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LEGISLATIVE WORK OF THE SENATE

Inquiry—Debate Adjourned

Speech by:

The Honourable Diane Bellemare

Thursday, May 5, 2016

THE SENATE

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[Translation]

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INQUIRY—DEBATE ADJOURNED

Hon. Diane Bellemare rose pursuant to notice of March 24, 2016:

That she will call the attention of the Senate to the Senate's legislative work from the 24th to the 41st Parliament and on elements of evaluation.

She said: Honourable senators, I will try to be brief.

Today, I wish to share with you the research that I have done with my legislative assistant and the Library of Parliament in order to collect statistics about the legislative work accomplished by the Senate since 1960, so from the 26th Parliament to today.

• (1520)

Raw statistical data are available on my website, and I invite everyone to consult them. Through this analysis, I wanted to respond to a question that I am often asked: "What do you do in the Senate? What value do you add?"

My instinct as an economist was to try to come up with some facts, an indicator of the legislative work we do. We received some help from the Library of Parliament, and I was greatly inspired by the work of a professor and political scientist named Andrew Heard, who did a statistical analysis similar to the one on my website, except that his ends in 2000. However, he recently updated his data and presented a very interesting brief to the Senate Modernization Committee, which I also posted on my website.

I would like to go over some of the highlights of that analysis. As you all know, there are several categories of bills. The bills we talk about the most are government bills. There are also public bills, which are introduced by a member in the House of Commons and by a senator in the Senate.

Finally, there are private bills introduced in the House of Commons and the Senate. All of these bills need to be passed by both chambers in order to be granted Royal Assent.

What really surprised me is that from 1960 until the end of the Forty-first Parliament, 12,774 bills were introduced in the Parliament of Canada. This averages out to 710 bills per Parliament, which represents a great deal of work, but very few of those bills received Royal Assent. According to our data, about 20 per cent of the bills introduced in Parliament receive Royal Assent.

The statistics show an upward trend in the number of bills introduced in Parliament and a downward trend in the percentage of those bills that receive Royal Assent. The good news in all of this is that, fortunately, all of the bills that are introduced are not

passed. Imagine if the opposite were true. We'd be overwhelmed by legislation.

Many of the bills are rejected in the House of Commons. Between 1997 and 2015, 80 per cent of bills did not make it out of the House of Commons. About 40 per cent of bills did not get past the Senate.

The figures also show that many bills in the House of Commons are introduced by opposition members. These bills are debated, but they will not make it to the Senate.

In the Senate, numerous bills are introduced by a senator but very few are passed. Between 1997 and 2015, senators introduced, on average, 59 public bills per Parliament, and of these bills, just four received Royal Assent.

To the new senators who wish to introduce a bill, you will have to be patient. These bills are not necessarily rejected, but they die on the Order Paper and often come up again during a later session. This is the case with Bill S-204, introduced by Senator Moore, which has been coming back to the Senate every session since 2008.

However, during the last Parliament, between 2011 and 2015, the Senate did well: nine of the 56 Senate public bills were enacted. That is 16 per cent, which is higher than the 6 per cent average observed over the extended period.

During the last Parliament, a number of Senate bills sought to institute special days, such as the celebration of a special event, the commemoration of Korean War veterans, National Philanthropy Day, and even National Fiddling Day.

Some bills amended important legislation. For example, Senator Runciman was successful in his bid to pass Bill S-221, which amended the Criminal Code to require a court to consider the fact that the victim of an assault is a public transit operator to be an aggravating circumstance for the purposes of sentencing.

The statistical data show that the Senate does some trimming of bills that originate from senators. However, the vast majority of bills that the Senate receives from the House of Commons receive Royal Assent. From 1997 to 2015, 87 per cent of the bills from the House of Commons were passed by the Senate, most without amendment. During that time, a total of 33 bills were passed with amendment, representing 6.3 per cent of the bills passed. I should also point out that these are mostly government bills.

Andrew Heard's document is quite helpful in understanding how government bills go through the Senate. He recently updated his statistical analysis. In the new analytical report he submitted to the Senate Modernization Committee, we learn that almost 80 per cent of the bills studied in the Senate are government bills and 91 per cent of those bills receive Royal Assent. During this period, 26 of the 427 government bills that were passed, or 7 per cent, were amended.

As noted by Andrew Heard, government bills are quite often fast-tracked through the Senate. In fact, 23 per cent of government bills are not studied in depth in committee and are

passed within a day or two. Nevertheless, he states that 77 per cent of bills are analyzed more thoroughly, which is not that bad.

Furthermore, committees spend very little time on government bills as compared to bills originating in government. In short, Andrew Heard finds that government bills are rarely amended and that they are not directly or indirectly rejected either. Naturally, some die on the Order Paper. However, those are often the bills that are introduced not long before prorogation and they generally return if the government is re-elected.

• (1530)

When government bills are amended, the House of Commons is usually quick to respond. More than half the time, the House of Commons approves the Senate's amendments within three weeks. Heard noted that, during the period studied, there were only two occasions when the other place took longer than 60 days to review the amendments.

During the previous Parliament, the Senate officially amended only one government bill. That was Bill C-10, the Safe Streets and Communities Act. It was passed by the Senate at third reading with six amendments on March 1, 2012. The House of Commons agreed to the Senate's amendments on March 12, 2012, and the bill received Royal Assent on March 13. This proves that the Senate amendment process can move quickly when there is political will.

According to Professor Heard, party discipline seems to play an important role in the progress of government bills through the Senate.

This review of how government bills move through the legislative process corroborates popular opinion about the Senate's legislative work. That's why Professor Heard concluded that changes were called for to improve the Senate's legislative work and be accountable to Canadians.

Heard also pointed out that private members' bills do not receive as much attention as they deserve even if they obtain a majority vote in the House of Commons.

The statistical tables on my website also reflect this reality. During the reference period from 1997 to 2015, the Senate let 14 per cent of the bills from the House of Commons die on the Order Paper, which is a total of 89 bills, most of which were private members' bills. In fact, according to Professor Heard's data, private members' bills spend four to five times more time in the Senate than government bills. They are rarely amended and die on the Order Paper. During the Forty-first Parliament, we let 19 private members' bills die on the Order Paper.

Why is this? There could be many reasons. Senators may be too divided on the outcome of the vote. There may also be political pressure to prevent these bills from passing. We have to wonder why Bill C-290 on sports betting, Bill C-279 on gender identity, and Bill C-520 to support non-partisan offices of agents of Parliament all died on the Order Paper. Why were these bills not put to a vote? Was it because of a lack of time, or was it an indirect veto?

Professor Heard essentially concluded that the Senate does not amend, but exercises an indirect veto, not on government bills, but on private members' bills.

As a result, we end up with a democratic deficit, because the public needs to know why bills that pass in the other place do not get through here.

Let's compare our legislative work with that of senates around the world. Although international comparisons are difficult, since we are not always comparing apples with apples, a comparison can still shed a little bit of light.

For example, in France, from 2013 to 2015, 107 amendments were made to the legislation under review. In 2015 alone, the Australian Senate adopted 57 amendments to assented bills. In the United Kingdom, the numbers are astounding. The House of Lords reported 1,163 amendments in 2014-15. Although it is true that the House of Lords also conducts regulatory reviews, these numbers still speak for themselves.

What about our legislative review work? Are we doing too little? Is the legislative work done by the House of Commons so perfect that it does not require any amendments?

Is the Senate's work so subtle that it doesn't leave any visible trace?

The Hon. the Speaker: Do honourable senators agree to give the honourable senator more time?

Hon. Senators: Agreed.

Senator Bellemare: As Professor Thomas pointed out in an article in Senator Joyal's book that comments on the statistical work of Professor Heard, statistical data may hide the subtlety of the Senate's work. The purpose of this inquiry is to bring to light the subtlety of the Senate's legislative work. This information will be useful in improving our legislative work.

Perhaps the work we do during pre-studies is useful, but the data do not show it. If we amend bills during pre-studies, Canadians need to know about it, or at the very least, we need to leave some sort of evidence of what we have done.

I initiated this inquiry so that the senators who have been here for a long time can bolster these statistics and talk about their own experiences.

In closing, the data support public opinion, but they also show that there is a democratic deficit when it comes to private members' bills, and that is something that we absolutely need to address.

What is more, the Senate's legislative review work is not transparent. I believe that in order to make that work transparent, committee reports on bills originating in the House of Commons need to be more substantial. That is why I moved this motion, which I will talk to you about again another time.

Thank you.