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THE SENATE

MOTION TO AMEND THE *RULES OF THE SENATE* TO ENSURE
LEGISLATIVE REPORTS OF SENATE COMMITTEES FOLLOW
A TRANSPARENT, COMPREHENSIBLE AND NON-PARTISAN
METHODOLOGY—MOTION IN AMENDMENT—DEBATE

Speech by:

The Honourable Diane Bellemare

Tuesday, March 7, 2017

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[Translation]

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MOTION TO AMEND THE *RULES OF THE SENATE* TO ENSURE LEGISLATIVE REPORTS OF SENATE COMMITTEES FOLLOW A TRANSPARENT, COMPREHENSIBLE AND NON-PARTISAN METHODOLOGY—MOTION IN AMENDMENT—DEBATE

Hon. Diane Bellemare (Legislative Deputy to the Government Representative in the Senate): Honourable senators, I will try to be brief because this is day 14, and it's the second time I'm adjourning debate.

I rise today to speak in favour of Senator Nancy Ruth's amendment to the motion that I moved in May 2016. Senator Nancy Ruth suggested adding a criterion for committees to take into account during their work on bills and their reports to the Senate. That criterion is substantive gender-based analysis. I support the amendment and thank the senator for proposing it.

[English]

This analysis is well known in English as a gender-based analysis plus, or GBA+. I support this amendment, but before explaining the nature of the amendment in more detail, let me explain the context and the substance of the initial motion.

[Translation]

The original motion, amended by Senator Nancy Ruth, proposed an amendment to the *Rules of the Senate* to facilitate debate at third reading of government, Senate and private members' bills. This motion is the outcome of a personal thought process that began with the Supreme Court's 2014 reference on Senate reform. This motion would answer the following question: when senators wish to have an independent and non-partisan look at bills, what criteria must they consider in order to justify their position to Canadians?

The Supreme Court reference states that the Senate is a complementary chamber rather than a rival to the House of Commons. It also states that it is not the role of the Senate to oppose —

[English]

The Hon. the Speaker: Honourable senators, it is now six o'clock. Pursuant to rule 3-3(1), I'm required to leave the chair unless it is agreed that we not see the clock. Is it agreed that we not see the clock, honourable senators?

Hon. Senators: Agreed.

[Translation]

Senator Bellemare: The reference states that it is not the role of the Senate to oppose for the sake of opposing, but rather to provide sober second thought on the legislation passed in the other place.

[English]

I quote the reference of the Supreme Court, quoting Sir John A. Macdonald:

An appointed Senate would be a body “calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill considered legislation which may come from that body, but it will never set itself in opposition against the deliberate and understood wishes of the people. . . .

[Translation]

It would be difficult for a senator who wants to exercise his or her constitutional role, as indicated in this reference, to study in detail all the bills introduced in the Senate. Committees are responsible for the in-depth study of bills. They report their findings to all senators so that the bill can be debated at third reading.

The rule governing committee reports is not very restrictive. It allows the committee to append observations to the report. In practice, committee reports do not say much about the nature of the debates that took place. According to the Rules, a committee is required to append observations only when the committee makes amendments to the bill or if it rejects the bill.

Generally speaking, committee reports are very succinct. When a bill is studied in committee and no amendments are presented, the committee can simply submit a report to the Senate using the following wording:

Your committee, to which was referred Bill XYZ, has, in obedience to the order of reference, examined the said bill and now reports the same without amendment.

It is that simple. This simple phrase constitutes the committee report. The committee is not obligated to disclose the nature of its deliberations, including the questions raised by witnesses or even the amendments that were proposed and rejected.

For quite some time, for as long as I've been here, this single sentence constitutes the committee report for most of the bills studied in committee. However, committee reports could be very useful to the senators who were unable to take part in the study, and could give them some insight into the various elements that make a bill a good bill.

What, then, are the elements that make a bill that comes to us from the House of Commons a good bill? More specifically, what test should the Senate apply to bills under consideration to guarantee Canadians that the Senate has properly carried out its duty of sober second thought?

The Senate test should be non-partisan, that much we know. The Senate test should be different than that of the official opposition in the other place. We cannot simply transplant the questions from the other place, since they are often more ideological. The Senate test, in my view, should be a test of quality based on objective criteria. Indeed, the role of senators is similar to quality control. Senators must be able to set aside their personal preferences and partisan affinities in performing this role.

Motion No. 89, which I moved last year, identifies some of the essential aspects of this quality control. Should the motion be adopted, committees would be required to append to their reports the observations made by witnesses on matters that are essential to the study. This motion does not require the committees to conduct an in-depth study of each of the issues themselves. That would not be realistic, given the time we have to study bills. Rather, the purpose of the motion is to guide the committee members regarding the questions they ask witnesses and the information they report to the Senate.

Accordingly, Motion No. 89 seeks to amend rule 12-23 so that the following items are appended to the report:

12-23. (1) The committee to which a bill has been referred shall report the bill to the Senate. The report shall set out any amendments that the committee is recommending. In addition, the report shall have appended to it the committee's observations on:

(a) whether the bill generally conforms with the Constitution of Canada, including:

(i) the Canadian Charter of Rights and Freedoms, and

(ii) the division of legislative powers between Parliament and the provincial and territorial legislatures;

(b) whether the bill conforms with treaties and international agreements that Canada has signed or ratified;

(c) whether the bill unduly impinges on any minority or economically disadvantaged groups;

(d) whether the bill has any impact on one or more provinces or territories;

(e) whether the appropriate consultations have been conducted;

(f) whether the bill contains any obvious drafting errors;

(g) all amendments moved but not adopted in the committee, including the text of these amendments; and

(h) any other matter that, in the committee's opinion, should be brought to the attention of the Senate.

Senator Nancy Ruth proposed adding to this list the following:

(d) whether the bill has received substantive gender-based analysis;

This addition proposed by Senator Nancy Ruth does not seek to require the committee to conduct a substantive gender-based analysis. It seeks to ask experts whether such an analysis was done and, if so, to find out the results of that analysis.

[*English*]

I want to talk now a little bit about gender-based analysis or GBA+. Let me start by defining GBA+, using the words of Status of Women Canada:

GBA+ is an analytical tool used to examine a policy, program or initiative for its varying impacts on diverse groups of women and men, girls and boys. It provides a snapshot in time by challenging assumptions and capturing the realities of women and men affected by a particular issue. It provides analysts, researchers, evaluators and decision makers with the means to improve the different interventions and to take account of unintended consequences.

In 1995, the federal government committed to using GBA+ as a means of advancing gender equality in Canada, as part of the ratification of the United Nations Beijing Platform for Action.

In 2009, at the request of the Standing Committee on the Status of Women, the Office of the Auditor General reported on the GBA+ practices of six departments and the three central agencies. The main findings from the report showed, and I quote from the website of Status of Women Canada:

... little or no evidence of GBA plus frameworks implemented in departments; no evidence that GBA+ was considered or documented in decision making; and no record of the Privy Council Office and the Treasury Board of Canada Secretariat playing their challenge function with departments.

In response to the Auditor General's report, Status of Women Canada, the Treasury Board of Canada Secretariat and Privy Council Office created the Departmental Action Plan on Gender-Based Analysis in autumn 2009, and, recently, the government renewed its commitment to GBA+ and is working to strengthen its implementation across all federal departments.

[*Translation*]

The Economist recently reported on the importance of governments conducting substantive gender-based analyses. The article, which ran in the February 25, 2017 issue, goes on to explain how such an analysis is useful in drafting government budgets, since it helps effectively address the causes of gender inequality. Such analyses would allow for actions that are more effective than the current legislation, which is based on quotas. We also learned the following, and I quote:

[*English*]

Now the World Bank backs gender budgeting. The IMF used not to see promoting sexual equality as its job, but Christine Lagarde, its managing director, now wants gender-budgeting to play a role in the advice it gives to member countries.

[*Translation*]

I thank Senator Nancy Ruth for proposing this amendment. Again, it seeks to put pressure on the departments to undertake such analyses when they propose new legislation and not to have the committee studying a bill do the analysis itself.

I think this is an important addition to Motion No. 89. This new criterion improves my motion since gender-based analysis helps in assessing the potential effects of policies, programs, services, and other initiatives on women and men from diverse backgrounds. Naturally, gender is a factor in the analysis, along with other identity factors such as education, language and geography. Neither gender takes precedence in GBA+. Rather, it integrates a series of factors for a more complete analysis that reflects the diversity of Canada's population. On January 12, the Government of Ontario announced the creation of an independent ministry that will ensure gender is taken into consideration for policy and program development.

I believe that my motion, with Senator Nancy Ruth's amendment, will enhance the value of committee deliberations on bills, while promoting more transparent accountability for our work as we dutifully exercise our constitutional duty to provide sober second thought.

I will conclude by pointing out that the essence of Motion No. 89 was presented in the Senate Modernization Committee. The following comments about it appear at the end of the Special Committee on Senate Modernization's first report:

[*English*]

The committee favours that all Senate committees, particularly when producing reports on bills, make use of

appended observations. Observations are useful for all senators. They indicate, for the benefit of all senators, including those not sitting on specific committees, the key issues that were canvassed in the course of a committee's deliberations. Appended observations included in committee reports on bills generally do not have the effect of increasing a committee's workload. These observations are useful for all senators so that they can discuss in the Chamber the issues raised by the various bills that are studied in the Senate Observations identify and provide an assessment of the relevant evidence gathered from witnesses during a committee's legislative work. These observations could take into account the regional, social economic, and constitutional effects of the studied bills. Observations could also provide a list of individuals or groups that met with a committee. They could also note the proposed amendments that were not adopted by the committee, providing senators with a useful source of the issues raised during committees' legislative work. This type of observation is especially useful when the Senate studies private members' bills emanating from the House of Commons or Senate public bills.

In this way, appended observations in committees reports on bills ensure that a committee's legislative work is given full account in a transparent and objective manner to all senators. Above all, appended observations on reports on bills showcase the work of Senate committees.

[*Translation*]

I will close with what Senator Nancy Ruth said:

[*English*]

In the interim, there is no need to wait. Senate committees have the power to ensure that our committee deliberations and reports follow this methodology. We can and should be doing our job. . .