that one of the criteria is about bills that are identical before Parliament. Bill S-5 is before Parliament. Could the analysts comment on that?

The Chair: Go ahead.

Mr. Michel Bédard (Committee Researcher): That may be a question for the analysts and the clerk as well. It is a principle of parliamentary procedure that this House, the House of Commons, should not know what is taking place in the other place. So even though it's public knowledge that Bill S-5 is before the Senate, we should not take into consideration Bill S-5 when we're examining the private member's bill and the criteria.

Ms. Chris Charlton: Is that the case even when it's a current government bill? Because that is one of the criteria before us, and Bill S-5 is a government bill.

Mr. Michel Bédard: My understanding is that it will also apply to Bill S-5, a government bill.

The Chair: Unless we hear differently, I think what our analyst has indicated is pretty clear.

We'll move on to—

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Mr. Chair, I would like a ruling from the Speaker, if possible, on this very issue, or a ruling from you, given that you are the chair. Given that the government has an item of business that is identical to that which Ms. Hoepfner has put forward in Bill C-391, I would like a ruling on whether or not that can be taken into consideration.

The Chair: With all due respect, I think we have the four criteria upon which bills are votable or non-votable outlined clearly before us. I think it's up to this committee to decide their votability, not the Speaker.

Mr. Reid, do you want to comment?

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Yes. I have the list of criteria as decided by the committee on procedure and House affairs. Under the Standing Orders, the criteria made by the procedure and House affairs committee are in fact part of the Standing Orders, although not contained therein.

The four criteria include items 3 and 4. I'll read them both. Item 3 is the item on the basis of which opposition members opposed allowing Bill C-391 to go forward while Bill C-301 was on the order paper. On the argument there, the criteria is, "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, or as ones preceding them in the order of precedence." That criteria is no longer met.

Criteria number 4 is, I assume, what is being referred to here. It states, "Bills and motions must not concern questions that are currently on the Order Paper or Notice Paper as items of government business."

The Order Paper and Notice Paper are instruments of the House of Commons. Bill S-5 is in the Senate and therefore is on neither the order paper nor the notice paper. Therefore, there is no need to fear that Bill C-391 would in any way be out of order on the basis of where Bill S-5 is. It would be different if Bill S-5 had been passed by the Senate and was now before the House on the Order Paper and Notice Paper, but it isn't.

• (1210)

The Chair: On checking with the clerk as well, it is clear that it's referring to items that are in the House of Commons, and that one is not.

Ms. Charlton.

Ms. Chris Charlton: Mr. Chair, I appreciate that guidance. I just heard you say that it's not a matter for the Speaker, but that we vote on the bill. Could we have a vote on Bill C-391?

The Chair: Sure.

Mr. Reid.

Mr. Scott Reid: Mr. Chairman, I'm just curious. I should advise members, and I'm sure everybody is going to vote based on the criteria. If the intention is to vote with no actual criteria against the bill in order to stop it from going forward, I would just remind the opposition members of two things. One, we are meeting in a public session so their vote is now on the record. Two, it would be simply impermissible for us to allow this to go forward as a negative item. I would have to be in a position of having to prevent this from being reported back to the main committee. I just make that observation, Mr. Chairman.

The Chair: Are there any further comments?

Madam Gagnon.

[*Translation*]

Ms. Christiane Gagnon (Québec, BQ): Is there interference from Bill S-5 and is the bill votable or not?

So, if I understood correctly, there is no interference. The fact that Bill S-5 is before the Senate and that it is somewhat in the same spirit, if not identical, does not interfere with whether this bill is votable or not.

[*English*]

The Chair: Madam Gagnon, both our analyst and our clerk have clarified the fact that there is no interference and that the bill is not before the House in any form. Therefore the four criteria that we've looked at certainly do not impede this bill in any way.

Ms. Charlton.

Ms. Chris Charlton: I just wondered if you could remind me. I know that when Mr. Breitzkreuz's bill was before the House this morning, he wasn't in the House to move the motion on the bill and therefore it wasn't debated. I know it was dropped in the order of precedence. Was it actually withdrawn?

The Chair: My understanding is that there were multiple attempts to have the bill withdrawn, and because it was not debated this morning, it is automatically ruled by the Speaker to no longer...but I'll look to my clerk.

The Clerk of the Committee (Mr. Jean-Philippe Brochu): The bill was dropped from the order paper, so it's no longer in front of the House now.

Ms. Chris Charlton: So when does that take effect—tomorrow when the order paper comes in or immediately?

The Clerk: It was this morning when the Speaker gave his ruling.

Ms. Chris Charlton: Thank you.

The Chair: So we're clear? There is no bill currently before the House that's the same as Bill C-391, and I'm going to ask for a motion then to agree to allow this one to stand.

Mr. Scott Reid: Let's go to a recorded vote, Mr. Chairman, and then I'll have some comments to follow that.

The Chair: We'll have a recorded vote.

Madam Gagnon.

[*Translation*]

Ms. Christiane Gagnon: I want you to tell us what we are voting on so that it is perfectly clear.

[*English*]

The Chair: We're voting on whether or not Bill C-391 is votable as a private member's bill.

Hon. Marlene Jennings: A point of order, Mr. Chair.

The Chair: Madam Jennings.

Mr. Scott Reid: So—sorry—there is going to be a motion?

The Chair: There will be a motion. I will have to ask for a motion.

Mr. Scott Reid: Will it be a motion to negative? Is that how it works?

The Chair: Well, we'll have to decide. Someone is going to have to make a motion one way or the other.

Mr. Scott Reid: I see. Okay. Thank you.

The Chair: Madam Jennings.

Hon. Marlene Jennings: I have participated in subcommittee meetings in camera. Is a recorded vote normal? I have no problem, but is that normal practice that you have a recorded vote when you're in camera?

The Chair: Madam Jennings, we are not in camera, just to clarify. This is a public session.

Hon. Marlene Jennings: Well then let's go for a recorded vote. Thank you.

The Chair: Okay.

Mr. Reid.

Mr. Scott Reid: Somebody has to make a motion.

The Chair: That's correct. Are you prepared to make a motion?

Mr. Scott Reid: Well, it's automatically acceptable unless someone makes the motion that it not be acceptable.

● (1215)

[*Translation*]

Ms. Christiane Gagnon: A point of order, Mr. Chair. Why are we not in camera? We were told that we would be.

[*English*]

The Chair: The notice that went out clearly indicated that it was a public meeting. I've checked with the clerks, and there are no rulings indicating that the private members' subcommittee needs to meet in camera. On that basis, we called the meeting as a public meeting.

[*Translation*]

Ms. Christiane Gagnon: Did you make that decision by yourself?

[English]

The Chair: As chair, I called the meeting as public after discussing with the clerk whether it was procedurally possible.

[Translation]

Hon. Marlene Jennings: So let us ask to be in camera.

Ms. Christiane Gagnon: I am new to this committee, but, normally, the decision to sit in camera is made collegially and with respect for all members of the committee.

[English]

The Chair: It's clear, Madam Gagnon, that the committee is the master of its own fate. If the committee chooses to move in camera, I'm certainly at the will of the committee.

Hon. Marlene Jennings: I propose that the committee move in camera in conformity with the practices of subcommittees when discussing this kind of issue. My understanding is that this subcommittee has sat in camera every single time it's met. It is my understanding—and you can correct me if I'm wrong—that this is the very first time that this committee is not in camera. As you can see from the reaction from some of the members, they assumed, as did I, that the meeting was in camera.

I move that the meeting go in camera.

The Chair: I will accept that motion. I just want to verify with the clerk....

[Inaudible—Editor]...that the motion is non-debatable and non-amendable.

Mr. Scott Reid: Mr. Chair, I believe there was a motion on the floor to the effect that we would be voting on Bill C-391, up or down. You can't go back after having had a vote. We had a show of hands, and then we were moving to an actual recorded vote. We can't stop in the middle of a vote and have a discussion of whether we're going to go in camera. As I saw it, the three opposite members were all indicating they wanted Bill C-391 killed by voting it down. I was voting in favour, and I realized that happened and I said I would like to make this vote on division. You can't stop in the middle of a vote and go in camera or do any other procedural item.

In fact, we are in the stage now of debating, I gather. Actually, we should be having a vote. We have to vote, period. The vote is on whether Bill C-391 is votable under the four criteria before us. It's not on any other subject. It's certainly not something that should be stopped whenever—

Hon. Marlene Jennings: On a point of order.

Mr. Scott Reid: —Madam Jennings feels like throwing the rules aside and—

Hon. Marlene Jennings: A point of order, Chair.

Mr. Scott Reid: I'm in the middle of a point of order. You can't interrupt one point of order with another, Mr. Chair.

Hon. Marlene Jennings: I thought you were trying to debate. You did not begin with a point of order.

The Chair: Madam Jennings, with all due respect, I'd like Mr. Reid to finish.

Mr. Scott Reid: She's right. I actually didn't call a point of order. I don't know if there's some kind of rule that says if you forgot to say it you're out of order.

Anyway, this is a point of order, clearly, because the orders require that votes be completed. All three members were in the process of voting against this, and that should be recorded. In fact, the discussion arose when they learned that it wasn't in camera and were asking...but that was a matter of information.

[Translation]

Ms. Christiane Gagnon: A point of order, Mr. Chair. I think that he is assuming that I will vote a certain way.

[English]

The Chair: Excuse me.

[Translation]

Ms. Christiane Gagnon: I do not want to politicize the debate, but that seems to be what people want to do at the moment.

Do not make assumptions about how I will vote. I just asked for us to be very clear about the vote. We are being asked if the bill is votable or not. I wanted to be sure about what I am voting on, because I was not the first time. That I why I asked for the clarification.

[English]

The Chair: I'm going to proceed before someone else runs in here.

We were in the middle of a discussion as to whether we would agree to proceed with Bill C-391. Three members indicated they were opposed to that. We did not have a formal motion to that effect. My understanding is there is not a motion on the floor. We've normally worked by consensus here, so we have not had a formal motion on the floor. Based on that, the only motion that I'm aware of that is on the floor currently is Madam Jennings' motion to move in camera.

Hon. Marlene Jennings: May I make a point? This is not on my motion; it's on the issue of taking a vote on committee business. In committee business we have an obligation to file a report with the committee as a whole. The committee as a whole then files a report with the House of Commons. The procedure is that our reports are confidential until—

● (1220)

The Chair: That's if it's in camera.

Hon. Marlene Jennings: I have never been part of a committee that has discussed a report in public. The rule—and you can check with the clerk.... Simply calling this meeting as a public meeting, I think, was a violation of the rules.

Second, to request a vote in public.... As you see, the members of this committee, of the three opposition parties, only became aware that the meeting was in fact in public when I commented on the issue of a recorded vote being raised and said that you don't have a recorded vote in camera. Then you informed the committee that in fact you had made the decision and that the notice did not say that it was in camera.

The Chair: Actually, Madam Jennings, if you read it carefully, it says clearly on the orders of the day that it's a "public" meeting. I don't take it upon myself—

Hon. Marlene Jennings: I just said the members did not—

The Chair: We have a motion before us. It is non-debatable and non-amendable.

Mr. Scott Reid: On a point of order, Mr. Chair, just to be clear about this, there was a notice sent out—I received it in my office—stating that the meeting was in public. That was received by my office last week. Just to be clear, while we are on the record and in public, that notice was sent out, and any suggestion that the chair or the clerk has acted improperly by having a public meeting, as Madam Jennings seemed to be at least insinuating, is factually incorrect.

Also, on the same point of order, I want to point out that she is also incorrect when she says that these meetings occur, under our rules, in camera. The fact is that our rules say nothing about meeting in camera.

The rules regarding private members' business are under Standing Order 91.1. What they say is that the meetings will occur, but they make no statement about the meetings occurring in camera. I'm just in the midst of finding the relevant order so I can read it to all members, so that they can be disabused of the incorrect notion that this is not something that happens. Forgive me—

Hon. Marlene Jennings: Mr. Chair, are you going to call the vote on the motion?

The Chair: I'm going to call the vote as soon as the point of order is completed.

Mr. Scott Reid: Thank you, Mr. Chair.

The rules were changed—

Hon. Marlene Jennings: Is this procedure?

The Chair: Yes, it is. He's referring to a procedure.

Hon. Marlene Jennings: No. I'm speaking to the clerk, through you, as to whether or not, when a motion that's non-debatable has been tabled—

The Chair: He's raising a point of order.

Hon. Marlene Jennings: —you can even accept a point of order. That's it: whether or not you can even accept a point of order. Do you not have to call the vote immediately?

The Chair: I am informed that I can allow a point of order.

Go ahead, Mr. Reid.

Hon. Marlene Jennings: Under which section, please, does it stipulate that when a motion is deemed non-debatable a point of order can be raised that has nothing to do with the motion that is votable and not debatable?

The Chair: Madam Jennings, this point of order—

Hon. Marlene Jennings: I'm waiting.

The Chair: This point of order clearly has something to do with the motion because we're debating whether or not it's allowable for a subcommittee to meet in public, and that's, I think, the point Mr. Reid is—

Hon. Marlene Jennings: It's not debatable. It's either votable.... I think it should be, until we hear from the—

Mr. Scott Reid: I'm sorry. I'm a bit confused here. It's not my place to say, but procedurally I think Madam Jennings is out of order, in that I was in the middle of a point of order and she interrupted it with something. I guess it's a point of extra-privileged order because it's coming from Madam Jennings. It seems to be her normal belief system that "I'll sort of supersede anything else". Her normal course of action is now to invite you to make a ruling and then get a vote against your ruling in order to shut down debate, which is really what she's trying to do here.

I just want to draw your attention to Standing Order 91.1(1). That is where we are covered:

At the beginning of the first session of a Parliament, and thereafter as required, the Standing Committee on Procedure and House Affairs shall name one Member from each of the parties recognized in the House and a Chair from the government party to constitute the Subcommittee on Private Members' Business, which shall be empowered to meet forthwith after the establishment or replenishment of the order of precedence to determine whether any of the items placed in the order of precedence are non-votable according to the criteria adopted by the Standing Committee on Procedure and House Affairs, provided that no item shall be considered by the House unless the condition set out in section (2) of this Standing Order or one of the conditions in Standing Order 92(1)(b) has been satisfied.

All of which are the four criteria we discussed, and the standing order then goes on to say on the "Report of the Subcommittee" that:

After it has met pursuant to section (1) of this Standing Order, the Subcommittee on Private Members' Business shall forthwith deposit with the clerk of the Standing Committee on Procedure and House Affairs a report recommending that the items listed therein, which it has determined should not be designated non-votable, be considered by the House, and that report, which shall be deemed to have been adopted by the Standing Committee on Procedure and House Affairs, shall be presented to the House at the next earliest opportunity as a report of that Committee and shall be deemed concurred in as soon as it is presented.

That basically completes the discussion of our subcommittee. You'll notice that nothing in there says that we shall meet in camera. Meeting in camera has been a practice; it is not a requirement. When I consult Marleau and Montpetit, Mr. Chairman, I notice that it does make reference to our subcommittee meeting in camera, but it makes so in an edition of Marleau and Montpetit that came out in the year 2000.

• (1225)

In the year 2002 or 2003 the procedure and House affairs committee changed the criteria under which private member's bills are dealt with. Among the changes was the fact that we went from saying there are 10 items allowed to be votable in each session of Parliament to saying that all items are deemed votable unless they are non-votable for one of the following reasons. The criteria changed too.

So if you read Marleau and Montpetit you see that it's referring to a completely different world in which you have essentially members bidding against each other, coming before the committee, the subcommittee, and making their pitch to the subcommittee.

So it says:

As soon as practicable after the order of precedence has been established at the beginning of each session, but not later than 10 days sitting after that date, the Standing Committee of Procedure and House Affairs must meet to select from the items placed on the order of precedence as a result of the draw up to 10 items to be designated as "votable items".

It says up to 10 items in a Parliament. This is what Marleau and Montpetit say when they are saying the meetings should occur in camera.

So this is a very different world they are referring to. Now listen to what happens next:

Being selected as votable should not be construed as a guarantee that the House will adopt the bill or motion.

Certain items which may be selected as votable are nonetheless not to be included as part of the list of 10 votable items, since they were not placed in order of precedence as a result of the draw.

They then go off and list some of the criteria that are going on.

The expectation here at that time was that the subcommittee would consult with the sponsors of each bill. I will just quote from Marleau and Montpetit again. This is on page 909:

It has been the practice since 1986 for the Committee to consult with the sponsors of each bill or motion placed on the order of precedence before making its selection of votable items. Each Member sponsoring an item on the order of precedence is invited to appear before the Committee in a public meeting to make a short presentation explaining why his or her item warrants additional debate and being put to a vote in the House. Each presentation may be followed by a brief question-and-answer period. The Committee has traditionally selected votable items by consensus rather than on the basis of votes.

A Member may ask the Committee not to select his or her item as votable by notifying the clerk of the Committee. This item will still remain on the order of precedence and be debated as a non-votable item.

So this is a very different world in which members were making special pleas before this subcommittee as to whether or not their items should be designated votable. Sometimes they would have to speak as to why their item should be put on the list as opposed to another person's item. Frequently they were of a similar nature. It was often the case that you'd have more than one member presenting on the same day or even at the same time in order to work out which of a number of items should be designated votable.

So it would have been conceivable under those rules that Ms. Hoepfner's Bill C-391 and Mr. Breitzkreuz's Bill C-301 would have come before this committee together. They would have made their case as to which of the two should be made votable, and in the end

the committee could have said we choose one over the other, or I suppose they could have said they would choose neither.

The point is that what you didn't have was a situation in which items were dealt with in a Court of Star Chamber, with the person not having the right to be there to see how their item was dealt with, with no record of what happened and indeed with the sanction of contempt of Parliament against anybody who indicated what was going on, including actions taken by members to kill something on the basis of completely unparliamentary criteria, on the basis of just rewriting the rules as they see fit or their interpretation of the rules as they see fit.

• (1230)

The Chair: Could you please wrap up your point of order? I want to get on with the motion.

Mr. Scott Reid: Yes, absolutely.

What is going on is in reference to a rule that does not exist in terms of the requirement that we be meeting in camera. An effort is being made to ensure that Bill C-391 can be killed quietly by the other parties, the opposition parties, in order to ensure that they don't have to suffer the embarrassment of revealing that they in fact call this one thing—

The Chair: I'm going to call the motion. You are going beyond the point of order.

Ms. Jennings, you made the motion that we move in camera.

Ms. Jennings.

Hon. Marlene Jennings: I move that this subcommittee move in camera.

The Chair: Okay. That's non-debatable and non-amendable.

We'll have a recorded vote.

(Motion agreed to: yeas 3; nays 1)

[*Proceedings continue in camera*]

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

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