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

This is our first meeting. I think all of you have received not only a copy of all the private members' bills, but also the spreadsheet that our analysts have prepared for us to walk through these bills today in an orderly manner.

We will begin with Bill C-317. We will have our analyst give any input that he cares to and then we'll take each item separately in deciding whether or not to include it as a votable item.

Mr. Michel Bédard (Committee Researcher): This bill will amend the Income Tax Act in order to require that labour organizations provide financial information, available for public disclosure.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

The Chair: Are there any questions or comments?

Are all agreed to allow this to proceed as votable? Seeing no opposition, so ordered for Bill C-317.

Now we move on to Bill C-308.

Mr. Michel Bédard: This bill will establish a commission of inquiry into the development and implementation of a national fishery rebuilding strategy for fish stocks off the coast of Newfoundland and Labrador.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

The Chair: Are there questions or comments? No concerns?

Bill C-308 is deemed votable.

Next is Bill C-314.

Mr. Michel Bédard: This bill will enact the breast density awareness act.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

The Chair: Are there questions or comments? Seeing none, we'll consider Bill C-314 votable.

Next is Bill C-310.

Mr. Michel Bédard: This bill will amend the Criminal Code to add the offence of trafficking in persons as an offence that can be committed outside Canada and for which Canadian citizens or permanent residents can be prosecuted in Canada.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

• (1110)

The Chair: Are there any questions or comments?

Seeing none, Bill C-310 is votable.

Bill C-305 is next.

Mr. Michel Bédard: This bill will establish a national public transit strategy, a strategy that would be established by the Minister of Transport, including a series of goals in consultation with the provinces and territories.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

The Chair: Are there questions or comments in regard to Bill C-305?

Seeing none, we'll move on to M-270, Motion No. 270.

Mr. Michel Bédard: This motion, if adopted by the House, will recognize that the construction and maintenance of public infrastructure plays a vital role in the creation and protection of jobs, and that infrastructure is a strategy that supports vibrant, prosperous, and sustainable communities.

This motion does not concern questions that are outside the federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

The Chair: Are there questions or comments?

Seeing none, M-370 is votable.

Bill C-288 is next.

Mr. Michel Bédard: This bill will enact the National Flag of Canada Act. This bill does not concern questions that are outside federal jurisdiction.

With respect to the Canadian Charter of Rights and Freedoms, there might be some issues that may be raised with regard to this bill because its drafting is very broad, and it gives the right to display the flag with no restrictions. However, the principle of the bill itself, the right to display the Canadian flag, itself is not unconstitutional. The issues that I have identified are, in my opinion, fixable during the process.

The Chair: Are there any questions or comments?

Mr. Dion.

Hon. Stéphane Dion (Saint-Laurent—Cartierville, Lib.): What do we do in this kind of case? You are saying what...? Could you repeat your point?

[Translation]

Mr. Michel Bédard: Actually, the criteria to be applied by the subcommittee are as follows: Does the purpose of the bill fall within federal jurisdiction? Does the bill clearly violate the Constitution, including the Canadian Charter of Rights and Freedoms?

Bill C-288 grants the right to

[English]

display,

[Translation]

display the Canadian flag.

Hon. Stéphane Dion: It grants the right to display it.

Mr. Michel Bédard: Yes, that's right. It grants the right to display the Canadian flag and prohibits anyone from stopping someone else from displaying the Canadian flag.

Hon. Stéphane Dion: Yes, I understand that. What is your objection?

Mr. Michel Bédard: There are several issues here. Based on the public statements made by the sponsor, the bill is intended to prohibit, for example, the adoption of bylaws by condominiums that would prevent the displaying of a flag.

In the bill, the right to display the flag is described in very broad terms. I could almost have showed up here today with my Canadian flag. So, I have identified some problems with the bill. It's important to understand that, under section 7 of the Canadian Charter of Rights and Freedoms, a bill that is too broad in relation to the goal being sought, and which includes criminal sanctions, could be declared unconstitutional.

Hon. Stéphane Dion: So, you're saying that, based on the second criterion, this bill could be problematic.

•(1115)

Mr. Michel Bédard: I am saying that this bill could raise a number of constitutional issues. In my opinion, nothing—

Hon. Stéphane Dion: And that would also apply to the first criterion with respect to federal jurisdiction.

Mr. Michel Bédard: As I see it, adopting rules regarding the Canadian flag is within federal jurisdiction.

Hon. Stéphane Dion: Because of the criminal law? It's the criminal law that is affected in this bill.

Mr. Michel Bédard: In my view, the Canadian flag is a little like the National Capital Commission. The residual power comes to mind.

Hon. Stéphane Dion: In relation to the charter.

[English]

My point is that I want to understand the role of this committee. What is it? This gentleman has a problem. Is it our problem to solve it here or what?

The Chair: Mr. Dion, it's important that we take time to allow the question to be finished before the answer is given.

Rephrase your question, please.

Hon. Stéphane Dion: My question is—

The Chair: You can do it in French. That's fine.

Hon. Stéphane Dion: I understand you to say that the way it is written now may create problems with the charter. Is that what you're saying?

Mr. Michel Bédard: That's correct.

Hon. Stéphane Dion: You recommend that it be fixed. Where? This is the question.

The Chair: I think the suggestion is that it's not clearly outside; it's potentially outside. But it could be fixed in committee. That's what our analyst indicated earlier.

[Translation]

Hon. Stéphane Dion: Say it in French.

Mr. Michel Bédard: As part of the legislative process, the subcommittee's role is to determine whether the bill is a votable item or not. A bill is designated a non-votable item if it does not meet one of the criteria, including being within federal jurisdiction and complying with the Canadian Charter of Rights and Freedoms. It must also determine whether it has already been voted on by the House of Commons or whether a similar matter is before the House. Those are the four criteria that should guide the committee in its review. The subcommittee is not supposed to be submitting or suggesting amendments to the bill. The only thing the subcommittee can do is decide whether or not a bill should be deemed a votable item.

Hon. Stéphane Dion: It's yes or no.

Mr. Michel Bédard: That's correct.

The point I'm making here relates to whether or not the bill is clearly constitutional. That is the criterion the subcommittee is required to apply. I was saying a little earlier that it raises certain questions. However, there is no jurisprudence on which I can rely to say that, in such a case, this is what the committee should or should not do. I have identified several issues, but I also pointed out that the principle underlying the bill is not unconstitutional. I believe the issues or concerns that I raised could be reviewed as part of the legislative process. The committee's role is now to decide whether it's unconstitutional—yes or no.

[English]

The Chair: Now I'll go to Mr. Toone.

[Translation]

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): I don't want to get into a discussion about what motivated this bill, but, as regards the second criterion, it is clear that there may be a problem there.

It seems to me that the proposed bill goes beyond the interpretation of section 7 of the charter. So the question is whether the committee should get involved in that. Are we supposed to prevent a bill from being debated in the House because there could be a problem of interpretation?

If I'm not mistaken, the problem with respect to section 7 is that the Supreme Court has provided interpretations of section 7. It seems the bill before us does not jibe with the criteria laid out by the Supreme Court as regards the proper interpretation of this section.

If that is the case, it is clear that this bill would benefit from amendments in committee or, if no amendments come forward, there is a good chance it would be defeated. If someone challenges it in court, I think there is a good chance a judge would strike down the legislation. Once again, the guidance provided by the Supreme Court with respect to section 7 is quite clear. This bill does not comply with the Supreme Court's interpretation.

So, that's the problem I have with this bill. I have nothing against the idea of others continuing our work. It's simply that it makes no sense to do that, based on Canadian constitutional case law.

Does the committee have the right to review the case law, other than the actual wording of the Charter? Can we go ahead and look at the jurisprudence?

I would like an answer to that question.

[English]

The Chair: Go ahead, Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): In what respect is this in violation of section 7 of the charter, which is about “life, liberty, and security of the person”?

Mr. Philip Toone: The problem with the bill that I see right now is that it doesn't seem to respect the idea of having the most restrained action possible on a person's rights; it seems to be looking at the larger sense of restraining somebody's actions. I'm thinking about condo associations, for instance. They would have to allow a very large interpretation, as opposed to a restrained interpretation, of violating somebody's rights. So I'm just thinking that this might not be the appropriate formulation for this law.

• (1120)

Mr. Scott Reid: Presumably, if you don't mind me saying, individual A wants to display the flag, and individual B, who perhaps is the president of the condo association, wishes to prevent it. This prevents person B from stopping person A. You can't pass a condo bylaw, for example, preventing me from putting a flag in my window.

I'm just having trouble understanding how that could lead to a problem with anybody's life, liberty, or security of the person.

The Chair: Mr. Reid—

Mr. Scott Reid: I'm sorry. I should be going through you, Mr. Chair.

I was addressing that to Mr. Toone because he obviously has a concern, but I'd be happy to hear any response that would hopefully satisfy my perplexity.

The Chair: I would like the analyst to speak to the question that Mr. Toone has raised.

[Translation]

Mr. Michel Bédard: In terms of the committee's ability to review constitutional case law, yes, the committee can do that. Indeed, that is the analysis I did myself before making my presentation to the committee.

I was referring to a Supreme Court decision regarding laws whose effects are too broad. Without mentioning it, I was referring to the Heywood case that came before the Supreme Court, where a number of provisions of the Criminal Code were declared unconstitutional.

The test to be applied by the committee is that an item is “clearly unconstitutional”. So, there is no guide. I would like to be able to say that the subcommittee has already defined what is meant by “clearly unconstitutional”, but the subcommittee has never defined what is meant by “clearly unconstitutional”.

I'm trying to provide more information to the committee to guide you in carrying out your task. The fundamental principle behind the bill is not unconstitutional, in my opinion. Some of the problems I have identified with the bill could be corrected during the legislative process by passing amendments at committee stage or at report stage.

I have actually distributed a document in French and English to members of the subcommittee with the wording of a section of the Canada Elections Act. That section gives voters the right to display election advertising posters during the election period. It is drafted differently from the bill we are currently reviewing, in the sense that it is more restrictive. For example, with respect to condominiums, it mentions the areas that are the exclusive property of the person wanting to display the material. When we're talking about a flag or a poster at a residence, it's obvious that the premises are those owned or rented by the individual. So, the wording is more restrictive.

That is the type of amendment that could benefit Bill C-288.

[English]

The Chair: Mr. Dion.

Hon. Stéphane Dion: Thank you, Mr. Chair.

I just want to understand our role, because we may start a debate about the bill. I don't think it's the time to do that, but I understand why a reasonable person might say that we may have to address some issues regarding the charter with this bill.

[Translation]

My colleague said that he couldn't think of anything. As far as I'm concerned, however, if you live, not in a big house, but in a very small condo, a flag could make noise and prevent people from sleeping. There are those kinds of issues that would need to be resolved.

For example, section 322.2 strikes me as extremely reasonable. I can't really see how this bill could be amended to make it reasonable, but I don't believe that is our role here. As far as this bill is concerned, is our role not to report on the charter-related problems that would have to be dealt with in committee?

[English]

The Chair: Correct. Based on that input, and I think if we're done discussing...?

Do you have another point to make? I think we need to move ahead. I think we're coming to a consensus that the bill is actually votable, but we have a few concerns.

Mr. Scott Reid: I was just going to say that I'm actually still not sure how one would use the flag in a way that would lead to a problem relating to section 7, but there is a restriction here. It states that the flag must be displayed in its role as a national symbol. That's paragraph 2(a).

Paragraph 2(b) states that "the display is not for an improper purpose...". That means any attempt to use it maliciously. I could display the flag by draping it over my neighbour's car so he can't leave the driveway and that would not be permitted, or across the end of the laneway so he can't drive out without... Also, "the flag is not subjected to desecration". If I want to start burning flags and create a fire hazard, that wouldn't be allowed either. I think there is a reasonable limit put on it.

• (1125)

The Chair: I think we've had a good discussion.

Michel, do you want to have one last word?

[Translation]

Mr. Michel Bédard: I'd like to follow up on Mr. Dion's comments. The subcommittee's mandate is to determine whether bills and motions should be votable items or not. However, the subcommittee's practice has never been to provide the reasons for its decisions. It simply designates the items as votable or non-votable.

However, the sponsor of the bill could potentially benefit from the discussion that took place in the subcommittee, because subcommittee meetings are now public. So, that is one way the sponsor of the bill could be made aware of the potential problems with his or her bill.

[English]

The Chair: Mr. Dion.

Hon. Stéphane Dion: So the process is only that...?

The Chair: Yes or no.

Hon. Stéphane Dion: It's yes or no, and our deliberations will be known, and that's it.

The Chair: So anyone—the sponsor of this bill, for example—could review the minutes of this meeting and see what the concerns raised were and then take appropriate action, or other members of the subcommittee...when it comes to committee after it has had second reading.

Hon. Stéphane Dion: The suggestion that has been made to look at subsection 322(2) of the Canada Elections Act makes sense. I'm pleased that the sponsor of the bill may have an opportunity to look at that.

The Chair: Okay We're ready to move ahead.

Are all agreed that we will allow this to proceed to votable...? I see no objections. Bill C-288 is votable.

Next is Bill C-313.

Mr. Michel Bédard: This bill will amend the Food and Drugs Act in order to designate non-corrective cosmetic contact lenses as a medical device.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as the ones before the House or already voted on. It does not concern questions currently before the House as items of government business.

The Chair: Are there any concerns or questions? Seeing none, Bill C-313 is votable.

Bill C-290 is next.

Mr. Michel Bédard: This bill will amend the Criminal Code in order to repeal a prohibition against sports betting.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on. It does not concern questions currently before the House as items of government business.

The Chair: Are there comments, concerns, or questions?

Okay? Bill C-290 is considered votable.

I thought we were regaining our momentum, Mr. Dion, and now you're going to take us back.

Hon. Stéphane Dion: It's about...?

[*Translation*]

It's to abolish lotteries in a way, is it not?

Mr. Michel Bédard: Are you referring to Bill C-290?

Hon. Stéphane Dion: Yes.

Mr. Michel Bédard: There is a provision in the Criminal Code that prohibits betting on specific sporting events. Crown corporations such as Loto-Québec are involved in betting on sporting events, but they benefit from a loophole in the legislation, since the bets relate to several sporting events.

What the bill seeks to do is legalize everything. Therefore, betting on a single sporting event would also be legal.

Hon. Stéphane Dion: And the criminal law falls within federal jurisdiction.

Mr. Michel Bédard: Exactly.

[*English*]

The Chair: Seeing no further concerns on Bill C-290, that one is considered votable.

We're moving on to Bill C-306.

Mr. Michel Bédard: This bill will amend the Parliament of Canada Act in respect of members changing political affiliation.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

The Chair: Are there comments or questions? Seeing none, Bill C-306 is considered votable.

Now we have Bill C-217.

Mr. Michel Bédard: This bill will amend the Criminal Code in order to create a new offence in respect of mischief in relation to war memorials and cenotaphs.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

●(1130)

The Chair: Do we have any comments or questions? Seeing none, Bill C-217 is considered votable.

Bill C-311 is next.

Mr. Michel Bédard: This bill will amend the Importation of Intoxicating Liquors Act in order to allow individuals to import wine for their personal use from one province to another.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

The Chair: Are there questions or concerns? Seeing none, Bill C-311 is considered votable.

Next is Bill C-278.

Mr. Michel Bédard: This bill will enact the Purple Day Act in order to designate March 26 every year as "Purple Day", to increase public awareness about epilepsy.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

The Chair: Mr. Dion?

Hon. Stéphane Dion: Have you checked if March 26 is already occupied by another celebration? I don't have enough days for—

The Chair: Exactly. We need a motion to extend the year by a couple of days.

[*Translation*]

Mr. Michel Bédard: A single day could involve several events. In any case, that would not make the bill unconstitutional.

[*English*]

The Chair: Are there any other concerns? Okay. Bill C-278 is considered votable.

Next is Motion No. 269.

Mr. Michel Bédard: Motion No. 269 is a motion calling upon the House of Commons to express its opinion in regard to improving financial literacy in Canada.

This motion does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as the ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

The Chair: Mr. Dion, you are not worried that we already have...?

Hon. Stéphane Dion: I give up.

Some hon. members: Oh, oh!

The Chair: Okay. For Motion No. 269 there are no concerns.

Bill C-304 is next.

Mr. Michel Bédard: This bill will amend the Canadian Human Rights Act in order to repeal some provisions about hate messages.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as the ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

The Chair: Does anyone have questions or concerns?

Bill C-304 is considered votable.

Next is Bill C-309.

Mr. Michel Bédard: This bill will amend the Criminal Code in order to make it an offence to wear a mask or a disguise or to conceal one's identity while taking part in a riot or an unlawful assembly.

This bill does not concern questions that are outside federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as the ones before the House or already voted on, and it does not concern questions currently before the House as items of government business.

The Chair: Are there questions or comments? Seeing none, Bill C-309 is considered votable.

Next is Bill C-300.

Did I miss one? Okay? Everybody is so quiet that I thought I missed one.

Mr. Michel Bédard: This bill will enact the Federal Framework for Suicide Prevention Act. It would, among other things, recognize suicide as a public health issue.

This bill does not concern questions outside the federal jurisdiction. It does not clearly violate the Constitution, including the charter. It does not concern questions that are substantially the same as ones before the House or already voted on. It does not concern questions currently before the House as items of government business.

• (1135)

The Chair: Are there comments or questions? Bill C-300 is votable.

Next is Bill C-215.

[*Translation*]

Mr. Michel Bédard: Bill C-215 would amend the Canadian Forces Superannuation Act and the Royal Canadian Mounted Police Superannuation Act with respect to the deduction of Canada Pension Plan benefits from the annuity payable under each of these acts.

This bill does not concern questions that are outside federal jurisdiction; it does not clearly violate the Constitution, including the

Charter; it does not concern questions that are substantially the same as ones already voted on in the current session; and, it does not concern questions that are currently before the House as items of government business.

[*English*]

The Chair: Are there questions or comments regarding Bill C-215? Hearing none, we're moving on to Bill C-292.

[*Translation*]

Mr. Michel Bédard: Bill C 292 would amend the Corrections and Conditional Release Act to provide that any monetary amount awarded to an offender pursuant to a legal action or proceeding be paid to victims and other designated beneficiaries.

As regards to this bill, I have doubts as to the federal government's power to pass provisions of this kind. It's important to understand that, according to the division of powers in Canada, property and civil rights fall within provincial jurisdiction. Under that head of power, the provinces have jurisdiction over contracts and all private law, including debt priority ranking. That includes debts owed to creditors, in particular. This is something governed by provincial legislation.

Certain provisions of the Constitution grant specific powers to the federal Parliament with respect to bankruptcy, banks or tax collection. Federal lawmakers can use that power, in keeping with their jurisdiction, to change the priority ranking in cases involving bankruptcies, security, bank collateral, or priority granted Revenue Canada. In this case, the bill applies to inmates—in other words, to offenders. It creates a debt priority ranking that is completely different. The distribution would work as follows: first would be the victims, who would benefit from a restitution order, then beneficiaries of a support award, then beneficiaries of individuals having secured a support award made against the offender, and finally a victims support group.

In other words, this new debt priority ranking cannot be connected back to bankruptcy law, to banks, to tax collection or other areas of federal jurisdiction. It's important to understand that this is an amendment to the Corrections and Conditional Release Act made under the criminal law as well as in relation to the establishment, maintenance and administration of penitentiaries. Changing the debt priority order involves the civil law and not the criminal law. That being the case, I do not see how this bill could be considered to fall within the jurisdiction of the federal Parliament.

[*English*]

The Chair: Are there questions?

Mr. Toone.

[*Translation*]

Mr. Philip Toone: Yes, that is also something that concerns me.

If it were to be established that this bill exceeds federal jurisdiction and interferes in an area that clearly falls within provincial jurisdiction, saying that the bill could be amended at the committee stage would not be enough.

I can't see how we could move forward with something like this. The second criterion says, and I quote:

Bills and motions must not clearly violate the Constitution Acts, 1867 to 1982, including the Canadian Charter of Rights and Freedoms.

There is a priority ranking when it comes to collocation. If the federal government interferes in collocation, could it be said that this is a subcategory of federal collocation? Could that work?

• (1140)

Mr. Michel Bédard: Given the way it's written, this bill could not be given such an interpretation. It's important to realize that federal jurisdiction regarding debt priority ranking is limited to certain well-defined areas, such as bankruptcy, tax collection and banks.

If someone tried to do indirectly something that cannot be done directly, that would be deemed unconstitutional because the purpose, indeed, the very essence of the bill would be unconstitutional.

[English]

Mr. Scott Reid: Are you saying the pith and substance of the bill is problematic or...?

Mr. Michel Bédard: What I'm saying is that the pith and substance of the bill belongs to the provincial jurisdiction. Therefore, based on criterion number one, the subcommittee could have grounds to designate the bill as non-votable.

The Chair: Go ahead, Mr. Reid.

Mr. Scott Reid: This is an area where I don't feel I have sufficient facts before me to render a firm decision one way or the other. I think it would be helpful if we were to take the opportunity to invite somebody in to provide us with additional information, someone who is an expert in this area.

I'd mention that the practice of inviting someone in or seeking some external testimony before the subcommittee to make a more well-informed determination as to votability or non-votability is one that has been practised in the past. I know this from experience, because it was done vis-à-vis an item of business that I myself brought before this subcommittee in the 38th Parliament, in which I proposed a resolution to amend the Constitution and they wanted further information about whether it would be votable. Ultimately they decided it was votable, but not until they set it aside to a second meeting and acquired additional information.

I would ask the indulgence of the subcommittee to try to do something similar in this case.

The Chair: Okay. There's a suggestion from Mr. Reid that we get more information.

Mr. Dion.

Hon. Stéphane Dion: When we ask for more information, who will give more information than the analyst appointed for this committee?

The Chair: Mr. Reid, do you want to respond to that? Who do you have in mind?

Mr. Scott Reid: We could start by asking departmental officials at the justice department. I assume they review and do analysis of legislation that deals with their area. All departments would do this. That would be a good starting point.

The Chair: Mr. Toone.

Mr. Philip Toone: I don't necessarily object to this going forward. It certainly wouldn't be the first time there has been a question mark on a bill that has gone before the House. Perhaps what you're proposing would be more appropriate at the committee level.

I'm wondering when this committee next sits, in order to be able to go through that process, as I don't want to delay the bill unnecessarily.

The Chair: The way I understand it is that we have two options. We could follow Mr. Reid's suggestion, have this subcommittee meet again and bring someone in to speak to this, or we could vote it non-votable and then go through the process of having the person who is submitting the bill appeal that, at which point the entire committee would discuss the votability of the bill.

Is that correct? Are those the options we have?

Mr. Michel Bédard: In the past, since I have been assigned to this committee, the committee has sometimes delayed a decision on a bill. I was not here during the 38th Parliament when the expert witness appeared.

Mr. Scott Reid: [Inaudible—Editor]...written submission.

Mr. Michel Bédard: It's possible. It's really up to the committee.

The Chair: I think we have two considerations. One is the timeline in terms of wanting to make sure that this bill isn't unnecessarily delayed, but on that note, we have time because it's in the second half, after the 15, so we do have some time there to study it as a committee.

I think the question is, do we want to study it as a subcommittee and then still report it to the full committee, or do we want to make a decision today and then know that we do have the avenue of the entire committee hearing the submission? I'm open on that. I'm simply your chair, so it's the committee's decision, not mine.

Mr. Reid.

•(1145)

Mr. Scott Reid: I'm not trying to address the question you've just raised, but I do want to raise a concern. We can't change the criteria. They're laid down under the Standing Orders. But I do think the criteria we face are problematic in that they say, "Bills and motions must not clearly violate the Constitution Acts, 1867 to 1982, including the Charter of Rights and Freedoms".

I think it would actually be more helpful.... Our previous discussion earlier today indicated that we were thinking this way anyway: it's really a question of whether they violate the Constitution in some way that is not fixable. Ultimately, the question of whether it's a clear violation is one that is to be made by the courts, not by us, but on the question of whether the item could be fixable, it is at least contingently something that should be made either by this body, by our parent committee, or by the House—

The Chair: Just to clarify, Mr. Reid, I think that on this one our analyst is more concerned about criteria number one than number two in terms of the jurisdiction.

Mr. Scott Reid: That's true, and I recognize that, but essentially the point is this: is it something that is irretrievably broken? As he says, is the object of the bill something that's irretrievably problematic or is it something that is fixable via an amendment?

The Chair: Mr. Bédard, do you want to respond to that?

Mr. Michel Bédard: Just on the question of procedure, when this subcommittee reports a bill as non-votable, there's an appeal to the full committee. The committee, PROC, had witnesses appear before it when it was looking at bills in the past, so this is one thing. Also, with respect to criteria number one and criteria number two, criteria number one does not include the clearly unconstitutional point, but whether it is or is not within federal jurisdiction.

The Chair: Mr. Dion.

Hon. Stéphane Dion: I was Minister of Intergovernmental Affairs long enough to know that colleagues in this House are very, very generous and want to intervene about everything, and sometimes we need some discipline. It's not the end of the world to be told that the substance of your bill is outside federal jurisdiction. It may be a good way to improve the ability of our colleagues to focus on their own role. I would suggest that we should say no, because it's not the end of the world, and they should understand that if we say no,

[*Translation*]

it is then submitted to the full committee. Right?

Mr. Michel Bédard: Exactly.

Mr. Stéphane Dion: In that case, I suggest it be referred to the committee and experts will appear as witnesses.

[*English*]

The Chair: I think the other benefit we have in the fact that we're meeting in public is that the writer of the bill has the option of looking back through the transcript of this meeting to see what the concerns that were raised actually were.

Mr. Reid.

Mr. Scott Reid: I'm not necessarily averse to that course of action, although I would have to ask for a recorded vote and then vote in

favour of the bill going forward as votable, because I feel very uncomfortable voting against something unless I'm certain in my own mind that it is something that, to my own satisfaction, meets the criteria here. We always want to err in the direction of votability.

That being said, I have a question relating to the procedures that would go on at the main committee. Is it a single meeting that's permitted? Is that it? Or is more than one meeting permitted prior to a final decision being made by the main committee?

The Chair: I'll ask the clerk to respond to that.

The Clerk of the Committee (Mr. Olivier Champagne): The Standing Orders are not very clear on that. They say that the sponsor of the bill or the motion may defend his or her bill or motion to the procedure and House affairs committee within five sitting days after the current meeting. So if at least the first meeting would be within those five sitting days, I don't think it would be a problem to have—

Mr. Scott Reid: Is it five days for them to make the appeal or for the appeal to be actually heard by a meeting?

The Clerk: Well, technically, the appeal would be after the procedure and House affairs committee would have agreed on a report from the subcommittee designating the bill as non-votable. Then the appeal process would start. So when the sponsor appears before the procedure and House affairs committee, it's not really an appeal. It's really consideration of the item in the full committee.

Mr. Scott Reid: That's fair enough.

The question was whether we have time within five days.

The Clerk: Yes, that is clear.

To the question of whether we can have multiple meetings in the procedure and House affairs committee, I think so, provided that the first meeting is within the first five sitting days.

•(1150)

The Chair: Do you mean the first five sitting days following the report of this committee to the full committee?

The Clerk: Yes.

The Chair: Monsieur Bédard.

Mr. Michel Bédard: If I might, I'll add some clarification.

You may recall that during the 39th Parliament there was a bill sponsored by Mr. Silva that was deemed non-votable. Mr. Goodyear was then chair of PROC. Mr. Silva filed his appeal to PROC within the five-day timeline, but he appeared before the committee after the five days. If my recollection is correct, Mr. Goodyear, the chair of PROC, stated on the record that as long as the chair received the appeal within the five days, that was fine with him.

The Chair: Okay.

I think we want to move ahead, unless there's more discussion.

I think we're ready to vote on whether Bill C-292 will be votable.

Mr. Reid, do you want this recorded?

Mr. Scott Reid: Yes, please.

The Chair: I guess I should ask the clerk to do that.

The Clerk: All those in favour of the motion, please indicate such.

Mr. Scott Reid: Is the motion to make it votable or non-votable?

The Clerk: It's to designate it as non-votable.

(Motion agreed to: yeas 2; nays 1)

Hon. Stéphane Dion: It's very difficult to be so formal when we're such a small group.

The Chair: It's because someone will ask us afterwards what we did.

Mr. Scott Reid: That is how my wife and I make decisions at home—a show of hands.

Voices: Oh, oh!

The Chair: This will have to be reported to the entire committee at the next meeting.

[*Translation*]

Mr. Michel Bédard: Bill C-291 would amend the Employment Insurance Act with respect to the two-week waiting period as well as special benefits for illness, injury or quarantine.

This bill does not concern questions that are outside federal jurisdiction and does not clearly violate the Constitution; it does not concern questions that are substantially the same as ones already voted on by the House of Commons in the current session or which are already before the House; and, it does not concern questions that are currently before the House as items of government business.

[*English*]

The Chair: Are there any questions or comments regarding Bill C-291?

Seeing none, we'll proceed to Bill C-267.

[*Translation*]

Mr. Michel Bédard: Bill C-267 would enact the Canada Water Preservation Act, primarily by prohibiting or imposing restrictions on the removal of water in bulk.

This item does not concern questions that are outside federal jurisdiction; it does not clearly violate other provisions of the Constitution, including the Charter; it does not concern questions that are substantially the same as the ones already voted on by the

House of Commons; and, it does not concern questions that are currently before the House as items of government business.

[*English*]

The Chair: Are there any questions or concerns on Bill C-267?

Mr. Dion.

Hon. Stéphane Dion: I'm not sure if it's constitutional the way it is, but we'll see.

Mr. Michel Bédard: I reviewed the literature on the water law, and both provincial and federal levels of government can legislate in this regard. At this stage, at the beginning of the process, to conclude that the bill is unconstitutional, there could be arguments.

The Chair: Yes, and I think that's where we come back to the word “clearly”.

We'll proceed unless there's an objection.

Bill C-267 is considered votable.

Next is Bill C-293.

[*Translation*]

Mr. Michel Bédard: Bill C-293 would amend the Corrections and Conditional Release Act to allow the commissioner to designate an offender as a vexatious complainant.

This item does not concern questions that are outside federal jurisdiction; it does not clearly violate other provisions of the Constitution, including the Charter; it does not concern questions that are substantially the same as ones already voted on by the House of Commons; and, it does not concern questions that are currently before the House as items of government business.

[*English*]

The Chair: Mr. Toone, do you have a question?

[*Translation*]

Mr. Philip Toone: It seems to me a definition is missing from this bill. We have a definition of “complainant”, but there is no definition of “vexatious complainant”. However, that does not mean this cannot be considered a votable item.

[*English*]

The Chair: So noted, Mr. Toone.

All agree that it's votable. I see no objections.

Next is Bill C-315.

• (1155)

[Translation]

Mr. Michel Bédard: Mr. Chairman, coming back to Mr. Toone's question, I wanted to mention that there is an indirect definition in one clause of the bill. It's just that it isn't found in the definition clause, for example.

[English]

The Chair: That comment was related to Bill C-293.

We're moving on to Bill C-315.

[Translation]

Mr. Michel Bédard: Bill C-315 would amend the Canada Labour Code with respect to language requirements that apply to federal works, undertakings and businesses operating in Quebec. For example, it would force federal works, undertakings or businesses there to use French in their communications with employees.

This item does not concern questions that are outside federal jurisdiction. As for other provisions of the Charter, it goes without saying that forcing a company to communicate with its employees in a particular language—in this case, French—could be seen as a violation of the right to freedom of expression. However, Supreme Court rulings do recognize the protection of the French fact in Quebec as a sufficiently important goal. Insofar as there is not a total prohibition—for example, if someone were being forced to communicate or advertise in French alone—and another language can be used, this bill could be considered constitutional.

[English]

The Chair: Mr. Reid.

[Translation]

Mr. Scott Reid: I agree that this bill is clearly unconstitutional, because of subclause (f) that appears in clause 4.1(1), which reads as follows:

(f) an arbitration award made following arbitration of a grievance or dispute regarding the negotiation, renewal or review of a collective agreement shall, at the request of one of the parties, be translated into English or French, as the case may be, at the parties' expense.

[English]

It will be translated as the case may be at the party's expense, so it's done in French, and only translated into English at the party's expense if they request it.

This provision seems to me to be in violation of section 16 of the charter dealing with provision of federal services in both languages. Moreover, I also think it's a violation of section 133 of the 1867 Constitution Act, which refers to documents of government being available in both English and French.

The relevant case law here is the case of the #Attorney General of Quebec v. Blaikie, from 1979, in which the Supreme Court argued that given that the protections under the Constitution should be regarded as growing rather like a living tree—they were citing the famous 1929 case, *Edwards v. Canada (Attorney General)*—we ought to give a broad interpretation to what is meant by government rules. They were referring specifically to a part of Bill 101, Quebec's language law, which said regulations and the rulings of regulatory

agencies would be in French only, a provision that was almost identical to the one here, actually.

But section 133 of the Constitution Act, 1867, applies in equal measure to both the Quebec and federal governments, and hence I think that ruling applies to this and renders this particular part of the proposed amendment invalid. I think the rest of it is probably okay. This part perhaps could be taken out and adjusted, but as it stands now, I think it's clearly unconstitutional.

The Chair: Michel.

Mr. Michel Bédard: Just with regard to section 133 of the Constitution Act, 1867, you're right that there's no discrimination. The *Journals* or *Hansard* must be in French and English for the federal Parliament and the Quebec legislature. But this provision of the Constitution would not necessarily apply to federal enterprises, such as a bank or Air Canada, for example, so I don't think this section of the Constitution is applicable.

Mr. Scott Reid: This was the subject of litigation in *Attorney General of Quebec v. Blaikie*, in which the court said that a large and liberal reading ought to be given to that language, so that it includes all rulings that have, from the point of view of the person to whom it is being applied, the force of law, which such a ruling would have. That, as I say, applied to both the Quebec and federal governments.

I am positive that unless the Supreme Court wants to change its mind on this, this is unconstitutional.

• (1200)

The Chair: Does anyone want to further enter the discussion?

Mr. Toone.

Mr. Philip Toone: We are talking about defending the Canada Labour Code here, which I don't think Blaikie touched on directly.

Mr. Scott Reid: No, it didn't, but it's the same pertinent part of the

Mr. Philip Toone: I can see that it's certainly debatable. I don't necessarily agree that the Blaikie decision would make this clearly unconstitutional. It's certainly up for debate.

It doesn't go beyond federal jurisdiction, so I'd have a difficulty in saying this is not votable. Personally, I think it is, but it may benefit from debate at the committee stage, frankly. It wouldn't be the first bill we've passed that would definitely benefit from debate.

The Chair: Okay.

Mr. Reid.

Mr. Scott Reid: You're right. It doesn't I think violate the jurisdiction question, which is criterion number one.

Criterion number two relates to violations of the Constitution Acts 1867 and 1982, not just of the charter of rights. My point is that, first of all, I have some concerns about section 16. It hasn't been litigated on in this regard, but section 133 has. The criteria that were applied by the Supreme Court in *Blaikie* were as to whether this has the effect of the force of law on an individual.

There were actually two *Blaikie* cases. One dealt with municipalities and whether they were provincially incorporated and so on. The courts ruled that the protections under the large and liberal reading they had given to section 133 did not apply to municipal corporations.

But this is a body of the federal government whose decisions effectively have the effect of court orders. They said not to take a broad reading of all of that. To my mind, this is actually quite a clear violation. It's just this one part of the legislation. I actually think you could correct it, but this one part seems to me to be very clearly in contravention of the *Blaikie* interpretation of section 133.

The Chair: Okay.

Mr. Dion.

Hon. Stéphane Dion: You are making a very interesting point. I think it should be discussed appropriately when the committee examines and makes a decision about this bill. For myself, I would say, let us proceed.

The Chair: Okay.

I want to ask our analyst whether he has another comment to make.

Mr. Michel Bédard: I made some comments earlier about section 133 of the Constitution Act and section 16 of the Canadian Charter of Rights and Freedoms. My humble opinion is that those provisions will not apply to this bill. It's just an opinion.

The Chair: Okay.

I think we are ready to vote on the votability of Bill C-315.

Mr. Scott Reid: I am sorry, Mr. Chairman, but I think this is one of those times when we might profit from a recorded vote.

The Chair: Okay. I have a recorded vote requested.

All those in favour of the making this one non-votable...no, that's not worded correctly. It's that Bill C-315 be designated as a non-votable item. Are you in favour of that?

The Clerk: Mr. Reid?

The Chair: Okay, Mr. Reid.

All opposed to that motion?

The Clerk: Mr. Toone? Mr. Dion?

(Motion negatived: nays 2; yeas 1)

The Chair: Okay. We'll move to Bill C-299.

[Translation]

Mr. Michel Bédard: Bill C-299 would amend the Criminal Code to prescribe a minimum punishment when a kidnap victim is under 16 years of age.

This item does not concern questions that are outside federal jurisdiction; it does not clearly violate the Constitution, including the Charter; it does not concern questions that are substantially the same as ones already voted on by the House of Commons; and, it does not concern questions that are currently before the House as items of government business.

[English]

The Chair: Are there any questions or comments?

Seeing none, we'll move on to Bill C-316.

[Translation]

Mr. Michel Bédard: This bill would amend the Employment Insurance Act with respect to the qualifying period and benefit period as a result of the claimant having spent time in a jail, penitentiary or other similar institution.

This item does not concern questions that are outside federal jurisdiction; it does not clearly violate the Constitution, including the Charter; it does not concern questions that are substantially the same as ones already voted on by the House of Commons; and, it does not concern questions that are currently before the House as items of government business.

• (1205)

[English]

The Chair: Are there questions or comments on Bill C-316?

Seeing none, we'll move to Bill C-280.

[Translation]

Mr. Michel Bédard: This bill would enact an Act to establish a National Strategy for Chronic Cerebrospinal Venous Insufficiency through the convening of a conference with territorial and provincial ministers in order to develop a national strategy.

This item does not concern questions that are outside federal jurisdiction nor does it clearly violate the Constitution, including the Charter; it does not concern questions that are substantially the same as ones already voted on by the House of Commons; and, it does not concern questions that are currently before the House as items of government business.

[English]

The Chair: Are there questions or concerns?

Seeing none, we'll move to Motion No. 274.

[Translation]

Mr. Michel Bédard: Motion M-274 seeks the opinion of the House regarding access to information regarding treatments by patients suffering from multiple sclerosis, their families and their caregivers.

This motion does not concern questions that are outside federal jurisdiction; it does not clearly violate provisions of the Constitution, including the Charter; it does not concern questions that are substantially the same as ones already voted on by the House of Commons; and, it does not concern questions that are currently before the House as items of government business.

[English]

The Chair: Are there comments or questions?

Seeing none, we'll move on to Bill C-312.

[Translation]

Mr. Michel Bédard: Bill C 312 would amend the Constitution Act, 1867 with respect to democratic representation in the House of Commons.

This item does not concern questions that are outside federal jurisdiction and does not clearly violate provisions of the Constitution; it does not concern questions that are substantially the same as ones already voted on by the House of Commons; and, it does not concern questions that are currently before the House as items of government business.

Members of the subcommittee, like all parliamentarians, are probably aware of the government's intention to introduce a bill on this very matter; but the bill has not yet been tabled in the House of Commons. Therefore, it's not possible to review a bill that doesn't exist yet; we can only consider bills that actually exist.

[English]

The Chair: We'll hear Mr. Reid and then Mr. Dion.

Mr. Reid.

Mr. Scott Reid: This, in my view, is clearly unconstitutional. It's unconstitutional and violates criterion number two, because it seeks to amend the Constitution Act in an area that regards the principle of proportionate representation, which is something that can be changed only by means of what is known as a 7-50 amendment. It seeks to do so using the wrong amending formula, the section 44 amending formula. In our Constitution, through sections 38 through 49, if you count all the sections that deal with the technicalities of it, we have a variety of amending formulas.

Subsection 42(1) of the Constitution Act, 1982, says: "An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1)...", which is a reference to the so-called 7-50 amending formula. then it has a series of different items, one of which is "(a) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada..."

There is a specific reference in the preamble to this bill to section 44 justifying the use of the section 44 amending formula. I suppose that in theory a preamble is not part of the law per se, and a preamble that states something that's inaccurate need not invalidate the law itself, but a further problem is that the measure is presented as a bill, which is how section 44 amendments are presented to the House of Commons.

If this were an attempt to amend the Constitution with all the same substantive results, but it were presented as a motion, it would then

be in order and would come into effect if seven provinces representing 50% of the population of Canada enacted it through their provincial legislatures within a three-year window. That's how we deal with section 38 amendments.

But it's simply done in the wrong form, completely in the wrong form, and that makes it irretrievably a violation of criterion number two. On that basis, it ought to be rejected.

I have more a detailed argument to present, but let that be the starting point.

• (1210)

The Chair: Mr. Dion.

Hon. Stéphane Dion: I would like to hear your reaction.

[Translation]

Mr. Michel Bédard: This bill proposes a new formula for the distribution of seats, by province, in the House of Commons. Bills dealing with this same topic have been introduced by the government in previous sessions. There were four or five different bills, but none passed. We are also told that a bill will probably be introduced this year or next year.

This deals with a section of the Constitution that provides that Parliament alone can determine provincial representation, based on my understanding. And that has actually been demonstrated through the bills introduced by the government. It did not decide to introduce motions or seek the agreement of the other provinces; it simply introduced its own bills.

[English]

The Chair: Mr. Dion.

[Translation]

Hon. Stéphane Dion: That depends on what is done. Are you saying that the House of Commons can amend proportional representation in the House of Commons as it sees fit and that Parliament can decide on provisions that would mean the House of Commons could assign seats the way it wants to? Is there not a threshold beyond which the 7/50 formula becomes relevant?

Mr. Michel Bédard: I presume there may be a threshold, but in the past, the seat distribution and readjustment formula has been amended quite frequently. As I understand it, Parliament has acted alone in this area since 1982.

Hon. Stéphane Dion: Yes, but if I understand correctly, this bill would lock in a province's representation. It would mean that a province could not be over or under that threshold. It would keep the same number of MPs it had in 2006. That is what this bill says.

However, the bill does not specify for how long that would apply. I can certainly imagine someone going to court and saying that this violates the principle of representation by province which, according to the court, should be fairly flexible. It has never said that it must be perfectly exact. Could there not be a constitutional issue here if we were to say we were locking in a province's representation forevermore? This is a bill passed by Parliament alone.

Mr. Michel Bédard: If my understanding of the provisions dealing with seat distribution in the House of Commons is correct, there are several rules that apply. For example, grandfather clauses ensure that a province will always have at least the same number of senators—

Hon. Stéphane Dion: Yes, but that grandfather clause does not call into question the principle that all voters are equal. It simply forces us to add seats to ensure that there is voter equality. As for the other clause—the one that prevents there being fewer MPs than senators—it is in the Constitution. If we're saying that a province has guaranteed representation—maybe forever; I really don't know—that is definitely something that could be challenged because of the voter equality principle, which is a constitutional principle.

[English]

The Chair: Mr. Toone.

[Translation]

Mr. Philip Toone: Other principles are also at issue here. The Supreme Court ruled that there exists what is called a community of interest. That is a fundamental principle of representative democracy in Canada. I do not believe this bill is an attempt to challenge the constitutionality of the right of representation in the House of Commons. This is simply about complying with court rulings that say there needs to be a broader approach taken to this than what is the case in the United States, where they have direct proportional representation with no nuance. In Canada, that is not the case.

It was mentioned earlier today that the Canadian Constitution is like a living tree. As a result, interpretation of the Constitution will evolve over time, and the Supreme Court has given its interpretation. I see no reason why this would not be deemed a votable item.

I guess there would need to be some debate, but this is a bill like any other. The House of Commons always has the right to propose other bills. Indeed, I believe the government will be introducing one in this parliamentary session, probably one of a similar nature. If one is not unconstitutional, I see no reason why the other would not be considered a votable item.

• (1215)

[English]

The Chair: Mr. Reid is next, and then we'll go back to Mr. Dion.

Mr. Scott Reid: The preamble of the bill attempts to present the kind of case one would present before a court, if one were arguing that this was in fact constitutional. I think the case is well presented but it's flawed. It says: "Whereas the principle of proportionate representation of the provinces must balance the fair and equitable representation of faster-growing provinces and the effective representation of smaller and slower-growing provinces..."

That's the starting point; that's one paragraph. I don't actually think that's what anybody would think is the principle of proportional representation. The principle is one of the things that might be thrown into a balance, but you can't say that included within proportionate is something else.

As Mr. Dion noted, section 51 of the Constitution Act, 1867, as amended, deals with the general amending formula. That's the part that was amended in 1985. The part that guarantees that no province will fall below the number of senators it has...that's what guarantees

the four seats to P.E.I. That is included separately, to make the point that this is not part of the proportionate. This is distinctly not proportionate.

Our whole constitutional battle at the time of the coming together of Confederation in the 1860s was over the question of proportionate representation by population versus some kind of fixed representation formula. The compromise that was reached was one chamber is fixed and one chamber is representation by population, a model that was used previously in the United States and subsequently in Australia. To say one remains fixed while the other keeps on adjusting to an ever less proportionate level is not part of the principle of proportionality. It is, in fact, a rejection or a diminution of it. That's a problem.

I'll say this, not as a constitutional argument but a personal argument, that as an Ontario MP who represents not the conveniently located people of downtown Toronto—who can get from one end of the riding to another—but a riding that takes two hours to cross, consisting of people who are below rather than above the average national income, who have no special favours presented to them by government, and who get proportionately fewer government benefits than other people in other parts of the country who have similar income levels, I am hard pressed to see why we should in perpetuity be treated as fractions of persons.

That seems to be the fundamental injustice with this proposal, because that is what has happened. We are part of Ontario as opposed to part of a province that has a declining proportion of the Canadian population, through no fault of our own. I don't think that's proper. But that is the argument, or the reverse of what I just said is the argument presented in the next paragraph. I'm now quoting from the third paragraph of the preamble: "Whereas the populations of faster-growing provinces are currently under-represented in the House of Commons and members of the House of Commons for those provinces therefore represent, on average, significantly more populous electoral districts than members for other provinces..."

This is presented as part of the argument. This is, in fact, to use the traditional language of the English law, the mischief we should be trying to correct rather than something we should be trying to entrench as a principle. I simply throw that out.

With regard to the argument that's presented in the preamble about the Constitution Act, 1985, moving to a less proportionate level of representation than had existed under the previous Representation Act... These, of course, are the successive versions of section 51, as they get enacted unilaterally by the federal government and added to the Constitution.

I reject that argument as a precedent because if you look at that particular bill, which became part of the Constitution, it's clear that it was not passed with the purpose of making the system less proportionate. It was passed for another purpose, and accidentally and unintentionally had the result of causing the system to be less proportionate than it had been under the previous formula that we adopted in the 1970s.

I'm reading from the Elections Canada website, where they discuss the current formula. They say, explaining why the bill was adopted:

Following the 1981 census, calculations revealed that the amalgam formula—

This had been adopted in the 1970s.

—would result in a substantial increase in the number of seats in the House of Commons both immediately and after subsequent censuses (369 seats were projected after 2001). Effectively putting a hold on the process already underway to reassign seats, Parliament passed the Representation Act, 1985.

• (1220)

The goal was to prevent the overall size of the House from going out of control at the time. It was not to have the effect of causing a permanent departure from proportionate representation. I throw those things out as considerations as to why this is being attempted using the wrong section of the Constitution.

I want to stress that I do think it is possible for someone to introduce a private member's motion that would start the process of looking for the consent of seven provinces. I say that because I introduced such a motion with regard to a different matter: getting rid of the federal disallowance power in the 38th Parliament. That was the item that came up for discussion.

The committee sought expert testimony, and they confirmed that private members' motions could be brought forward for the purpose of initiating constitutional amendments under the 7-50 formula or the unanimity formula, as the case may be, but they have to be in the proper format as motions, not as bills.

The Chair: Mr. Bédard.

[*Translation*]

Mr. Michel Bédard: As regards this particular bill, I had not identified it as potentially problematic. That is why my analysis was not as detailed here as for other bills which had been identified as potentially problematic, since there are probably 30 or more bills or motions to review in a single meeting. So, if the subcommittee wishes additional information from the analyst, I would suggest that information be provided to subcommittee members at another meeting or at another time.

[*English*]

The Chair: I think we're at the point where we're ready to move ahead.

Mr. Dion has another intervention, and then I'd like to call the vote.

Hon. Stéphane Dion: I'm sure that Parliament has the authority to come up with a formula that is not exactly proportional representation. It has been done in the past. When it was challenged in court, the court said Parliament has this authority.

There is a question here.

[*Translation*]

I would like to continue in French.

Does Parliament have the power to make a law that clearly contradicts the principle of voter equality, to the point where that principle could be called into question? Over time, that is what would happen. At this point, I have serious doubts about this. I do not believe that Parliament alone has the power to lock in the representation of a province, however its population may change.

At the same time, our analyst has a somewhat opposite view of this, although he did qualify it somewhat. He is not absolutely certain, but nor do I claim to be 100% certain. So, I don't intend to block this bill. However, I would like to benefit from some additional expertise. I really like the idea of hearing from other experts in addition to our analyst, since he has said that he is not totally sure about his recommendation.

So, if we say no, that will mean that experts will come and discuss this with us. Right? I actually don't know how I am going to vote, because I'm still a little confused about all these votes. We're in favour of no and opposed to yes.

[*English*]

The Chair: I think the process is that if we reject this and make it a non-votable item, the person presenting the bill appeals to this entire committee, and then we have the discussion with the entire committee.

Hon. Stéphane Dion: But I would prefer instead to have a.... If we say yes, that means that.... I understood that if we say no, then the whole committee will have an opportunity to hear experts who come in.

The Chair: If we say yes, it goes to the House, and it becomes an item to vote on with the normal process of private members' legislation.

Hon. Stéphane Dion: And if we say no?

The Chair: If we say no, that person has the opportunity to appeal to the committee.

Hon. Stéphane Dion: To the whole committee?

The Chair: That's correct.

Go ahead, Mr. Bédard.

Mr. Michel Bédard: The third option is for the subcommittee to meet in a week or at a later point during the session to have a fuller briefing on the bill.

The Chair: I'm just going to say that as chair I question the wisdom of that, simply because we're going to go around this again, and I think the more people who are involved in the reconsideration, the better it is for the process. But it's this committee's choice to either vote it up or vote it down.

Is someone prepared to make a motion that this be designated non-votable?

Okay. We have a motion that Bill C-312 be designated as a non-votable item.

•(1225)

Mr. Philip Toone: Is it possible to have a recorded vote?

The Chair: A recorded vote, please. All in agreement with that motion? All opposed?

(Motion negatived: nays 2; yeas 1)

The Chair: Mr. Dion.

Hon. Stéphane Dion: My point has been made. Our colleagues in the House will benefit from our views.

Mr. Philip Toone: We're not in camera, right, so....

The Chair: Now we've just decided it's votable.

Hon. Stéphane Dion: Our discussion would be taken into account.

The Chair: Now we're moving on to Bill C-307.

[*Translation*]

Mr. Michel Bédard: Bill C-307 would amend the Canada Labour Code with respect to the health and safety of pregnant or nursing employees. It would allow them to avail themselves of provincial occupational health and safety legislation.

This item does not concern questions that are outside federal jurisdiction; it does not clearly violate provisions of the Constitution, including the Charter; it does not concern questions that are substantially the same as ones already voted on by the House of Commons in the current session; and, it does not concern questions that are currently before the House as items of government business.

[*English*]

The Chair: Does anyone have any questions or comments?

I see none.

We'll move on to Motion No. 271.

[*Translation*]

Mr. Michel Bédard: Motion 271 recognizes the importance of the Port of Quebec as a hub of international trade.

This item does not concern questions that are outside federal jurisdiction; it does not clearly violate the Constitution, including the Charter; it does not concern questions that are substantially the same as ones already voted on by the House of Commons; and, it does not concern questions that are currently before the House as items of government business.

[*English*]

The Chair: Does anyone have any concerns?

I see none.

Okay. Motion No. 271 is considered votable.

Now I need to formalize this subcommittee's work.

The first motion will be regarding the ones that we've deemed votable. The only item we're excluding here is Bill C-292, and we'll come to that later. The subcommittee will present a report listing those items that it has determined should not be designated as non-votable and recommending that they should be considered by the House. These are the ones that will proceed.

All in favour of that motion?

(Motion agreed to)

The Chair: The second motion is that the chair report the subcommittee's finding that Bill C-292 is non-votable to the Standing Committee on Procedure and House Affairs as soon as possible.

Does everyone agree?

(Motion agreed to)

The Chair: That's the action of our committee today.

That meeting will be on Thursday.

Is that when we report?

The Clerk: Possibly: it has to be within five sitting days.

The Chair: It says "as soon as possible".

Is there any other business that we need to deal with as a subcommittee?

Okay. Thank you for your cooperation.

Thanks to our analyst and our clerk for their good work.

Mr. Reid.

Mr. Scott Reid: If we're thinking of reporting to the full committee, normally the transcripts of a subcommittee aren't ready that quickly, but I think it would be helpful to the members of the committee if we could have the transcripts of that section.

The Chair: Of that section of the discussion?

Mr. Scott Reid: That's right.

The Chair: Okay. I think we'll be able to work that through.

Hon. Stéphane Dion: I don't understand.

The Chair: The clerk.... For the section on Bill C-292, the bill that was rejected as being votable, it's that they have the transcript of the discussion surrounding the reasons for that bill being considered non-votable, to have it available to the full PROC membership so they can understand our rationale in arriving at that decision.

Hon. Stéphane Dion: And the other discussions we had are not reported...?

The Chair: Well, they're all available, but it's to print that one section specifically for the benefit of PROC, because PROC will not be dealing with the other items.

Hon. Stéphane Dion: Can we do the same for the other bills? Why only this bill?

The Chair: Okay. Procedure and House Affairs will not be dealing with any of the bills that we discussed today because—

Hon. Stéphane Dion: Okay.

The Chair: —they have already gone to the House. But that one particular bill comes back to this committee for discussion, assuming the mover wants to appeal. Based on that, it would be helpful for some of the committee to know about some of the discussion that occurred surrounding the decision we arrived at. I think that was Mr. Reid's motivation. Are we in agreement with that?

Hon. Stéphane Dion: *Oui.*

The Chair: Thank you.

Okay. The meeting is adjourned.

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