



HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

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

SMEM • NUMBER 017 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, November 6, 2018

—
Chair

Ms. Linda Lapointe

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

Tuesday, November 6, 2018

• (1220)

[Translation]

The Chair (Ms. Linda Lapointe (Rivière-des-Mille-Îles, Lib.)): Good afternoon. I want to welcome you all.

Today we're holding our 17th meeting. As part of the determination of non-votable items pursuant to standing order 91.1 (1), we'll be reviewing three bills.

Does anyone have any comments?

Good afternoon, Ms. May.

[English]

Ms. Elizabeth May (Saanich—Gulf Islands, GP): I'm not a member of this committee.

[Translation]

However, I'm here as a result of Bill S-203.

I'm responsible for this bill in the House of Commons of Canada.

I'm here in case there are any questions. I'm here only to make sure that there aren't any issues.

I'm interested in the other bills, but I'm not involved in them.

The Chair: Thank you, Ms. May.

Mr. Graham, would you like to make a comment?

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): I know that there are questions concerning Bill S-203.

The Chair: Yes.

Mr. David de Burgh Graham: In that case, I move:

That Bills S-215, An Act to amend the Criminal Code (sentencing for violent offences against Aboriginal women) and S-240, An Act to amend the Criminal Code and the Immigration and Refugee Protection Act (trafficking in human organs), not be designated non-votable.

If we pass this motion without opposition, we can continue the discussion on Bill S-203.

The Chair: Do you agree with Mr. Graham's motion?

Some hon. members: Yes.

(Motion agreed to)

[English]

Mr. David de Burgh Graham: Does that sound good?

[Translation]

May I continue?

[English]

On Friday, when I starting learning about Bill S-203, I called David to let him know that I would like a very full explanation of Bill S-203 because I've been having, from both sides, on my side, a debate about where this should go. I honestly don't know, and I'd like to hear the full analysis from the analyst on how to deal with Bill S-203. I appreciate that Elizabeth is here to talk about it as well.

Mr. David Groves (Committee Researcher): I'm happy to discuss any of the bills that the committee has before it, but as Mr. Graham has mentioned, I'm going to focus my comments on one bill in particular, which is Bill S-203. It is my assessment that all three of these bills could be declared non-votable, but Bill S-203 I feel requires a bit more elaboration.

Bill S-203, an act to amend the Criminal Code and other acts, ending the captivity of whales and dolphins, is a Senate public bill that seeks to accomplish three goals: one, to prohibit the keeping of a cetacean—which I have learned is a whale or a dolphin or other animals in that family—in captivity; two, to prohibit the catching of a cetacean so as to keep it in captivity; and three, to prohibit the import and export of a live cetacean.

In so doing, the bill would make amendments to the Criminal Code, to the Fisheries Act and to the Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act. Of note for the committee, it would amend the Fisheries Act by adding section 28.1, of which subsection 28.1(1) would read as follows:

Subject to subsection (2), no one shall move a live cetacean, including a whale, dolphin or porpoise, from its immediate vicinity with the intent to take it into captivity.

Proposed subsection 28.1(2) reads:

A person may move a live cetacean from its immediate vicinity when the cetacean is injured or in distress and is in need of assistance.

I have flagged this proposed section in particular because there is another bill before Parliament that would make a similar amendment to the Fisheries Act. This is Bill C-68, an act to amend the Fisheries Act and other acts in consequence. It's a government bill.

Bill C-68, which was passed by the House and is currently at second reading in the Senate, has a number of stated goals, one of which, as described in its summary, is to:

prohibit the fishing of a cetacean with the intent to take it into captivity, unless authorized by the Minister, including when the cetacean is injured, in distress or in need of care

To achieve this goal, Bill C-68 would add section 23.1 to the Fisheries Act, which would read as follows:

23.1(1) Subject to subsection (2), no one shall fish for a cetacean with the intent to take it into captivity.

(2) The Minister may, subject to any conditions that he or she may specify, authorize a person to fish for a cetacean with the intent to take it into captivity if he or she is of the opinion that the circumstances so require, including when the cetacean is injured or in distress or is in need of care.

To summarize, Bill C-68 would prohibit the fishing of a cetacean with the intent to take it into captivity. Bill S-203 would prohibit the moving of a live cetacean with the intent to take it into captivity. Both would achieve these goals by making amendments to the Fisheries Act.

Normally, this subcommittee evaluates public members' bills on four criteria that were established in a report of the Standing Committee on Procedure and House Affairs, which you're all familiar with. Standing Order 92(1)(a), however, states that when considering Senate public bills, such as Bill S-203, the only criterion is whether the bill "is similar to a bill voted on by the House in the same Parliament".

As echoed in *House of Commons Procedure and Practice*, "the only ground on which such a bill can be designated non-votable is its similarity to a bill voted on by the House in the same Parliament."

This is simply to say that while there may be some similarities between the issue before the committee today and issues that have arisen around private members' bills over the last year, Bill S-203 has not been assessed on the basis of those criteria that the committee was applying in those circumstances. This is a different test.

Per the standing order, the only question is whether Bill C-68 and Bill S-203 are similar enough that Bill S-203 should be declared non-votable.

As I mentioned earlier, there is a clear similarity between the bills. Both of them would amend the Fisheries Act to prohibit the capturing of a cetacean for the purposes of keeping it in captivity. It could, therefore, be argued that they are similar and thus that Bill S-203 should be declared non-votable.

However, there are differences. Preventing the capture of cetaceans is only one of three goals in Bill S-203, which also seeks to prohibit the keeping of cetaceans and the importing and exporting of cetaceans. These are unique to Bill S-203. Bill C-68 is only interested in the act of capturing a cetacean. Bill C-68 also makes a number of other changes to the Fisheries Act that have nothing to do with cetaceans, which are the sole focus of Bill S-203.

As such, it is my assessment that these bills are partially, rather than completely, similar. The bills overlap in one aspect, but not in all aspects.

In the past, assessments of how votable a bill is have been conducted with the purpose of this committee in mind, which I understand to be to provide members with the fullest opportunity possible to use their private members' time effectively, so that if a bill or a motion would have little or no effect because of similarity, members should be given the opportunity to replace it with something that would be meaningful.

In this case, it is my assessment that there is enough difference between these two bills that were Bill S-203 to advance and become law, it would have a distinct effect. Both bills prohibit capturing, and in this respect Bill S-203 would be redundant. However, Bill S-203 would go further in prohibiting the keeping of cetaceans and the importing or exporting as well. As such, the committee could decide that this bill should be declared not non-votable.

Having said that, this assessment is not binding on the subcommittee. I'm here for your assistance. The issue of whether a partial similarity between items is so substantial that a private member's item would have little or no distinct effect—in other words, the issue of how similar is too similar—is not apparent from the text of the Standing Orders. The standing order simply says "similar", and my assessment is based on past decisions of the subcommittee and my understanding of the subcommittee's purpose. This is different enough to be declared not non-votable.

I'm happy to answer any questions you have.

• (1225)

Mr. David de Burgh Graham: If this bill originated in the Commons, would the recommendation be different?

Mr. David Groves: That's an interesting question. I went through the criteria more out of caution than for conducting this analysis, and my perspective is that it would also be not non-votable if it went through the criteria laid out in the report of the Committee of Procedure and House Affairs. I can go through that if you'd like.

Mr. David de Burgh Graham: If C-68 and S-203 both passed, would they create a contradiction in law?

Mr. David Groves: They would not create a contradiction in the law, because they seem to prohibit essentially the same behaviour in a similar way. I'm sure there would be some instances where one could catch something that the other would not.

Of course, the bill could be advanced to committee and amendments made at that point. It's not for me to say.

Mr. David de Burgh Graham: Okay.

The Chair: Ms. May, go ahead.

Ms. Elizabeth May: I appreciate your analysis enormously. Bill C-68, of course, would prohibit the taking of whales and dolphins in the wild in Canadian waters, but it doesn't prohibit keeping them in captivity if they come from overseas or if they've been bred in captivity. The purpose of Bill S-203 is very clearly not to keep cetaceans in captivity in Canada. The amendment in Bill C-68, which we really welcomed, is totally consistent, but it applies, as you said, only to one part of the same topic. It doesn't accomplish the same ends. Taking this forward would be great.

If it had been known to Senator Wilfred Moore, the originator of this bill in the Senate, that the then Minister of Fisheries was on the verge of banning the taking of whales and dolphins in captivity, he would have left that section out of Bill S-203. However, it proceeded from the Senate in advance of when the minister put forward Bill C-68 for first reading.

It would certainly create unwanted complexities for the government to try to change that one section now that it's in the Senate, just as it would create unnecessary complications for Bill S-203 to try to remove that. The only real question is whether there is any incompatibility. There isn't. They work together toward one of the same purposes, but Bill S-203 is toward a rather different end and we'll have to see how it does in committee.

While I have the microphone, I'd just say that I consulted with senators Wilfred Moore and Murray Sinclair, who took the bill forward through the Senate. In terms of which committee you might direct it to, it appears most logical that it go to the fisheries committee. I just wanted to make that suggestion while that was under review.

Mr. David de Burgh Graham: Is that the committee it would be referred to?

Mr. David Groves: I don't know if that would have been determined yet.

Mr. David de Burgh Graham: Rachel, do you have any comments?

Ms. Rachel Blaney (North Island—Powell River, NDP): Thank you so much for your analysis. It was very clear, and these two things both being in the House really makes sense.

I appreciate Elizabeth's addition to it. It really looks at this in a more wholesome way. I just want to thank you so much for that hard work.

●(1230)

[*Translation*]

The Chair: Does the committee want Bill S-203 to not be designated non-votable?

We need a mover.

[*English*]

Ms. Rachel Blaney: Madam Chair, I'll move it.

(Motion agreed to)

[*Translation*]

The Chair: Mr. Graham moves:

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

(Motion agreed to)

[*English*]

Mr. David de Burgh Graham: Thank you for the analysis on this one. It does help an awful lot.

[*Translation*]

The Chair: Thank you, everyone.

The meeting is adjourned.

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

SPEAKER'S PERMISSION

The proceedings of the House of Commons and its Committees are hereby made available to provide greater public access. The parliamentary privilege of the House of Commons to control the publication and broadcast of the proceedings of the House of Commons and its Committees is nonetheless reserved. All copyrights therein are also reserved.

Reproduction of the proceedings of the House of Commons and its Committees, in whole or in part and in any medium, is hereby permitted provided that the reproduction is accurate and is not presented as official. This permission does not extend to reproduction, distribution or use for commercial purpose of financial gain. Reproduction or use outside this permission or without authorization may be treated as copyright infringement in accordance with the *Copyright Act*. Authorization may be obtained on written application to the Office of the Speaker of the House of Commons.

Reproduction in accordance with this permission does not constitute publication under the authority of the House of Commons. The absolute privilege that applies to the proceedings of the House of Commons does not extend to these permitted reproductions. Where a reproduction includes briefs to a Committee of the House of Commons, authorization for reproduction may be required from the authors in accordance with the *Copyright Act*.

Nothing in this permission abrogates or derogates from the privileges, powers, immunities and rights of the House of Commons and its Committees. For greater certainty, this permission does not affect the prohibition against impeaching or questioning the proceedings of the House of Commons in courts or otherwise. The House of Commons retains the right and privilege to find users in contempt of Parliament if a reproduction or use is not in accordance with this permission.

Also available on the House of Commons website at the following address: <http://www.ourcommons.ca>

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

PERMISSION DU PRÉSIDENT

Les délibérations de la Chambre des communes et de ses comités sont mises à la disposition du public pour mieux le renseigner. La Chambre conserve néanmoins son privilège parlementaire de contrôler la publication et la diffusion des délibérations et elle possède tous les droits d'auteur sur celles-ci.

Il est permis de reproduire les délibérations de la Chambre et de ses comités, en tout ou en partie, sur n'importe quel support, pourvu que la reproduction soit exacte et qu'elle ne soit pas présentée comme version officielle. Il n'est toutefois pas permis de reproduire, de distribuer ou d'utiliser les délibérations à des fins commerciales visant la réalisation d'un profit financier. Toute reproduction ou utilisation non permise ou non formellement autorisée peut être considérée comme une violation du droit d'auteur aux termes de la *Loi sur le droit d'auteur*. Une autorisation formelle peut être obtenue sur présentation d'une demande écrite au Bureau du Président de la Chambre.

La reproduction conforme à la présente permission ne constitue pas une publication sous l'autorité de la Chambre. Le privilège absolu qui s'applique aux délibérations de la Chambre ne s'étend pas aux reproductions permises. Lorsqu'une reproduction comprend des mémoires présentés à un comité de la Chambre, il peut être nécessaire d'obtenir de leurs auteurs l'autorisation de les reproduire, conformément à la *Loi sur le droit d'auteur*.

La présente permission ne porte pas atteinte aux privilèges, pouvoirs, immunités et droits de la Chambre et de ses comités. Il est entendu que cette permission ne touche pas l'interdiction de contester ou de mettre en cause les délibérations de la Chambre devant les tribunaux ou autrement. La Chambre conserve le droit et le privilège de déclarer l'utilisateur coupable d'outrage au Parlement lorsque la reproduction ou l'utilisation n'est pas conforme à la présente permission.

Aussi disponible sur le site Web de la Chambre des communes à l'adresse suivante : <http://www.noscommunes.ca>