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Chair

Mr. Bob Mills

Standing Committee on Environment and Sustainable Development

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● (1110)

[*English*]

The Chair (Mr. Bob Mills (Red Deer, CPC)): I will outline the procedure we're going to follow today, so everyone knows.

Basically, Mr. Cullen has a notice of motion he wants to give us. Then we'll go to a brief explanation of what exactly has happened between then and now. And I'll let you know that I've been at the garbage dump all morning; however, I got back in time to let you know the gasification process is working fine and will soon be into production.

Hon. Geoff Regan (Halifax West, Lib.): Are you duly gasified?

The Chair: So I'm duly gasified.

Hon. Geoff Regan: Showered?

The Chair: No, I didn't.

Anyway, perhaps we could begin. Mr. Cullen, you have a notice of motion.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Congratulations on being gasified, Chair. That's good to hear, and I know we'll be talking more about this in the coming days.

I'll be tabling my notice of motion formally on Tuesday, but I wanted to give the committee notice that we'll be seeking to begin study on Bill C-377, which was initially designed as the post-Kyoto long-term targets, the bill by Mr. Layton, and trust the committee will study it and return it to the House post-haste.

The motion will be extremely simple and straightforward for committee members to read, and we look forward to the study of the bill, knowing that the committee has some things to study but not an overwhelming schedule, obviously, this spring.

The Chair: Mr. Cullen, as soon as you have it in writing, could you get it to the clerk?

Mr. Nathan Cullen: I have something for you today.

The Chair: Then we can get it out to all members so they know what's coming. As I mentioned, we have arranged for some guests, for at least a couple of meetings in advance, and we'll get to that as soon as we can.

Mr. Nathan Cullen: Yes, my suggestion is that even on Tuesday we take 10 minutes as a committee to look at our schedule again, depending on—

The Chair: To update you on where we're at and so on.

Mr. Nathan Cullen: Exactly.

The Chair: So I believe we'll begin.

I think we've discussed this. We'll begin by updating from Tuesday to today, and where we are in terms of the negotiations, if you want, and let everybody know more or less what has happened.

Mr. Warawa, perhaps I could begin with you, please.

Mr. Mark Warawa (Langley, CPC): Thank you, Chair.

I appreciate the willingness of committee members to meet. I've met with representatives of the different parties and I think we have consensus on close to 90% of the issues. For some of the more benign issues, such as what do we call DEHP—should it be di(2-ethylhexyl)phthalate or bis(2-ethylhexyl)phthalate—I don't think that's contentious. But regarding Mr. Cullen's recommendations on defining phthalates, of having less than 0.1%, there are a lot of minor things that I think we've now got consensus on. Which statute should be managing it? Who's accountable? I think we're very close.

To get an overview, perhaps I could ask the department to explain, because what I've passed on to the department is what I believe is the consensus position, by talking to Mr. Godfrey and Mr. Cullen, and they've tried then to draft it into a form that I think properly represents a consensus position. If they could give us an overview, we might have a big picture of where we're going.

The Chair: Sure, if we could get that overview, then Mr. Cullen might like to finish it off with his views of what has happened.

We'll go to the department first, then, please.

Mrs. Sue Milburn-Hopwood (Director, Risk Management Bureau, Department of Health): Thank you, Mr. Chair.

What I'd like to do is give you a bit of the architecture of what the government's amendments are. We've really tried to be very responsive to all the suggestions we've heard, so I'll give an overview of what is proposed here.

First of all, we are introducing a new clause 2 to deal with the definition of what would or would not be a phthalate, which is sort of a definitional-type issue.

Then we move on to the regulations section and we compare that with the old bill. The regulation section proposed—

The Chair: We're going to call it clause 2.1, actually.

Hon. Geoff Regan: Obviously for us it would be helpful, I think, if when we're looking at this document we received from the clerk, which has the various motions to amend, we knew which of these we were talking about. It would be a great help to us, apart from going through this.

● (1115)

The Chair: Yes, clause 2 obviously is gone. We'll call that new clause 2.1, and then we'll go to clause 3, which is the regulations. I must apologize. Our clerk only got some of these amendments 10 minutes ago, and that's why there's a problem.

Hon. Geoff Regan: So we don't have them.

The Chair: Even for anyone else who wants copies of these amendments, they are being copied right now. I believe there's enough for the MPs, but for no one else here.

The extras have just arrived.

Anyway, perhaps you could take Mr. Regan's comments into consideration, please.

Mrs. Sue Milburn-Hopwood: Please bear with me. I just got this myself, so I'm going to try to do a mapping between the proposed motions and the architecture that I am going to be dealing with. I'm trying to give an overview. We will get into each of these pieces, though, as we debate each motion. This is to be an overview of the government amendments.

The Chair: Yes, Mr. Godfrey.

Hon. John Godfrey (Don Valley West, Lib.): I'm sorry for all this stuff going around, but I received something called "modified bill", which lays out all the things in sequence, and if people have that, as opposed to a series of individual....

Is that what you gave? The modified bill does lay it out in a way that incorporates all the changes, so you can compare one bill against the other as a package, rather than bit by bit.

You have that? I think that makes it a lot easier to work with.

The Chair: I don't have one either.

The source of this, I believe, Mr. Warawa, is the department's summary.

Mr. Mark Warawa: They've put down in a legal text what I believe is the consensus I've heard from meetings, and again, I want to thank those who met to try to find some middle ground. The department will do the overview, but what you see in front of you is what I believe is the consensus, the middle ground.

Hon. John Godfrey: Pulling together all the amendments into an integrated package.

Mr. Mark Warawa: Exactly.

Hon. John Godfrey: So the amendments flow from this.

Mr. Mark Warawa: Exactly.

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Point of order.

[*English*]

The Chair: Yes, Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: I would like the minutes to reflect that we are talking about consensus, but the Bloc Québécois was not consulted about the new amendments. I would like that considered before we talk about consensus.

[*English*]

The Chair: Thank you, Mr. Bigras.

Can we carry on with the department? Just give us the overview, I think, and then let's get on with this. We are going to finish this today or we'll lock the doors and you'll all be here until we do.

Go ahead.

Mrs. Sue Milburn-Hopwood: Thank you, Mr. Chair.

I'm going to speak from the paper that I believe everyone has, which is the consolidated amendments, and that will be the architecture I will speak to. Then we'll have to map that into the individual motions as we move through.

First of all, we have introduced a new clause 2.1, which is essentially a definition to determine what would or would not be determined to be a phthalate, for the purpose of taking any action in this bill. I believe that came from a suggestion of one of the members. We like that idea and we incorporated that.

The next thing deals with the clause related to regulations, and the regulations in the previous version of the bill dealt with regulating a variety of areas for all three of the substances being captured in this bill, the DEHP, the BBP, and the DBP.

We are faced with the issue of already doing risk assessments on DBP and BBP and finding them non-toxic, so it would be very difficult for the department to convince the Governor in Council to add them to schedule 1 and then take action under CEPA, adding to schedule 1 under CEPA. We proposed and we've introduced a clause at the end of this package, clause 7, which would commit the ministers of health and the environment to reassess those two substances within 24 months. We're very much taking into consideration some of the commentary we heard from witnesses and members about doing cumulative assessments and also looking at exposure from cosmetics and other consumer products.

So we've moved DBP and DEHP. We cannot move to do anything with them until we have a risk assessment that says there is a risk to human health. We put that clause at the end of the revised bill.

Then moving on with what we can do with DEHP, the new clause 3 would deal with cosmetics. We would be prohibiting the use of DEHP in cosmetics, using the Food and Drugs Act. So that's what clause 3 is all about.

Moving on to clause 4, we would be looking at toys and other child care products like soothers and teethers, things that could go into the mouths of children under three. We would be using the Hazardous Products Act to prohibit those products from containing DEHP, and that is a step forward. We do that on a voluntary basis right now, and this will expand the age range and the types of products we'd be dealing with and we would put them into a regulation.

These clauses 3, 4, and 5 will all be introduced as one motion.

The fifth picks up on the desire of some commentary we heard to put in the idea of precaution, so we've made reference to the use of the precautionary principle in clauses 3 and 4. We've added a new clause 5 that uses the definition of the precautionary principle in CEPA and linked it to the actions that would be taken under the Food And Drugs Act and under the Hazardous Products Act.

So that is the package that deals with cosmetics and toys and other child care products that could be put in the mouths of children.

Then we move on to a very long clause 6, which is an approach we see as a compromise approach to deal with the issues of DEHP in medical products while at the same time ensuring we have access to life-saving medical devices that are very much needed and for which there may not be safe substitutes available.

There is a whole range of initiatives to deal with that, and we've introduced three new ideas based on the ideas that have come forward in the last couple of days. We can go into them when we get to that clause.

Then finally, the last one I've spoken to already, and that's the requirement to reassess DBP and BBP.

Thank you, Mr. Chair.

● (1120)

The Chair: Good. Thank you.

Mr. Cullen, do you want to make a brief comment about what you have in front of you?

Mr. Nathan Cullen: Sure.

First of all, thank you to the department officials for arranging some of this and putting it into language that the committee can understand and consider.

As Mr. Warawa said earlier, through the conversations, there's in the range of a 90% agreement on the way to cast this bill forward. The 10% that's off for us remains around the clauses 3 and 4 that were listed. I think this is more just seen as a difference of opinion based upon what we heard from witnesses. Clauses 3 and 4 only deal with one of the three phthalates. As you will see—I believe it's here, and I'm not sure which one it refers to in your package—we have an amendment that would change clauses 3 and 4 a bit, that would include all three of the products.

There are two reasons primarily. One reason is that we still see significant health concerns with BBP and DBP. We also see other jurisdictions having gone that route, and manufacturers have, in effect, taken some of these chemicals out of the products already. I explained this to the parliamentary secretary earlier. One of our main concerns is our inability right now in this country to know for certain, if we walk down to the dollar store in the mall, that products coming from China, particularly, and from some of the other countries.... We have a limited ability to actually understand whether these chemicals are in there without going the route of eliminating them, particularly with children's toys, and ones that we know will be placed in their mouths.

I don't want to overfocus on that piece. What I've said to the government and to other committee members is that we're comfortable with the package. The point of difference we're comfortable with committee members considering and having a vote on, and that difference of opinion will be expressed by the various parties and members of Parliament sitting at the committee. So overall we're glad of the conversations that have been had.

In terms of the medical devices in clause 6, this was in direct response to Mr. Bigras' comment. The only slight difference and change we would make is that when you get all the way down to paragraph 6(e), we want to strengthen the language a bit so that there's specific instruction to government to have a label on medical devices that contain DEHP. This was a concession we intended to make to Mr. Bigras, rather than the outright ban, because they raise concerns, particularly from Quebec. Although other hospitals and provinces are starting to go DEHP-free in their devices, and products are being made, we'll make that concession in order to accommodate Mr. Bigras' concern. We want that language strengthened a bit so we're very clear that the government is seeking, I believe within 24 months or 18 months, that there will be a labelling process going on. We thought that was reasonable.

● (1125)

The Chair: Thank you, Mr. Cullen.

We'll go back to Mr. Warawa briefly.

Mr. Mark Warawa: Thank you. I have a quick question for Mr. Cullen, through you.

On paragraph 6(c), it deals with what you just mentioned regarding labelling. It would be required, within 24 months after coming into force, that there would be labelling on medical devices that contain DEHP. Would that alleviate those concerns?

Mr. Nathan Cullen: Correct. I misspoke myself a bit. In paragraph 6(e), if committee members will read along:

> within 18 months after the coming into force of this Act, prepare a list of medical devices that do not contain bis(2-ethylhexyl)phthalate that are sold in or imported into Canada

The addition we were making—thank you for that, Mr. Warawa—reads:

> and list the DEHP-containing medical devices these devices can replace;

One of the things we're looking for is a replacement and an acknowledgement of what's coming in and what's replaceable. I suppose the intention of a lot of this is that we're looking for an eventual phase-out of this product, because we heard from industry that they're making the products right now. We heard from hospital groups that they are essentially moving in that direction. While we're not requiring or certainly forcing hospitals to do that, in a sense this is an encouragement towards that. So when devices are coming into the country, or if there are alternatives...that those be noted as well.

The Chair: Good. Thank you.

Certainly I congratulate all members for working together and coming up with something that seems much easier to deal with, and congratulations for listening to my advice, I guess, or the advice of all of us.

Mr. Bigras, do you have a comment you'd like to make at this point?

[*Translation*]

Mr. Bernard Bigras: Mr. Chair, this will be an initial reaction because I am not involved in the agreement that has been made between the two parties, and perhaps even with the third party — I do not know because its representative has not yet spoken. The interesting aspect of what has been presented to us is first of all clause 3 that specifies the precautionary principle. I think that this is an interesting step forward that could even be written into other acts. I think that it is a very interesting and very important point.

Secondly, in clause 6, I feel that a balance has been achieved in the spirit of the amendment, in the sense that it also allows us to recognize that there can be risks. As I understand it, everything must be spelled out in the labelling, but it does not prevent people's access to medical treatment. So, with the transparency, the information given to medical technicians, and the desire to make sure that the public is informed, I think that an appropriate balance has been written into the amendments that are before us. But we can perhaps talk about that when we move to clause-by-clause study of the bill.

[*English*]

The Chair: Thank you, Mr. Bigras.

Very briefly, we'll go to Mr. Warawa.

Mr. Mark Warawa: As a brief comment, I apologize to Mr. Bigras for not consulting him. The reality is that there just was not time. Comments that he made last Tuesday and before that were incorporated into the consensus. They were very much considered, and I appreciate his commitment to dealing with this.

Thank you.

● (1130)

The Chair: Finally, Mr. McGuinty or Mr. Godfrey, do you have a brief comment before we get started here?

Hon. John Godfrey: What we're trying to do on our side is facilitate the process and stay out of traffic, if I can put it that way. If there are any ways in which we can continue to broker deals, we will do so, but our chief purpose in being here is to get the bill done in a way that will make it a better bill, and not to try to add too much value in a way that would complicate matters further than they already are.

The Chair: I appreciate your not being a dangerous driver. That helps a lot in getting to where we need to go.

Hon. John Godfrey: A dangerous pedestrian is more like it.

The Chair: Let's begin. I've briefly talked with the clerks. They're trying to get caught up here, in terms of advice.

Can we start with new clause 2.1?

We were under discussion of Mr. Warawa's amendment. In order to go back and start with new clause 2.1, which seems the logical approach, I would need consent of all members here to let us do that, so that we could go back, start with new clause 2.1, and then move on to clause 3, and so on.

Do I have consensus?

Some hon. members: Agreed.

The Chair: Let's begin, then with new clause 2.1.

I believe our first amendment, then, would be—

Mr. Mike MacPherson (Procedural Clerk): Hold on.

The Chair: —would be "hold on".

Some hon. members: Oh, oh!

The Chair: I've been advised that amendment G-5.1 on page 5.1 would be the one we need to look at first.

This is very similar to amendment NDP-0.2 on page 4.1, and NDP-2 on page 11.

Hon. Geoff Regan: It's identical.

The Chair: We can only adopt one of these, so we would either need—

Go ahead, Mr. Cullen.

Mr. Nathan Cullen: I think on amendment G-5.1, new clause 2.1 covers off what we attempted to do in our two clauses, so I can withdraw those and we can put the vote up on this one.

The Chair: Then we just won't move amendment NDP-0.2 and amendment NDP-2. Is that correct, Mr. Cullen? Okay.

Mr. Warawa, we'll go over to you, then, to move this amendment G-5.1 on page 5.1.

Mr. Mark Warawa: I so move, Mr. Chair.

The Chair: Is there any discussion about this amendment?

Go ahead, Mr. Godfrey.

Hon. John Godfrey: Just as a reminder, and to make sure everybody is clear, we are always going to be using the nomenclature "bis", as opposed to "di", throughout the piece. Is that correct?

Mr. Mark Warawa: Correct.

Hon. John Godfrey: It's just to line it up, because I noticed even our expert witnesses fell into the bad habit of getting back to DEHP. So we've got to keep calling it BEHP now, is that it?

Mrs. Sue Milburn-Hopwood: I would suggest, for the purpose of the discussion we're having here, that we use nomenclature we're all familiar with—DEHP—but that the legal drafters use the "bis" terminology.

It's actually not used as an acronym, but the "bis" terminology is consistent with what's already on schedule 1 of CEPA, so we'd want to do that. But I think that for the purposes of not confusing everybody here, we should use DEHP, because that's been the terminology of the committee.

● (1135)

Hon. John Godfrey: Oh, great. Fine.

The Chair: Nothing is easy, Mr. Godfrey; nothing is easy.

(Amendment agreed to)

The Chair: If members could turn to page 5.2, we're just finishing off clause 2.1. We're looking now at Mr. Cullen's amendment on page 5.2.

Mr. Nathan Cullen: As committee members are reading along, this is, as Mr. Bigras pointed out earlier, the stated use of the precautionary principle, which is gaining momentum and needs to have more momentum. That is particularly because some of the changes we made are not to use CEPA, which has it built in, and the committee recommended, through our recent CEPA report, that it get more...that we use the precautionary principle in the way that we determine the use of these products in cosmetics, consumer products, and the rest.

This is just a restatement of that principle. I'm not sure where government or department officials are on that, but this is just a statement of purpose. This needs to be there, that it has to be something the government considers when it's allowing or not allowing these chemicals into our products.

The Chair: Mr. Warawa, I'm advised that amendment G-7.1 is very similar to this, so could members please compare the amendment on pages 5.2 and 7.1.

Mr. Mark Warawa: Thank you, Chair. I was looking for that, so thank you for helping me.

Can I then ask the department to explain what the difference is between the amendment on page 7.1 and the NDP amendment?

The Chair: So what we're asking for is 5.2 compared to 7.1, and obviously members are going to be looking at which one they should—

Mr. Nathan Cullen: I'm not sure if these are exactly comparable.

The Chair: Okay.

[*Translation*]

Mr. Bernard Bigras: It is clause 3.

[*English*]

Mr. Nathan Cullen: This goes to clause 3 of the bill.

The Chair: Just half a second here.

It's the last part of 7.1, with the clause 5. It's that clause that is similar.

Mr. Nathan Cullen: It's a little difficult to deal with because, I guess...are we being asked to consider 7.1 in its entirety or just a piece of it? Whereas we have new clause 2.1....

The Chair: The only change, I believe, is in the clause 5. Is that correct?

Hon. Geoff Regan: No, no. Mr. Chairman, on this point, I think that the important difference that strikes me immediately is that 7.1 talks about “for postponing cost-effective measures to prevent” not only “environmental degradation”, but it also says “to prevent adverse health impact”.

Now, it's my hunch that most of us would probably want that included, as well as preventing environmental degradation, but I'm curious to hear Mr. Cullen's response.

● (1140)

The Chair: Mr. Bigras, I believe you're first.

[*Translation*]

Mr. Bernard Bigras: Mr. Chair, it seems to me that amendment 5.2 amends clause 2 while amendment 7.3 amends clause 3. Is that not right?

[*English*]

The Chair: Yes, the amendment on page 5.2 would become new clause 2.2. Instead of new clause 2.1, Mr. Bigras, it would become new clause 2.2.

Mr. Nathan Cullen: His point, if I could, Mr. Chair, is that if you read G-7.1, it amends clause 3. So to compare them...they're different clauses. and this G-7.1 has quite a bit more in it. So to compare them is to say one or the other, and I don't think it's actually correct.

The Chair: The clerk advises me that you can't have the same language twice, so this is where the conflict would come in.

Mr. Nathan Cullen: Then my point would be that this new clause 2.2 comes first in the bill. If we need to amend the government to remove.... I understand the clerk's point.

The Chair: We're discussing new clause 2.2—

Mr. Nathan Cullen: Exactly.

The Chair: — so I believe we can vote on 2.2.

Mr. Warawa.

Mr. Mark Warawa: Thank you, Chair.

We want to have a language that is the best proper legal language, so perhaps I could ask the department which of these two will—

The Chair: I believe the point that Mr. Cullen is making is that we are, at this point, looking at new clause 2.2, and when we come to clause 3, that's where we could amend what we have in front of us. Am I not correct?

Mr. Mark Warawa: I would agree, Chair, but you can't say the same thing twice within the bill and get under the 7.1, the proposed clause 5, under our amendment 7.1. It deals with the same thing, so which is the better text?

The Chair: The better place to have it.

Mr. Mark Warawa: That's my question.

The Chair: Can the department comment on their interpretation?

Mrs. Sue Milburn-Hopwood: I think we need to look at where you want to put it in the bill. I think the really key point to look at is whether you want to put the issue of looking at preventing health effects as well as environmental degradation. That's the real key difference. The rest of it really depends on how you want to set up the architecture of the bill.

The Chair: Mr. Regan and then Mr. Bigras.

Hon. Geoff Regan: Thank you, Mr. Chairman.

Of course, clause 3 of the bill deals with regulations. Under G-7.1, clause 5 being proposed by the government would apply to this question of the creation of regulations.

Mr. Cullen's motion would apply. It says “In the administration of this act”. I see that as a broader and more all-encompassing opening of that phrase. It applies to the whole bill. There may be lawyers who could tell me differently, but it seems to me it would apply to the regulations as well. I think it's fairly obvious.

But my point would be this. If we accept Mr. Cullen's amendment, I would prefer the last two lines to say “to prevent adverse health impacts or environmental degradation”. I'm looking for his response to that suggestion. I think you'd have it apply to the whole bill and you'd cover both elements.

The Chair: We have Mr. Bigras next, and then Mr. Cullen.

[*Translation*]

Mr. Bernard Bigras: I do not think that the two are redundant. M. Cullen tells us that he would like the precautionary principle to apply to the whole of Bill C-307. Further on, the government says that it wants the precautionary principle to be considered in other acts to which the bill would apply, such as the Food and Drugs Act and the Hazardous Products Act.

I think that by passing the two amendments, we would reinforce the precautionary principle whenever the act applies, and even in the details of clauses that would apply under other acts.

● (1145)

[*English*]

The Chair: Mr. Cullen, I think you nodded to accept Mr. Regan's friendly amendment?

Mr. Nathan Cullen: Yes, exactly. We would add “adverse health impacts”.

I believe that was the text, Mr. Regan.

Hon. Geoff Regan: Yes.

The Chair: I'm told there's no such thing as a friendly amendment.

Mr. Nathan Cullen: Is there no such thing?

The Chair: You could move a subamendment.

Hon. Geoff Regan: I'll move a subamendment, Mr. Chairman: in the seventh line of Mr. Cullen's amendment on proposed new clause 2.1, on page 5.2, after the word “prevent”, that the words “adverse health impacts” be inserted. It would read “to prevent adverse health impacts or environmental degradation”. Those are the words I would insert.

The Chair: If we could vote on the subamendment, all those in favour?

(Subamendment agreed to [See *Minutes of Proceedings*])

The Chair: If we can vote on the amended amendment, as it is on page 5.2, all those in favour?

Mr. Warawa.

Mr. Mark Warawa: I have one quick question.

We're in support of what's being proposed here. Procedurally, can we change our amendment by removing proposed clause 5 so that it's not being duplicated and we don't have to throw out the whole motion? Is that okay?

The Chair: Further down, when we get there, we can do that.

Mr. Mark Warawa: That's fine. Thank you so much.

(Amendment agreed to)

(On clause 3—*Regulations—Food and Drugs Act*)

The Chair: We have taken care of new clauses 2.1 and 2.2.

We can now go on to amendment G-7. Is that correct?

Mr. Mike MacPherson: Yes, we're on clause 3.

The Chair: We're beginning again where we left off the other day at amendment G-7, on page 7.

Hon. Geoff Regan: You have two on clause 3, right? So I presume you're going to replace this with amendment G-7.1.

The Chair: So we are in clause 3 now, and we're looking at G-7.

Mr. Mark Warawa: Chair, it will be not G-7, but G-7.1.

The Chair: You're withdrawing G-7?

Mr. Mark Warawa: Correct.

The Chair: Yes, do we have the consent of the committee for this withdrawal?

Some hon. members: Agreed.

The Chair: So now we're on amendment G-7.1.

Could you just wait half a second, Mr. Warawa, please.

Just for everybody's information here, the clerk is advising us.... There could be some scope issues with this, but above all, we would need to.... I assume we're eliminating proposed clause 5. I think we agreed to that. He just doesn't move part three.

What the clerk is suggesting, Mr. Warawa, is that we deal with this as two separate motions. In other words, clause 3 would be one motion and proposed clause 4 would be a different motion, and of course, you just don't move proposed clause 5, so that would be gone.

● (1150)

Mr. Mark Warawa: That's fine.

The Chair: So if you want to, you can talk to clause 3 in G-7.1.

Mr. Mark Warawa: Thank you, and so moved, Mr. Chair.

The Chair: Yes, Mr. Regan.

Hon. Geoff Regan: Mr. Chair, I'm trying to move a subamendment, just for starters here, that the “section 5” that's in the fourth line of this clause 3 as proposed be replaced with...was it new clause 2.1 that we just passed?

The Chair: It was 2.2.

Hon. Geoff Regan: It's the one that says:

> In the administration of this Act, the Government of Canada shall apply the precautionary principle

etc. And then we added the adverse. It said clause 2.1. It was page 5.2 and it says 2.1 on here.

Mr. Mike MacPherson: There was already a clause 2.1. We always—

Hon. Geoff Regan: So it's clause 2.2.

Okay, so clause 2.2 should replace “section 5” in there, or is that just administrative? That's looked after on its own.

I guess the question I'm asking is if we need this subamendment. Or does it happen automatically?

The Chair: Does it...?

Hon. Geoff Regan: Do you correct this automatically? Because “section 5” would mean something else entirely that it's going to refer to.

Mr. Nathan Cullen: You guys took that out, right?

The Chair: Let's proceed as he has moved it, and the editing will take care of getting the numbers right.

Hon. Geoff Regan: Okay, good, because obviously it won't apply to section 5.

The Chair: Right. I think we're going to get into trouble if we start trying to do editing here.

Hon. Geoff Regan: Fine, okay.

The Chair: Let's get the wording right.

Hon. Geoff Regan: I'll withdraw my subamendment, Mr. Chair.

The Chair: Yes, no problem. Are there any other comments regarding clause 3 on amendment G-7.1?

Mr. Warawa, did you wish to speak?

Mr. Mark Warawa: Yes, I was just going to respond to Mr. Regan. What was handed out is the proposed new bill, and clause 5 will become clause 2.2, and clause 6 will become clause 5, and clause 7 will become clause 6.

Hon. Geoff Regan: We agreed on that, I think.

The Chair: Yes.

Mr. Cullen, I believe you had a comment.

Mr. Nathan Cullen: This is the 10% disagreement in terms of a difference of opinion as to what was heard from witnesses.

For committee members, for ease of understanding, there are three phthalates in play here—DEHP, BBP and DBP. If you follow beyond this—and I'm not going to refer to it any deeper than this—we have two NDP amendments that are similar to this one presented by the government, but they include all three phthalates instead of just the one.

So for ease of principle so that we can have the debate, essentially, or the difference of opinion between committee members, if we don't amend, do we—not friendly—subamend?

The Chair: Subamend.

Mr. Nathan Cullen: We subamend clause 3, and when we get to clause 4 I'll suggest the same thing, to include BBP and DBP in this piece. I think that's the easiest way to have a discussion.

The Chair: Can we hold for one second, please, Mr. Cullen?

The clerk has brought to my attention the fact that we are in effect changing some of the authority here in clause 3. We are changing it to the Food and Drugs Act, as opposed to this bill being responsible for these regulations. So there is a procedural concern here that the clerk has raised.

Mr. Cullen, do you have a comment on that?

Mr. Nathan Cullen: Yes. I think as we've gone through the learning process of how to most effectively do this, we took advice from departmental officials and others that, for efficacy, this was the most direct and cleanest way to do it. I know there's some concern about how much you change a bill in terms of its intention, but the intention remains. It's the vehicle being applied to get it done, based upon the advice of those who are actually going to do the work.

The second point on this in terms of our subamendment is that we've seen other cases.... I know there are concerns about doing a reassessment, which I think comes later in the bill. We'll be seeking a reassessment of these because we think the original assessment was flawed, and also looking to remove the products at the same time. This follows directly out of our notions around the precautionary principle, which states that in the absence of 100% proof, if there's cause for concern, you can still act. That is why we've moved the subamendment to the government's 7.1.

● (1155)

The Chair: Mr. Warawa.

Mr. Mark Warawa: Thank you, chair.

So clause 3 is dealing with cosmetics. What Mr. Cullen is proposing is that we add to this, with a subamendment, DBP and BBP. What's being proposed in the total picture is that those be reassessed, and if they are assessed as being dangerous at that time, then they would be regulated. That is what's being proposed. At this point, they will be assessed.So to add them to this before they're assessed is somewhat putting the cart before the horse.

The precautionary principle is part of that. That's what was recommended by Mr. Cullen, so it's part of that, but it is dealing specifically with cosmetics. Proposed clause 4 will be dealing with items that could be put in the mouth of a child. But specifically, clause 3 is dealing with cosmetics, and I think it sends an unhealthy message if we're making regulations before we've had scientific reassessments for DBP and BBP.

So I would not support that and would recommend that the committee not support it.

The Chair: My advice from the clerk—I'll be very upfront with you—is that this is inadmissible, but I'm hearing quite a bit of consensus around the table. So my instinct says we should accept that and let it proceed.

I'm certainly open, though, to members and members' comments—

Hon. John Godfrey: That being what?

The Chair: That I can rule it inadmissible and you can overturn the ruling.

Mr. Regan.

Hon. Geoff Regan: Can I clarify something, just to be clear on this?

The Chair: No, he was next, and then Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: Well, yes.

[*English*]

The Chair: Sorry, sorry. Mr. Bigras first, and then Mr. Regan.

[*Translation*]

Mr. Bernard Bigras: I understand what you have just told us, but my concern is what could happen to this bill when it gets sent back to the House. So, if your opinion is correct...We can always discuss the merits and ultimately overturn your decision, but I would like the clerk to tell us what could happen to the bill if this amendment is passed.

[*English*]

The Chair: Mr. Bigras, I did consult on some of these issues. Basically I was told that if no member from this committee stands up and objects to what we tabled in the House, there's not likely going to be any changes to it.

So I would be looking for consensus here that we vote on the proposed change, and then we vote on this and proceed.

I think that's what I'm hearing in people's comments. It's okay.

Mr. Regan, please carry on.

Hon. Geoff Regan: Mr. Chairman, so you're saying that even though under the rules, when a private member's bill comes to a committee, strictly speaking, you're not allowed to amend acts or sections of acts that aren't referred to in the original private member's bill brought forward.... In other words, in this case, the bill amends certain sections of CEPA; it doesn't amend the other acts. And therefore, strictly speaking, it wouldn't be able to do that.

My question is, if we were all to agree to amend the Food and Drugs Act and the Hazardous Products Act here, and this goes back to the House, can one party then object to it and say to the Speaker that it shouldn't go forward because of this? And would the Speaker then be likely to rule that the bill is out of order because the committee exceeded its authority? That's the question.

● (1200)

The Chair: Again, I've listened to the Speaker a lot over the years, and usually he will say that he supports the ruling from the chair.

So obviously my decision would be to rule whether it's admissible or not. I have advice from the clerk. If there are no objections within this committee, and the mover of the bill said he understands that to make this bill more functional, he's taking the advice of the department, that's good enough for me, because we want a functional bill.

Obviously if someone here is violently opposed to that, they can raise it in the House, open the question, and there would be a question about that portion of the bill.

We have to hear Mr. Bigras in order to make sure he knows and understands what I'm proposing.

Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: I understand completely what you are proposing. By way of corroboration, I am going to tell you about a precedent. Precedents can guide our decisions.

Bill C-257 was approved in committee. Amendments had been made, and there was consensus among committee members that the amendments were in order, despite the view of the chair. A vote was taken and the ruling of the chair was overturned. When the bill went back to the House, the Speaker felt that the changes went beyond the scope of the original bill. The amendments were not accepted, and we went back to the original bill that had been tabled in the House to begin with.

So I would like to know if, based on the precedent of Bill C-257, the same thing could happen to the bill we are considering today.

[*English*]

The Chair: Again, the clerk advises me that if it had to do with money, there' s no question that could happen.

Mr. Cullen, can you bring some light to this?

Mr. Nathan Cullen: Yes. I completely hear Mr. Bigras' point. I just want to remind committee members that what we've conceded to do in changing what may be technically inadmissible is simply a matter of a vehicle. In order to make this bill most effective, which everyone has claimed to support, it's a little strange for me to imagine that there won't any money matters involved, that there's going to be a motion in the House by any of the parties to say this is a bad thing, even though we know the thing we're doing is a good thing.

If we're trying to make this thing happen in the most effective way, and we all agree to that, it seems to be one of these moments in parliamentary history where you say, yes, this is Parliament trying to get the job done.

The Chair: My feeling is that we've discussed this enough, and I will listen briefly to Mr. Bigras. But I'm prepared to put this to a vote and we'll move forward.

Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: Thank you, Mr. Chair, for recognizing me. That is not the reason this has happened. First, it was not a question of money, nor of royal assent, but rather a question of including the notion of essential services in the bill, and the Speaker of the House felt that that went beyond the scope of the bill.

We cannot say anything we like, such as that it is a Bloc Québécois bill on replacement workers. I do not want to be a party-pooper. But there are 308 MPs in the House, and any one of them can get up and say that the bill goes beyond its original scope...I do not want to be a party-pooper, I want to make sure that the work we are doing here can come to an appropriate conclusion and follow a normal procedure. We must not keep working just to end up in a situation like the one I was talking about, especially when there are precedents, and when they have been brought to our attention.

[*English*]

The Chair: My only comment is that sometimes change is the thing that scares people most when it comes to precedents.

Mr. Cullen.

Mr. Nathan Cullen: Through you, Chair, to the clerk, to break this logjam.... I understand Mr. Bigras' reservations, and we don't want to see the baby tossed out with the bathwater, if you will, but I'd ask him if the changes that have happened that he is worried about in regard to admissibility are because we are using the Food and Drugs Act as opposed to CEPA, which was the original design of the bill. Is that where the contentious point of admissibility is?

Maybe I could have some clarification.

● (1205)

The Chair: This bill is the authority. It is to be the authority, and so by adding another act, we are in effect—

Mr. Nathan Cullen: Right, then to find a way to remove Mr. Bigras' concerns, is there language that can be proposed that would allow the authority to stay within this bill, then, for this particular part?

It's a little frustrating, to be honest. We're being given that this is the best vehicle, and now we're essentially having to try to find a substandard vehicle in order to appease a technicality in the House. That's unfortunate if it's the route that we go, but we don't want a situation where there may be a difference of opinion on this in the House and someone can object on a technical reading and have the bill dismissed. That would be even more unfortunate.

Are we prepared to find another vehicle to do it?

The Chair: Mr. Warawa, do you have a brief comment?

Mr. Mark Warawa: I do have a salient point, which is that if the bill were permitted to continue on in its present form and, as the clerk identified, it would be a stand-alone, is that constitutional? Is it a legal bill? I would suggest that it may not be successful if it were stand-alone. Maybe the department could advise us.

I think there is consensus that we want this to go ahead, but the way it is now, it may not be successful either. There may be problems either way. It would have a greater chance if it is improved to be a good bill and if there is unanimous support for it to continue on, I suspect the Speaker would support the ruling and advice of the committee.

I have a question. Is there a risk of it moving forward? Is there a constitutional problem or a legal problem with the bill, as it was originally written?

The Chair: Again, I would like to see us vote on the proposed amendment and I would like to proceed. I cannot really imagine the Speaker overruling the committee on an item like this. I just don't believe that would happen.

Mr. Cullen.

Mr. Nathan Cullen: Sorry, Chair, the—

[*Translation*]

Mr. Bernard Bigras: Point of order.

You do not believe me, Mr. Chair. You have that right, except that precedents support me. I probably believe you, but the reality is that precedents exist, that it is possible. If it is possible, and if it has already happened, it could very well happen with this bill too.

At the end of the day, Mr. Chair, this is not my bill, it is Mr. Cullen's. If Mr. Cullen wants to risk the bill going back to its original form when it gets back to the House of Commons, that is his choice.

I want to point out the risk. You have made your decision. I respect your view entirely. Now, if Mr. Cullen wants to take the risk, that is up to him.

[*English*]

The Chair: Mr. Rochon, do you want to jump in here quickly?

Mr. Jean-Sébastien Rochon (Counsel, Department of Justice): This is in response to Mr. Warawa's comment in relation to the constitutionality. It is indeed the government's position that the bill, as currently drafted, is not supported by the legislative heads of power that are assigned to Parliament under the Constitution Act, 1867.

Mr. Nathan Cullen: That's a very fine opinion.

The Chair: That really helped a lot.

Mr. Nathan Cullen: If I may, Mr. Chair—

The Chair: Mr. Godfrey has a point of order, I believe.

Hon. John Godfrey: Yes, let me understand what question you just answered. You are talking about the bill in the form that was originally presented by Mr. Cullen, and that's the judgment you're making on that. You're not making a judgment on the modified package that we're talking about, are you? Which of those two options are you judging?

Mr. Jean-Sébastien Rochon: The position is in relation to the bill as it was presented.

● (1210)

Mr. Mark Warawa: That is the original.

Mr. Jean-Sébastien Rochon: Yes, that is the original bill. That's correct.

Hon. John Godfrey: Okay, now we have a problem with the original bill, but we're doing something about that. Are we in worse trouble or less trouble with the new bill?

Mr. Jean-Sébastien Rochon: Thank you, Mr. Godfrey.

It is the government's position that the amendments that are put forth today would take care of these problems.

Hon. John Godfrey: Excellent.

The Chair: Mr. Cullen, you have a final word, please.

Mr. Nathan Cullen: Here's the crux.

Mr. Bigras raises good points about procedure, as do you, Chair, about changes being necessary.

Here's what we don't want to see happen. If we have changed the scope and the admissibility of the bill, yet there is agreement around the table, then if there comes a time when this bill comes back to the House of Commons with a disagreement about some of the contents in it because there is then a debate over one of three phthalates, any member in the House can stand up under the guise of admissibility and say, "I don't like this bill"—but really what they mean is that they just disagree on the chemical component—and wipe out the bill entirely. That would be a greater tragedy.

I'll keep this very short. Regarding the constitutionality of the bill, one of the things that all members of Parliament do when drafting bills is check for constitutionality using the advice of the House of Commons. We didn't pull this out of thin air. We've gone through that check. So there is a difference of opinion, I would suggest, between the government officials present here today and the advice that we get from the House of Commons, upon which we all rely.

I'm not into having duelling banjos between lawyers as to what is constitutional and what is not, but we've gone through the check already. It's not as if we didn't consider constitutionality in this.

To summarize, I'm not sure if we can establish a gentlemen's agreement to have a difference of opinion here about the different elements that are listed, but to allow it to go ahead through the House even though there may be a moment at which we've clearly expanded the scope of the bill to include a better mechanism. We didn't expand the scope of the bill to change its nature or to try to do something radically different. We're just using a better tool, on which we have advice from department officials, and which, there is some agreement around the table, is a better tool to use.

The Chair: Mr. Regan, go ahead, please, very briefly.

Hon. Geoff Regan: My question is for Mr. Rochon.

Is it not the case that CEPA falls under the heads of authority of the federal government regarding regulation of materials that may be toxic? And if that is the case, why doesn't this bill? What is wrong with it constitutionally? That's what I want to understand better.

Mr. Jean-Sébastien Rochon: Thank you, Mr. Regan.

The position is that the bill has some problems with the heads of power insofar as it can't fall under the criminal law power. If you consider Bill C-307, you'll notice that the regulation-making powers don't specifically refer to CEPA. That being said, we must understand that the authority to make the regulations that are currently sought in clause 3 of Bill C-307 would be under the bill itself.

Hon. Geoff Regan: I see.

Mr. Jean-Sébastien Rochon: It is a long-standing principle that under criminal law you require three criteria to be justified under this head of power, the first one being a criminal law purpose that is backed by a prohibition and a sanction.

Hon. Geoff Regan: You're saying that by bringing it under subsection 30(1) of the Food and Drugs Act and section 6 of the Hazardous Products Act, you overcome that problem. Is that what you're saying? That is a legitimate way of doing this?

Mr. Jean-Sébastien Rochon: That's correct, Mr. Regan. These statutes have already been through the....

Hon. Geoff Regan: I see. Okay.

The Chair: I'm going to go to Mr. Cullen and ask him to tell us exactly what his subamendment is. Then I'm going to call the vote, please.

Mr. Nathan Cullen: The only reason I'm hesitating, Chair, is that I feel that by adding a subamendment to include those other two phthalates, I put in jeopardy the entire bill. I'm not sure government opposition to this will not arise in the House of Commons under a technical excuse, ending up with the bill not going ahead.

I'm not sure what assurances I can get from government today that even though we have a difference of opinion over the elements, they will not end the bill's existence in the House over this technicality. I'm not sure if there's a willingness there.

The Chair: As I understand it, Mr. Cullen, and I'm sure you do as well, it's simply a matter that these are being evaluated. It's just a matter that you don't want to put them in and take them out, or vice versa, and that is really the disagreement. It's not a matter of questioning the motive. It's just the timing, I guess, more than anything else.

I don't know, Mr. Warawa, but I don't believe you can give those assurances.

● (1215)

Mr. Mark Warawa: Chair, all I can say to Mr. Cullen is that we don't support the amendments for the reason I've expressed, which is that we're putting the cart before the horse. We need to first assess DBP and BBP.

The Chair: Mr. Cullen, back to you. Are you going to amend this?

Mr. Nathan Cullen: In light of the entire intention of the bill, I won't move those subamendments, just to allow the process that we've negotiated here to go ahead. And I would encourage the government to consider including those two phthalates in their ban in future stages.

The Chair: Okay.

I'll call the vote, then, on what is proposed clause 3 in amendment G-7.1.

Again, we won't worry about numbering here; we'll just deal with it as it appears in front of us.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Now we are going to deal with proposed clause 4 as a separate motion.

Again, Mr. Warawa, I would ask you to explain that and then move it, if you so choose.

Mr. Mark Warawa: Thank you, Chair.

This again includes the precautionary principle, as requested by Mr. Cullen. The last clause dealt with cosmetics. This deals with products being brought into contact with the mouth of a child who's less than three years of age.

It deals with DEHP. Again, the issue is whether it should also include DBP and BBP. The position of the government is that it very well could, but at this point we need to reassess DBP and BBP. That will be a high priority of the government. After the reassessment, they could very well be prohibited, but at this point it would be just DEHP for products being in contact with the mouth of a child.

The Chair: Yes, Mr. McGuinty.

Mr. David McGuinty (Ottawa South, Lib.): Through you, Mr. Chair, to Mr. Cullen, where did this definition come from?

Maybe the department can help us on this as well.

The Chair: Can the department clarify?

Mrs. Sue Milburn-Hopwood: Sorry, I don't understand which definition we're talking about.

Mr. David McGuinty: The precautionary principle.

Mrs. Sue Milburn-Hopwood: The one that was in the government's amendment came from CEPA. I'm not sure of the origin of the definition of the one that we approved earlier.

The Chair: Does that help, Mr. McGuinty?

Mr. David McGuinty: It helps, except it does speak about cost-effective measures, which basically brings an economic test to bear. That is unusual in a precautionary principle. It tempers the precautionary principle in a significant way.

I'm not sure if this is the common parlance or common use in the federal government today, but it's certainly not the common use internationally.

Mrs. Sue Milburn-Hopwood: I'd just like to note that the term "cost-effective" is used both in the clause we had approved earlier and this proposed clause 5. We used the wording that was in CEPA—we actually used exactly the wording that was in CEPA—because that had long since been debated. We thought that was the most expedient way to enter that idea here.

Mr. David McGuinty: Thank you.

The Chair: Before you do that, Mr. Warawa, I want to make sure everybody understands that we are on clause 3, that our first amendment was to clause 3. Now we're into the second amendment, which will be a new clause.

So we need to vote on clause 3 as amended in order to complete what we have just done.

(Clause 3 as amended agreed to [See *Minutes of Proceedings*])

● (1220)

The Chair: Okay, now we're on to Mr. Warawa. This will be new clause 3.1.

Mr. Mark Warawa: Thank you.

I move new clause 3.1.

The Chair: Are there any comments?

Mr. Mark Warawa: I've already made them.

The Chair: Mr. Warawa has made his comments. I think everybody knows where we're at here.

Mr. Cullen, sorry.

Mr. Nathan Cullen: Regarding the language, this new clause refers back to section 5.

The Chair: Yes, I believe so.

Mr. Nathan Cullen: Will the language be cleaned up?

The Chair: We'll get all that right.

Mr. Nathan Cullen: Great. That's all. I'm sorry to hesitate and interrupt the vote.

The Chair: Okay.

NDP-1.2, on page 7.4, will not proceed if we approve the new clause 3.1 on page 7.1.

Hon. Geoff Regan: I'm sorry, Mr. Chair, is the new clause 3.1 called clause 4 on this page?

The Chair: Yes, our new clause 3.1 is clause 4 on page 7.1.

Hon. Geoff Regan: Okay. Question.

The Chair: It's good that it's not Friday.

So page 7.4 will not be dealt with, then, if we approve of this new clause 3.1. Is that clear?

Mr. Warawa.

Mr. Mark Warawa: No, that's fine, Mr. Chair.

The Chair: (Amendment agreed to [See *Minutes of Proceedings*])

The Chair: You're not moving new clause 5, right, Mr. Warawa?

Mr. Mark Warawa: That is correct.

The Chair: Because of the amendments we made and the votes we took, we will eliminate NDP-1 on page 8 and BQ-1 on page 10. NDP-3 on page 12 will become the new clause 3.2.

Mr. Cullen, could you please speak to NDP-3, which is now new clause 3.2?

Mr. Nathan Cullen: This is concerning medical devices. One of the things that were brought up was a concern around certain medical devices not being available. This allows a three-year window and then a three-year extension, if allowed. This is in some contention directly to some of the issues brought up, but we thought this amendment allowed the switch to become possible, and if it wasn't possible, the Governor in Council could allow a three-year window extension so that there would be no interruption in services or products.

● (1225)

The Chair: Are there any other comments about page 12?

Mr. McGuinty.

Mr. David McGuinty: I'd like to ask the officials. Are there any potential unintended consequences that might flow from this change?

Mrs. Sue Milburn-Hopwood: This particular version—and I think it was left over from a discussion that we were going to have on Tuesday—actually would perhaps force us at the end of the six-year period to lose access to very valuable medical devices because we have not been able to do the safety assessment and to declare that they are equally as effective as the DEHP-containing devices. So this could have unintended negative consequences for health.

Mr. David McGuinty: May I ask also, Mr. Chair, how long the safety assessment would take?

Mrs. Sue Milburn-Hopwood: I think it's not a matter of one individual medical device; it's a safety assessment for every application that we're trying to remove. There is a whole range of products out there, so it's not that we can do something in a period of time; it's finding the right alternative that is safe to replace a particular use.

Mr. David McGuinty: Can you give us any indication at all of how long it would take?

Mrs. Sue Milburn-Hopwood: This is beyond the scope. I cannot give you a sense of it until we can move to an environment where we're completely free of DEHP in medical devices. We've heard from some of the other witnesses that they're essential in blood bags, and I know we've talked about that. But I can't give a blanket assessment of when we could move to that. That's why another approach has come forward that we would like to hear about later on.

Mr. David McGuinty: So a potential unintended consequence, then, of this amendment is that we may be denying use of products that are presently being used for medical procedures, without a substitute available?

Mrs. Sue Milburn-Hopwood: Right.

Mr. David McGuinty: Thank you.

The Chair: I'll go to Mr. Warawa and then Mr. Cullen.

Mr. Mark Warawa: Amendment NDP-3 on page 12 and the government's motion on page 15.2 are dealing with the same issue of medical devices. Mr. McGuinty brought up the issue of unintended consequences. We agree, and I'm hoping we can find some middle ground here. I thought we had some. The proposal would ultimately result in the ban of safe and effective medical devices, even if there were no safe and effective alternatives in Canada, which is Mr. McGuinty's point.

Under Mr. Cullen's proposal, regulatory decisions made by another regulatory agency about the safety and effectiveness of DEHP-free alternatives would determine whether or not DEHP-containing medical devices would be available in Canada. The current medical device regulations prohibit the sale or importation into Canada of unlicensed medical devices, even if they've been approved for sale in another regulatory jurisdiction. Health Canada's safety requirements for medical devices are generally more stringent than those in many countries, and generally you'll find more evidence for safety and effectiveness.

Unfortunately, we cannot accept this amendment as it may introduce new potential safety risks posed by using DEHP devices not approved for use in Canada. We believe our recommendation on page 15.2 strikes that balance, and we would hope that Mr. Cullen would withdraw his motion and support the one on page 15.2.

Thank you.

The Chair: Mr. Cullen.

Mr. Nathan Cullen: We're prepared to go to the government's suggestion, but let it be known within the committee that I have deep concerns with the approach taken by government officials on this one, particularly to raise the spectre of people not being able to gain access to needed surgeries.

There are two reasons. One built right into this regulation would allow the government to extend the use of devices that contain DEHP. That was one of the things we said. The second is that we have list after list of hospitals in Canada and North America that are going DEHP-free, clearly not jeopardizing their patients.

So while I will withdraw this amendment because it was some part of the negotiation, it's absolutely ridiculous to keep suggesting this notion that someone's going to be lying on a hospital table somewhere in Canada not being able to receive medical assistance because of this bill's proposal. Government, at some point or another, will find its way to where the medical consensus is coming from, that DEHP-free medical devices are becoming a standard. They are becoming a norm because the companies are making them, the hospitals are accepting them, and they're advertising the fact they are DEHP-free. So we'll move to the labelling as a first step, but this effort is certainly not done today.

So I'll withdraw this motion.

● (1230)

The Chair: It's being withdrawn, so I don't think we need to speak to it, Mr. Bigras. Is there something different?

[*Translation*]

Mr. Bernard Bigras: No.

[*English*]

The Chair: I'd rather move on, if we can.

[*Translation*]

Mr. Bernard Bigras: No. If it is withdrawn, it is withdrawn.

[*English*]

The Chair: Okay, it's withdrawn.

[*Translation*]

Mr. Bernard Bigras: If it withdrawn, why is there a debate?

[*English*]

The Chair: We can move on.

Perhaps we could look at page 13.1, NDP amendment 3.1. The clerk has pointed out a real similarity between page 15.3, which is numbered in your book as proposed clause 7. So if you could look at page 13.1, NDP amendment 3.1 and page 15.3, proposed clause 7, there is a similarity between those two.

Mr. Warawa.

Mr. Mark Warawa: Chair, I think the first difference is the timeframe. The NDP is recommending within 12 months for the reassessment, and the government is recommending within 24 months.

If I could defer to the department in the spirit of doing it as quickly as possible, which is the more realistic of the two timeframes? Is it possible to do a proper reassessment within the 12 months?

Mrs. Sue Milburn-Hopwood: We would prefer the 24 months. We want to do a good job on this. We want to have the right peer review that would normally be taken with something like that, so we would not like to do a rush job.

We would like to have the extra time to be able to do a good job, because obviously there's a lot at stake and a lot of new information has come to the table that we really want to take under consideration.

The Chair: Mr. McGuinty.

Mr. David McGuinty: Through you to the witness, Ms. Milburn-Hopwood, was it your understanding then that the entire reassessment can take place within 24 months—beginning, middle, peer review, and end?

Mrs. Sue Milburn-Hopwood: Yes.

Mr. David McGuinty: All can be completed within 24 months? So it's not a situation where it's started and it takes three years or three and a half years to complete?

Mrs. Sue Milburn-Hopwood: Essentially what we do with the assessments is bring together all of the available scientific data that is there. Sometimes we have to go and get new information, but usually we use what we have, and then we will make a judgment with what the new information is. I believe these were done in the early and mid-1990s. So there is substantial information to review.

Mr. David McGuinty: I understand this reassessment will—maybe I stand corrected—call for some kind of analysis of cumulative effects. Is that right?

● (1235)

Mrs. Sue Milburn-Hopwood: Yes. This is a very difficult technical area to work in—

Mr. David McGuinty: Yes, it is.

Mrs. Sue Milburn-Hopwood: —but we use as much science as we have available on cumulative effects, and we will factor that into the reassessment.

Mr. David McGuinty: I raise it because I had put it to some extra witnesses who appeared here, to ask them if they could define what this means, and they could not.

Mrs. Sue Milburn-Hopwood: I can't give you a technical term related to that, but it's starting to look at any synergistic effects or any additive effects, or it could be not additive effects but subtractive effects—that's not quite the right word. It's looking at whether there is any interaction between these two substances, if you need to look at the impact of one and the addition of another. So it's looking at them together, rather than as individual substances, and how they interact.

Mr. David McGuinty: So the 24-month period, then, might give the officials more time to discern—

Mrs. Sue Milburn-Hopwood: More time to do that, which is a bit of a new and emerging area in science.

Mr. David McGuinty: I'd say.

Thank you.

The Chair: Mr. Lussier.

[*Translation*]

Mr. Marcel Lussier (Brossard—La Prairie, BQ): I would like to point out to Mr. Cullen that on page 13.1, two products are mentioned, BBP and DBP, and on page 15.2, paragraph (c), it just mentions DEHP. Why are you comparing the two?

[*English*]

The Chair: We're looking at proposed clause 7 on page 15.3. I believe they're both there.

[*Translation*]

Mr. Bernard Bigras: Where does it say 24 months?

Mr. Marcel Lussier: It says it in English.

Mr. Bernard Bigras: Where are they mentioned in French? Do you see it? In the French version of amendment G-7...

Mr. Marcel Lussier: It is there.

Mr. Bernard Bigras: Yes, "within 12 months of the coming into force of this Act [...]"

Mr. Marcel Lussier: There are no abbreviations.

[*English*]

The Chair: Mr. Cullen.

Mr. Nathan Cullen: As to the crux of the matter in terms of doing this reassessment, our understanding is that this is what we'd call a paper assessment, that there is much out there in the scientific literature about these chemicals and what's happening. It's not as if we have to go into the field and start doing....

That's why we're comfortable with the 12-month reassessment, because it's gathering evidence and work that has already been done in the field.

One of the things we found through the CEPA review was that the pace of things, in terms of assessment and getting the assessment back out, is often a concern for Canadians. That's why we feel confident with the 12 months and the possibility of getting it done.

The Chair: Just to clarify, Mr. Bigras and Mr. Lussier, there is an error in the printing of the French version on page 15.3. That should be 24 months.

Basically, we haven't gotten this moved yet, but I believe we do have the issue discussed as to 12 or 24 months. Do any members have any further questions about this issue?

Mr. McGuinty.

Mr. David McGuinty: Mr. Cullen raised an important point. Let me just get this on the record: is this merely a paper assessment?

Mrs. Sue Milburn-Hopwood: It is a paper assessment. There might be some situations, but we will not likely go out and do a new research project that could take two or three years. We will be looking at the information that's out there.

That said, to collect all that information, to understand it, to talk to any other experts, to do a report, to do the peer review that would be necessary to do that, and to get our heads around this cumulative impact assessment and look at examples used in other places is a complex challenge for a risk assessor. So I feel that it would be very tight and that we would probably shortchange the risk assessment if we were to require all of that to happen in a 12-month window.

Mr. David McGuinty: Thank you.

The Chair: What I propose, then, and what we will do is vote on amendment NDP-3.1. If that's carried, obviously we will not vote on page 15.3, proposed clause 7. If it is not carried, we'll have some things in between, but we'll then go immediately to page 15.3, proposed clause 7.

So you have moved—

Mr. Nathan Cullen: Yes, I moved it.

The Chair: You have moved amendment NDP-3.1 on page 13.1. We'll proceed to the question.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: There are things between amendments that we have to do.

While we're waiting here a minute, let me tell you that we have this room booked a little later. I would ask members, if at all possible, to carry this on a little past one o'clock. I'd need consensus to do that. Wouldn't it be nice to finish this while we're here and have the experts here?

That's coming up; I'm not asking you now.

● (1240)

Mr. David McGuinty: Mr. Godfrey wants more cookies.

The Chair: Maybe we could order more cookies for Mr. Godfrey. It's on the record, Mr. McGuinty.

I'm advised that I don't need consensus to carry on, so we'll just keep going. There go your cookies, Mr. Godfrey.

Next is amendment NDP-3.2 on page 13.2. It will become new clause 3.2, not 3.1, as listed. It's very similar to part (a) of amendment G-15.2.

Mr. Mark Warawa: Mr. Chair.

The Chair: Yes, Mr. Warawa.

Mr. Mark Warawa: In the interest of moving this along in an efficient way—I think we have consensus on almost everything from this point on—if Mr. Cullen were agreeable to withdrawing amendments NDP-13.2, NDP-13.3, and NDP-13.4, we could move right on to amendment G-15.2 and amendment G-15.3, and I think we could progress more quickly.

The Chair: We're going to separate those two.

Mr. Mark Warawa: We could, but I think there is very close consensus and I would ask, through you, whether he would be interested in withdrawing—

The Chair: Let's just give Mr. Cullen a minute to look at that proposal.

Mr. Nathan Cullen: I have a question about an aspect of amendment G-15.2.

The Chair: Go ahead, Mr. Cullen.

Mr. Nathan Cullen: I have not understood the 33 months under paragraph (d). This is the one concerning health professional associations and hospital associations. Thirty-three months seems like an awfully long time, and a strange kind of date that I've not seen used before. Is there any particular reason why the government has that in?

The Chair: Could we ask our officials, please?

Mrs. Sue Milburn-Hopwood: It's important to realize that this particular issue of bringing together hospital associations and health practitioners' professional health associations—doctors, nurses, people who work in critical care areas—is somewhat beyond the jurisdiction of the federal government. We would be playing, really, a leadership role. We feel we would probably need about nine months to bring all the right players to the table and then another 24 months to actually proceed with the rather complex task.

Yes, the 33 months is a rather odd choice of number of months, but it's really to bring the diverse players to the table and start working, giving them a two-year period to get their work done.

The Chair: Mr. Bigras, I think you had a question. Then we'll go back to Mr. Cullen.

[*Translation*]

Mr. Bernard Bigras: I was wondering if the federal government was in the business of, and feels responsible for, writing guidelines for clinical practice. It seems to me that we are beginning to significantly infringe on provincial jurisdiction. We are talking about hospital associations. As far as I know, hospitals are provincial. So I was wondering if Health Canada always worked like this.

[*English*]

Mrs. Sue Milburn-Hopwood: I probably misspoke.

It's something that we very often do. It's just something that is not a legally binding kind of thing. So you ask people to come to the table and you hope that they get there, but you might have to encourage them along. So it's the issue of giving some time to do something where we don't have a regulation or something else behind us to force people to come to the table with us, to be able to work with them to bring them to the table.

So it's not a legally binding event, but yes, it is very much the kind of thing that Health Canada does on a regular basis.

● (1245)

[*Translation*]

Mr. Bernard Bigras: Are the provinces at this table? Are they usually present? Are they stakeholders?

[*English*]

Mrs. Sue Milburn-Hopwood: I'd actually like to defer this question to the director general of medical devices, who's here today. She has a lot more experience with this, and I'd ask her to come to the table and respond to that question.

The Chair: Could you identify yourself, please, for the record?

Dr. Supriya Sharma (Associate Director General, Therapeutic Products Directorate, Health Products and Food Branch, Department of Health): My name is Supriya Sharma. I'm the director general of the therapeutic products directorate in Health Canada.

Maybe I'll just address the issue of clinical practice guidelines and what we do and don't do.

As a regulator, it is a bit unusual that we would be stepping into the area of facilitating clinical practice guidelines. Ms. Milburn-Hopwood is correct in that as Health Canada, especially around the public health area, we do often step into those, but very rarely do we really move to clinical practice guidelines for specific products. However, in unusual situations, where there's a leadership role—in this case, around a specific category of product—we do take a leadership role in terms of bringing people to the table.

When we do that, it would depend on the individual issue. So if there are implications for provincial heath authorities or for individual hospitals or for individual practitioners, we would basically look at the issue and then bring the appropriate people to the table.

For some of the medical device issues, absolutely, we've had people from the various ministries of health at the table, along with certain health professional organizations and certain individuals as well.

The Chair: Mr. Bigras, does that answer you question?

[*Translation*]

Mr. Bernard Bigras: Yes, thank you.

[*English*]

The Chair: Mr. Cullen.

Mr. Nathan Cullen: I have two things, and we're getting prepared to withdraw our amendment.

In proposed clause 6 here, on page 15.2, there are just two places, maybe three, where I think some words can be taken out to strengthen the language.

I guess what I'm looking for is some sort of consideration from government before we withdraw: in paragraph (c) where it says "that within 24 months after the coming into force of this Act", to say "the government requires the labelling of medical devices", rather than "takes steps"; and then in paragraph (d), "take steps to facilitate".... It may seem like a small thing, but I've noticed in the drafting of laws that if you're not very specific and tight with the instruction in the law, then there's lots of room for open interpretation. Three years down the road, you can say, "Well, why haven't you done this thing?" and the government can claim, "Well, we took steps to", but still haven't done it. And we saw that very much through the CEPA review.

The only other piece that I would look for is in paragraph (e). This one is talking about preparing a list of medical devices that don't have DEHP in them. All we would ask is that there is a corresponding list of what they're able to replace. So if there's a specific tube that's come on line that we know is DEHP-free, it is meant to replace this apparatus, and vice versa, just to make it easier for hospital administrators to have a list so that they know what's being replaced and by when.

That's all.

So if we can get that feeling from government that we're willing to just tighten up the language, be more directive, talk about a replacement list, then I'll withdraw NDP-3.3, or whatever it is now.

The Chair: Can the officials comment on what we've just heard?

Dr. Supriya Sharma: I think there are probably two separate issues there. One is the interest of tightening up the language, talking about taking steps, and I don't think we have a problem with that. That seems fairly straightforward.

In terms of the list, I would go back to seek some clarification about what a replacement list would entail. In general, we wouldn't be making recommendations on the use of an individual medical device over another individual medical device. That really is the practice of medicine. So an individual practitioner would make that risk assessment based on the patient they had in front of them.

So I just need some clarification on what a replacement list would really entail and what the implications of that would be.

The Chair: Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: I am coming back again to paragraph 6(d). What do you mean by "hospital association"? For example, do you think that a public health department in Quebec is one? I think that with paragraph 6(d), we are leaving out an important player. It bothers me deeply to see the extent to which the federal government can deal directly with hospital associations without feeling the need to go through provincial health authorities.

I would like your opinion on that. What are hospital associations? They are certainly not provincial health authorities.

● (1250)

[*English*]

Dr. Supriya Sharma: There are a number of different hospital associations, so there is an umbrella organization that represents all hospitals. Again, it's not a group that we would normally consult with, simply because they're primarily administrative. Each province has its own hospital associations, and they're very different in terms of how they interact with the individual health authorities, etc. So we actually go on a province-by-province basis and we see who their responsible associations are and how they function, and then we try to bring the best people to the table.

If there is a public health aspect of it, we would then either go to the ministries of health or we would go through the community, actually the public health officers. Again, it really is on a case-by-case basis, but we have to match who we bring to the table to the issue that we're there to discuss. It's a very varied stakeholder group, usually on a case-by-case basis.

The Chair: Mr. Regan.

Hon. Geoff Regan: Thank you, Mr. Chairman.

I think your point is well taken about the concern that obviously doctors have to make the decision. But I think what Mr. Cullen was looking for is that you're going to have one list of the products that contain phthalate, so why not also have a list of products that don't contain phthalate? You aren't making the decision for the doctors about which one they will use in the end. The point is that they at least would have a list available to them of what alternatives are there, and then it helps them make their judgment, it strikes me.

I think this seems like a reasonable suggestion.

Dr. Supriya Sharma: I think that's why I was seeking clarification, because what I was understanding is that there would be an individual product and then an alternative suggested for that product.

In terms of the numbers, simply to go over it, when we're talking about all classes of medical devices, we're talking about approximately 650,000 devices. When we're talking about the products we're dealing with in the classes of 2s, 3s and 4s, it's in the tens of thousands as well.

When we're talking about a list, then, if we actually talk simply about a list of medical devices that are containing DEHP, we're already talking around a list of about 10,000 products. If the request is that we're making a list of about 10,000 products and then making a comparable list of 30,000 to 40,000 products, we start getting into a question of how useful those lists would be and the ability of an individual to really go through all that and make an assessment.

The last point about the list of products that wouldn't contain DEHP is that this would also include lists of medical devices that would never include DEHP because there would be no reason for them to. So I wonder—and again this is obviously for the committee to debate—whether or not it would be more confusing or helpful.

I think that's the perspective we're coming from.

The Chair: I apologize, Mr. Bigras. I believe I cut you off earlier. You had one more point, I believe, and then we'll go to Mr. Cullen.

[*Translation*]

Mr. Bernard Bigras: I had a supplementary question. In your opinion, if this paragraph 6(d) were passed, would it mean that the Minister of Health could deal directly with hospital associations without the need to go through public health authorities? What I read is clear:

> 6. The Minister of Health shall:
>
> (d) take steps to facilitate the drafting by health professionals associations and hospital associations of clinical practice guidelines respecting the use of medical devices [...]

Do I understand that if we pass this paragraph, we give the minister the power to visit hospital associations directly in order to draw up guidelines? Am I mistaken?

[*English*]

Dr. Supriya Sharma: I think that's correct. It actually speaks directly to those two groups. It doesn't speak at all to the ministries of health.

It doesn't prohibit us from doing that. Our normal practice is to go through those groups. I agree that the way it's worded, it doesn't specify that this needs to happen.

● (1255)

[*Translation*]

Mr. Bernard Bigras: So, Mr. Chair, would it be possible to split the vote in order to vote first on paragraph 6(d), among others, and then on the rest? I would not like to throw the baby out with the bath water because of one point in the amendment with which I have a problem.

[*English*]

The Chair: You could also look at a subamendment to that. Actually, we haven't had anything moved at this point.

Mr. Nathan Cullen: I feel as if I have assurances from government that we can make some of these changes, so I'll not move my amendment. Then I'll allow government to do what it needs to do.

The Chair: Next is NDP-3.3 on page 13.3.

Mr. Nathan Cullen: I'll withdraw NDP-3.3.

The Chair: Okay.

Then we'll go to NDP-3.4.

Mr. Cullen.

Mr. Nathan Cullen: I think this is the contentious point of Mr. Bigras. I'll withdraw this and we'll deal with it in G-9.

The Chair: Okay, so NDP-3.4 is withdrawn. We'll now go to G-9.1, which we've already discussed. It may have subamendments once we get it moved.

Mr. Warawa.

Mr. Mark Warawa: I will move it, but we can't accept friendly amendments. Is that correct?

The Chair: We can have subamendments.

Mr. Mark Warawa: Under paragraph 6(c), Mr. Cullen had suggested—

The Chair: Excuse me, Mr. Warawa, you can move it any way you want.

Mr. Mark Warawa: Okay, so I will move it with the change under paragraph 6(c), so it will read:

> within 24 months after the coming into force of this Act, the government requires the labelling of

I think that's what Mr. Cullen was hoping for. Is that correct?

The Chair: It's the Minister of Health.

Mr. Mark Warawa: That's correct. Instead of the government, it would be the Minister of Health.

The Chair: The clerk has suggested you could simply take out "take steps to" and say:

> coming into force of this Act, require the labelling of medical devices that

You have "The Minister of Health" at the top, so you don't have to repeat that.

Okay? So that's how it's being moved, so that's not a subamendment.

● (1300)

Mr. Mark Warawa: Okay.

And through you, Chair, to Mr. Bigras, did he suggest an amendment to deal with the hospitals?

[*Translation*]

Mr. Bernard Bigras: It will be moved by myself or Mr. Lussier, because I have to leave in a few minutes. The intent is to take 6(d) out of amendment G-9.1.

[*English*]

The Chair: Yes, if you're going to remove it, change it, or whatever—

[*Translation*]

Mr. Bernard Bigras: I would remove it.

[*English*]

The Chair: Where we're at right now is that Mr. Warawa has not moved it; he's asking if there is a change you would like made, as opposed to a subamendment, so that he can move it.

[*Translation*]

Mr. Bernard Bigras: I can make a friendly amendment to the motion, but I would ask Mr. Warawa to withdraw paragraph (d). Would he agree to do that? If Mr. Warawa does not accept my suggestion, I will have to proceed more formally.

[*English*]

Mr. Mark Warawa: At this point I would like to leave it in, then, because I think it's a very important part of the consultation process.

[*Translation*]

Mr. Bernard Bigras: Great.

[*English*]

Mr. Mark Warawa: I so move.

The Chair: What we have, then, is an amendment that has been moved, and the only change as written is that in paragraph 6(c) we take out “take steps to”. That's how it is moved at this point.

Is there discussion about the motion as Mr. Warawa made it?

Go ahead, Mr. Cullen.

Mr. Nathan Cullen: Sorry, I understood that we were also going to take out “take steps to” in paragraph 6(d).

The Chair: I believe Mr. Bigras is going to make a subamendment.

Mr. Nathan Cullen: Oh, he is? I think he's just going to vote against it. That is my understanding.

The Chair: I'm sorry. You want “take steps to”...?

Mr. Nathan Cullen: Yes.

The Chair: Mr. Warawa, I'm sure that when you made your motion, you meant to take out “take steps to” in paragraph 6(d).

Mr. Mark Warawa: That's correct.

The Chair: Yes. That's what I heard.

Mr. Nathan Cullen: It's both.

The Chair: Yes, in both of them.

[*Translation*]

Mr. Bernard Bigras: As I understand it, my colleague...

[*English*]

The Chair: Yes, go ahead, Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: ...did not understand, and I just want to make sure that I understand him. Mr. Warawa, is the government moving its amendment with paragraph (d) removed? No? You are keeping it in? That is not what I understood.

[*English*]

Mr. Mark Warawa: We're keeping it in.

[*Translation*]

Mr. Bernard Bigras: Very good. He moves his amendment and I can move a subamendment. I will do that.

[*English*]

The Chair: Yes.

[*Translation*]

Mr. Bernard Bigras: OK. Let him move it, and I will speak.

[*English*]

The Chair: Okay.

[*Translation*]

Mr. Bernard Bigras: So I move the removal of paragraph (d).

[*English*]

The Chair: Okay. We have a subamendment from Mr. Bigras for paragraph 6(d) of amendment 9.1, which is really 3.2, which is on page 15.2.

[*Translation*]

Mr. Bernard Bigras: There you go.

[*English*]

The Chair: We're just waiting....

Mr. David McGuinty: I think Mr. Cullen had something.

The Chair: Mr. Cullen, did you want to enter in here?

Mr. Nathan Cullen: Can we take care of Mr. Bigras's subamendment first?

The Chair: Sure. That's what I thought.

If you have a subamendment, Mr. Bigras, we'll hear that now.

[*Translation*]

Mr. Marcel Lussier: You have to repeat it.

Mr. Bernard Bigras: I repeat. I move the removal of paragraph (d) from amendment G-9.1 on page 15.2. Understood? I move that the paragraph be removed because we believe that the Minister of Health must consult public health authorities in the provinces, rather than drawing up guidelines with hospital associations. The danger is that there would be discussions between the Minister of Health and hospital associations, whereas hospitals, as far as I know, are responsible to public health authorities in the provinces. Those public health authorities are responsible to the provincial ministries of health and social services.

[*English*]

The Chair: Go ahead, Mr. McGuinty.

Mr. David McGuinty: We asked the witnesses about that.

As a matter of practice, under paragraph 6(d), does that not occur? Don't you sit down with the health authorities of different provinces? When you're drafting protocols and clinical practice guidelines, would you attempt to conduct or facilitate a process that would do so without consulting the provincial health care ministries in practical steps when appropriate?

● (1305)

Dr. Supriya Sharma: I should give a point of clarification. Especially from the regulatory perspective, we wouldn't be drafting the clinical practice guidelines; the term "facilitate the drafting", or the development of it, is purposeful because of the issue of jurisdiction.

As I mentioned, it really would be going to the people who would be best placed to give advice, and bringing them together to be able to formulate the clinical practice guidelines. We would normally have people at the table who could inform that position, but it would be unusual to go through, for instance, a ministry of health if the issue was really at a hospital level, because you would end up going through another organization, and that organization would speak to somebody else.

The reason it takes 24 months for the drafting of clinical practice guidelines is that it's a very detailed process. You not only draft them, but you have to bring in the expertise. Then you have to do the reality check of what this really means for practice; then you have to figure out a way to implement and communicate that. It really is bringing the appropriate people to the table. Whether we go through another organization or.... If it's a product-related thing and a very specific thing, we would normally go directly to the users of those products.

The Chair: Mr. McGuinty, do you understand the answer?

Mr. David McGuinty: Sorry, it didn't answer my question.

As a matter of practice, in the process you would facilitate through Health Canada, would you not engage senior officials from Ontario, New Brunswick, P.E.I., Quebec, and other governments who are involved in running health care systems, along with other hospital associations and experts, this subgroup of the Canadian Medical Association, and so on? Would you not convene them into this process as full participants?

Dr. Supriya Sharma: We would invite all those groups to the table, and then it would be up to those groups to decide, if they had a stake in it, if they actually wanted to participate. But we would absolutely invite those people to the table.

Mr. David McGuinty: Thank you.

The Chair: Mr. Bigras.

[*Translation*]

Mr. Bernard Bigras: I understand what Mr. McGuinty is saying, but I also heard what the official has just said. The intent of the bill is that the Minister of Health can take those measures and act directly. That was likely the case in the past, and I think that public health authorities must have had to be consulted. I prefer to keep the status quo instead of writing into the bill a provision like that which could ultimately exclude provincial public health authorities. Given that things worked well in the past, I do not see why we would not keep the status quo. Writing such a provision into the act could mean excluding public health authorities. I do not think that was the intent.

[*English*]

The Chair: Mr. Cullen.

Mr. Nathan Cullen: Just as a way for us to move past this impasse if we can, it seems that Mr. Bigras has some specific concerns with this part in paragraph 6(d) and wants to amend it. It seems that this is a separate debate on this whole paragraph of G-9.1.

In order to finish this, I suggest that the government move this amendment without paragraph 6(d) in it and consider it separately. Mr. Bigras can make his petition, and we can get on with it.

Has it already been moved?

The Chair: Yes, it has been moved. Mr. Warawa said he would leave paragraph 6(d) in his motion.

So we have to vote on this, and I think we've probably gone around enough times. We need to vote on the subamendment to remove paragraph 6(d) from G-9.1 on page 15.2.

Mr. Warawa.

Mr. Mark Warawa: I think we've moved a long way toward consensus. This is in there, I believe, in discussions with Mr. Cullen. If he supports having this removed, I'd like to hear that; otherwise, it's to provide guidelines for the use of phthalates.

The Chair: Mr. Cullen, be very brief so we can vote on this subamendment.

Mr. Nathan Cullen: I understand Mr. Bigras' concerns, but I just don't read those concerns into this group that's getting together. I appreciate and respect the jurisdiction of the provinces, but this is an advisory group. They're used all the time under Health Canada, with beneficial consequences.

(Subamendment negatived [See *Minutes of Proceedings*])

● (1310)

The Chair: On the main amendment, G-9.1, is there any other discussion?

Mr. McGuinty.

Mr. David McGuinty: Mr. Cullen earlier raised the issue of removing the words "take steps to" in paragraph 6(d). Is that gone?

The Chair: That was removed.

Mr. David McGuinty: Thank you.

The Chair: Are there any other questions?

Mr. Cullen.

Mr. Nathan Cullen: This is back to the paragraph 6(e). We heard the witnesses say that thousands of devices would have to be listed. We simply don't read it that way—there wouldn't be the labelling and introducing of this comparative list.

So I propose a subamendment that would add language in paragraph 6(e) after "that" so it would say "and list the DEHP-containing medical devices".

These are categories of devices. The intention is not to label the tens of thousands of devices. We have lists of these available to us already. I presented them at committee. This is meant to help administrators and people who are purchasing products choose. We don't see this as onerous, because it's being done right now by industry groups.

The Chair: We have discussed that with officials and have been advised. Does anyone want any more information regarding this subamendment?

Can we get the wording again, Mr. Cullen, please?

Mr. Nathan Cullen: Sure. It would read: “and list the DEHP-containing medical devices these devices can replace”.

The Chair: That goes at the end?

Mr. Nathan Cullen: No, it goes right after “that”, some seven or eight words before the end.

Excuse me, just before “that”, not just after.

The Chair: So to read “that do not contain”, and then right after that you would add—

Mr. Nathan Cullen: Yes, “and list the DEPH-containing medical devices these devices can replace”.

The Chair: Then “that are sold in or imported into Canada”?

Mr. Nathan Cullen: Exactly. It may not be the best grammar in the world, but it's intention-based.

The Chair: Our clerk is having difficulty knowing exactly what our subamendment is.

Mr. Nathan Cullen: The intention of this—and perhaps the clerk can suggest language—is that paragraph (e) here talks about, within 18 month of the coming into force, preparing a list of medical devices that do not contain DEHP. All we're asking for is that the list that says these devices do not contain it lead directly to administrators, who are looking to replace devices, being able to say, this is what replaces what; there's a new product out by So-and-so; or a new device has been created DEHP-free, and it replaces this one that right now has it in it.

There's advice given like this all the time, so....

The Chair: I think what I heard from our officials is that the list might be quite large, and they would not simply say one product replaces; there might in fact be many that would replace. That is my interpretation of what we heard.

Mr. Nathan Cullen: Our understanding from the advice is that it's not in the thousands, it's more the categories of the devices that leads you to hundreds.

The Chair: Comment?

Dr. Supriya Sharma: If we are looking at all medical devices that contain DEHP, we are talking about approximately 10,000. So for an individual category...and let's pick an arbitrary category like catheters that contain DEHP. Within that category of catheters, there are approximately 4,000 to 5,000 different individually numbered catheters. They may be different lengths or different lumens or made in different ways or made by different companies, and there are individual differences. There may be similarities by category, but we really are dealing with tens of thousands of products.

The Chair: We've heard the subamendment, and I think we're prepared to vote on that subamendment.

Does anyone want to hear it again?

Some hon. members: No.

(Subamendment negatived [See *Minutes of Proceedings*])

The Chair: So now we're back to new clause 3.2, which is amendment G-9.1 with, of course, the changes made by the mover.

(Amendment agreed to on division)

● (1315)

The Chair: Now we're on page 15.3, which will be new clause 3.3 and not clause 7, but remember, we split that. We've pretty much had the discussion and I believe Mr. Cullen did remove that. Of course, we made that 24 months in the French translation.

Mr. Mark Warawa: I so move.

The Chair: Mr. Warawa moves it.

Questions? Mr. McGuinty.

Mr. David McGuinty: I want to be absolutely clear here, I'll read it in English:

> The Minister of the Environment and the Minister of Health shall, within 24 months after the coming into force of this Act, reassess

Does that mean we'll have completed the reassessment?

The Chair: Yes. We're getting a nod, yes.

Mrs. Sue Milburn-Hopwood: Yes.

Mr. David McGuinty: Should it not say “have completed a reassessment”?

The Chair: In your motion, did I hear you say that?

Mr. Mark Warawa: You certainly did, Chair.

The Chair: That's what I thought.

It has been a long meeting.

(Amendment agreed to [See *Minutes of Proceedings*])

(On clause 4)

The Chair: I'm advising you that we should defeat clause 4, because we've made so many changes that clause 4 doesn't fit anything anymore.

Mr. David McGuinty: The original clause 4?

The Chair: Clause 4 is part of the original bill, so the original clause 4.

Now NDP-4 is an amendment to what is still in existence, clause 4. Where is that one? NDP-4 on page 16 is where we are.

If Nathan withdraws, then obviously we can—

Mr. Nathan Cullen: I'm not sure about that. Would withdrawing not allow that clause 4 still stands?

The Chair: No. We then have to strike clause 4 from the bill.

Mr. Nathan Cullen: So whether we do that, whether it's changing the—

The Chair: I think we need to deal with your amendment first.

Mr. Nathan Cullen: Sure.

The Chair: If you don't move that, then we can go on to the next —

Mr. Nathan Cullen: Sure.

The Chair: So NDP-4 is not moved.

Now the committee needs to take a look at clause 4. We need a motion.

Mr. Nathan Cullen: Essentially we're seeking to remove it, correct?

The Chair: Yes. We want to remove it.

● (1320)

Mr. Nathan Cullen: I move that clause 4 be withdrawn.

The Chair: What we're doing is calling clause 4. If it's defeated it's removed, and if it's supported then it stays there.

Hon. Geoff Regan: You're urging us to defeat it.

The Chair: I have no opinion.

(Clause 4 negatived)

The Chair: Now we can go to the title, can we not? The short title.

We had a government amendment to the short title. It is inadmissible, so I rule it inadmissible.

Mr. David McGuinty: What is the title?

The Chair: Can you deal with that, Mark? You were adding the words....

Mr. Mark Warawa: I have listed the same thing. There's no change.

The Chair: You were trying to delete the wording before. It goes back to where we were on Tuesday.

Mr. Mark Warawa: I have "This Act may be cited as the Phthalate Control Act", which is the same as we had listed originally.

Hon. Geoff Regan: That's a good reason for it to be out of order, Mr. Chair.

The Chair: Okay. So you're not going to move that, then, Mr. Warawa?

Mr. Maurice Vellacott (Saskatoon—Wanuskewin, CPC): What is it? What's the difference?

The Chair: There isn't. It's already there.

Mr. Mark Warawa: Then I'll withdraw and you can call the question, "Shall it stand?"

The Chair: Exactly.

Hon. Geoff Regan: Do we have to move clause 1 or are you just asking?

The Chair: I'm just asking, I guess.

(Clause 1 agreed to)

The Chair: Okay, we have a short title.

Now there are a few amendments that we need to look at here.

Mr. Warawa.

Mr. Mark Warawa: We're almost there.

The long title that we proposed originally is to "prohibit" the use of BBP, DBP, and DEHP. We were proposing, instead of "prohibit", "respecting", and the bill then guides how to manage those phthalates. So we're "respecting" as opposed to "prohibiting". We think that's a little bit more accurate wording, so that's what we're proposing.

The Chair: So we're looking at amendments G-1 and G-1.1, and we're ultimately going to look at amendments NDP-0.1 and NDP-1.2.

Mr. Mark Warawa: They're the same, other than that we're using the word "respecting" as opposed to "prohibiting".

The Chair: Amendments G-1 and G-1.1 are exactly the same.

Mr. Mark Warawa: Yes.

The Chair: So let's just go with amendment G-1.

Mr. Mark Warawa: I'll move amendment G-1.

The Chair: Okay, Mr. Warawa moves amendment G-1, and the change is the word "respecting".

Amendment NDP-0.1 conflicts with that. Mr. Warawa has moved amendment G-1. What are your thoughts?

● (1325)

Mr. Nathan Cullen: I'll just withdraw amendment NDP-0.1.

The Chair: Okay, so we are now dealing with amendment G-1. Is there any discussion?

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Shall the title carry as amended?

Some hon. members: Agreed.

The Chair: Shall bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall I report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: Shall we reprint the bill as amended and use this in the House at report stage, send it back to House?

Some hon. members: Agreed.

The Chair: Congratulations, everyone. Well done.

The meeting is adjourned.

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