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AGRICULTURAL GROWTH BILL

Bill to Amend—Third Reading of Bill C-18

Speech by:

The Honourable Claudette Tardif

Tuesday, February 24, 2015

THE SENATE

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BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Plett, seconded by the Honourable Senator Frum, for the third reading of Bill C-18, An Act to amend certain Acts relating to agriculture and agri-food.

Hon. Claudette Tardif: Honourable senators, I rise today to speak at third reading of Bill C-18, An Act to amend certain acts relating to agriculture and agri-food, better known as the agricultural growth act.

The Standing Senate Committee on Agriculture and Forestry, of which I am a member, had the opportunity to hear from several witnesses during the study of Bill C-18. The stated purpose of this bill is to support innovation and increase access to international markets by modernizing Canadian standards so as to comply with the International Convention for the Protection of New Varieties of Plants 1991, better known as UPOV 91.

The agricultural growth act is an omnibus bill. As I expressed in my remarks during second reading of this bill, this is a large and fairly technical piece of legislation and the sheer scope of Bill C-18 is an issue. By grouping together many different amendments to various existing legislation, bills cannot be debated in full and do not have the chance to be thoroughly examined as they should. It puts parliamentarians in a difficult situation, as they often agree with parts of the bill but are opposed to others, and are forced to vote for all of the changes at once.

Honourable colleagues, although Bill C-18 amends nine different acts, the vast majority of the discussion during the committee's study of this bill was on the subject of the proposed amendments to the Plant Breeders' Rights Act. We also heard some witnesses comment on changes to the Agricultural Marketing Programs Act and the Agriculture and Agri-Food Administrative Penalties Act. Little to no discussion was held on changes to the Feeds Act, the Fertilizers Act, the Seeds Act, the Health of Animals Act, the Plant Protection Act and the Farm Debt Mediation Act.

Most witnesses agreed with the provisions of Bill C-18 and were in favour of this bill. They supported changes to the Plant Breeders' Rights Act which will align Canadian legislation with UPOV 91. They were optimistic that these changes would help facilitate trade and create innovation. They believe that farmers will have access to better plant varieties as the international community currently prohibits certain types of plant varieties from entering the Canadian market because of a lack of protection of intellectual property rights in the current Plant Breeders' Rights Act. On this matter, Rick White from the Canadian Canola Growers Association stated:

A number of the amendments contained in Bill C-18 are expected to foster innovation in agriculture and provide for more responsive government decision-making. In particular, we applaud the government for proposing changes to the

Plant Breeders' Rights Act to bring Canada in line with UPOV 91, the international standard adopted by Canada's major competitors, while providing an exemption for farmers to save seed for use on their farm.

That having been said, no bill is ever perfect and there are always concerns. I can assure honourable senators that I asked every witness who came before the committee to comment on concerns they had identified or that were raised by other witnesses, or to clarify their understanding of the proposed legislation.

As I'm sure you would all agree, it is our role as senators to ensure that all voices and all different opinions on a bill are heard. Those voices include those of the minorities that we are here to protect. It does not matter how many people one group or organization represents. Whether a group has a membership of thousands or several hundred, every Canadian has a right to be heard.

• (1500)

I will outline some of the concerns that were raised during the committee's study of Bill C-18.

Contrary to what my honourable colleague Senator Plett stated while speaking at third reading last Thursday, there were four witnesses, not two, who did not support Bill C-18: Food Secure Canada, the author and researcher Devlin Kuyek, les AmiEs de la Terre de Québec and the National Farmers Union. In addition, a few of the groups or individuals who supported Bill C-18 had some reservations and two of these groups, the Canadian Federation of Agriculture and the Canada Organic Trade Association, provided recommendations to improve the bill.

[*Translation*]

Last week, in response to a question by the Honourable Senator Bellemare, my colleague across the way said that the witnesses from the province of Quebec who came before the committee were all in favour of the bill. Allow me to quote Ms. Gagnon-Légaré, from Les AmiEs de la Terre de Québec. She said:

As far as the more general issue of adopting UPOV 91 is concerned, we have some very, very serious concerns at Les AmiEs de la Terre.

[*English*]

The main area of concern with Bill C-18 is the changes to the Plant Breeders' Rights Act, which gives breeders significantly more "rights" while giving farmers a "privilege." Although witnesses were generally pleased with the amendment moved by the government in the other place, which specified that farmers could stock and store seed for propagation purposes on their own holdings, some witnesses were concerned that the breeders were given exclusive rights to the potential detriment of the farmers' privilege. Bill C-18 empowers the government to modify the farmers' privilege on a case-by-case basis through regulations.

Through my questioning of the witnesses, it became apparent that most were unaware that the farmers' privilege could be restricted or revoked through regulation by the Governor-in-Council. In Bill C-18, the minister has the power to exempt, to change and to exclude. Although the Minister of Agriculture and Agri-Food assured the committee that he would not implement any regulation that would restrict the farmers' privilege without consultation, circumstances can change. The catch-all phrase appears to be, "Don't worry, we will consult."

Honourable senators, it is important that people who both agree and disagree with the government's view be consulted. This is something that this government has a lot of difficulty with. I do not question the minister's goodwill, but I am preoccupied with the fact that the farmers' privilege could be revoked or restricted through time.

During his testimony, Mr. Boehm from the National Farmers Union stated:

The breeder is given an extensive list of exclusive rights and the farmer a privilege, which is conditional and could be revoked.

Mr. Holmes from the Canada Organic Trade Association also expressed concerns. He stated:

— we are still concerned that the bill can introduce regulations that may withdraw or restrict the farmers' privilege on a crop-by-crop basis or for specific groups of farmers.

Many witnesses stated that they expected to be consulted for any regulatory change to the Plant Breeders' Rights Act. That is why I proposed an amendment to Bill C-18 to make it explicit that the Governor-in-Council may make regulations but only after consultation with the Plant Breeders' Rights Advisory Committee. This amendment would have guaranteed that the farmers' privilege would not be restricted or revoked through regulations without consultation with the Advisory Committee.

Honourable senators, the amendment I brought forward was a suggestion from one of the witnesses who testified before the committee. Unfortunately, members of the Standing Senate Committee on Agriculture and Forestry on the government side voted against this amendment.

[*Translation*]

Another aspect of Bill C-18 that raises some concerns is the fact that it opens the door to a system of end-point royalties. This system would allow plant breeders to collect royalties on harvested material.

Currently, royalties are paid at the point of seed sale. Some witnesses, such as the National Farmers Union and the Canadian Organic Trade Association, criticized this system, which would further benefit large corporations. In a document submitted to the committee, the National Farmers Union explains that the fact that farmers have the explicit power under Bill C-18 to save and store their seed for propagation of the plant variety is a threat to the plant breeders' profit. The National Farmers Union said:

This interpretation further devalues the farmers' privilege in Section 5.3 (2) by simply moving the royalty collection

point from the point of seed sale to the sale of the harvested crop.

Mr. Banack from the Canadian Federation of Agriculture said that in the event that end-point royalties are collected, the federation wants the government to engage in robust consultation to ensure that any such royalties are reasonable and supported by industry.

When he appeared before the committee, Mr. Holmes, from the Canada Organic Trade Association, who is concerned that this type of system penalizes farmers who choose to save their seeds, proposed that the committee pass an amendment providing that end-point royalties do not exceed royalties collected at the initial sale of seeds. This would protect organic farmers, who often must resort to this practice because of the low availability of organic seed.

That is why I moved two amendments addressing that issue. Also, there is no definition for the terms "end-point royalty" and "système de redevance de fin de chaîne" in the bill. Once again, these amendments were not accepted.

Another concern that was raised by some witnesses was that the government is relying too much on private funding to foster innovation in the agricultural industry. Professor Gray, an economics and biodiversity researcher from the University of Saskatchewan, provided the following explanation, and I quote:

[*English*]

— do not expect that Bill C-18 will create a cascade of private research investment into wheat, barley or similar open pollinated crops. . . .

There is a real danger that we could make a situation that's not great a lot worse if we actually withdraw more from public research before the private research is able to generate enough revenue.

[*Translation*]

Several witnesses, such as researcher Devlin Kuyek and representatives of Food Secure Canada, the National Farmers Union, AmiEs de la Terre de Québec and the Canada Organic Trade Association, all expressed their concerns regarding the privatization of research and development in agriculture in Canada. They believe that we should be wary of policies that restrict public funding of scientific research.

[*English*]

On this matter, Mr. Mooney from Food Secure Canada explained:

— I think we see a decline in innovation. When you have an oligopoly in the marketplace, you don't get a lot of innovation. There's no incentive to innovate. There's an incentive to advertise.

[*Translation*]

Therefore, the idea that the private sector will make up for the decrease in the number of public scientific studies conducted in Canada, as the government believes, has no merit. Devlin Kuyek, an agricultural researcher, said, and I quote:

[English]

The more royalties that are collected, the idea is that that will go into research and development, or plant breeding. I think that's a stretch. Again, most of these companies who will collect the royalties will be outside of Canada. They won't be doing plant breeding in Canada. To think that that would go into plant breeding in Canada is quite a stretch.

[Translation]

Furthermore, in order to protect their discoveries, private companies rarely share their studies and are even less willing to share their genetic products. Some witnesses pointed out that private studies are leading to a standardization of plant species, which is already starting to cause problems. Ms. Gagnon-Légaré, from Les AmiEs de la Terre de Québec, said:

... by adopting standard UPOV 91, Canada could ... adversely [affect] the current level and the expansion of agricultural biodiversity.

• (1510)

[English]

I would like to turn my attention to changes in the Administrative Monetary Penalties Act. Mr. Dave Solverson, from the Canadian Cattlemen's Association, stated:

We're supportive of monetary penalties for abuse. . . . on any other animal cruelty thing, we believe a strong deterrence through fines is better than regulating the whole industry because of the bad acts of one or two, so we are supportive of a strong monetary deterrence.

However, Mr. Solverson did express some concern on the subject. He explained:

... we do have some concern with how this is implemented, more than with the authority granted in the proposed bill. . . . It is not clear that there will be a continuum within minor, serious and very serious. . . . This is down to implementation and is not something we have a suggestion for the committee to amend, but we did want to register this concern.

Although I realize that changes to section 4(2)(b) of the Agriculture and Agri-food Administrative Monetary Penalties

Act only increase the maximum penalties allowed and not the minimum, I invite regulators to clearly outline the amount of penalties associated with different violations so that it is clear for all parties involved.

[Translation]

It is clear that the proposed changes to the Advance Payments Program are very much appreciated by the groups affected. I'm also in favour of a number of these changes. However, a comment that came up in testimony was that the current loan limit of \$400,000 doesn't cover the real operating costs for farmers. Mr. Banack from the Canadian Federation of Agriculture explained that his operating costs were around \$800,000 to \$900,000. He also said that members of the federation were disappointed that the advance payments limit has not been increased since 2006.

[English]

Honourable senators, it is clear that, contrary to what my honourable colleague on the other side tried to portray, there are several concerns with Bill C-18. From the reduction in the funding of public research, the potential restrictions to farmers' privilege, the concerns with end-point royalties, the insecurities with the administration of monetary penalties and the insufficient Advance Payments Program limit, it is obvious that, although modernization of Canada's agricultural legislation is needed, we must ensure that a good and fair balance is achieved between the protection of our Canadian farmers and that of the plant breeders.

I proposed three amendments to Bill C-18 that would have dealt with some of the concerns raised by witnesses. The members of the committee on the other side chose to vote against all three amendments, without debate and without explanation.

In conclusion, despite the concerns identified by some witnesses, I do recognize that many elements of Bill C-18 are positive and that the bill has merit.

It will be important, however, to closely monitor the impact of this bill that allows for changes by order-in-council, strengthened ministerial powers and incorporation by reference without public debate or parliamentary oversight or consultation. The alignment of Canadian legislation with UPOV 91 will need to be monitored, as will the regulations that will come into force in upcoming years.