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Chair

Mr. Bob Mills

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● (1530)

[*English*]

The Chair (Mr. Bob Mills (Red Deer, CPC)): I think we can begin, and our other guests will join us.

I would like to welcome our panel today.

We're taking a look at the precautionary principle as it relates to our CEPA review. I would propose that we begin. We would ask our guests to give us no more than a ten-minute presentation of your views, then we will go to a round of questions—and as many rounds as we need to bring out the issue.

Our intention—and we have our Library of Parliament person, who takes diligent notes—is that at the end of this process we will come up with a proposal relating what our recommendations to the government on a CEPA review will be.

We'll start with the Canadian Environmental Law Association. Mr. Benevides, please.

Mr. Hugh Benevides (Counsel, Canadian Environmental Law Association): Thank you, Mr. Chair.

My name is Hugh Benevides. I am with the Canadian Environmental Law Association, or CELA, as I will refer to it in my presentation.

CELA is a legal aid clinic established under the laws of Ontario. We've been in existence since 1970 in order to represent the economically most disadvantaged in society who have needs related to the environment. As part of that mandate, we also engage in law and policy reform activities at the national, provincial, municipal, and international levels.

CELA, as you know, is also a member of Pollution Watch, which is a collaborative project of environmental defence. My colleague, Dr. Khatter, was here with you on May 10, I believe. As you know, we have a website, pollutionwatch.org, and we issue periodic reports, largely making use of the national pollutant release inventory data.

I wasn't certain, given the round-table approach that was anticipated, whether I would have the usual ten minutes, so I'll probably take up less with a few introductory remarks, all of which are tailored around the notion of precaution. Of course that theme is intimately tied to virtually all of the other themes in the act. I've tried to pay attention to that, given the theme today.

I begin by saying that implementing the precautionary principle in CEPA is a journey, not a destination. Having said that, I think it's fair to say that my community wants to travel faster and pass the signposts earlier. In going to the basics of precaution, environmental problems always implicate issues of risk arising because of something that's ever-present in life, including in environmental matters, and that is uncertainty. A precursor to risk is hazard. By that I mean the inherent danger of certain activities, or in the case of what we're dealing with in CEPA, the inherent danger of certain substances. Our vision for CEPA, in order to prevent harm, is to make sure we can eliminate these hazards before they can cause harm. This is at the heart of precautionary action. That means careful consideration and action before we embark on the manufacture and use of new toxic chemicals, which of course is an ethical obligation now reflected in international law. It's also an obligation respecting those substances that are already in use, those we now refer to in the CEPA regime as existing substances.

In respect of existing substances, the importance of the two departments' conclusions in September 2006, post-categorization, are very important. I encourage this committee to follow that process closely. I'll elaborate on that a little bit through the rest of my presentation.

There are several articulations of precaution in various treaties and laws. International law continues to crystallize not around any single one of these articulations, but around the spirit of precaution. As you've heard already in your scoping exercise, the administrative duties section, paragraph 2(1)(a), the preamble, subsection 6 (1.1), and section 76.1 in the current act all mention the precautionary principle explicitly. As a result, CEPA will be interpreted as mandating a precautionary approach. However, we would all be helping officials as well as the environment and human health if we considered during this review how to better articulate it throughout part 5 of the act and elsewhere.

The proposals that have been made by Pollution Watch for this review are intimately tied to and form part of a precautionary approach. That's that linkage among issues including precaution that I mentioned a couple of moments ago. Examples include placing a greater onus on proponents to provide data and information, and greater public involvement, beginning with requirements to make that same information available to the public sooner in the process and more robustly.

● (1535)

I have just a few themes that are all intimately linked to this larger theme of precaution this afternoon. I want to expand briefly on how earlier action could be taken at various stages, how we could be more precautionary, how we can be more preventive in our actions, and how we can protect the environment and human health as a result.

First is the categorization stage. The committee has heard and certainly we in the environmental community are aware that it's anticipated that roughly 4,000 substances will emerge from the categorization exercise as identified for further action. Technically those substances are those that exhibit characteristics of persistence or bioaccumulation and are inherently toxic. It's a considerable group that has at least two of those characteristics, inherently toxic and persistent or bioaccumulative, or there are those substances that have the greatest potential for exposure. So a large number of substances out of the admittedly much larger group of 23,000 are listed.

The act, as you know, requires a further stage called screening. We're very careful with the language because it's easy to confuse one with the other. On the screening-level risk assessment identified in the act, there are a number of questions that arise. For example, we're told that roughly 400 of those 4,000 substances are what we call affectionately, or not so affectionately, PBITs—persistent, bioaccumulative, and inherently toxic, exhibiting all three of those characteristics.

Pollution Watch, the organization and project we're involved with, says we should proceed as soon as possible to a virtual elimination with those substances. In addition, as a subset, or perhaps as an overlapping set of those substances, the two departments may propose the most immediate action on a smaller subset of these. On what basis will they do that? That's going to become clear in the coming weeks. For example, criteria like substances that are known carcinogens and substances that have known reproductive or developmental toxicity are those that are yet to be addressed. Regardless of which subcategory they fall under, we would also suggest they need immediate attention.

I'm raising these because this committee is in a fortunate position, or perhaps a complicated one, depending on how you look at it, because you're charged with reviewing the operations of the act but at the same time, as September approaches, we're coming to an extremely critical time in the life of CEPA 1999. There are a number of decisions the departments will make about how to proceed on those various substances. My suggestion is that the more the committee can involve itself in the questions as to when to proceed to screening, with which substances, at what speed, then Canadians will be better served.

I'll leave that area for now, keeping in mind that the theme here is that the speed with which we do carry on those steps for the different categories will define how precautionary we indeed are in implementing the act.

On the next subject, risk management, you'll want to ask what powers the government has to move now on whichever subset of those most dangerous substances. For example, in section 94 of the act is a provision that allows for interim orders to be made respecting such substances. I believe that provision has not been used yet in the six years experience of the act. For example, for the PBDEs, why has that provision not been used? Will they be used? Why, or why not? So timelines and the speed with which the government can and will act....

● (1540)

A second major category following the process, as it were, is resources. I know that in your scoping exercise with Mr. Moffet and Mr. Glover from Health Canada, this issue was raised. I believe the witnesses invited you to ask the minister about the question of resources. At this point, I would only say that the issue is so important, in terms of answering the questions I asked in the last few minutes about how fast on these substances. The core question is, do we have the resources to carry that out? Again, you're best placed to find out the answers, whether it's from the minister or some other source.

Third is the question of discretion and how to tailor it. I didn't get a chance to tell Mr. Moffet I'd be raising a couple of his points from May 15—and that I wasn't picking on him, or perhaps I am—but one of his comments was that CEPA was an enabling statute, and it doesn't actually require us to do a whole slate of specific actions. I think that's correct, and in most environmental statutes that's the case. Every decision in CEPA requires the precautionary principle be put into effect.

The question is, how can the discretion of the ministers of Environment Canada and Health Canada be tightened in those situations where the most urgent precautionary measures need to be taken? In other words, discretion is always a factor, but are there situations where it's most important that we narrow and tailor that discretion, and lean towards a more mandatory approach?

The Chair: I wonder if you might come to a conclusion now, please.

Mr. Hugh Benevides: My final comment, Mr. Chair, in terms of the categories I wanted to identify is that there are barriers to taking precautionary action, and you can see how that ties into my last theme, both within the act and within various policies and directives that government officials are required to follow. I'd be pleased to talk about that.

In addition, Pollution Watch has advocated particular provisions regarding the Great Lakes, and I wanted to raise that as an overarching theme as well.

Thanks, and we'd be pleased to answer your questions now and through the course of the review.

The Chair: Thank you.

I think we'll have our presentations now.

I'd like to let members know we're going to have to leave at about four o'clock, but it should be a very quick vote.

If I could ask our guests to have an extra cup of coffee, we should be right back. It will be a very brief time that we'll be gone.

Mr. Lourie, could you please do your presentation? Then we may have to leave you briefly, and I apologize for that.

Mr. Mario Silva (Davenport, Lib.): Is it possible, Mr. Chair, to finish with the presentations, then hold off for the questions when we come back?

The Chair: Try to get both of them in?

Mr. Mario Silva: Yes, if we can.

The Chair: We'll see if you can squeeze them into 15 minutes, as that's about what we're looking at.

Mr. Bruce Lourie (President, Ivey Foundation (Toronto)): Thank you, Mr. Chair. I'll do my best. Just so you know, I've submitted a lengthier version of my remarks to the committee. I'll just try to highlight a few things.

Thank you for having me. I've worked for many years on toxic pollution issues in Canada, both as a consultant to government and industry and also working with NGOs. I ended up doing quite a bit of work on mercury pollution. What I thought I would do, rather than spend a lot of time looking at specific details of CEPA, is highlight some examples using mercury that might provide us with some direct understanding of how precaution is being used or not used. I thought too that it's very hard to comment on precaution without also commenting on pollution prevention, which I think is a related concept and also something that is fundamental to CEPA.

In the paper I've provided a number of pages of background of the history of the previous CEPA review, comments made by the Commissioner for Sustainable Development since that CEPA review, and some comments on the scoping paper we have before us for this review.

To summarize it very quickly, it really seems that not a whole lot has changed since the last CEPA review. The same kinds of remarks that were raised then are being made today, and the same kinds of criticism around inaction are really still present.

I would say they fall under four main themes, the first being a lack of federal leadership, the second being an emphasis on industrial or economic interests and decision-making above ecological interests, the third being a lack of science-based decision making, and the fourth being a failure to implement pollution prevention and precaution. It's very hard to separate these, but I'm going to touch on a few of those things.

I also describe in a little bit of detail the story of mercury, which is really quite interesting. Canada has a long history of undertaking research and being active globally on mercury issues. In fact, we were a leader approximately 35 years ago in doing mercury research and attempting to address mercury in Canada. Unfortunately, over the past number of years and particularly the past decade, we've really fallen behind. I've provided a number of examples of restrictions and regulations and product bans globally that have taken place, but have not taken place in Canada.

The reason I'm raising the issue of mercury is that it's one of the most well-studied toxic substances. There's little doubt that it causes harm. Yet in the past decade, unlike most of Europe, the United States, and many other industrial countries, we have not issued any regulations on restriction of the use or emissions of mercury.

I think, looking at it, that if we cannot restrict mercury use under CEPA and apply precaution and pollution prevention, it seems unlikely that there's any substance we'll be able to regulate effectively under CEPA. This is because mercury really is a bellwether for how we address toxic substances.

I don't want to touch too much on federal leadership and authority. Perhaps that will come up in your other panels. But I should point out that the issues raised around the term “national cohesion” in the scoping paper present some concern. I think much of CEPA really has devolved responsibility to other organizations, other parties, and other jurisdictions. In fact I touch specifically on the CCME and the Canada-wide standards process, which really haven't delivered on the kinds of restrictions and regulations we see in most other industrial nations. So I've described some of those issues.

● (1545)

One of the reasons, again, we look at mercury as a good example where the federal government should be taking action and should be exercising its authority is that it's a global air pollutant. There are interprovincial trade issues. It's imported from other countries. We've signed numerous global agreements. The primary exposure pathway is through fish, which is a federal responsibility. It's found in medical devices, which are overseen by Health Canada. The Canadian Arctic is particularly at risk, and many first nations in the north are living well above WHO mercury risk levels.

So with the fact that all those things apply to mercury, we know more about it than almost any other substance. Yet still, for some reason, in Canada we're unable to apply concepts like precaution and prevention in terms of developing even a national strategy on how we're going to deal with mercury.

Ten years ago we were writing that Canada had fallen behind the rest of the industrial world, and in the intervening years very little has happened, whereas I point out in here that last year alone there were 251 mercury-related bills in the United States. That's after several years of mercury product regulations throughout the United States. So I think there's certainly reason to be concerned about these things.

I'll touch briefly on pollution prevention. Pollution prevention is referred to in almost every federal document relating to toxic substances management. The CCME describes pollution prevention as our toxic substance management policy, CEPA, and for good reason: it's a simple and powerful concept. Basically, pollution prevention says it's easier to not put things into products than it is to attempt to control the release of the substances at the end of the pipe.

Again, if we look specifically at examples of how we've implemented things—and I touch on quite a few in here, but I'll just use one example, which is mercury dental amalgams—we still have about three million grams of mercury imported into Canada each year going into people's teeth. The response under the Canada-wide standards, rather than looking at pollution prevention—even though we have easy alternatives, even though more than half of dentists no longer use it—has been pollution control. We set up a voluntary guideline for putting a little trap in the drain in dental offices to collect the mercury. So that's not pollution prevention; that's pollution control.

Mercury switches in cars, thermostats, and thermometers are all examples where pollution prevention could easily be applied. Alternatives exist. They're cost-effective. They're simple.

Again, if we can't do it where we have alternatives, where it is cost-effective, and where we know what we do about mercury, then really we question how we can implement any kinds of measures under CEPA around substances where there is greater uncertainty.

That really takes us to the issue of precaution. As I'm sure you all know, the precautionary principle is a specific response to uncertainty. What we've seen over a number of years is an increasingly rigid application of risk management and risk assessment, but particularly risk management, to the point where I would say, in Canada, we're interpreting risk management the way most other countries don't. Wherever there is any kind of uncertainty, even the slightest uncertainty around whether it's an exposure pathway, an emission, or the ecosystem response, it's continually used as an excuse to not act. That's a serious problem, and that's where precaution comes into play.

So when we look at all those things together, the need for some leadership at the federal level, the need to use tools, such as pollution prevention, that are cost-effective, and the need to better to understand issues around uncertainty and risk...particularly we're still referencing this notion of sound science in the scoping paper and we see sound science referenced in federal documents. “Sound science”, if you read any of the literature on it, was a term created by industry deliberately to interject uncertainty and doubt into decision-making. So the fact that we have “sound science” still in our federal documentation suggests that we're really lining ourselves up with the kind of language that industry uses deliberately to undermine action.

● (1550)

I think it's problematic. I did a survey of about 30 people across industry, government, NGOs, the legal profession, and academics. The only people who thought sound science was a valid word were the people in government. Even people in industry recognized it as a deliberate strategy to delay action.

That touches on a particular point I have some trouble with.

To conclude, I think the CEPA amendments must address federal accountability and toxic substances management in Canada. We're relying too much on voluntary efforts and on other governments. We've got references to first nations and other federal mechanisms. Clearly, they haven't worked in the past; there's no reason to expect they will work in the future. I think the review must address mechanisms that assert federal regulatory authority to manage toxic substances.

On pollution prevention, we really haven't used the mechanisms under CEPA to implement pollution prevention, even in the most obvious and cost-effective cases. CEPA needs to somehow be strengthened so that, in this regard, explicit direction and authority are provided to Environment Canada to implement pollution prevention.

Finally, on precaution and risk, I would say that CEPA has not facilitated precautionary action at all in Canada, particularly with respect to substances management. Unless we can address the inherent barriers to precaution, particularly our rigid application of risk management and false concepts such as sound science, I really don't think we will get there.

Perhaps the federal government should require that Environment Canada and Health Canada prepare some kind of internal guideline on understanding and incorporating uncertainty. It may help guide decision-making. We need to make sure that uncertainty isn't used as an excuse for inaction and that we truly apply precaution.

Given a survey of most countries, I would imagine that CEPA would be probably one of the least precautionary pieces of legislation dealing with toxic substances.

I'd be happy to answer any questions.

Thank you very much.

● (1555)

The Chair: Thank you very much.

Mr. Stoffman, we'll give you about four or five minutes, and then we're gone.

We'll actually give you seven minutes; the clerk says we can make it.

Mr. Larry Stoffman (Chair, National Committee on Environmental and Occupational Exposures, Prevention Action Group, Canadian Strategy for Cancer Control): If not, maybe we can finish it up when you get back.

Thanks very much for inviting me to present on behalf of the Canadian Strategy for Cancer Control. I'm the chair of the National Committee on Environmental and Occupational Exposures, which works under the Canadian Strategy for Cancer Control.

Approximately a year ago, in the fall of 2005, we made a submission on CEPA 1999 and made a number of recommendations that I believe the committee has had circulated. When I was asked to come today to address more specifically the precautionary principle, I understood why, in that it is really a principle that underpins any action—or inaction, depending on your point of view—on precaution with respect to environmental or occupational health concerns.

In fact, the application of the precautionary principle underpins all the recommendations we have made through the Canadian Strategy for Cancer Control with respect to CEPA and with respect to control or elimination of known human carcinogens in our environment. We include in that environment, of course, workplace exposures, because we address both.

We targeted two areas with respect to a series of recommendations we've made to government, industry, other levels of government and labour, and other NGOs. Those two are pollution prevention programming, particularly with respect to identified and classified human cancer-causing agents; and disclosure of the presence, use, or release of those classified carcinogens in Canadian communities and in the Canadian environment.

We made the point that until you and the public have a clear understanding of what those exposures may be—the nature of them, and the nature of the risk—obviously policy decisions that need to be taken won't be understood or won't be supported. We have found that the more information the public receives in this area, the more they ask for public policy in health protection with respect to environmental carcinogens or, for that matter, carcinogens you find in consumer products and so on.

There has continued to be, obviously, a debate over how serious or significant this risk is with respect to environmental exposures, and there is always going to be a debate in terms of quantifying exactly what percentage of cancers in Canada can be attributed to environmental or occupational exposures. In fact, in a very useful and insightful document published a year ago on environmental carcinogens, Cancer Care Ontario noted that it's almost impossible to find unequivocal evidence of harm or cancer causation, particularly when you're looking at environmental exposures. That doesn't mean you're not going to find them; there is always evidence, but you're not going to find unequivocal evidence.

It went on to say that in spite of that—in fact, because of that—it was necessary to apply things like the precautionary principle to begin to control and eliminate a number of very significant and serious threats to our environment and our health with respect to environmental exposures. In particular they addressed things like drinking water chlorination byproducts, radon exposures, diesel air pollutants, certain pesticides, and heavy metals.

In other words, the point they made and the point we make is that it is possible to prioritize. We're not talking about 40,000 compounds that we must immediately address using the precautionary principle. No government is going to be able to do that, we're not resourced to do that, and people are going to ask how to prioritize.

One of the things we prioritized or classified was known human cancer-causing products. They are classified through the World Health Organization, and they are referenced in our legislation, both federally and provincially, in terms of not only the environment but in all the occupational health regulations as known human carcinogens to which there should be, if at all possible, no exposure at all. When you apply that to the environment, you're applying the precautionary principle in a certain way and in a focused way.

Again, many argue that there isn't sufficient evidence to do that. The way we put it is the opposite—public policy and primary prevention is driven by limited data and a necessity for precautionary measures. We cited as one articulation of that the European Union, the European commission's adoption of a definition of the precautionary principle.

● (1600)

You've heard it over and over again. Essentially it says that where reliable scientific evidence is available that there may be adverse impacts on health or environment but there is still scientific uncertainty about the precise nature or the magnitude of that damage, decision-making must be based on precaution in order to prevent that damage.

There are a number of other very serious scientists in the country who have addressed this as well. In Canada, for example, the CEO of Cancer Care Ontario, Dr. Terry Sullivan, in that *Insight on Cancer* review stated: “Governments may choose to go beyond existing evidence and be guided by a range of principles...”. He then went on to talk about the precautionary principle, citing that “the tradition of public health, a tradition which in Canada, through the Supreme Court, has given municipalities the authority to ban pesticides” is in fact a tradition of application of the precautionary principle.

Dr. Tony Miller, professor emeritus of U. of T. and a colleague of mine on our committee, put it in terms very much to the point. He said: “The potential penalties from not following this principle are that cancers that could be prevented are not”. That's pretty basic, and it is a fact.

Dr. Donald Wigle, formerly of Health Canada and now with the R. Samuel McLaughlin Centre for Population Health Risk Assessment, cited Horace Krever and the Canadian blood supply commission, who restated again that the precautionary principle means that:

> Where there is reasonable evidence of an impending threat...it is inappropriate to require proof of causation beyond a reasonable doubt before taking steps to avert the threat.

In Canada there's not only a great amount of discussion on this principle, but I think there are two citations from the European Commission as well that are particularly informing to us. One is their statement that the application of this principle is in fact the “central plank of Community policy”. These are quotes from the EU documentation. One that I think is particularly germane is this one. It is “...in situations in which the adverse effects do not emerge until long after exposure”—

Mr. Mark Warawa (Langley, CPC): On a point of order, Mr. Chair, we have five minutes to get to the chamber. Considering the different abilities of people and walking speeds, I think we have to cut it off.

Mr. Larry Stoffman: I have a couple of minutes. If I can finish when you're back, that would be just perfect. Thank you.

The Chair: That's fine. We'll let you conclude.

Yes, you can walk quite slowly. The tunnel is near here. If you can't make it in two minutes, you have problems.

● (Pause)

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● (1635)

The Chair: We will begin again, please.

Mr. Stoffman, I believe you were just finishing up.

Mr. Larry Stoffman: The greater the uncertainty, the more you need to take precautionary measures to address that uncertainty, which seems quite common-sensical to the average person. When you don't know what the problem is, you have to be careful. If you're not certain that there's no problem, you have to address it. It's only prudent to do so. In terms of public health policy, it's a necessity if one is to fulfill a mandate that the public expects to be filled.

I want to address two other things very rapidly, which obviously will be in the background during the whole debate on how one applies this form of risk management, and they are cost-benefit studies and the whole notion of sound or unsound science.

First of all, in terms of cost-benefit, you'll notice, if you do a review of precautionary principles, that sometimes "cost effective measures" is inserted into the definition, and other times it is not there. There have been all sorts of debates, some important, some not so important, as to whether those things should be inserted. Obviously, any government is going to look at that issue. However, it has to look at it within a certain context. And again, to quote from the European Union,

> Examination of pros and cons cannot be reduced to an economic cost-benefit analysis. It is wider in scope and includes non-economic considerations. The Commission affirms, in accordance with the case law of the Court that requirements linked to the protection of public health should undoubtedly be given greater weight than economic considerations.

It went on to assert—and this is something the Canadian Strategy for Cancer Control, and in particular our primary-prevention committee, has endorsed and would like to see applied in all jurisdictions in Canada—that all class 1 and class 2 carcinogens, genotoxics, and substances potentially harmful to reproduction, including endocrine-disrupting chemicals, are of high concern, are not acceptable for daily intake thresholds, and require strict authorization before use.

That's the EU's position, and they have legislation or directives that have put that into place. There are a number of states in the United States that have also done that and have moved in that direction. Canada is probably lagging behind all those jurisdictions in taking proactive action for those particular classes of compounds.

The issue of science, and whether it is sound or unequivocal, is the last thing I want to address. Our committee is basically a tripartite committee. We have representatives from industry, from labour, from academia, and from government-linked institutions, such as WSIB. We're supported through Health Canada and the Public Health Agency of Canada. The Canadian Cancer Society and a number of its affiliates are a big part of the committee.

When we went to the strategy's governing council with a 100-page document and maybe two dozen key recommendations, the one thing they wanted to talk about was the precautionary principle. Even in that governing council, which primarily is health-scientist-based, there was uncertainty as to what that meant. We had to have a discussion, similar to the one we're having today, to talk about what it means. We're not talking about running around saying that we need no evidence before we act. We're saying that when there is potential for significant harm, you have to act, even if the evidence is not unequivocal. And you are always going to have a counter-argument—it doesn't matter what the issue is—for almost any substance of concern. The question is, when is it appropriate to act?

If we're to have a direction in this country as to how we're going to act, regulate with mandatory pollution-prevention planning. We have to look at certain classes of compounds that are out there that have been identified. We're talking about human carcinogens, for example, reproductive toxins, for example, as two clear classes of compounds that need to be addressed.

So when you see, day after day, a series in the *Globe and Mail* about toxic shock and what not, which I'm sure many people noticed during the last week, in fact those series were, if you looked at them carefully, focusing on those classes of compounds. That's where the Canadian public has the greatest concern. That's where precaution is most warranted, because they do have and may have significant long-term chronic effects that have not been fully documented yet. It's when you have that great degree of uncertainty and those very significant health endpoints that you need to act and not sit there and wait until all the evidence is in.

● (1640)

An example of the application of the precautionary principle in this country, which the whole country and all governments are now in support of, is restriction on environmental tobacco smoke. There's a placard in the back of this room about the workplace smoking law. I was looking at it during the break. That's an example of the application of the precautionary principle in the face of uncertainty and equivocal evidence. We all know there's a lot of evidence on smoking and cancer and other diseases, but if you were to ask any health scientist if is it unequivocal with respect to second-hand smoke, they'd say no, it's not.

A lot of people say I know my risk of dying of cancer if occasionally I walk in a room and some guy is smoking a cigarette may not be so significant, but on the other hand it is there, and people have died from that. So we've taken a precautionary measure, both in terms of policy and legislation, with that substance.

It makes no sense when we look at the fact that the very same substances that are in cigarette smoke are in a number of other applications with huge emissions in Canadian communities, as is documented under CEPA. The aldehydes, the formaldehydes, the polycyclic aromatics—not to address those and regulate them and require the same kind of pollution prevention planning that we do for second-hand smoke makes no sense at all.

Thanks. I'll end there.

The Chair: Thank you very much.

Mr. Moffet, do you have anything as a result of our witnesses that you'd like to add before we go to questions?

Mr. John Moffet (Acting Director General, Systems and Priorities, Department of the Environment): I think I'll be perfectly happy to respond to any questions. I think members are looking keen to get to the questions, and I'd be happy to respond to anything they have.

The Chair: Thank you very much.

Mr. Godfrey.

Hon. John Godfrey (Don Valley West, Lib.): Thank you very much, Mr. Chair.

What I'd like to do, in order both to help Mr. Moffet respond and also to give a chance to the other witnesses to pursue this example of mercury, which seems to be pretty well documented in terms of its dangers to the population.... I've got a couple of questions, which I would invite Mr. Lourie or any of his associates to comment on. Why is it, if we know so much about mercury, we haven't, in this particular case, applied the precautionary principle? That's the problem.

Secondly, is there also a question of timelines? Has that been an issue, there hasn't been enough pressure to get on with it? I'd like some amplification about how we haven't done the most elemental thing here with mercury, and then I'd like Mr. Moffet to respond to the answers provided by the other witnesses.

Mr. Bruce Lourie: I'll take a stab at it.

● (1645)

Hon. John Godfrey: Sure, go ahead. It's your doctoral thesis.

Mr. Bruce Lourie: I think it's a good question. I think a lot of that gets back to what the decision-making processes are and where one would expect to have some sense of action in Canada. I think if you look at other jurisdictions that have addressed mercury, typically, once the problem is recognized and the evidence is presented, there's some mechanism to actually take some action. In most cases, it's federal governments in other countries. In the U.S., it tends to be mostly state governments. I think where there's some kind of recognized authority that has the evidence.... And really it gets to the issue of weight of evidence; weight of evidence is a big part of the precautionary principle.

So in Canada, first of all, we had to see evidence of emissions, and then we see evidence of transport, and is there evidence of deposition, is there evidence of biological uptake, do we have evidence of the exposure pathway? One by one, we required more and more evidence. Each time more evidence was required, typically those who didn't want to see action around mercury would ask for even more evidence. There was always uncertainty, there was always a lack of evidence, or in the eyes of industry a lack of evidence. So even though there's this overwhelming weight of evidence, it seems all I can really put it down to is the fact that we've created these risk management systems that basically don't allow us to take action. That's perhaps combined with the federal government's tendency to create national stakeholder processes where everyone needs to agree, like the CCME, which really hasn't worked.

Hon. John Godfrey: I'd like to know from Mr. Moffet whether that's a fair comment.

Mr. John Moffet: Whether what's a fair comment?

Hon. John Godfrey: I'd like to know whether people who wish to slow down the process—not because they're really interested in the science of it, but because they're stakeholders and want to delay the decision—have found in CEPA a mechanism for doing this, whereas other jurisdictions seem to be able to deal with it on a much faster basis. It seems that the science is overwhelmingly against mercury in this case.

Mr. John Moffet: I'm going to give an indirect answer, because I think it's important to differentiate between, on the one hand, what's in the statute and what the statute either requires the government to do or enables us to do and, on the other, how the government in the past and the present has actually implemented the statute.

To answer your question, I personally don't see anything in CEPA that impedes us from taking the kind of action that Bruce would like us to take.

Why haven't we? Fundamentally, I would argue those are political decisions. On the issue of federal leadership, the act gives us authority to address a wide range of issues. The extent to which we've chosen to exercise that authority has been, and will continue to be, a political decision. The judgment about whether we were right or wrong is not for me to say. What I'm trying to do is differentiate the statute and what it provides for from how it has been implemented.

Similarly, on judgments about how precautionary Environment Canada or Health Canada have been, I don't see anything in CEPA that impedes the departments or the ministers from taking precautionary decisions.

The comment on the department's emphasis on stakeholder consultations is a fair one. I think one can find that those processes—which are not mandated under CEPA, and which are an implementation decision—can at times become circular and lead to lowest-common-denominator types of outcomes. Nothing in CEPA requires them. Nothing in CEPA impedes the minister from saying she doesn't care what that process says, this is the decision.

Hon. John Godfrey: Okay, back—

The Chair: Mr. Benevides has a question. Do you want to jump in right now?

Mr. Hugh Benevides: Yes, please. I note that mercury, at the time of the enactment of CEPA in 1999, was listed as number eight on the list of toxic substances, a clear indication that it's been there for some time.

The second observation is that we have a gap in those substances that were already listed at the time of enactment that don't fall into the timelines we have now. A substance that's added tomorrow will have some of the few timelines in the act for taking some action.

That's obviously the mechanical reason no action was taken, but of course Mr. Moffet is correct in saying this is the old answer of political will. Perhaps I was polite in framing the discussion about tightening discretion in the act, in terms of precaution, because it really should be addressed in terms of the lack of will to do that. This is why I was asking how we can change the act so that we can require action in more circumstances for substances like this.

● (1650)

Hon. John Godfrey: Is it a question of changing words like "may" to "shall"? Is it as simple as that?

Mr. Hugh Benevides: Of course. I'd let Bruce address that question in relation to mercury, because of the different situations, but I think for mercury switches.... The context is going to vary, but....

Mr. Bruce Lourie: I think that's right, and I agree with John's remarks that there seems to be something, in terms of political will, that's been lacking. But somehow that political will has been disseminated throughout the bureaucracy.

My goal over the last ten years was to figure out how we can get mercury out of the environment. So we would go to Environment Canada and ask, why can't we get mercury out of household thermometers? Most other countries are doing that. They'd say, well, that's a Health Canada issue—why don't you go talk to Health Canada? We'd go talk to Health Canada and they'd say, well, you know, as long as the mercury stays in that thermometer, it's not hazardous, so that's really an Environment Canada issue, once it breaks. So we go back to Environment Canada, and they'd say, well, we can't actually deal with that because we don't have whatever authority—which apparently is vested entirely in CEPA. So the question is if all the authority is in CEPA, why isn't it being used?

Unfortunately there needs to be some onus coming back to us as stakeholders from the government around why it isn't being used. I'm not a lawyer; it's not my job to figure out why it's not being used. I know it's not being used; that's clear. So I'm just trying to point out the many areas where it clearly should be used, and it's not.

The Chair: Mr. Stoffman, you wanted to jump in?

Mr. Larry Stoffman: I think what's glaringly obvious in Canada, compared to other jurisdictions—the U.S. and Europe in particular, but also Asia, where Japan might be another example—is a complete lack of focus, in that there has not been a policy decision and a political decision taken to say that for certain classes of hazardous materials we are going to restrict their status; we're either going to ban their use or we're going to have mandatory pollution prevention for those classes of compounds.

It's not difficult to determine which ones or who has done this elsewhere. They've done it on the basis of not being able to determine a safe level of exposure, or if so, it's fraught with uncertainty. Carcinogens are an example where that's been done in occupational health legislation for decades. We have some provinces in this country where in fact they require substitution for all of those. Mercury would be an example, if it's classified as a carcinogen or a reproductive toxin. You take certain classes of compounds and address those right at the outset, so you don't have a discretion to determine for every single thing under the sun, well, what's the political will here? Is there stakeholder consensus there? That's just a recipe for paralysis. In that respect, there is no direction in this country.

Mercury is an example of this. We all know it's a reproductive hazard. We also know it's a heavy metal, a terribly toxic neurotoxin, and I believe it's on the carcinogenicity list as well. So great, three strikes and you're out. But we don't have that law for mercury. Why not? The public is shocked; they assume we do.

For instance, in British Columbia, in the Okanagan—where I'm from—there are a number of teachers and students who are ill from mercury exposure because of broken thermometers in school labs. That's been a local event in the province, in the media, and so on. Why is this? People are shocked. The parents say, well, why are we using mercury in kids' labs? Of course they're going to drop them; they're kids. It makes no sense. We ban a few things from children's jewelry. We don't allow lead to be used in children's jewelry, but we have it in other stuff.

Whether there's political will or not—I agree that historically there hasn't been—we need to fetter discretion and free politicians from having to use political will on every one of these issues. Because you say, okay, for that class, as the Europeans or certain American states have done—genotoxins are an example.... Industry agrees with this; large portions of the chemical industry agree with this. Those are the people I work with. They say they agree to get rid of that stuff. But the political discretion has gotten in the way.

● (1655)

The Chair: Thank you.

Mr. Lussier, I should warn you that I have a little grey box here that times you. So in case there is ever a dispute, I actually have the time.

We just went 12 minutes and 34 seconds—

Mr. Marcel Lussier (Brossard—La Prairie, BQ): But they were a great 12.

The Chair: They were a great 12 minutes.

Anyway, it's just to scare everybody.

Go ahead, Mr. Lussier.

[*Translation*]

Mr. Marcel Lussier: In accordance with the precautionary principle, smoking was prohibited in a number of municipalities and provinces. Then, pursuant to a Supreme Court judgment, the use of pesticides on lawns was limited in a number of Quebec municipalities.

What are we to think about water chlorination? We've known for many years that there are carcinogenic products and sub-products. Should we apply the cautionary principle to municipalities that use chlorination?

[*English*]

Mr. Larry Stoffman: May I answer?

Thanks for the question. Yes, we should. As we said before, the precautionary principle is a form of risk management; it doesn't mean it only has one form—that you ban something. There are various responses you make within the context of precaution that can range from as little as labelling laws to as much as banning the use of a substance.

You're right. Quebec, I believe, has provincial legislation coming on line that will ban the sale of cosmetic pesticides to the entire public and every hardware store in the province. It's the most advanced law addressing that in the country, by far, of all the provinces. I think that's coming in next year sometime in Quebec. It's something that we noted in our best practices review should be looked at and taken up by other municipalities and provinces in the country.

With respect to chlorination by-products, obviously the chlorination of drinking water is an important thing in terms of infectious disease and controlling it, so you don't immediately say we're going to ban all chlorination of the drinking water. What you do is you look at what precautions have been taken elsewhere and what can you do in order to.... It's not a question of let's minimize the harm; it's can we do away with the harm if possible, and if not, can we minimize it?

For example, there are some Canadian companies that are world leaders in filtration systems that in fact are as effective as chlorination for reducing infection, the presence of biological organisms in drinking water. There are some European countries and some European cities that have taken this up, and those things should be promoted. If one had a federal strategy, you could.

In fact, when we talk now about the transfers of funds to the municipal levels—and this was in the news yesterday where this government is doing that—some of those funds should be tied to funding municipalities to in fact look at the costs of bringing in some of these advanced filtration systems in order to reduce chlorination of drinking water in our communities.

There's also ozone treatment as another example. These things cost money. Are they impossible to do? No. Has there been a will to do them? In some parts of the world, yes. In Canada, no. In fact, the irony is that there are Canadian companies that have led the field in developing those technologies.

So the Canadian government should say we'll subsidize a municipality to use that technology and we will inform the public that these technologies will reduce your exposure to bladder carcinogens. If the public knew that, they might be prepared at the municipal level to increase the property tax to pay for a municipal system as well, but we're not even having that discussion.

[*Translation*]

Mr. Marcel Lussier: I wanted, more particularly, to know whether we should require municipalities that use chlorine to announce that their drinking water contains carcinogenic agents.

[*English*]

Mr. Larry Stoffman: There are. In New York State, I believe they do that. I know that Americans have drinking water legislation where they are required every year. Many of these are private providers. My sister used to live in New York, so I would see her report. Every year you would get a report on drinking water, and what heavy metals and what carcinogens were in it and at what level, whether this was above or below some limit and so on. So you're talking about a community's right to know. I think that the more the public knows then the better we can have an informed discussion of what precautionary measures to take.

● (1700)

[*Translation*]

Mr. Marcel Lussier: My next question is for Mr. Lourie.

Studies on mercury among Aboriginal people in the James Bay area were well advanced 15 or 20 years ago. However, from what I understand of your report, those studies were abandoned. Is that correct?

[*English*]

Mr. Bruce Lourie: There are still ongoing studies. I think it's more complicated in terms of the effects of mercury from hydroelectric dams and the effects on first nations. I think that's where we've actually had to make a huge health compromise, recognizing that the livelihoods and cultural livelihoods of people was at least as important as their health, or at least it was an aspect of their health. In fact, what's happened is in Canada we allow first nations to consume fish well above international levels of mercury because we don't want to compromise the cultural values.

[*Translation*]

Mr. Marcel Lussier: However, no more studies are being done. Isn't that correct?

[*English*]

Mr. Bruce Lourie: We probably don't need more studies. We know what to do. Right now, particularly in the north, we're seeing increasing levels not from the hydroelectric dams, but just from the active emissions of mercury from coal plants and other things.

The hydroelectric situation is somewhat distinct, in that there is a large amount of mercury initially, and then over time it declines. Hydro-Québec does a lot of research into that and have shown that over time it's declining.

The Chair: You still have three minutes.

Mr. Marcel Lussier: I'm going to sell those three minutes to this gentleman.

The Chair: Mr. Cullen.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Thank you, gentlemen, for this.

This is one of those days I wish we were televised. Those initial presentations that I heard in terms of the faith that parliamentarians and Canadians in a broader context place in something like the precautionary principle, the general feeling of safety Canadians have about the tests and rigours being carried out over some of these elements, even your depiction of mercury and the unbelievable fact that we can't seem to get it listed or just take some basic action—all were striking.

There is one thing I would like the committee to consider before we go on. I am disappointed today because the original intent of these forums was to be able to have an interchange of ideas, pro and con, on certain things. We have heard a very strong case in terms of the ineffective use of the precautionary principle to this point; looking over the documentation from the Canadian Chamber of Commerce, I see they have taken an opposing view and I am disappointed they are not here today. I will be trying to petition committee members individually, but I think they need to be here. I think the chamber needs more than just some papers making suggestions contrary to what we have heard today. I will be respectfully lobbying committee members to see if we can't more strongly encourage the chamber to bring those views.

The Chair: If I may interrupt, allow me to say that they were invited—

Mr. Nathan Cullen: Yes, I know—

The Chair: —and they did decline.

Mr. Nathan Cullen: Yes.

The Chair: Just so you know, they were invited.

Mr. Nathan Cullen: This is one of those moments. I put this to the members: how critical is the notion of precautionary principle as a foundation piece to CEPA, as a foundation piece to the way that we approach what we do with chemicals? Mr. Stoffman, could you start us off?

Mr. Larry Stoffman: How critical is it? I think, as I said before, it's the basis of public policy in public and environmental health. If you don't address it and don't commit to it with respect to very significantly harmful toxins, I don't think you have a foundation at all. I'd say that you can't have effective environmental protective legislation without having the precautionary principle as its foundation.

Mr. Nathan Cullen: Before we hear another piece, this notion of sound science seems to be placed...not in opposition, but seeking to have a criteria level that seems almost impossible to meet. Could people explain that a little more?

A lot of business groups will say they're all for the precautionary principle; it sounds great. Just use science—number one—and cost effectiveness—number two—in your application. In the Canadian experience, I would suggest that has been an abject failure in terms of protecting Canadians from some of the most critical harmful substances. Could I get a comment?

● (1705)

Mr. Bruce Lourie: What I have highlighted around sound science, and what has contributed to that failure, is the fact that there is such an expectation for certainty and clarity in the science that doesn't exist in the world of science. It only exists in the world of policy, or how industry would like to see policy.

It's almost as though it's contrary to be talking about sound science in the CEPA scoping paper, while at the same time asking us to comment on precaution; they are almost contrary.

Mr. Nathan Cullen: If sound science had been applied to second-hand smoking, or smoking in general, would we be where we are today?

Mr. Larry Stoffman: Absolutely not. We'd be allowing smoking in all sorts of places—for example, in this room.

I shouldn't say “sound science”; it's unsound science. It's like *Alice in Wonderland*, right?

Mr. Nathan Cullen: Yes, of course.

Mr. Larry Stoffman: Because those who argue that sound science means that we have to have absolute unequivocal evidence, with no contrary evidence, aren't scientists; they're politicians or lobbyists.

I work with scientists every day. The people on our committee include, for example, Dr. Paul Demers, who was one of the leading epidemiologists in Canada and is on the IARC panels in Geneva at the World Health Organization that classify the carcinogens we're talking about, and Paul is a well-known classifier. So Canada references these same classifications in this legislation right across the country. Paul wrote the piece on best practices about that, saying that in fact if we want to talk about identifying risk.... In our world today, it is not science at all to say the risk is *x* or the risk is *y*. It depends on who you're talking about.

We didn't talk today about vulnerable populations or people who are more exposed and people who are less exposed. We're worried about protecting people from a reproductive hazard or a carcinogen. If they have no exposure, then we don't really have to worry about it. But we know that across the country there are pockets and elements in communities, or whole groups of people, that are at higher risk because they are exposed, and that's where you take action and that's why you use precaution.

So if somebody wants to argue with me, or with the health scientists we work with, about sound science, not only would we not have moved on secondary tobacco smoke, but also not on tobacco legislation at all, because the industry always claimed there wasn't enough sound science to even label it. We wouldn't even have moved on pesticides, to which there was reference made earlier.

If you use the term “sound science” to mean there has to be unequivocal evidence that people using cosmetic pesticides on their lawns are going to cause X, Y, and Z, we wouldn't have a municipality in the country that would have banned cosmetic use of pesticides.

Mr. Nathan Cullen: It's an impossible-to-meet criterion, essentially.

Mr. Larry Stoffman: Yes.

Mr. Nathan Cullen: If I can change our direction just for a moment, Chair, how much time—

The Chair: I believe Mr. Moffet wanted to comment, so you are at six minutes.

Mr. Nathan Cullen: Thank you.

Mr. John Moffet: I'll try to be brief.

I wanted to clarify for the committee that the term “sound science” doesn't appear in CEPA. So to a certain extent, we're setting up a straw dog. There's no obligation, and there's absolutely not an interpretation in the act or in either of the departments..... Well, there's no requirement in law or in policy for unequivocal certainty. I think any scientist—within the departments anyway—would agree that all of the risk management actions taken under CEPA were taken on the basis of uncertainty.

So we can debate about whether or not more should have been done, but I want to be clear that the departments are very transparent about the fact that they do not seek certainty, and they acknowledge that they cannot seek certainty. That's a recipe for inaction, and everybody agrees with that.

The Chair: Mr. Benevides.

Mr. Hugh Benevides: Thank you, Mr. Chair.

I'm sure John is right that the words “sound science” don't occur in the act. However, what Mr. Lourie was identifying was the reality of the kinds of activities and discussions going on in a swirling range of activity around the law. The law is just the centrepiece, of course.

In my presentation I made reference to barriers within CEPA, which this committee at least has the ability to make strong recommendations on. However, another place where this kind of language can be used is in the policies, directives, and guidelines that officials also make reference to—the set of the rules they have to follow. For example, there's a federal framework for the application of precaution in science-based decision-making, one that emplaces precaution—at industries' and governments' insistence—in the context of a risk management framework, whereas there's a fundamental disagreement that precaution is about doing things differently.

Now, that argument isn't so important, so much as how do we place more precautionary measures into processes.

● (1710)

Mr. Nathan Cullen: I'm going to interrupt, if I may, just because I'm going to be running out of time. We'll talk afterwards. I want to get one more question in, but I know Mr. Lourie has a question as well.

Mr. Bruce Lourie: Very quickly, I think John was referencing the CEPA scoping paper, which does reference sound science. One of the headings is “Sound Science and Informed Decision-Making”, under CEPA on the scoping paper.

Mr. Nathan Cullen: What's important for committee members to be considering, whether or not it's being officially popped around in Environment Canada, is that this is one of the debates that industry certainly brings to the table and it has to be explored by this group to understand what it means.

In the application the smoking debate or analogy is important. Carbon dioxide is coming into our debate in this forum and committee. I wonder if any of the panellists have any comment on the use of the proper application of the precautionary principle when applied to carbon dioxide, which is named as a toxin, quite controversially, under CEPA.

Mr. Bruce Lourie: It's one of the best examples of where precaution isn't being used.

Mr. Nathan Cullen: How so?

Mr. Bruce Lourie: I don't know if you've seen the recent books such as Tim Flannery's *The Weather Makers*, or obviously there is Al Gore's movie. Those are the popular things. The weight of evidence suggests that we're facing significant ecological damage and we have already seen evidence of it as a result of the carbon dioxide levels in the atmosphere. If ever there was an example around applying precaution, that's the one.

Mr. Hugh Benevides: Of course the act is able to address that problem, particularly, for example, in relation to the large final emitters. So one might ask: where are the regulations that would impose hard limits on those emitters and where are the timelines within those?

Mr. Nathan Cullen: Which the act bears the power of. The precautionary principle would suggest the need to—

Mr. Hugh Benevides: Act sooner rather than later.

The Chair: Thank you.

Well done, Nathan.

Mr. Nathan Cullen: Did I do okay? Do I get a prize or anything?

The Chair: You're going to finally beat Mr. Godfrey.

Mr. Warawa.

Mr. Mark Warawa: I'll see if I can do well too.

Thank you for being here.

I'd like to follow up on some of the comments made by Mr. Cullen regarding the format today. Being a round table, we're hoping to hear on all sides. This is a CEPA review and the committee has discussed the format and we decided on a round table format and we'll be dealing with specific topics. One of those is what we're talking about today.

On the precautionary principle, Mr. Lourie, you mentioned that CEPA has not facilitated precautionary management. Are you critiquing the precautionary principle or CEPA itself? I think there's consensus for support for CEPA, but we have this review. We're required by law to have the review, and here we are. Are you critiquing CEPA itself, or are you addressing the precautionary principle?

Mr. Bruce Lourie: It's increasingly difficult to figure out where CEPA begins and ends and where government action begins and ends.

The act itself is quite a fine piece of legislation. That reminds me of the story about your kid has great manners; they've never been used. It's a good piece of legislation. We just haven't actually used it very much to figure out where it can be seen to be effective and where really the challenges are. The precautionary principle is in the preamble. There's no reason why it shouldn't filter through the kinds of actions that are enabled through CEPA.

In one way my response is that I don't really have any criticism of the precautionary principle or the act, but I have a lot of criticism around how it has or has not been implemented. Reading the act, one would assume we would have all kinds of great action in Canada, but we don't.

● (1715)

Mr. Mark Warawa: In our first or second meeting we discussed REACH very briefly. It's hypothetical that we actually have real legislation here in Canada, so we'll see what REACH ends up to be.

What you're saying is that CEPA has the potential, but your critique is that we're not using it. That's what I'm understanding. Your example with mercury is a good example.

Instead of going home, as I normally do, I spent the weekend reading through different briefs and materials. I found the "Toxic Nation", which I had glanced at before. I reread it and it created a lot of thought. We find ourselves in a situation now in a country that has CEPA, but are we using it? What you're saying is that we are not.

Mr. Bruce Lourie: That's correct.

Mr. Mark Warawa: My question—maybe for Mr. Moffet—is what impact has the precautionary principle had on industrial stakeholders?

Mr. John Moffet: Could you elaborate?

● (1720)

Mr. Mark Warawa: We have the precautionary principle. We're hearing that we're not using it and CEPA. How is it being implemented with industry? We've had the example of mercury. As just a general overview, how are we using the precautionary principle as we deal with chemicals and substances?

Mr. John Moffet: First of all, let me clarify that the act actually refers to the precautionary principle in four places, not just in the preamble. It imposes an administrative duty on the government in section 2 to implement the precautionary principle throughout the act. So the departments have an obligation to account for the precautionary principle in every decision they make under the act, including administrative decisions. Indeed, CEPA is the only federal statute in Canada that has that kind of obligation. There are a number that refer to the precautionary principle in their preambles, but none of them imposes an actual duty. So it informs every decision.

One way to think about the impact of the precautionary principle is to say that it enables certain decisions to be made that would otherwise not be made. So, many decisions that are made under CEPA probably could have been made, and would have been made, without those provisions in the act, or without having an obligation to consider the precautionary principle. What the precautionary principle does is move the threshold of acceptable decisions.

To exactly where is not clear, and exactly what kinds of decisions should be made is not clear. That's left wide open to the discretion of decision-makers, with one exception, and that is the exception of persistent bioaccumulative and inherently toxic substances. When the departments find that a substance is a PBIT, to use Mr. Benevides' acronym, then the ministers must recommend that the substance be subject to virtual elimination. That's one example of where the act actually does prescribe a certain type of action, but Mr. Stoffman is absolutely correct that it doesn't prescribe similar types of actions for other groups or classes of substances, based on the kind of harm that is found.

So the answer to your question is that the departments account for the principle in every decision. I am fairly confident that if industry had agreed to come, at least some would have argued that Environment Canada and Health Canada have been overzealous in applying the precautionary principle. It's a value judgment as to how precautionary we ought to be.

Mr. Mark Warawa: How much time do I have?

The Chair: Three and a half minutes.

Mr. Mark Warawa: Well, there you go.

Back to all three presenters, do you support the precautionary principle within CEPA and its present wording, which came from Rio? Do you support it being part of CEPA? My understanding is that you do, but it's just a matter of using CEPA. We've heard there's the issue of political will. Are you suggesting that CEPA is a good piece of legislation, but that we just need to use it properly, and we haven't been? Is that what I'm hearing?

Mr. Bruce Lourie: Yes, that's what I'm suggesting. I think you can debate the wording issue, and things like cost-effective or not, but I think they really aren't the issue. I think what's coming out is perhaps this idea of ministerial or political discretion, which seems to be at the heart of a lot of the lack of implementation of the act.

Mr. Hugh Benevides: That's right.

In my introductory remarks I tried to establish the proposition that precaution is not an option, as it's an emerging principle of international law, and that the particular articulation of the principle in the act is one that is contested, and not the only one, by any means. Mr. Stoffman gave another one. I have a couple more here that I could offer to the committee. So whether it's written in and how many times it is written in is really not the issue.

If I could go back to the remarks about REACH, Mr. Warawa, of course you're right. REACH at the moment is hypothetical, in the sense that we don't know exactly what form it will take when it is finalized, and due to the same kinds of pressures that affect the quality of our laws in Canada, its initial form has been diluted in Europe.

I would have thought that we'd not be talking here about waiting for REACH and seeing how strong or weak it will be, but to actually compete, as it were, to see if we can have the strongest or most precautionary law in terms of earlier action; more information provided by proponents; greater onus on proponents to provide that information; more information provided to the public; and greater resources, for example, to do the kinds of things like *Polluted Children, Toxic Nation: A Report on Pollution in Canadian Families*, which Environmental Defence has done, but to do that with some fulsome data, as is done in the United States and Germany and elsewhere.

So on those kinds of questions, I would think our preoccupation would be how can we actually compete with legislation like REACH, regardless of what its final form will be when it arrives.

Mr. Larry Stoffman: I'll just jump in really fast here.

I would say, in response to the statement that CEPA is fine and that it doesn't need rewording but that we just need to use it, I wouldn't agree with that entirely. As a framework law, there is a lot you can do with it, but there are certain sections and language in it that, in a clause-by-clause review, we would say need to be strengthened. These would include expanding the scope of CEPA toxic scheduled items to address things like developmental toxins and, in particular, classified human carcinogens, which it doesn't do, as Mr. Moffet noted. So that's there.

If we are talking about definitions, once you put in the words "cost-effective", I think we would argue that you have to address it more broadly, the way the commission did in Europe, which is that cost-effective does not simply pertain to economic terms. What are the real costs of these cancer deaths, or these people who feel trespassed because they're concerned about their reproductive health or are concerned about early puberty in kids, or whatever? Those are costs too, and they certainly are public costs and political costs. So these things have to be looked at.

One point on REACH is that it's true that REACH is a work in progress, but there are a number of directives that have been adopted by all those countries in the EU, which have already addressed a number of the issues we're saying should be addressed in a renewed CEPA. So whether REACH gets more or less diluted, or whether it's passed by the European Parliament or not, there are a half a dozen directives that have been in place, some of them for a couple of decades, that address the fact that there should not be certain classes of compounds allowed in consumer products, that certain emissions will not be allowed, that there be national registries of those who emit certain carcinogens, and so on. So REACH seeks to consolidate a lot of that work that has already happened there.

● (1725)

Mr. Mark Warawa: I'm way over time now, aren't I?

The Chair: You are, yes. Thank you very much.

I wonder, would the members agree, and would our witnesses be able, to stay slightly longer because we lost that time? We still have a couple of people who have questions. Is that all right with everybody?

Hearing no complaints—

Mr. Luc Harvey (Louis-Hébert, CPC): I have another meeting at 5:30 and I have to leave.

The Chair: I think we'll still have a quorum, so we'd be fine with that.

Mr. Mario Silva: Do you have any specific time for the extension?

The Chair: I don't believe anybody else will be using the room, so—

Mr. Mario Silva: No, I'm asking how long is the extension going to be, because I also have a meeting.

The Chair: Well, 15 minutes. Is that all right?

Mr. Luc Harvey: Okay, but just before I leave, may I ask my question?

The Chair: Well, we'd have to get Mr. Silva's—

Mr. Luc Harvey: I have to go. I will not be able to ask my question.

The Chair: Mr. Silva, you are next. Would you agree?

Mr. Mario Silva: Sure.

The Chair: Go ahead, Mr. Harvey.

Mr. Luc Harvey: Thank you.

[*Translation*]

Mr. Lussier referred earlier to the presence of carcinogenic substances in water. He was no doubt referring to trihalomethanes, which are created by contact between organic products and chlorine.

You have to wonder whether it's preferable not to use chlorine, and thus to preserve those organic materials and risk contracting other diseases, or simply to treat the water.

[*English*]

Mr. Larry Stoffman: It's not a question of whether one treats it or not; it's how you treat it. What can you treat it with? Chlorine is one option. It has its problems, as you've just said. There are other filtration methods, advanced technologies, in use in the world today that are as effective and, some argue, more effective. Those need to be promoted. And we need to use legislative techniques and tax strategies as well in this country to promote those things.

[*Translation*]

Mr. Luc Harvey: In that case, we're talking more about nanofiltration or membrane filtration, aren't we?

[*English*]

Mr. Larry Stoffman: That's one example, yes.

[*Translation*]

Mr. Luc Harvey: Thank you.

[*English*]

The Chair: Mr. Silva.

Mr. Mario Silva: Thank you very much, Mr. Chair.

I recognize that there is a gap between the policy and the concept of precautionary principle and the implementation of it, which is unfortunate. But we have to make sure in no uncertain terms that this concept is not in any way watered down, because we have seen the rise of cancers in our country, at a very alarming rate. We know that many incidents of mercury, for example, as was discussed, have entered our ecosystem and our food chain. Today we're very concerned about the very high levels of mercury, whether they're in salmon or tuna. And there are, quite frankly, too many cancers that we just don't know anything about, and we don't know where they're coming from. So we all have to be very concerned and alarmed by this increasing trend.

If we're going to proceed with the CEPA review, how can we make sure that language is not weakened but strengthened? I think you were getting close to answering that, but I don't think I fully heard the very specific recommendation and how it in fact strengthens the very important principle that needs to be kept there as part of CEPA.

● (1730)

Mr. Larry Stoffman: I'm sorry, I don't have a suggestion for wording right here to give to you. But one thing that I've certainly talked about this afternoon is that one could write that when one applies a precautionary principle to the following compounds or classes of compounds with the following inherent hazards associated with them, that there can be no tolerance for allowable intakes. We should enact pollution prevention programming to ensure that those emissions are eliminated. That kind of language would certainly help. And it may already be applied to certain other classes, the bio-persistent toxic and inherently toxic compounds. But the next step—i.e., that restricted status and pollution prevention programming shall be required—is still missing.

The question of jurisdiction is a whole other issue, because you have federal and provincial jurisdiction. Certainly, as a start, you take a look at federal enterprises where there is no clear dispute over who has jurisdiction; you apply the principles and practices of federal enterprises; and you demonstrate, from the federal government perspective, what should be done. If provinces take that on, then that's great. There's a whole issue of how you can strengthen CEPA to address the jurisdictional issues as well. That's a complicated question.

Mr. Mario Silva: Is there a difference between how the term "precautionary principle" is applied and how it is seen in the provincial legislation and how it is in the federal legislation? Is the language similar but maybe the application different?

Mr. Hugh Benevides: The context will determine how that might happen. There are some examples of different provincial legislation that have features of precaution within them, even if that word isn't used. That's why I was trying to say that what is less important than the particular meaning is what the points are within the process that we can insert to make the act more precautionary. I have tried to identify some of those.

Certainly while one articulation of the precautionary principle may be stronger than another, and it may be nice to have it in one provincial act and not in another federal act, the real key is that it is not one-stop shopping. There have to be a number of places where precaution is there in a mandatory and a clear way to address, for example, those discretionary points of implementation that we would want to address.

That is what my introductory remarks were intended to make the case for. We would be happy to elaborate on those for all the different stages, particularly part 5 of the act, throughout the process.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: Thank you, Mr. Chair. I will try to keep this brief.

I would like to get a bit of an international context. We have talked about Europe and some of the states. Hearing what I would suggest is a pretty abysmal application of things like the precautionary principle—a general public health protection—how does Canada rank internationally? Do we tend to be laggards on this front, or does the world look to us for any sort of governance or guidance about the way to do things?

Mr. Bruce Lourie: I forget the exact OECD ranking. In terms of environmental performance, I think Canada is 27 out of 28 on the OECD ranking. I think the UN ranking, as well, has Canada near the bottom of the pack of industrial nations.

Mr. Nathan Cullen: Those are indexes, though. Has there ever been a ranking on specifics with respect to detrimental pollutions?

I am familiar with the UN and the OECD rankings, but they are a composite of a number of different things. Some of them include green spaces; some don't. They can get skewed pretty radically.

With respect to this and the general protection of public health from pollution—

● (1735)

Mr. Bruce Lourie: I will use mercury as an example—again, I'm sorry if I dwell on mercury, but it is a subject I know well. If we compare the actual restrictions and regulations on products and emissions between Canada and say Asia, Europe, and the United States, we would find that Canada certainly trails far behind those countries.

Mr. Nathan Cullen: Was there ever a notion within the initial creation of CEPA that was meant to divest the enactment of these policies from the politics of the day and actually rely upon true, sound science in the decisions? Do you find that the act is meant to be more arm's length, in a sense, from the to and fro of political change?

Mr. Larry Stoffman: When you read it, I think that is the intent. That would certainly be a layperson's understanding if he pulled out the act and read it on the Internet or something.

Mr. Nathan Cullen: Maybe Mr. Moffet can help with this. Let me understand the minister's discretion and power with respect to pollution. I am trying to get a firm question that the average Canadian, not being familiar with this, can understand.

If there is a known carcinogen, a heavily toxic substance, does the minister have the power to simply not list it, to not cause anything to happen in terms of restrictions or applications? Does the act allow that?

Mr. John Moffet: Yes. For chemicals, basically the act applies in two areas: new substances and existing substances. If you want to introduce a new substance by importing it or manufacturing something that has not been used in Canada, you have to give the government information that the government prescribes. That information will give us what we need to determine whether there is a risk.

Mr. Nathan Cullen: But even with the information and a proven risk, can the minister still decide to allow it into the marketplace?

Mr. John Moffet: We get that information, we make an assessment, and we make a recommendation to the minister.

Mr. Nathan Cullen: At that point the discretion lies entirely with her or his office as to whether to take up your recommendation or to ignore the findings.

Mr. John Moffet: Yes.

Then, similarly, on existing substances, the act now says we have to do categorization; we now must do a screening assessment. We have to; there is no discretion there. If the scientists, the risk assessors, conclude that a substance meets section 64, that recommendation goes to the minister. The minister then has discretion to say yes or no, although the science will be public.

Then, the minister also has the discretion as to whether to recommend adding the substance to schedule 1. That's a decision made by cabinet. Once the substance is on schedule 1, there's a decision about what to do about it. Do we do some labelling? Do we ban it?

That's, again, a government decision made by cabinet, with the one exception being the case of persistent biocumulative inherently toxic substances. If the science finds that these are present, ministers must implement virtual elimination and recommend an addition to schedule 1.

Mr. Nathan Cullen: So the chemicals in that particular class seem to have a little bit more oomph in them, in terms of getting through this political maze of getting listed and actually having something happen.

Mr. John Moffet: Yes.

Mr. Nathan Cullen: Canadians get most mystified by the language of the act, the difference between a “may” and a “shall” and a “wherefore”. Is there any cause for this committee to understand what the language would look like as it applies to this... what was the class of chemicals again?

Mr. John Moffet: Persistant biocumulative and inherently toxic. Those were the substances that the committee that developed CEPA in 1999 focused on as being priorities.

Mr. Nathan Cullen: The dirty dozen, no?

Mr. John Moffet: No, there's a lot more than that.

Mr. Nathan Cullen: A lot more than that.

So, other panellists, this seems to have a little bit more weight than the initial political maze described.

Mr. Larry Stoffman: I'll be really quick here. We talked about carcinogens and genotoxics and reproductive toxins, and we would like to see those addressed in a similar fashion to how PBITs are being addressed.

The Chair: Mr. Benevides, go ahead, please.

Mr. Hugh Benevides: Mr. Chair, these are the 400 substances that I identified earlier as having those characteristics. Certainly, as a starting point, one would want to consider what kinds of mandatory timelines would we want in an amended act, in terms of proceeding to the next stage of screening, or whether screening is necessary at all, given the information that we have, whether virtual elimination should be proceeded with, and on what timelines. In order to help with the decisions about how to recommend amending the act, I mentioned that it might be useful for the committee to learn from the departments what that list of the 400 looks like, and what smaller categories of substances they may be looking at for even faster action within that 400, so that this committee can have some input into that.

Unfortunately, as I said, the categorization will be complete by September. I know the departments are thinking about how to proceed. Certainly the public would be well served by this committee's learning how that process is going to turn out, in terms of recommending what should happen even before the act is amended. That's why I identified earlier that difficult timeliness.

● (1740)

The Chair: Mr. Godfrey, could you just keep it fairly brief?

Hon. John Godfrey: Maybe it's a yes or no question.

I guess the first question is whether CEPA would be improved and more useful if the precautionary principle were an automatic legal requirement rather than a discretionary power in the act. That's the first question. And I guess the second question is whether the precautionary principle could be usefully incorporated—and I thought I heard maybe a positive answer to this—into some of the specific mechanisms of the act. I'm thinking of virtual elimination of PBITs or the phasing out of known carcinogens. Would something be gained by both of those things?

Mr. John Moffet: Can I respond to the first and let my fellow panellists respond to the second?

The implementation of the precautionary principle is mandatory under CEPA. It is not discretionary. The government must apply the precautionary principle in every decision that it makes under the act.

Hon. John Godfrey: Okay.

Mr. John Moffet: So there's no discretion. The discretion is in what we mean by the precautionary principle—

Hon. John Godfrey: Ah.

Mr. John Moffet: —which gets to your second question.

Mr. Larry Stoffman: Yes, and—

The Chair: I would ask the panellists to be brief here. We did agree on the time.

Mr. Larry Stoffman: So for certain health hazards that are presented by certain classes of compounds, I would suggest they need to be defined by what the precautionary principle means. It means that for those classes of compounds, we shall take the following actions: A, B, C, D. The debate is about what those actions are going to be. Right now, we don't even have the requirement to take any action. So whether it's labelling or banning or restricting, which are the lists of possibilities, then we need to have a discussion about what the list should look like for certain classes of compounds.

Mr. Bruce Lourie: It would seem to me, too, that the number of times we have to go to cabinet or where there's a point that discretion is inserted, it really makes it very hard to implement the precautionary principle, because at that point it becomes a political decision, not a decision about the facts.

Mr. Hugh Benevides: It's precisely because of the various stages in the act where we don't have tailoring of what to do and when, in respect of the most dangerous substances, that we need to be more specific about how to implement precaution. It doesn't mean, for example, plugging in that word “precaution” at every one of those stages, but being more mandatory at different stages. It's the tailoring of discretion, as I was talking about earlier, that would best achieve the more mandatory taking of precautionary measures throughout the act.

The Chair: Thank you.

I'd like to thank our panellists. I think it proves that we do have to have both sides at the table to make the round table work well, and we do need someone who will challenge you. We'll then get better answers and the committee will understand better. Certainly we've talked about that up here, and we'll make every attempt to make sure that we have that discussion.

In fact, I might go so far as to ask our panellists, if necessary, would you agree to come back when we do have that other side, if you will, in order to let us expand this a little further? I think it could be very worth while. Certainly you were excellent witnesses, but we do need you to be challenged a little more, because our job is really to try to sort all of this out, and only through all sides are we going to get that. So we'll certainly attempt to make that happen.

Our next scheduled meeting is Monday, when we'll be measuring success, which our witnesses will be focusing on. I think we've started that today, really, and the meeting could carry on from here, in again looking at where we're going.

Thank you.

We're adjourned.

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