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Chair

Ms. Filomena Tassi

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• (0850)

[English]

The Chair (Ms. Filomena Tassi (Hamilton West—Ancaster—Dundas, Lib.)): I'm very happy to call this meeting to order. I wish everybody a good morning on this glorious day.

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

The April 10 list has been replenished. We have 15 items on that list. What we'd also like to do today is add the three Senate public bills. One of them we've had previous notice of, which is Bill S-226, but two were introduced yesterday. They are Bill S-231 and Bill S-233, which we would like to add if we have consensus.

Do we have consensus to add those two Senate bills in the interests of time and efficiency?

Mr. Arnold Chan (Scarborough—Agincourt, Lib.): Sure.

The Chair: Okay. Very good.

Now I'll pass it over to Alexandre, our analyst, for his comments.

Mr. Alexandre Lavoie (Committee Researcher): The only item I wish to comment on is Bill C-344. You may have noticed that Bill C-344 is essentially the same as another bill, Bill C-227, which was struck from the Order Paper on January 31. I understand that this bill was dropped from the Order Paper not because of the substance of the bill, but because its sponsor was appointed Minister of Immigration, Refugees and Citizenship. Marc-Olivier can confirm that it shouldn't be a problem to have this bill discussed again in the House.

That's the only one, unless there are other questions on issues.

Mr. Jamie Schmale (Haliburton—Kawartha Lakes—Brock, CPC): Yes, Chair, if I may, through you, I do have a few questions for our analysts. We believe that this constitutes a decision by the House. As you pointed out, they are pretty much word for word the same bill.

Mr. Alexandre Lavoie: That's right.

Mr. Jamie Schmale: One of the criteria for determining whether or not it can be voted on is that bills and motions must concern questions that are substantially the same as ones already voted on by the House in a current session of Parliament, or the ones preceding them in the order of precedence.

The reference I'd like to point to is Standing Order 86(4):

The Speaker shall be responsible for determining whether two or more items are so similar as to be substantially the same, in which case he or she shall so inform the Member or Members whose items were received last and the same shall be returned to the Member or Members without having appeared on the Notice Paper.

I think the rule here is clear. Obviously we have concerns that the decision has been made, so I guess the plus side here is that if it's determined to be non-votable at this committee, the member from Brampton has the opportunity to table another bill or to revise this one. If it passes here—and we will probably raise a point of order in the House—at that point, I believe, the member could, if I understand the rules correctly, lose his chance of having a private member's bill. I think that's where we need to be careful, because having a private member's bill can be a once-in-a-lifetime and a once-in-a-career opportunity, as we all know. This is where I want to be very careful for that member.

The Speaker could go either way, obviously, but the point is that without further analysis on this point, I don't want to see this member lose his opportunity. That's why I think we need to proceed very carefully with this.

The Chair: Okay. Thank you, Mr. Schmale.

Marc-Olivier, do you want to comment?

The Clerk of the Committee (Mr. Marc-Olivier Girard): Thank you, Madam Chair.

Thank you, Mr. Schmale, for your concerns.

To address these, you talked first about Standing Order 86, if I remember correctly. Just to inform the committee members, this standing order actually applies to notices, for instance a private member's motion or a private member's bill, that members eligible for private members' business put on the Notice Paper.

In this specific instance, the standing order doesn't apply, because you cannot argue that, for instance, Bill C-344 was identical or similar to another item already on the Order Paper. Why? Because on January 31, the House of Commons had already withdrawn the bill by Mr. Hussen, Bill C-227. Basically, Bill C-227 was no longer on the Order Paper when Mr. Mr. Sangha wanted to put Bill C-344 on notice. That was your first comment.

Your second point was about a decision of the House being made. The practical interpretation is this. The time of the House of Commons is very precious. The House doesn't like to waste its time on something it has already considered in the past and also voted on or decided on in the current session of Parliament. I interpret this decision as one of the following options: a bill that would be negated at second reading; a bill that would be negated at report stage; a bill that would be negated by the House at third reading; or a bill that would be adopted at third reading for final passage of the bill.

If I take a look at Bill C-227, nothing in this decision actually happened to the bill. The bill was withdrawn when it reached report stage in the House of Commons. None of these options actually applied to Bill C-227 before the withdrawal from the House of that bill.

With that in mind, it's my interpretation, as a matter of procedure, that the decision has not necessarily been officially made. If you follow the spirit of the rule you mentioned on Bill C-227, the withdrawal from the House of Commons of that bill was mostly based on the fact that the bill had no eligible sponsor anymore for private members' business, Mr. Hussen having been appointed as a minister of the crown. It was not a decision made on the substance of the bill.

I'll let my interpretation be the advice I'm giving to the committee, but as a person devoted to the committee, I will emphasize that the final decision lies with the committee itself.

● (0855)

Mr. Jamie Schmale: I will also quote Beauchesne's—

Madam Chair, do I still have the floor?

The Chair: Yes.

Mr. Jamie Schmale: —sixth edition, page 192. Citation 624 states:

(1) There is nothing in the rules and no precedent to prevent the setting down of more than one bill or motion dealing with the same subject.

And:

(3) There is no rule or custom which restrains the presentation of two or more bills relating to the same subject and containing similar provisions. But if a decision of the House has already been taken on one such bill, for example, if the bill has been given or refused second reading, the other is not proceeded with if it contains substantially the same provisions and such a bill could not have been introduced on a motion for leave.

I think that's where our issue lies.

I understand what you're saying. I go back to my original comment on how a private member's bill can be a once-in-a-lifetime opportunity. I just want to make sure we do everything we can so that the person doesn't lose this opportunity. That's my concern.

The Chair: I appreciate the spirit in which this is raised.

Mr. Chan.

Mr. Arnold Chan: I want to come back to your final comment.

I think the point the clerk is making is that there actually was no decision of the House. The decision of the House was fairly clearly laid out in respect of what the conditions were, namely, that this bill was withdrawn because there was no sponsor.

I think the point you're making is that if there was a negative decision at second reading, at report stage, or a negative decision made at third reading, there would be a decision of the House as it relates to the substance of the bill. In this particular case, the bill was at report stage. We didn't actually have a decision of the House. Under the Standing Orders, it had to be withdrawn because Mr. Hussen could no longer be a sponsor of the bill.

Mr. Jamie Schmale: Yes, for sure. I'm just saying our challenge is that we believe a decision was made by the House in withdrawing it.

Mr. Arnold Chan: That's procedural withdrawal, not an actual substantive decision of the House. I think that's the distinction that you and I are making right now. You believe it was withdrawn because of the fact that Mr. Hussen became a member of the Privy Council. Our view is it is procedurally withdrawn. There's no substantive decision on the bill.

Mr. Jamie Schmale: Well—

Mr. Arnold Chan: It's a procedural withdrawal, not a substantive withdrawal.

Mr. Jamie Schmale: For sure. I'm just saying there is... We believe the opposite, that's all.

Mr. Arnold Chan: What is the practice of the committee if we are not in agreement? Is it just voted straight up and straight down?

The Clerk: Do you want me to answer?

The Chair: Yes, please.

The Clerk: Thank you, Madam Chair.

Most of the time, as you know, the subcommittee proceeds on the basis of consensus, but if there are concerns raised about a specific question, well, in the end the question will be put by the chair and could be resolved by a show of hands. Then we know whether the specific question is carried or not.

The Chair: Marc-Olivier, do you want to add any comments with respect to the discussion that has taken place back and forth? Do you have anything further to add in terms of what you've said already?

The Clerk: Nothing further to add, thank you.

The Chair: Okay.

Mr. Arnold Chan: Madam Chair, I have an item that I need to raise as well, on C-343 that was introduced by Madam Brosseau.

The Chair: Mr. Chan, you have the floor.

Mr. Arnold Chan: This is Bill C-343. This is a bill that would establish an office of an ombudsman under the—

● (0900)

The Chair: victims of criminal justice act.

Mr. Arnold Chan: —victims of criminal justice act, and there are in the provisions of the bill a provision of remuneration and expenses for the ombudsman, plus the hiring of staff.

Typically, this would not be a matter that could be brought under private members' business, as it would be a contravention of section 54 of the Constitution Act 1867. However, I do want to note that... and let me read section 54 of the Constitution.

It provides that:

It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

As you know, there is no actual royal recommendation attached in the bill, however there is an attempt in this particular bill to add an interesting section at the very end of the draft bill, section 26, which is a coming into force provision, which basically provides a subject to royal recommendation provision.

The text of this particular clause under section 26 of Bill C-343 reads:

26.1 Subject to subsection (2), this Act comes into force on a day to be fixed by order of the Governor in Council. 26.2 No order may be made under subsection (1) unless the appropriation of moneys for the purposes of this Act has been recommended by the Governor General and the moneys have been appropriated by Parliament.

From my perspective it sets a really interesting precedent if we allow this to move forward. It is an attempt, from my perspective, to do something indirectly what you can't do directly, which is to circumvent the prerogative under the royal prerogative process with respect to the use of spending under both section 53 and section 54 of the Constitution.

If we were to allow this bill to move forward, it would be my view that it would allow future bills to use a very similar provision to get around... We would end up with a whole series of potential bills on the books that would be subject to a future royal recommendation. I'm not sure that this is a particular precedent that we want to set.

This is sort of a grey area. I want the comments of my colleagues and, perhaps, from the clerk as well, or the analyst, whether from their perspective this is a votable bill. I am of the view that it should not be.

The Chair: Thank you, Mr. Chan.

Alexandre, would you like to make a comment?

Mr. Alexandre Lavoie: Do you want to explain the procedure to get the royal recommendation?

The Clerk: Okay. I can offer some comments.

The Chair: If the MPs want them, do we have any comments?

Mr. Jamie Schmale: Do we get a royal recommendation first or comments from the clerk or the analyst?

The Chair: Would you like that to happen first before you speak?

Mr. Jamie Schmale: Yes.

The Chair: Okay.

The Clerk: Thank you, Madam Chair.

About the concerns raised for Bill C-343 by Mr. Chan, first, I'll comment on the idea that the bill might be requiring a royal recommendation.

At this stage, it's not necessarily the role for the subcommittee to determine whether or not a bill requires a royal recommendation. As you know, the role of the subcommittee is to determine whether or not the items that you have in front of you should be the subject of a vote down the road by the House of Commons or rather be

designated non-votable on a series of criteria that you are already familiar with.

Regarding the royal recommendation, it's helpful to note that, once the report from this committee is presented to the House, usually very rapidly, the Speaker of the House of Commons, Mr. Regan, will scrutinize them, perform a scan of all these items, and will check for that royal recommendation requirement.

If he finds in Bill C-343 or any other bill that there is a requirement for a royal recommendation, he is going to make a statement about that in the House of Commons. As you know, the Standing Orders and the procedure provide for this bill to go forward, until the question is asked at third reading.

If it's determined by the Speaker that this bill requires a royal recommendation, the question will not be put at third reading, but the bill will be able to travel throughout the legislative process for second reading, committee stage, report stage, and even have a debate at third reading. However, if there was a requirement for a royal recommendation determined, not by the subcommittee, but by the Speaker of the House himself, the Speaker will say, "Well, I see that now I have to interrupt the proceedings. The question shall be put whether or not this bill shall receive third reading. There was a requirement put forward for a royal recommendation. I don't see that this royal recommendation is present. Therefore, by the Standing Orders, the bill will now be dropped from the Order Paper." That's the end of the bill.

I think you mentioned clause 26, that this bill shall not be put into force before it actually receives appropriation of funds by Parliament.

My opinion is that maybe this is a question that could be raised in the House of Commons, rather than in this subcommittee. It may even be a precedent. If I recall correctly, we have seen some bills come from the other place with that kind of provision. If it's the case now that we have this provision in Bill C-343, it might be a good idea to request a formal opinion from the Speaker of the House of Commons himself about whether or not the bill, as it stands now, is in the proper form with this clause.

With that being said, as I was mentioning with my other points, for whatever reason and based on the criteria that you have, you want to determine that this bill shall be designated non-votable that is entirely your decision, Madam Chair.

● (0905)

Mr. Arnold Chan: May I pose a question particularly to Mr. Schmale, given that I believe this originates from one of your caucus colleagues?

Again, you had raised the earlier point with respect to Mr. Sangha's bill, Bill C-344. I want to give the same opportunity to Ms. Boucher. Anything is possible and perhaps a royal recommendation will be granted before third reading, but we know that the potential consequence is that the bill would be deemed non-votable at third reading. If it were to proceed that far down the process and if there were no royal recommendation, then the bill would be deemed to be non-votable at that stage.

As an alternative, maybe we would want to give Ms. Boucher at least some consideration about whether this is still how she wants to proceed or whether she wants to substitute?

Mr. Jamie Schmale: That's a fair point, since it's the same thing with Bill C-344.

Mr. Arnold Chan: That's right.

Mr. Jamie Schmale: I think that's fair.

• (0910)

The Chair: In terms of our role or goal today, we have to decide today whether the items are votable or non-votable. In regard to the matters that have been discussed, the clerk is going to make a few more comments based on the discussions that have taken place.

The Clerk: I was just mentioning that, if my memory serves me well, there was a new Standing Order adopted in 2015 by the House that provides that, in the event that a private member's bill is judged out of order by the Speaker of the House, either because it needed to be preceded by what we call a ways and means motion when there's a taxation purpose included in the bill, or for any other procedural reason, there's a time frame that is provided for the member in question to actually substitute the item that he or she had that was found to be out of order and replace it with another item of his or her choice. Basically, the member doesn't lose his or her spot.

Mr. Jamie Schmale: Okay, that's good.

Mr. Arnold Chan: It's what, 20 business days or something like that?

The Clerk: The thing is, my Standing Orders here are from this book.

Mr. Arnold Chan: Yes.

The Clerk: This is from 2009, and it was carried in 2015. But, yes, we can—

Mr. Alexandre Lavoie: You can look it up.

Mr. Arnold Chan: We raised it at the last meeting, I recall, but okay.

The Chair: Are there any other comments on this?

Mr. Jamie Schmale: Just on Ms. Boucher's private member's business, I appreciate what you were saying there, and I do appreciate you extending that branch to us, so thank you. I think we're making the difference that Ms. Boucher's bill is kind of outside the jurisdiction of this committee, whereas we believe the House made a decision on the other bill, Bill C-227, where that would have jurisdiction in this committee and that information is from the clerk. We believe the House has made a decision on one, whereas it hasn't on the other.

The Chair: Okay.

Mr. Chan, do you have any other comments?

Mr. Arnold Chan: I don't agree. I take the clerk's recommendation that there had been no decision of the House on the bill that was reintroduced by Mr. Sangha that essentially adopts Mr. Hussien's former bill. As I say, I get the point that the clerk is making on Bill C-343. Again, I still am just mindful when we're dealing with the Constitution Act and section 54. I think we will see a lot of bills coming before the House that will attach a very similar type of provision to get around section 54 of the Constitution. I note the

point that he's raised, that ultimately it would be deemed non-votable at third reading if there were a royal recommendation clause and the royal recommendation wasn't actually granted by that point of decision in the House.

I do acknowledge that there were Senate precedents. I don't remember the exact instances. I know there were a few instances—because this would be a breach of section 53 of the Constitution, because the Senate also can't initiate any spending measure. Similar provisions came out of the Senate on a number of bills. I don't think it actually even ever made it to the House for consideration in each of those instances, because there was no sponsor of the bill. I think that was the distinction from the point that you were making. Clearly, that is a breach of section 53. There has been precedence. I believe this is the first time it's been attempted in the House. I believe there has been precedence, coming from the Senate, with a similar provision found in Ms. Boucher's bill in clause 26.

Mr. Jamie Schmale: Through you, Chair—and correct me if I'm wrong—I believe that in the past, bills that have required royal recommendation have come through this committee and have gone on to a final decision through the House.

The Clerk: Absolutely. We do have a current example, Mr. Gerretsen's Bill C-243, for instance.

Mr. Arnold Chan: That's what we thought.

The Clerk: It was deemed to be non-votable by this subcommittee and it is currently at report stage. You have a good example there. It was also the subject of a statement by the Speaker that, in his opinion, it did require royal recommendation, so the bill is still going forward until it reaches the third reading, question put at third reading.

• (0915)

Mr. Jamie Schmale: Right.

The Chair: Alexandre, do you want to add something else with respect to what you've looked up on the standing order?

Are there any other comments or discussion on this?

Are we good?

Mr. Arnold Chan: Yes.

The Chair: Okay.

Now, I would suggest that we take a look at these two items separately, to determine whether they are going to be part of the package that we're moving forward.

Since we discussed it first, let's start with Mr. Sangha's bill, Bill C-344. I think we have to actually have a show of hands on this with respect to the discussion that has taken place, and whether it is votable.

(Motion agreed to)

The Chair: Now we will move to Bill C-343.

Could I see a show of hands for those who believe that this motion is votable and should be included?

Mr. Arnold Chan: I'll abstain.

The Chair: None opposed and Mr. Chan abstained.

(Motion agreed to)

The Chair: Could we have unanimous consent with respect to the remaining items as discussed at the beginning, the 15 items and the three Senate bills?

Mr. Arnold Chan: I so move.

The Chair: So moved.

(Motion agreed to)

The Chair: Now we'll have the formal part.

The Clerk: Yes.

The Chair: This is it formally now:

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 [See *Minutes of Proceedings*])

The Chair: Is there any further business?

Mr. Arnold Chan: Should we adjourn?

The Chair: The meeting is adjourned.

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