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DEPARTMENT OF EMPLOYMENT AND SOCIAL DEVELOPMENT ACT EMPLOYMENT INSURANCE ACT

BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

Speech by:
The Honourable Diane Bellemare

Tuesday, May 17, 2022

THE SENATE

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[Translation]

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Hon. Diane Bellemare moved second reading of Bill S-244, An Act to amend the Department of Employment and Social Development Act and the Employment Insurance Act (Employment Insurance Council).

She said: Honourable senators, this bill is the result of discussions between several groups, representatives and labour market stakeholders, all with an interest in employment insurance.

The Canadian Labour Congress played a leading role for the unions. The FTQ, the CSN, Unifor and Canada's Building Trades Unions also participated in the discussions.

For employers, the Canadian Chamber of Commerce was the main contact point. The Fédération des chambres de commerce du Québec, the Conseil du patronat du Québec, the Canadian Federation of Independent Business and the Canadian Manufacturers and Exporters also took part in the discussions.

I would also like to thank the two EI commissioners, Pierre Laliberté, the Commissioner for Workers, and Nancy Healey, the Commissioner for Employers, for their thoughtful contributions to the discussions. I also want to thank my team, the law clerks and my special adviser, Michel Cournoyer, a long-time contributor to the consultations.

The purpose of the bill is to enhance social dialogue within the Canada Employment Insurance Commission. Its current structure, based on consultation, does not meet today's needs. This system is funded entirely by the employers and the workers, and it plays a major role in the labour market with respect to compensation, but also with respect to employment policies that facilitate transitions. It failed at that task during the pandemic, so a major reform is needed. The effectiveness of the changes will depend on the stakeholders' participation in defining and implementing these changes. The bill is a response from labour market partners. As I was saying, the commissioners actively participated in it.

This bill is rather simple. Through federal legislation, it seeks to create a council that will be in charge of providing advice to the current Canada Employment Insurance Commission. The bill proposes that this council, which will be co-chaired by the Commissioner for Workers and the Commissioner for Employers, be made up of an equal number of labour and employer representatives. Unlike the current commissioners, the members of the council will not be paid. The creation of this council will therefore have no specific budget impact.

What is social dialogue? Often when I talk about social dialogue, people say, "What are you talking about?" It's true that social dialogue is not something we hear about every day in Canada. However, it's a fairly common practice, especially in Quebec, and it's even more widespread in most industrialized nations.

The International Labour Organization, the ILO, an agency of the United Nations, proposes the following definition of social dialogue:

Social dialogue is defined by the ILO to include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy. Social dialogue takes many different forms. It may exist as a tripartite process, with the government as an official party to the dialogue, or it may consist of bipartite relations between the representatives of labour and management at company level (or trade unions and employers' organizations at higher levels). Social dialogue may be informal or institutionalized, and often involves both. It may take place at the national, regional, international, cross-border or local levels. It may involve the social partners in different economic sectors, within a single sector or in a single company or group of companies.

The ILO further states:

The main goal of social dialogue itself is to promote consensus building and democratic involvement among the main stakeholders in the world of work. Successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advance social . . . peace and stability and boost economic progress.

When we read about how social dialogue is a collective bargaining or information exchange process, we can see that Canada does practise social dialogue to a significant extent. Consultation, as it is often understood, is just the beginning of an ongoing social dialogue intended to achieve consensus. A second reading of the ILO definition makes it clear that social dialogue is not a unilateral or one-way process, unlike the consultation processes that governments in Canada carry out as they are developing bills.

Consultation is less effective than consensus. It is the beginning of the process, and it is less effective, but why? The short answer is that consultation produces many answers, whereas consensus zeroes in on a solution or solutions that are mutually acceptable and generally mutually beneficial.

Consider labour relations in a business. Labour relations experts understand right away that a negotiated contract is always better than a contract imposed by an arbitrator after consulting the parties. More often than not, when the balance of power is even and the process is undertaken in good faith, negotiation results in mutually beneficial agreements with respect to

productivity and equity. The result often resembles a positive-sum game in the way labour, production and compensation are organized.

That is not necessarily the case with arbitration. The arbitrator listens to both parties' official versions and then splits things down the middle, producing a less-than-optimal outcome.

[English]

In short, social dialogue is a form of negotiation at the national level which results in the determination of more effective and fairer labour market policies than would otherwise be the case.

It is an effective process because it reveals the multiple facets of the same reality. It allows for innovation in mutually beneficial solutions. It allows the unexpected effects of policies to be taken into account and the losers to be compensated. Social dialogue also ensures greater social acceptability among companies and the workforce, facilitating its implementation.

[Translation]

The actual process of social dialogue is very different from the specific, time-limited public consultations that are carried out by elected officials or civil servants to support political decisions that have sometimes already been made. Consultation generally puts all of the information in the hands of decision makers and, more importantly, it does not allow for innovative solutions because it does not encourage dialogue between the parties.

Consultation, as it is typically practised, is not a consensus-building process; on the contrary, it often results in opposing positions from those being consulted. As a result, the public servants and politicians who decide on the strategies to use will very often make someone unhappy. There may be winners and losers, which will make it more difficult to implement the strategies.

In short, social dialogue is a more transparent process than consultation because every stakeholder has access to the information provided by the others. Feedback is provided at the same time that information is being validated around the table. This process encompasses the concerns of the various stakeholders. Social dialogue results in common solutions and promotes social consensus, which bilateral consultation simply can't do. It also facilitates policy implementation. In short, it is a positive-sum game.

I will now shift from theory to things that are more tangible. I had the opportunity to observe social dialogue in the context of labour market policies in Quebec. I would like to tell you a bit about the accomplishments of the Commission des partenaires du marché du travail.

The Commission des partenaires du marché du travail has existed in Quebec since 1993. It started out as the board of directors of the Société québécoise de développement de la main-d'œuvre, or SQDM, a public organization whose mandate was to manage the labour and training programs funded by Ottawa and Quebec. In 1994, at the request of Quebec's employer and worker associations, the composition of this public organization's board of directors was changed so that the

members would be representatives of associations instead of individuals. The government of the day agreed to that request and, at the same time, I became the chair of this organization during its restructuring.

At that time, the minister responsible for this file supported the priorities of the Forum pour l'emploi, a non-profit organisation created in 1987 to provide a framework for social dialogue in Quebec. To be clear, the Forum pour l'emploi was born out of a collective desire on the part of Quebec's economic players to help lower the unemployment rate and stimulate growth and productivity.

The catalyst for this movement was the publication of a book called *Le défi du plein emploi — un nouveau regard économique*, which offered a new economic perspective on the challenge of full employment. I co-wrote it with my colleague Lise Poulin-Simon, who left us too soon in 1995. Our book compared the economic policies on employment of countries that had managed to weather the economic period of the 1976 oil crisis relatively well, while Canada had been experiencing stagflation since 1976. The book generated a lot of public interest, so two former federal officials came to us and challenged us to carry out what we had proposed in the book. We decided to take on the challenge, so we brought together a group of people who came from different backgrounds, but who were all interested in collective action.

The non-profit organization was initially co-chaired by Claude Béland, who will be familiar to some of you and who was president of Mouvement Desjardins at the time, and by Louis Laberge, then president of the FTQ and the Fonds de solidarité. It was composed of all the key players in Quebec's labour market. Union and employer associations were all represented, as were the municipalities, some large companies, youth and women's associations, and the vocational training sector.

The Forum pour l'emploi was eager for a major reform of labour programs and for the federal and Quebec government to coordinate or even merge their programs in order to focus their efforts on obtaining concrete results in terms of workforce integration and reduction of unemployment, rather than compliance with the programs.

Consequently, employer and labour representatives lobbied the federal government to decentralize its programs and measures and download them onto the provinces.

The objective was to create a labour development fund that would be managed by Quebec. In 1996, an agreement was signed to create the fund, with funding from the federal and Quebec governments. The agreement included and still includes results-based objectives, and program-based management was replaced by results-based management. At the time, more than 100 programs were abolished. Those programs were designed for certain categories of people, and they bore the imprint of the minister who had wanted to create them. There was no budget flexibility, so, at the end of the year, the unspent amounts of money allocated to each program were returned to the public treasury, even if the dire needs of the people in the labour market had not been met.

Needless to say, the official evaluations of these programs were negative. The social partners made it possible to transition to results-based management of public funds, as opposed to program-based management. That is a huge achievement.

The SQDM has now been replaced by Emploi-Québec, which combined SQDM staff, staff from federal employment services offices and social assistance workers. The Commission des partenaires du marché du travail is still involved in managing Emploi-Québec, more specifically in the area of training and employment services. Results-based management is still being used, and the labour market partners have to ensure that governments don't indirectly erode their progress by once again creating politically motivated programs targeting specific categories of people.

They ensure that the socio-economic logic of the labour market takes precedence over politically motivated objectives.

[English]

In short, this story aims to show that social dialogue in the labour market and at a national level is more than consultation. Social dialogue is about consulting each other to give advice that respects the collective logic of the labour market and to find — together — optimal solutions for specific needs. In many cases, in many countries, social dialogue is used to manage unemployment insurance programs as well as investments in labour force development.

[Translation]

What we can learn from this story is that society wins when economic and social partners are involved in making decisions regarding labour market policies.

The partners collect information on the ground that is not reflected in statistics. They put policies into practice, incorporate them into their human resource management practices, and live with the impact of these policies. Their participation is necessary for the programs to be successful.

[English]

Public intervention in employment and labour must respect the logic of the labour market and not the electoral logic in the number of votes. Our sustainable prosperity depends on it. Programs cannot change every four years and follow political logic.

[Translation]

However, social dialogue is not a spontaneous practice. Initiating productive social dialogue requires various conditions, one of which is mutual trust between the parties. Not all employers have a good relationship with their employees, and vice versa. Social dialogue can be a powerful antidote to the polarization generated by social media. However, in order to thrive, social dialogue needs an environment that fosters mutual trust. Governments have a role to play in creating environments that foster this trust. That is not always easy when the politicians leading government institutions are often simultaneously involved in divide-and-conquer strategies.

[English]

As an OECD report for the Global Deal mentions:

... social partners and the government cannot build and maintain an effective dialogue without mutual trust. While there is no single recipe to build up trust, OECD studies have identified some key determinants of trust in one specific institution, namely the national government. These include integrity of high-level government officials' ... government's reliability in case of crisis, openness to citizen's voice ... as well as responsiveness to citizen's concerns ... In addition, the following factors enhance trust ... i) availability of institutions and structures where social partners can regularly meet and discuss to arrive at a common understanding (from work places level up to national level); ii) access to accurate information by all sides ... iii) mechanisms that ensure enforcement of collective agreements and other commitments ... iv) institutional stability to create shares and anchored expectations; v) respect for autonomy of social partners; and vi) avoidance of excessive mutual strife and competition between social partners themselves.

[Translation]

Every study that has examined social dialogue has found that at least two conditions must be met in order for it to be sustained and effective. The first is the recognition and willingness of governments to engage in social dialogue as a means of determining public policy on labour issues.

The second is the importance of institutionalizing this practice in order to sustain mutual trust and develop a culture of consensus building.

Esteemed colleagues, at the risk of repeating myself, social dialogue is one of the best ways to achieve efficiency and equity in the production system and the labour market. That is why the International Labour Organization, the ILO, has always promoted social dialogue at the international level in every country, even the least developed. The ILO has produced recommendations and conventions identifying best practices in this field, and Canada has signed numerous ILO conventions. The government of Canada supports the practice and recognizes the importance of social dialogue through its international commitments.

For example, in 2016, the federal government supported the Global Deal for Decent Work and Inclusive Growth, an initiative launched by Swedish Prime Minister Stefan Löfven and developed in cooperation with the OECD and the ILO. The objective of the deal is to harness the potential of social dialogue as an instrument for promoting better quality jobs, fairer working conditions and more inclusive growth, in line with the UN 2030 agenda.

In addition, the ILO Declaration on Social Justice for a Fair Globalization, which expresses the contemporary vision of the ILO's mandate in the era of globalization, was adopted in 2008 by all of its members, including Canada. The declaration promotes decent work through a coordinated approach to

achieving four strategic objectives: employment, social protection, social dialogue, and fundamental principles and rights at work.

As the declaration states, social dialogue and tripartism are the most appropriate methods for adapting the implementation of the strategic objectives to the needs and circumstances of each country and translating economic development into social progress, and social progress into economic development, for example. Canada ratified the Tripartite Consultation (International Labour Standards) Convention, No. 144, in 2011. The convention recognizes social dialogue between representatives of the government, employers and workers in operating these procedures with respect to matters concerning ILO activities.

Employment Service Convention, 1948, No. 88, was ratified by Canada in 1950. Article 4 stipulates that representatives of employers and workers on these national advisory committees shall be appointed in equal numbers after consultation with representative organizations of employers and workers.

Honourable colleagues, social dialogue plays an important role in many societies, and not just democratic societies. History has shown us that private market institutions and the principle of competition do not function optimally in the labour market, especially when we are talking about compensation, employment insurance or skills development. By the same token, central planning of production and of the labour market does not work either in countries that are considered undemocratic.

There are social dialogue institutions all over the world at several levels of government. Many are national and help define major issues with economic and social policies as well as the strategies that are needed in response. Several countries practise social dialogue to deal with more specific issues, such as workforce development.

[English]

As an example of the importance of social dialogue on the macro level, the International Association of Economic and Social Councils and Similar Institutions is an organization that assembles economic and social councils from 72 countries in Africa, Europe, Latin America, the Caribbean and Asia. It was created in 1999 and has its head office in Brussels, Belgium.

[Translation]

Many countries, such as France, Belgium, Greece, Cameroon, Brazil, Mexico and China, are part of this association. The Scandinavian countries are leaders and pioneers on labour matters, as are Germany and Austria, both of which are countries that I studied and observed in action in a previous career. More than half of European countries have established tripartite institutions that are actively involved in managing labour and employment insurance programs.

Over the past few years, we have seen increased interest in social dialogue on the international stage. This is not surprising, given the challenges associated with mobilizing collective action to achieve a common objective as important as the sustainable development of our planet.

The UN sustainable development goals and 2030 agenda will require us to develop a common strategy and engage in constructive, robust social dialogue at all levels. To make the transition to green economies, we will have to adopt sustainable labour market practices, because this is where wealth is created and distributed.

What about social dialogue at the federal level in Canada? Before I get to that part, I want to pay tribute to an economist I never knew personally but would have enjoyed meeting in the context of this bill. I am talking about Donna Wood, who passed away in 2019. After spending 25 years in the public service in Alberta and then Northwest Territories, in the field of public policy, she taught in the political science department at the University of Victoria. She published several books on social policy, both in Canada and internationally, and on federalism.

Professor Donna Wood extensively analyzed the evolution of social dialogue in Canada. For this reason, for the next part of my speech, I will be drawing freely on her writings and on the scientific studies I conducted when I was a university professor alongside Professor Lise Poulin-Simon. I will also draw on my professional experience in the employment sector.

At the federal level, the first tripartite experiment began when unemployment insurance was created in 1940. At that time, the unemployment insurance program was established under the direction of the tripartite, arm's-length Unemployment Insurance Commission.

The program was originally funded through equal contributions from employers and employees, equivalent to 40% of the cost of the program for each group, and the federal government provided the remaining 20%. The federal government stopped contributing to the plan in 1990.

This tripartite commission carried out important responsibilities with respect to managing unemployment insurance from 1940 to 1976. In 1965, the tripartite commission lost the responsibility for employment and placement services, which were transferred to the Department of Labour and subsequently to the Labour and Immigration Department.

In 1976, the commission's responsibility for managing compensation was transferred to the Department of Employment and Immigration. The commission's composition was changed from three members to four, with one representative for employers, one representative for labour, and two departmental representatives. The chair of the commission was the deputy minister of the department. It was then that the commission came to closely resemble the commission of today. In short, its responsibilities are to assess the employment insurance program, approve policies, make certain regulations, set the premium rate and, until recently, oversee the administrative appeal tribunal, although that responsibility was taken away from it in a roundabout way. More on this later.

For almost 35 years, employment insurance was a tripartite institution that the government steadily stripped of its powers to govern a system that the partners currently fully fund. The year 1976 is also when the employment insurance system began to undergo many transformations in response to political problems

that were often not aligned with the logic of the labour market. The coverage rate of that system was about 80%, but it fell to under 50%.

In addition to the former tripartite Unemployment Insurance Commission, several advisory committees were established between 1941 and 1998. The last one was the Canadian Labour Force Development Board, which was established in 1991 and dissolved in 1998.

[English]

For various reasons, these institutions ended up dissolving. According to the late Professor Donna Wood's analysis, the most influential factor to cause the demise of advisory bodies was the propensity of the Government of Canada to reorganize and realign government responsibilities, abandoning or changing advisory committees in the process. As UI, as it was then known, and its various component pieces were moved around organizationally by the federal government, advisory committees were recast and weakened. The lack of legislation establishing these advisory committees most likely contributed to their easy dismantling.

However, in the case of the Canadian Labour Force Development Board, Professor Wood gathers that the government may have unwelcomed some of the messaging and therefore reduced its financial support, which ultimately led to business stakeholders pulling the plug.

For almost 20 years, the Canada Employment Insurance Commission has worked to facilitate business and labour input into employment policy in Canada. When input on larger issues than EI is needed, the Government of Canada has set up ad hoc consultations or has referred the issues to committees, such as the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities, or HUMA — because we do not have a committee on human resources in the Senate — in the lower chamber, which serve as fast-track options for governments seeking more specialized advice on short notice instead of permanent advisory bodies that tend to have broad and long-term expertise.

I would be remiss if I did not mention the Economic Council of Canada as an example of multipartisanship in Canada.

This organization, financed by the federal government, was created in 1963 and dismantled in 1992, when the studies of the council did not please the government of the day or the Department of Finance. The council was first composed of labour, business and other groups' representatives. Its composition was changed later by the appointment of individuals instead of representatives of institutions. It produced applied studies on issues of growth equity in the labour market and other issues of the day. Its mandate was to help build consensus in Canada. I had the privilege to be appointed for two mandates of three years each to the economic council, once by former prime minister Pierre Trudeau and reappointed by Prime Minister Mulroney.

To conclude this section of my speech, let me quote Professor Donna Wood from one of her last articles, entitled, *The Seventy-Five Year Decline: How Government Expropriated Employment Insurance from Canadian Workers and Employers and Why This Matters*:

There are many reasons why business and labour oversight and input into EI has diminished over time. Certainly, the combination of Cabinet government and executive federalism creates in Canada a closed, elite dominated process involving primarily politicians and bureaucrats in any policy area. The absence of vertically integrated, highly representative encompassing 'peak' pan-Canadian business and labour organizations exacerbates the business-labour divide and impedes their capacity to interact with government and with each other. The dismantling over the past 20 years of all pan-Canadian advisory committees and research institutions responsible for employment has eliminated spaces where fruitful conversations used to occur.

To conclude my speech, let me again cite Donna Wood's report:

Putting the business-labour-government partnership on a more formal footing through a National Labour Market Partner's Council would go a long way towards optimally re-positioning Canada's labour market programming for the 21st century.

[Translation]

That's exactly what this bill does.

Employer and worker organizations have enthusiastically welcomed this bill.

[English]

The Honourable Perrin Beatty, President and Chief Executive Officer of the Canadian Chamber of Commerce, stated that:

With the creation of an employment insurance advisory council, Senator Bellemare's Bill S-244 will enshrine a true and meaningful tripartite approach between business, labour and government. This will ensure that the Employment Insurance program is sustainable, responsive, non-partisan, inclusive and relevant for current and future generation of Canadian employers and employees.

The president of the Canadian Labour Congress, Ms. Bea Bruske, declared that:

Bill S-244 will absolutely strengthen the voices of the social partners in the work of the tripartite EI commission. In turn, by inscribing social dialogue at the heart of the EI system, Senator Bellemare's bill will improve the efficacy and responsiveness of labour market policy-making in Canada to the benefit of workers in our economy.

[*Translation*]

This bill was officially endorsed by these two major organizations, as well as all the other organizations that participated in the consultations. It's up to the government to take it from here.

This bill is important because the employment insurance system is in need of an overhaul and the people who contribute to

the system need to be involved in reforming it, not only as a matter of principle, but also to ensure it is equitable and effective.

Honourable colleagues, I would ask that you quickly support this bill at second reading so it can make its way to committee as soon as possible.

Thank you. *Meegwetch*.
