House of Commons
CANADA

Standing Committee on Health

HESA • NUMBER 013 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Tuesday, March 31, 2009

Chair

Mrs. Joy Smith

Standing Committee on Health

Tuesday, March 31, 2009

● (1535)

[*English*]

The Chair (Mrs. Joy Smith (Kildonan—St. Paul, CPC)): Good afternoon, ladies and gentlemen. Welcome to the committee.

I think today is going to be a very long day, because we're going through many clauses, with many amendments and many things to talk about.

I would ask you, with regard to any questions you have, to consult with the chair before you start speaking, because I would like to try to move through this as quickly as possible.

I would like to welcome Dr. Theresa Tam and Ms. Jane Allain, who are joining us today from the department. It's very much appreciated.

To begin, pursuant to the order of reference of Monday, February 23, 2009, on Bill C-11, An Act to promote safety and security with respect to human pathogens and toxins, we are now going to start clause-by-clause consideration.

Pursuant to Standing Order 75(1), consideration of the preamble and clause 1 is postponed. The chair calls for clause 2 right now.

(Clause 2 agreed to)

(On clause 3—*Definitions*)

The Chair: On clause 3, we have three amendments from the Bloc. I am wondering how the committee would like to proceed. When we have a clause that has many amendments, what we can do is stand it, move on to the rest of the bill, and come back systematically to the clauses that need discussion about the amendments.

How would you like to proceed as a committee? Would you like to go through the whole bill and then come back to the clauses and amendments so we can discuss them?

Would you like to do it one by one? Yes? Then we'll do that. We don't want to confuse anybody.

On clause 3, we have three amendments. Would someone like to speak to BQ-1?

Monsieur Malo.

[*Translation*]

Mr. Luc Malo (Verchères—Les Patriotes, BQ): Madam Chair, you are going to tell me that it's always the people who are not there that get the blame, but before I talk about the amendment to clause 3, I would just like to say that after reading last week's testimony, I still have a number of questions about the scope of the bill. I'm quite surprised to see us move today to the clause-by-clause study phase and to learn that the government has quite simply decided not to propose any substantive amendments to the bill that would alleviate some of the concerns that were expressed. I'm surprised that the government did not take a step back and review the bill in light of the comments we received and the comments we are likely to hear in the coming days and weeks.

That said, Madam Chair, a vote was taken and I accept that it is time for the committee to move to the clause-by-clause study phase. That is what we will do. Of course, I will be proposing a number of amendments, as several of my colleagues will be doing as well, in an effort to address some of the witnesses' concerns. The proposed amendments to clause 3—in fact, the three amendments— are similar in that they call for the exclusion of the micro-organisms listed in schedule 2 from the definition of "human pathogen", given that several witnesses have stated that risk group 2 pathogens should not be subject to the same rules as risk group 3 or risk group 4 pathogens. You will tell me that the government has attempted to put in place a number of safeguards further on in the bill to limit the scope of the bill in terms of criminal implications.

However, strictly from the standpoint of risk, because I do think BillC-11 has far more to do with evaluating risk and the implications and consequences of imposing this legislative framework and especially the upcoming regulatory framework the scope of which is still unknown, it is important the any reference to risk group 2 pathogens be removed from the definition, given that— and we heard this from the witnesses—there are costs associated with this reference. There are implications for education, the evolution of knowledge, the exchange of scientific information and the development of research. I did not hear any evidence convincing me that all micro-organisms that are or that could be present or could be present should be included in the definition of "human pathogen". Further on in the bill, we see that the minister has certain regulatory authority to add certain types of micro-organisms to the list of substances in the schedules.

● (1540)

In my opinion, Madam Chair. . .

[*English*]

The Chair: Monsieur Malo, excuse me for a moment. Would you like to formally move your motion, then?

[*Translation*]

Mr. Luc Malo: Absolutely. I will move all three motions at the same time, because all three call for excluding risk group 2 micro-organisms from the definition of "human pathogen".

[*English*]

The Chair: You can only move one amendment at a time.

[*Translation*]

Mr. Luc Malo: That's fine.

[*English*]

The Chair: With your preliminaries, if you wouldn't mind moving the emotion...or motion, rather—that was a Freudian slip—and then speaking to it, that would be very much appreciated.

[*Translation*]

Mr. Luc Malo: I don't think I was that emotional, Madam Chair. As you will have noted, I remained relatively calm.

[*English*]

The Chair: You were. You were very good.

[*Translation*]

Mr. Luc Malo: As you requested, I move that the committee examine the first proposed amendment which bears the reference number 3730579.

[*English*]

The Chair: Thank you, Monsieur Malo.

We don't need a seconder. This is now open for discussion and debate.

[*Translation*]

Mr. Luc Malo: Would you like me to repeat what I said, Madam Chair, because we were not—

[*English*]

The Chair: Oh, that's fine. It's okay to have a few comments before you move the motion. That's fine.

Dr. Carrie.

Mr. Colin Carrie (Oshawa, CPC): Thank you very much, Madam Chair.

I would like to thank my honourable colleague for the suggestion.

He brought up issues of criminality, and he mentioned level 2 as a different risk. I'd like to mention, respectfully, that when you started clause-by-clause, there was a suggestion and a government amendment for the second "Whereas" clause, which I think would take into account his problem with level 2.

The Chair: That is in the preamble. We'll get back to it. We have to go through clause-by-clause before we can get back to that specifically.

Mr. Colin Carrie: Could I make note that I think that amendment would take into account his issue or problem with level 2?

The Chair: Absolutely.

Dr. Duncan.

Ms. Kirsty Duncan (Etobicoke North, Lib.): I'd like to thank my honourable colleague for his comments.

I do want to raise something. I know we heard a lot about level 2s and removing them completely. I think there are some level 2s that we need to be concerned about. I think it might be worth having a scientific advisory group, one who knows this material, make those decisions. I would hate to...because some level 2s can be tampered with. It's an issue of biosecurity.

The Chair: Thank you.

Any further discussion?

Ms. McLeod, and then Dr. Carrie.

Mrs. Cathy McLeod (Kamloops—Thompson—Cariboo, CPC): Thank you, Madam Chair.

I listened to and carefully assimilated all the information over the last few weeks. I believe that within the regulations we can really differentiate, and I think we need to, within the regulations, differentiate.

We have things that talk about an advisory panel; it's in an amendment. We have things that talk about how we're going make these regulations different. I think we should just be moving forward and keeping risk group 2 in, but clearly differentiating them as we go through.

The Chair: Thank you.

Dr. Carrie.

Mr. Colin Carrie: Thank you, Madam Chair.

By removing risk 2, it basically prevents the government from knowing which labs possess certain risk group 2 pathogens. It hinders the government's ability to trace the agents. The amendments that would like to take this out will basically gut a really important part of the intention of the bill.

I think it's very important that we keep the level 2 in. If an amendment brought forward in the future talks about an advisory committee, I think that would handle the concerns.

● (1545)

The Chair: Are there any other comments before our vote?

Ms. Wasylycia-Leis.

[*Translation*]

Ms. Judy Wasylycia-Leis (Winnipeg North, NDP): Thank you, Madam Chair.

I intend to support the Bloc's amendment. It seems that it is the only thing we can do to honour the wishes of most of the witnesses who testified before the committee. We heard from a number of witnesses that the inclusion of these pathogens in the Criminal Code could potentially cause major problems for researchers and scientists.

[*English*]

The Chair: Thank you.

Dr. Carrie.

Mr. Colin Carrie: Thank you very much, Madam Chair.

One of the things the minister would like to do is to build consensus. Unfortunately, with these Bloc amendments, we've just received them now, so it's difficult to make a decision.

We do have some officials here. I was wondering if they could address this and give the committee some advice on their viewpoint.

The Chair: Dr. Tam, could you comment?

Dr. Theresa Tam (Director General, Centre for Emergency Preparedness and Response, Infectious Disease and Emergency Preparedness Branch, Public Health Agency of Canada): As the parliamentary secretary has indicated, removing risk group 2 removes the whole essence and public health intent of the bill. As the agency and David Butler-Jones have stated, we believe in the importance of a national biosafety standard to ensure the safety of all Canadians. I'm an infectious disease specialist who also deals with laboratories, and some of these risk group 2 pathogens are clearly pathogenic, causing illnesses and sometimes death in humans, and they should be handled safely. I don't think there's any dispute about that, and I think we all agree that risk group 2 should be handled differently, but in a safe manner. I certainly do not believe that's necessarily happening now. We do have reports of specific laboratory-acquired infections, but there is no national reporting mechanism to actually capture these.

In public health, one of the key cornerstones is prevention, and while we haven't heard of an escape from a level 3 lab, or indeed a level 2 lab, we don't want to be waiting for an actual incident to happen before laying down what we believe are reasonable and feasible national standards to ensure it doesn't happen. By removing risk group 2, as the parliamentary secretary has said, you have removed our ability to know who has what pathogens, that is, the majority of pathogens in Canada. You have removed our ability to assess whether they have handled those pathogens in an appropriate manner, and whether the labs who think they're risk group 2 labs are indeed not handling certain pathogens they should not be handling under those conditions. We would not be able to have the information necessary to even measure laboratory-acquired infections, or their impacts. So by removing risk group 2, you would be removing a very large aspect of what we already currently do on the human pathogens importation regulations, where risk groups 2, 3, and 4 pathogens and their laboratories are already under the permits regime and under the required laboratory biosafety guidelines.

So we truly believe that by removing this we would not then have a national standard we could apply to all laboratories.

The Chair: Monsieur Malo.

[*Translation*]

Mr. Luc Malo: Madam Chair, I will try to respond to the parliamentary secretary's comments as calmly as possible, even though inside, I'm quite upset.

The parliamentary secretary has told us that the government wants to cooperate and that it did not receive our amendments until today. At the last committee meeting, Madam Chair, the Liberal and Bloc members were not engaged in the clause-by-clause study of the bill for a number of reasons, chiefly because we had not yet received an impact study. Madam Chair, questions had been raised by deans and by provincial governments, questions to which we had not yet received any answers.

If the government really wants to take a consensual approach, then I would ask the parliamentary secretary and all of my colleagues to suspend the clause-by-clause study, to obtain answers to these questions, to return here to discuss matters in a consensual manner and to refrain from moving forward too quickly.

That's my response to his comment that we are not adopting a consensual approach to our work.

● (1550)

[*English*]

The Chair: We have examined this extremely thoroughly. Sometimes some members haven't been able to attend, and they have missed maybe a little bit. But the fact of the matter is we've gone through everything very thoroughly, and today we're open for discussion, and we will in the end have a vote on this. Keep in mind, too, that the red flag that went up was that we as parliamentarians are responsible. If an incident happens, we have to have measures in place.

[*Translation*]

Mr. Luc Malo: Madam Chair, let me just quickly say that wanting to adopt a consensual approach is not merely a pious wish and it is not the sole responsibility of one party. It is everyone's responsibility. When we move forward too quickly, we need to be aware that we are not taking a consensual approach to our work.

[*English*]

The Chair: Thank you.

Dr. Carrie, and then Ms. Wasylycia-Leis.

Mr. Colin Carrie: Did you say Monsieur Dufour?

The Chair: He said no.

Dr. Carrie.

Mr. Colin Carrie: Thank you very much, Madam Chair.

I was just going to reiterate what you stated. If we had an outbreak of listeriosis—which is in risk group 2—tomorrow, what would we do? We wouldn't be able to track it depending on where it came from. I mentioned earlier—and I believe the Liberals brought forward an amendment with the board, and I think everyone knows that we're okay with that. We're willing to work with that. We allowed the people who were going to be regulated to come to committee. That is very rare. We do try to build consensus, but sometimes you will have disagreements on things. Since the last meeting was delayed, there was no recommendation that we see further witnesses. We worked very hard over the weekend to fulfill the requirements to go to clause-by-clause today. I think we have handled all the issues that Monsieur Malo brought forward. I don't know if he's had an opportunity to look at all the different amendments to see where they're coming from. We do have a very tight schedule, and we do have a lot of work to do. I think if we are doing clause-by-clause today, if we could move through it with the debate.... And if we do have to vote, we do have to vote. We may not get consensus on everything.

The Chair: That's true.

Ms. Wasylycia-Leis.

Ms. Judy Wasylycia-Leis: Thank you, Madam Chairperson.

I just want to say in response to Mr. Malo that we certainly support his efforts here today. I don't have any problem with receiving amendments as we go through clause-by-clause. That's the normal way we do business around this committee. I know he's concerned that we didn't have a delay in proceedings. I voted against that suspension simply because I believed that we were at loggerheads, that we were at an impasse. The government wasn't budging, and we weren't getting any further in terms of how we could deal with level 2 pathogens.

I think what we're all saying is not to leave this area out completely. We had tried some suggestions, and the witnesses made some suggestions about having a separate process developed around level 2 pathogens. In fact, some reference was made to the United States, which is actually reviewing the whole treatment of all levels, particularly level 2. So that wouldn't be that unusual.

I think it would be terribly unfortunate for anyone here—either you, Madam Chairperson or the parliamentary secretary—to engage in any kind of scare tactics by saying that if we don't include level 2, we're going to be responsible for some dangerous outbreak, and that if something should happen, it's all going to be our fault. Let's be clear about what's going on here. What would happen now is what has been happening for years. They're tracked; they're dealt with, and we have lots of mechanisms for actually dealing with outbreaks of listeriosis. The problem is really on the government side with respect to the whole Canadian Food Inspection Agency in its handling of that issue. That's where some of the problems lie, and not so much in terms of how labs are licensed and how level 2 pathogens and toxins are monitored. No one is denying the need, at some point, to get on with a regulatory scheme for these pathogens, but we're saying, as we heard from all the witnesses, that they don't belong in the Criminal Code and they don't belong in this framework. They belong in a separate undertaking, and that's what we're trying to do.

● (1555)

The Chair: Dr. Carrie.

Mr. Colin Carrie: I just want to say that I do respectfully disagree. If there is an outbreak and it is traced back to one of these labs, I do think we are responsible for that. If we look at the purpose of the bill, it is "to establish a safety and security regime to protect the health and safety of the public against the risks posed by human pathogens and toxins".

It's my belief that the public would not be served if we do not have—

Ms. Judy Wasylycia-Leis: How are they being served now?

Mr. Colin Carrie: This is the whole idea and the purpose of the legislation, because there is a gap. We've had experts here to state that when they're imported we do have a mechanism for the importation, but once we have a domestic situation, there is no way to tell how these are moved in between—

Ms. Judy Wasylycia-Leis: I have a point of order, Madam Chair. Could I get clarification from someone around the table on how this legislation would have prevented the 20 or so people who died as a result of the listeriosis outbreak at Maple Leaf, and on why the government is refusing to tighten up procedures at the CFIA? Are we looking at a paper-tracing regulatory scheme, as opposed to a proactive precautionary principle, when it comes to people's health and well-being?

The Chair: I don't think that's actually a point of order, but maybe we could have Dr. Carrie respond.

Mr. Colin Carrie: I don't think it is, either. I was using listeriosis as an example, and the example is not applicable to this legislation.

The Chair: Ms. Murray.

Ms. Joyce Murray (Vancouver Quadra, Lib.): I'm a bit taken aback at the comment that we would be responsible for an outbreak like the listeria outbreak if we were to not accept these amendments. I wonder whether that means that the member, Dr. Carrie, takes personal responsibility for those 20 deaths, given that his government, in their deregulation, had reduced the reporting from those plants to government.

I would also like to comment that I don't consider myself to be a specialist in biosafety and security, so I have been drawing heavily on the experience and the communication from the lead people, like the provincial health officer in British Columbia. I am pleased that as a result of our repeated reminders...the Province of British Columbia and other jurisdictions and labs were concerned about the bill as it was presented to us, and there have been amendments proposed by government. I have a letter from the provincial Minister of Healthy Living and Sport that states that she is comfortable with the approach and with the written assurances about the consultations that will take place during the regulations.

I believe most of my earlier concerns have been acted on. That's why I would support going forward in this clause-by-clause, and I no longer believe that we need to hold off on this and have it rewritten.

The Chair: Thank you.

Dr. Duncan.

Ms. Kirsty Duncan: I'd like to echo what my colleague has said. I would like to move on. As we proceed today, though, our focus has to be on public health, on biosafety, and on biosecurity. I want to stress that there are some things in schedule 2 that could become a biosecurity risk. If we stick to scientific principles, it is standard operating procedure to have a scientific advisory group. With due respect to everyone, we do not have the expertise to make those decisions.

● (1600)

The Chair: Ms. McLeod.

Mrs. Cathy McLeod: With respect to all my colleagues, I think we're drifting a little in our conversation, and we're talking about an amendment. Once we get through this first amendment, then the rest of the process should move smoothly. At the end of the day, it is about inclusion or exclusion of risk group 2.

The Chair: Thank you.

Monsieur Malo.

[*Translation*]

Mr. Luc Malo: Thank you, Madam Chair.

I just want to come back to the comment made by certain members—including yourself, Madam Chair—to the effect that we could be responsible for some unfortunate incidents that might occur. It is clear to all of the witnesses and to colleagues seated at this table that the safety of the public is our main focus.

Draft legislation, Bill C-54, was tabled during the previous Parliament. Since then, there has been time to do some impact assessments. These would have helped us to determine either that the bill would be damaging to the research, university and scientific community or conversely, that there was no cause for concern, that everything would be fine and that there would be no brain drain as we saw happen in the United States because here, we were going to take a different approach.

However, it is clear that such studies would have proved invaluable to avoid our heading off in many different directions. The concerns that were expressed could have been addressed. When we had our first briefing with the Agency when Bill C-11 was tabled, we were told that consultations had taken place, that everyone was satisfied and that there was no cause for concern. However, as we started to hear from witnesses, concerns were voiced by many different parties.

Madam Chair, the crux of the problem is the fact the government has chosen to focus more on criminal provisions and on putting in place parameters and regulations, insisting that people will be reassured by this. However, the reality is that hundreds of research facilities, universities and hospitals that do research are today asking themselves what will happen to them once Bill C-11 is adopted.

As parliamentarians and as a responsible committee, we should have taken their concerns into account during our study of the bill. It is unfortunate that today, as we proceed with the clause-by-clause study, we are not in a position to reassure the vast majority of the witnesses who came here to testify. That is what saddens me the most today.

[*English*]

The Chair: Okay, thank you, Mr. Malo.

I am going to urge members to state their opinions. Let's not be repetitive, because we could be here till next June. So could we all be mindful of that?

We will go to the vote now. All in favour of amendment BQ-1, raise your hands, please. All against?

(Amendment negatived)

The Chair: I would like to ask the committee to apply this vote to amendments BQ-2 and BQ-3, because they are very, very similar. Are you in favour of applying the vote to the other two BQ amendments?

Some hon. members: Agreed.

(Clause 3 agreed to)

(On clause 4—*Excluded*)

The Chair: We also have amendment BQ-4 to clause 4.

Would someone like to speak to it?

The only thing about this particular amendment is that I have concerns about its admissibility. It could be beyond the scope of the bill. So I would turn to the officials.

Would you mind commenting on amendment BQ-4 to clause 4? The concern is its admissibility.

● (1605)

Dr. Theresa Tam: The bill seeks to establish a national standard for biosafety and biosecurity, and that means all laboratories, be they private, provincial, research or academic. Having just received this amendment, the way I read it is that it would not be in line with the intent of the national standards approach.

The Chair: I would like to rule this particular one out of order because of the reasons the officials cited.

If you would like to make a comment on it before I do that, Mr. Malo, please go right ahead.

[*Translation*]

Mr. Luc Malo: Absolutely, Madam Chair. I will also be asking for a ruling on whether or not this amendment is in order.

In light of the testimony given, it is clear that the bill could overstep the existing constitutional framework. Some witnesses questioned whether this was so. We received opinions and comments from different provincial governments. As legislators, we have the authority and the duty to taken these comments into account when framing this legislation.

Essentially, this is the aim of the proposed amendment to clause 4 which would exclude from the scope of the act activities carried out in any facility regulated, operated or funded by a province. In so doing, we would be dispelling a number of legitimate concerns raised by researchers in particular who operate university labs, as well as by the provinces that are involved in—and we have written proof of this fact—in a number of regulatory and oversight activities. Basically, that is the aim of this proposed amendment.

Madam Chair, I respectfully request that you ask my committee colleagues whether or not they deem this amendment to be in order and whether they wish to consider it?

[*English*]

The Chair: Right now, to be quite honest with you, Monsieur Malo, I am going to rule it out of order, and if you do disagree with my ruling, you can appeal that. Based on what the officials said, and based on the fact that that's what I feel very strongly about, it is out of order. I consulted with the clerks prior to this discussion today and I consulted with other people as well, and they too were concerned about it. I never spoke to the officials. So I am going to rule it out of order, and as I say, you can appeal it.

[*Translation*]

Mr. Luc Malo: Madam Chair, officials from the Public Health Agency of Canada were asked whether, in their opinion, the scope of the bill went beyond constitutional agreements. They were clearly of the opinion that the content of the bill fully respected the jurisdictions of the various levels of government.

[*English*]

The Chair: Thank you, Mr. Malo.

[*Translation*]

Mr. Luc Malo: Madam Chair, like me, you listened to the testimony of the various witnesses and read the opinions issued by the provincial governments. As I see it, in order to maintain constitutional order, it is important to allow the provinces to exercise their full legislative authority and influence over institutions that fall within their jurisdiction.

● (1610)

[*English*]

The Chair: I understand what you're saying, Monsieur Malo, but my ruling has been made, so there is no debate. If you disagree with it, you can appeal it.

We shall carry on.

[*Translation*]

Mr. Luc Malo: Yes, but you asked whether I wanted to appeal your ruling and that's what I'm doing. I'm doing what you asked.

[*English*]

The Chair: Thank you, Monsieur Malo.

(Clauses 4 to 6 inclusive agreed to)

(On clause 7—*Controlled activities*)

The Chair: We will pause on clause 7. There is an amendment from the NDP. I ask you to move your amendment, first of all.

Ms. Judy Wasylycia-Leis: Yes, and you should notice that it's the new NDP-1 that was circulated separate from the package, the longer one.

The Chair: Yes, the separate sheet that you have is the new amendment. Thank you, Ms. Wasylycia-Leis. You won't be moving the other one. This is the only one you need to move. Could you move that and then make comment, please?

Ms. Judy Wasylycia-Leis: I move this amendment. Do you want me to read it out? I'll move it and then speak to it.

The Chair: Just move it and then speak to it. People can read it.

Ms. Judy Wasylycia-Leis: I'm moving that clause 7 be amended by adding after line 22 on page 5 the following:

> (c) any activity involving a micro-organism, nucleic acid or protein that falls into Risk Group 2, if the person who conducts the activity provides the following elements to the Minister, and informs the Minister of any changes thereto:
>
> (i) the location of the places where the activity is conducted, the name of the micro-organism, nucleic acid or protein involved in the activity, and the name of a contact person, and
>
> (ii) a signed document certifying that the activity is conducted in accordance with the *Laboratory Biosafety Guidelines* of the Public Health Agency of Canada.

I so move.

The Chair: Thank you.

Ms. Judy Wasylycia-Leis: This is a further attempt to actually carve out level 2 pathogens, but to do it in accordance with some of the concerns raised by my colleagues, like the parliamentary secretary and others, about the need to have some sort of a regulatory framework around level 2 pathogens and toxins.

This really eliminates level 2 pathogens from the prohibition list if they meet—and it requires them to meet—certain very specific requirements, such as ensuring they are part of a licensing regime or registry so that all information about the activity and the labs is known, and so that they are in accordance with the regulatory framework that we have all received from the department. I refer to the human pathogens and toxins act, Bill C-11, the potential treatment of facilities with risk group 2 human pathogens under the program and regulatory framework.

I'm proposing this because I think a safe and effective regulatory framework for level 2 pathogens is necessary, and what I've proposed is something that will not discourage or impede research and patient care. I think it meets the concerns expressed by the witnesses that there needs to be significantly different treatment of level 2 pathogens, but that they not be left just to regulations, that we don't just give a blank cheque for the government to deal with them as they would wish.

I believe it's in line with the Public Health Agency of Canada's treatment of level 2, as outlined in its most recent framework document, which I've just mentioned. I think it's consistent with Director General Theresa Tam's remarks, as recently as March 26, when she said:

> The made-in-Canada solution, this Bill C-11 and the program thereafter, is to establish biosafety and biosecurity and to protect Canadians from pathogens. It's important for us to know who holds pathogens, whether they are in risk group 2 or not. All we want to do is to know that when institutions, organizations, and laboratories hold pathogens, we actually know who these people are and that they are handling things in a safe manner, according to laboratory biosafety guidelines.

She goes on to say:

> Now, for risk group 2, for the most part, we are not asking for security clearance, because we do not believe they are a bioterrorism risk.

I think this accomplishes everything we've talked about and everything we heard from the witnesses.

● (1615)

The Chair: Thank you, Ms. Wasylycia-Leis.

Do you have some comment, Dr. Carrie?

Mr. Colin Carrie: Madam Chair, because of the changes in this amendment, I would respectfully ask if we could have our officials comment on this.

The Chair: Yes.

Dr. Tam or Ms. Allain.

Ms. Jane Allain (General Counsel, Legal Services, Public Health Agency of Canada): By putting it in clause 7, it would essentially remove the licensing aspects of the bill with regard to risk group 2. That would also remove the ability to require information under clauses 38 and 39 of the bill, as the minister may only require information from an applicant, a licence holder, or a biological safety officer.

It would also remove the requirement to have biological safety officers under clause 36 of the bill, and it would remove all of the licensing regime for risk group 2 holders, so that would basically be clauses 18 to 35 inclusive.

There would also be no requirement to report on inadvertent releases under clause 12 of the bill, no requirement to report on lab-acquired infections as set out in clause 13 of the bill, and no requirement to report on missing or stolen human pathogens, as set out in clause 14 of the bill. That's just from a quick review, because we had not seen it before.

The Chair: Thank you.

Do we have any more comments or discussion on this?

Ms. Murray.

Ms. Joyce Murray: It seems consistent with what the department has put forward as the basic purpose of including risk group 2—that is, to know where those pathogens are. Is that not the case?

Dr. Theresa Tam: Jane Allain has tried to explain what this could exclude.

Ms. Joyce Murray: I understood.

Dr. Theresa Tam: While we believe there should be less stringent applications for laboratories handling risk group 2, by inserting this piece, you'll have other impacts such as not having to report inadvertent release or thefts from the lab. I think it's very important for us not to remove some of the other key elements. We believe we can address it, and we told the provinces, territories, and other stakeholders that the licensing requirements for risk group 2 would be less stringent. I would caution against suddenly inserting a piece that could have a domino effect on some of the other sections, including the significant ones that Ms. Jane Allain has tabled. Having it in the regulations allows for more consultation than having it inserted into the body of the bill.

The Chair: Thank you.

Is there further discussion?

Monsieur Malo.

[*Translation*]

Mr. Luc Malo: Thank you, Madam Chair.

I'd like to come back to what Ms. Murray was saying.

I still have the impression—perhaps the mistaken impression—that the Agency's goal where risk group 2 pathogens and micro-organisms are concerned was to find out where these substances were located and to have some basic information.

I commend Ms. Wasylycia-Leis on her initiative. This amendment would to some extent limit the scope of the bill with respect to risk group 2 pathogens while ensuring at the same time that the Agency's goal is met. Ms. Tam's response to Ms. Murray's question suggests to me that the Agency is not interested in merely knowing where risk group 2 micro-organisms may be located and whether the activity complies or not with the guidelines. The Agency wants more than that.

Am I right?

● (1620)

[*English*]

The Chair: Dr. Tam, would you like to comment on what Mr. Malo just said?

Dr. Theresa Tam: I don't think I have major information to add to what I've just said, bearing in mind that the biosafety officers and others have indicated that the key piece they do not want to see for risk group 2 is security clearance. We hope this will be further addressed later on. The specifics of the licensing requirements are best handled in the regulations.

The Chair: Ms. Wasylycia-Leis.

Ms. Judy Wasylycia-Leis: I have another comment about why I think this makes sense, as well as a question to the officials. In the previous discussions, we heard that imported pathogens must meet the biosafety standards that we now have, and your hope was to ensure that all pathogens, imported or not, were treated the same way and placed on a level playing field. So what I proposed was to do just that. It would put them on the same level playing field. So I don't understand the concern about responding to spills or theft of level 2 pathogens or toxins.

The Chair: That's a question directed to either member of our panel today.

Ms. Allain, would you like to answer?

Ms. Jane Allain: I would say that under the current importation regulation the person still is required to obtain a permit and is still required to fill in detailed information about that. That's the mechanism by which the agency maintains a certain kind of oversight and control over the importation. The amendment, as you propose it, is that it would not be a permit or a licensing scheme whatsoever; you're exempting them from that. It's a mere attestation.

It's difficult to assess the full implications of that amendment. There might be other consequences for the inspection authorities as well, which are set out elsewhere in the act. We'd have to look at that more carefully to see whether or not we could continue to inspect. Because of the way this provision was designed, it was designed to deal with all of risk group 2, so there could be much more significant ramifications than simply an attestation that they are following the biosafety guidelines.

The Chair: Dr. Carrie, and then Ms. Wasylycia-Leis.

Mr. Colin Carrie: I was just wondering if we could clarify this, because the stakeholders did say they wanted consultation. If we put this in the legislation, it kind of boxes us in. What you're suggesting is that by doing it the way it's written now, it would allow more consultation on the regulations with the stakeholders.

Dr. Theresa Tam: Yes. Paradoxically, I think, by putting specifics in the bill we're not allowing the consultation process to unfold in terms of the development of the regulations. We also know that individual laboratories sometimes have very specific variations and nuances that we need to take into account when we are actually looking at the licence for a specific facility. We certainly believe that the consultation approach to the regulations is the way to go.

Mr. Colin Carrie: Thank you.

The Chair: Ms. Wasylycia-Leis.

Ms. Judy Wasylycia-Leis: With respect to the suggestion that imported pathogens need a higher standard than what I'm suggesting, it seems to me that with the amendment, especially parts (i) and (ii) under (c), we in fact are requiring what's equivalent to a permit by demanding "the location of the places where the activity is conducted", the name of every organism, and the name of a contact person who is clearly registered.

Secondly, although you say it's somewhat doubtful as to.... I think you expressed the term "unsure" about the signed document. But in effect are you getting a clear statement from each player in this field that they're in agreement with the laboratory biosafety guidelines, which is basically the bottom line that the department said had to be met? So still I guess I'm no more assured or no more.... Any further clarification from the department that this doesn't meet with all the concerns that were raised by the witnesses and is in line with what the department says it wants to accomplish....

● (1625)

The Chair: Did you want to make further comment, or have you said pretty well everything you have to say on this issue?

Dr. Theresa Tam: I think what we preliminarily read into part (ii) of (c) is a sort of form of self-attestation. The current human pathogen importation regulation actually sets out in some detail specific requirements in terms of information provided, which is not detailed in this particular section. Also, it will not allow for a specific objective look at whether someone is following the laboratory biosafety guidelines and is relying solely on self-attestation.

The Chair: Dr. Bennett.

Hon. Carolyn Bennett (St. Paul's, Lib.): I just wondered if the officials would clarify this. There was some concern from the Canadian society of medical laboratories about diagnostic blood tests and the reality of universal precautions and whether or not you feel this is something that can be dealt with appropriately in the regulations. I guess I was concerned. I thought I had heard they were excluded from this, but I just wonder if you would tell us how you're handling that.

Dr. Theresa Tam: We have spoken to the association itself and clarified with them that there are two provisions in the bill in terms of exclusions that would apply.

When people talk about universal precautions, etc., they're talking about protection for the worker and how to handle the taking of a blood sample from a potentially infected individual. What we have here is an exemption under clause 4 in terms of a pathogen occurring in its natural environment. So for someone who is infected, or whose blood is infected, that blood sample is considered a natural environment.

Further, in clause 37, there is an exemption for the people collecting the specimens. If you're just collecting the specimens for the purpose of diagnostic purposes, you're not taking out the pathogen to multiply and manipulate it as you would in a lab. To us, that was clear. That explanation was provided, and the association or society was content with that explanation.

We know there are many variations upon some of those questions, and again, we can also, in the regulation as it is set out, provide very specific exemptions for certain circumstances as these arise.

The Chair: Thank you.

Mr. Malo.

[*Translation*]

Mr. Luc Malo: Thank you, Madam Chair.

I have a question, further to the one put to you by the parliamentary secretary. Would the regulatory framework be more flexible in the case of risk group 2 micro-organisms than the two criteria listed in paragraph (c) of the NDP amendment? How can a regulatory framework offer more flexibility that a provision calling for the location, name of the substance and name of the resource person to be listed and a document attesting to compliance with the guidelines to be signed?

● (1630)

[*English*]

The Chair: Dr. Tam, would you like to respond?

Dr. Theresa Tam: The regulatory framework document, as was tabled, looks at risk group 2 in some detail in areas where we believe a less stringent application is appropriate, and that doesn't just deal with the location of a laboratory. It deals with a number of areas, including what our intent is for security clearance; the importation, transfer, and exportation of specimens; and other aspects that will be included in the scope of that licence, which we do not see detailed here. Those types of details are really best handled in the regulations themselves.

[*Translation*]

Mr. Luc Malo: So then, it isn't true to say that the regulatory framework would be more flexible for users of risk group 2 micro-organisms than would be Ms. Wasylycia-Leis' proposed amendment.

Ms. Jane Allain: The principle that Dr. Tam was attempting to convey was that if you include something in a statutory provision, then it becomes law and essentially cannot be modified. That would be the case with respect to limiting the responsibilities of persons using risk group 2 pathogens and the Laboratory Biosafety Guidelines.

The consultations that Dr. Tam and her colleagues are seeking on the guidelines would reveal how stakeholders and persons subject to this act feel about its provisions. The consultation process would also be helpful in terms of developing a program that would meet both Dr. Tam's need to ensure the biosafety of human pathogens and the needs of researchers who work with these substances.

However, if you include this in the act, there is no flexibility. The main point is that regulations allow for greater flexibility.

Mr. Luc Malo: When you talk about flexibility, you mean for Agency officials, not for the user.

Ms. Jane Allain: No, I'm talking about flexibility to address the concerns of researchers. It would be an opportunity to discuss matters with them.

Mr. Luc Malo: You maintain that a regulatory framework would provide more flexibility that the option of simply requesting information about the location of the place where the activity is being conducted, the name of the micro-organisms and a signed document certifying that everything is in accordance with the guidelines.

Ms. Jane Allain: The guidelines pertain to risk groups 2, 3 and 4. It would be a matter of determining which elements and guidelines would apply in the case of risk group 2 pathogens. That is where the flexibility comes into play. As the legislation is now worded, all guidelines would apply.

Mr. Luc Malo: The guidelines that the Agency would like to apply would provide for greater flexibility than the elements set out in subparagraph (ii) of Ms. Wasylycia-Leis' proposed amendment.

Ms. Jane Allain: This would allow for amending the regulations to take into account some of the more relevant elements of the guidelines having to do with risk group 2 substances.

Mr. Luc Malo: So then, there are certain aspects of the biosafety guidelines that the Agency does not want to see applied to risk group 2 pathogens. Is that correct?

Ms. Jane Allain: No.

[*English*]

The Chair: I would like to take this to the committee now.

All in favour?

[*Translation*]

Mr. Luc Malo: Madam Chair, I'm asking some questions in an effort to understand the amendment,

[*English*]

The Chair: Monsieur Malo, I think we've covered everything.

[*Translation*]

Mr. Luc Malo: I'm sorry, Madam Chair, but it's still not clear to me.

[*English*]

The Chair: Committee members, is there anybody here who is unclear so far about what's going on? Is there anything we've missed?

Hon. Carolyn Bennett: The amendment is about to be killed.

The Chair: Go ahead, Monsieur Malo. You can talk for another hour. Go right ahead.

[*Translation*]

Mr. Luc Malo: That is not what I'm trying to do, Madam Chair. I'm simply trying to wrap my head around this issue. The word "flexibility" has been mentioned and I'm hearing that the guidelines in the regulations will provide for more flexibility that the elements set out in subparagraph (c)(ii) where mention is made of "a signed document certifying that the activity is conducted in accordance with the Laboratory Biosafety Guidelines".

If I go by what Ms. Alain is saying, I have to conclude that the laboratory biosafety guidelines are too stringent regarding risk group 2 pathogens. My understanding is that in the case of risk group 2 pathogens, these guidelines will not be applied in the same way as they are for risk group 3 and 4 substances. Am I correct?

● (1635)

[*English*]

The Chair: Is that okay, Mr. Malo? Are you happy?

[*Translation*]

Mr. Luc Malo: Yes.

[*English*]

The Chair: That's good. Thank you.

I'll call the vote on amendment NDP-1 on clause 4.

(Amendment negatived)

(Clauses 7 and 8 agreed to)

(On clause 9—*Addition of items—toxins*)

The Chair: We have two amendments to clause 9. Who would like to speak to amendment Liberal-1? I would ask that you move the amendment right away so we can discuss it.

Dr. Bennett.

Hon. Carolyn Bennett: Madam Chair, I think this has been well discussed.

I move amendment Liberal-1, which says that the minister would have to consult an advisory committee and that the advice to the minister would be transparent.

The Chair: Is there any discussion on that? Are we ready for the vote?

(Amendment agreed to)

The Chair: There's another amendment—BQ-5.

Monsieur Malo.

[*Translation*]

Mr. Luc Malo: The amendment reads as follows:

> (4) The Minister shall, before amending the schedules referred to in this section, conduct and publish the results of a risk assessment, consult the provinces and respond to their observations.

This is in keeping with the spirit of the amendment proposed by Ms. Bennett but in addition, it would give observers and people affected by the bill an opportunity to comment.

[*English*]

The Chair: Monsieur Malo makes a very good point. Because we've already passed the previous ones, would you have any objection to adding this as subclause 9(6)?

[*Translation*]

Mr. Luc Malo: Would you like us to come back to Ms. Bennett's motion?

[*English*]

Hon. Carolyn Bennett: Because I have now hogged subclauses 9 (4) and 9(5). They're not available.

[*Translation*]

Mr. Luc Malo: Yes, absolutely. It's only text, Madam Chair.

[*English*]

The Chair: It all goes together very nicely. This should be renumbered as new subclause 9(6), if we could.

[*Translation*]

Mr. Luc Malo: Fine. I'm happy to see that committee members are in a such a cooperative mood.

[*English*]

The Chair: Is that perfect, *très bon*? Great.

Is there any discussion on new subclause 9(6)?

Dr. Carrie.

Mr. Colin Carrie: Could I please have the opinion of our officials? This is new to me.

The Chair: Absolutely.

Ms. Tam.

Dr. Theresa Tam: Yes, this is new language that we haven't seen.

The Liberal amendment proposed by Dr. Bennett is in line with what we are going to do in terms of establishing a scientific-based committee to ensure transparency in the process. I think the language in terms of Monsieur Malo's proposed amendment speaks to consulting the provinces.

I think the schedules, and how we deal with them, should definitely be science-based. That would be our intent. There may certainly be scientists who reside in those provinces and territories, and maybe there are provincial and territorial government scientists who will be included, but I think the advisory committee should be a scientific advisory committee.

● (1640)

The Chair: To clarify, then, Dr. Tam, this does not fit with new subclauses 9(4) and (5) for those reasons? Is that what you're saying? It's not scientific, it's provincial-based, rather than...?

Perhaps you could clarify.

Dr. Theresa Tam: The way I read it, there is no scientific basis to this particular amendment.

The Chair: Thank you.

Further discussion on this?

Monsieur Malo.

[*Translation*]

Mr. Luc Malo: I have a question for Dr. Tam.

Judging from what you've just told us, the only way to apply or administer the provisions of this bill and to weigh its implications is to look at things from a scientific standpoint. The economy, the law or the field of education are not at issue here. Should these considerations be excluded from the consultation process?

[*English*]

Dr. Theresa Tam: We agree on an in-depth consultation process and that it should include a number of stakeholders. The provinces and territories make up a very specific and important aspect of the consultations. In addition, there is a need for science-based advice, as required, to inform the schedules or the laboratory biosafety guidelines.

I think a scientific advisory committee is complementary to the consultation process. We certainly do know that a number of decisions are made based on complex considerations of a number of factors. In the end, I think a sound scientific base and a transparent process are important, but the consultations will be as we laid out, with our stakeholders in terms of the consultation strategy.

The Chair: Monsieur Malo.

[*Translation*]

Mr. Luc Malo: May I ask a supplementary question?

[*English*]

The Chair: Ms. Davidson is next, and then we'll go back to you.

Ms. Davidson.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): I just wanted to say that I don't think I can support this amendment the way it's written. I have some concerns with the last statement, “and respond to their observations”. We have the consultation process set up, and the advisory committee, that's scientific-based, with the experts. I think that's what we need to stick with.

I think we should call the vote on it.

The Chair: A very tiny comment, Monsieur Malo.

[*Translation*]

Mr. Luc Malo: Dr. Tam, you told us that the process of consulting with those stakeholders or parties that might be affected by the bill would be carried out in concert with expert groups and the advisory committee and that the latter would take a science-based approach. So then, the process of holding consultations pursuant to the amendment to clause 9 would be complementary, not contradictory, to the consultation process.

[*English*]

Dr. Theresa Tam: I'll provide an initial comment, and my colleague might wish to add something. There's already in existence a consultation requirement for the development of regulations. The Public Health Agency has said repeatedly that we will honour that requirement and that we will be consulting extensively. I think that's already laid out in the development of regulations.

The Chair: Ms. Allain, are you...?

Ms. Jane Allain: It's essentially the cabinet directive on regulation-making. As well, there's a component on regulatory impact assessment, and it requires detailed consultations that are open and meaningful and balanced, and that is part of how the government intends to propose regulations under this section.

● (1645)

The Chair: Okay, we'll go very quickly.

We'll go to Ms. Wasylycia-Leis.

Ms. Judy Wasylycia-Leis: It seems to me, though, that this is separate and apart from the regulations that will be drafted and adopted. This is to say that if and when there is a need to change the list—the schedule of toxins and pathogens—you'll have a scientific advisory committee that makes the decisions. I think, as Luc Malo just said, this complements that. It just means you have to consult openly, you have to share the results, you have to consult the provinces, and you have to answer their concerns. I don't see the problem in something that basic.

The Chair: Go ahead, Dr. Tam.

Dr. Theresa Tam: I think, in particular, it refers just to the schedules themselves. That's very specific. And the schedules, as you can see, in the way you read them, absolutely should be based on a scientific-based discussion.

I think, really, if the latest science on the risk of a pathogen or on changes in a pathogen, which only a scientific discussion can actually address, goes into the schedule, this current amendment does not speak to any other aspect of the regulation-making.

The Chair: I'm going to go to the vote on amendment BQ-5.

(Amendment negatived)

(Clause 9 as amended agreed to)

(On clause 10—*Addition of Items*)

The Chair: We now have amendment L-2 to clause 10. Who would like to move this motion and speak to it?

We'll go to Ms. Murray.

Ms. Joyce Murray: I move that clause 10 be amended by adding subclause (3) and subclause (4) after line 6. It is similar to the amendment made to clause 9.

The Chair: Thank you.

Is there any discussion?

(Amendment agreed to)

(Clause 10 as amended agreed to)

(Clause 11 agreed to)

(On clause 12—*Inadvertent Release*)

The Chair: We have amendment G-1 to clause 12. Who would like to speak to this one?

Go ahead, Dr. Carrie.

Mr. Colin Carrie: What we'd like to do is add the words "from the facility" to subclause 12(1). It would read: "If a licence holder has reason to believe that a human pathogen or toxin has been released inadvertently from the facility in the course of an activity".

Some of the stakeholders were concerned about simple spills, and this should address those concerns.

The Chair: Is there any further discussion on this amendment?

(Amendment agreed to)

(Clause 12 as amended agreed to)

(Clauses 13 to 32 inclusive agreed to)

(On clause 33—*Access to facilities*)

The Chair: We have amendment G-2 to clause 33. Would someone like to move that and read the amendment, please?

Go ahead, Dr. Carrie.

Mr. Colin Carrie: Yes.

> 33. No person shall enter the part of a facility in which controlled activities are authorized in relation to human pathogens

—and then add:

> that fall into Risk Group 3 or Risk Group 4 and are prescribed by regulation or toxins that are prescribed by regulation

We heard from the stakeholders that they prefer that security clearances do not apply to facilities with risk group 2 human pathogens, and PHAC has no intention of requiring this.

The government has agreed from the beginning that there should be no security screening for facilities that conduct controlled activities within risk group 2 human pathogens. So we'd like to make that amendment to clarify that.

● (1650)

The Chair: Is there any more discussion?

(Amendment agreed to)

(Clause 33 as amended agreed to)

(Clauses 34 to 37 inclusive agreed to)

(On clause 38—*Provision of information to Minister*)

The Chair: On amendment G-3, Mr. Carrie.

Mr. Colin Carrie: I will read this:

> 38. (1) The Minister may order an applicant, a licence holder or a biological safety officer to provide the Minister, in accordance with any conditions that the Minister may specify, with any information that is under that person's control, including personal information and confidential business information

—and then cross out "and that, in the Minister's opinion" and replace it with:

> and that the Minister believes, on reasonable grounds,

The Privacy Commissioner did write us a letter, and changing it in this way will fulfill what the Privacy Commissioner has asked us to do. The change is consistent with the request of the Privacy Commissioner to add a reasonableness component to the section.

(Amendment agreed to)

(Clause 38 as amended agreed to)

(On clause 39—*Disclosure by Minister*)

The Chair: On amendment G-4, Dr. Carrie.

Mr. Colin Carrie: It reads:

> 39. (2) Except in the circumstances described in paragraph (1)(b), before disclosing the information to any person other than Her Majesty in right of Canada or an agent of Her Majesty, the Minister must obtain the person's written agreement that they will maintain the confidentiality of the information

—and then we'd like to add:

> unless they are required by law to disclose it.

Again, the Privacy Commissioner had concerns with this section, and this follows the Privacy Commissioner's specific recommendation.

The Chair: Ms. Wasylycia-Leis.

Ms. Judy Wasylycia-Leis: Given some of the concerns we heard about which law we're following and the whole influence of the Patriot Act, have you thought at all about adding the words "Canadian law", or would you consider that?

Mr. Colin Carrie: Could we have the officials address that? I never thought of that.

Ms. Jane Allain: This is essentially to require that if you disclose to a third party and that third party is required to disclose the information and is required because they have a court warrant or some other disposition, they have to comply with it. There is no extraterritorial application of the Canadian law. The law is in Canada.

Ms. Judy Wasylycia-Leis: To seek further clarification, we have had cases in other areas where Canadian companies have been obligated to disclose information because of the Patriot Act. Are we sure that's not the case here, and shouldn't we try to deal with that situation and prevent it from happening?

Ms. Jane Allain: I'm not sure I understand your point. The requirement here is to try to ensure that if someone has entered into an assurance with the federal government when we disclose the information, if they're required by law to disclose it, they could be allowed to disclose it. So again it would be a court order or another statutory provision. That's the intent, essentially. It's not to look at the Patriot Act application, if there is such an application on Canadian soil.

Ms. Judy Wasylycia-Leis: Are you absolutely confident that there is no way this section or any part of this act could be seen to condone the supremacy of the Patriot Act over any aspect of Canadian activity in this area? We've seen in the case of the financial sector where, because of the fluidity of our border, personal information of Canadians can be disclosed or has been disclosed without being subject to reprimand or efforts to curtail that activity from Canadians or the Canadian government.

● (1655)

Ms. Jane Allain: I can only restate what I've just stated. The purpose of this is to address the concerns that the Privacy Commissioner had with regard to the privacy aspects of this particular provision. It is a standard clause that exists elsewhere, in other pieces of federal legislation.

Our intent is to strengthen the privacy protections by saying that if it's required to be disclosed by force of law, whether there's another statutory provision that would allow it or a court order would allow it, in those circumstances the person could disclose.

The Chair: Could we please go to the vote now?

(Amendment agreed to)

(Clause 39 as amended agreed to)

(Clauses 40 to 52 inclusive agreed to)

(On clause 53—*General*)

The Chair: Dr. Carrie, on clause 53, G-5.

Mr. Colin Carrie: This is to address some of the things that Monsieur Malo brought forward at the beginning. It's to create lesser penalties for offences under the act or regulations related to risk group 2, including no provision for a prison sentence for most offences involving risk group 2 human pathogens.

The amendment, in clause 53, would read:

> (a) in the case of a contravention with respect to a human pathogen that falls into Risk Group 2,
>
> (i) for a first offence, to a fine of not more than $50,000; and
>
> (ii) for a subsequent offence, to a fine of not more than $250,000 or to imprisonment for a term of not more than three months, or to both; and
>
> (b) in all other cases,

—and it continues on.

Stakeholders voiced strong opinions that facilities with risk group 2 human pathogens should be treated more leniently than risk groups 3 and 4. This amendment should look after that.

The Chair: Monsieur Malo.

[*Translation*]

Mr. Luc Malo: Madam Chair, since the parliamentary secretary to the minister is inquiring, I'd like to make a few important comments. Various researchers have testified that the imposition of criminal sanctions could potentially label as criminals researchers who work in the lab to advance our knowledge of science and to educate and train our future researchers.

As far as they are concerned—and I read this again last week—this new provision will alter their relationship with the world, with Parliament and with the government. The status of these individuals is now being changed.

When Agency officials drafted this amendment, were they aware that scientists might not look favourably upon the notion that their activities could possibly be deemed criminal?

● (1700)

[*English*]

The Chair: Who would like to take that, Dr. Tam or Ms. Allain?

[*Translation*]

Ms. Jane Allain: When a department moves to impose criminal sanctions under a specific act, basically it looks at the sanctions provided for in comparable acts. It compares penalties and offences in an effort to enforce the act's provisions in a coherent manner. The aim is to look at the impact of the offence and to determine the gravity of that offence. In order to assess the risk, one must look at the penalty and match it to the offence.

Differences are also important. Penalties exist to encourage people to uphold the law. We looked at a number of health and safety provisions. Pursuant to the Food and Drug Act, an offence punishable on summary conviction carries a fine of $50,000 and six months in jail. In the case of the sale of food that can harm people's health, of hazardous products, conviction under the act carries a fine of $100,000 and six months of imprisonment. Failure to comply with an order from a quarantine officer carries a fine of $200,000 and six months of imprisonment.

SInce my notes are in English, I will now switch to that language.

[*English*]

For the Health of Animals Act, contravention of the act or the regulation has a summary conviction offence of $50,000 or imprisonment of six months. It goes up to an indictment of $250,000 or two years. If there's a contravention of the Plant Protection Act or regulation, for summary conviction it's $50,000 or six months in jail. By way of indictment, it's $250,000 or two years in jail.

I would underscore as well that both under the Health of Animals Act and the Plant Protection Act a person simply possessing or disposing of an animal that was imported into the country in violation of the act or regulations faces a possible maximum penalty of $50,000 and jail. So we believe this amendment is consistent with those other statutes and sets the same type of threshold as well as a means of deterrence.

The Chair: Can we go to the vote now?

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

(Clause 53 as amended agreed to)

(Clauses 54 and 55 agreed to)

(On clause 56—*Contravention of subsection 7(1) or 18(7)*)

The Chair: We have amendment G-6.

Dr. Carrie.

Mr. Colin Carrie: This is basically a consequential amendment because of clause 53. We'd like to add, in clause 56, after "every person who contravenes subsection 7(1) or 18(7), the following:

> with respect to a human pathogen that falls into Risk Group 3 or Risk Group 4 or a toxin is guilty of an offence

If there are any questions, I would recommend we have the officials speak to this because it is quite technical.

The Chair: If there are any questions, we can do that.

First of all, I think there's quite a good understanding of this, but I want to ask the committee if everyone is in favour of voting on this amendment right now.

Some hon. members: Agreed.

(Amendment agreed to)

(Clause 56 as amended agreed to)

(Clauses 57 and 58 agreed to)

(On clause 59—*Defence*)

The Chair: We have amendment G-7.

Dr. Carrie.

Mr. Colin Carrie: This would be the same thing, a consequential amendment.

It would amend clause 59, paragraph (a), by replacing, in line 37 and 38, "contravention of section 17 and subsection 41(6)" with the following:

> contravention of subsection 7(1), section 17 and subsection 41(6);

And it would replace paragraph 59(b) with:

> section 55;

(Amendment agreed to)

(Clause 59 as amended agreed to)

(Clauses 60 to 65 inclusive agreed to)

(On clause 66—*Regulations*)

● (1705)

The Chair: We have amendment G-8.

Dr. Carrie.

Mr. Colin Carrie: This relates to the "Whereas" clause in the front. What we'd like to do is make explicit that the regulatory regime will treat risk group 2 human pathogens less stringently than risk group 3 and risk group 4 agents in subclause 66(1), relating to the ministerial regulatory authorities.

The amendment would add, after line 25 on page 30, the following:

> (1.1) In making regulations, the Governor in Council shall take into account the varying levels of risk posed by human pathogens—determined by whether they fall into Risk Group 2, Risk Group 3 or Risk Group 4—and those posed by toxins.

(Amendment agreed to)

(Clause 66 as amended agreed to)

The Chair: Now we move to the new clause 66.1. We have two amendments there.

On NDP-2, would you please move that motion, Ms. Wasylycia-Leis?

Ms. Judy Wasylycia-Leis: Yes, thank you.

I'd like to move the two together, if I may. They are complementary; they go together.

The Chair: I've just been informed they have to be done one at a time. My apologies. I'm willing, but he isn't.

Ms. Judy Wasylycia-Leis: Is it important that I read this into the record?

The Chair: No.

Ms. Judy Wasylycia-Leis: This amendment brings this legislation into line with practices under other legislation, particularly the Assisted Human Reproduction Act. It ensures that the witnesses we have heard from would know that the regulations they'll be involved in, in terms of the consultation process, will also come to the House of Commons, that we'll have a chance for oversight. We'll have a chance to take into account any concerns and try to persuade the government of any changes that are brought forward.

The Chair: Would officials like to comment on this?

Dr. Carrie.

Mr. Colin Carrie: We would like to support this amendment, if we could make a slight amendment by adding the Senate, to have an appropriate standing committee in the Senate.

Ms. Judy Wasylycia-Leis: I accept that.

The Chair: Can you read it out, then, Dr. Carrie? That way we can put it down in print here.

Mr. Colin Carrie: Just give me a moment. I think you have to add "Senate" in a few places....

Ms. Judy Wasylycia-Leis: I would accept a friendly amendment that says we add the word "Senate"—

Mr. Colin Carrie: Where appropriate.

Ms. Judy Wasylycia-Leis: —wherever it says "House of Commons".

The Chair: Would that be acceptable?

Dr. Bennett.

Hon. Carolyn Bennett: Explain that again.

Mr. Colin Carrie: She would like to table the regulations before the House of Commons. We would like to add that it has to be tabled with the Senate as well.

Hon. Carolyn Bennett: But it would not be....

I mean, the point of the bill is that it be sent back to the committee that knew something about it and did the work. I wouldn't want the government to have the ability to send it to the Senate instead.

Mr. Colin Carrie: No, no, not instead; it would be going to both.

If you'd like further explanation, perhaps we could we have the officials speak on that.

The Chair: The analysts inform me that it's similar to what's in the Assisted Human Reproduction Act.

Ms. Judy Wasylycia-Leis: Yes. In fact, the Assisted Human Reproduction Act actually spells out that it's the House of Commons and the Senate.

The Chair: Yes.

All in favour of this amendment...?

I'm just going to read it into the record so that we know what it's about:

> The proposed regulation shall be referred to the Standing Committee on Health or, in the event that there is not a Standing Committee on Health,

No, that doesn't work. It has to be rewritten.

Yes, "both Houses of Parliament" would do it. There we go.

Thank you to the analysts for that. It's great to have analysts here.

Can you read BQ-6 now?

● (1710)

[*Translation*]

Mr. Luc Malo: We'll withdraw the amendment, Madam Chair, as it is now superfluous.

[*English*]

The Chair: It's no longer necessary? Are we going to delete BQ-6, Monsieur Malo? Is that what you're saying?

Okay, then, it's deleted. It's not moved.

I'll read the first part of new clause 66.1 as it would be amended:

> 66.1 (1) Before a regulation is made under section 66, the Minister shall lay the proposed regulation before both Houses of Parliament

The rest would be identical.

(Subamendment agreed to)

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

The Chair: We are now on NDP-3, which proposes new clause 66.2.

Ms. Wasylycia-Leis, please.

Ms. Judy Wasylycia-Leis: This basically rounds out the process that is now under the Assisted Human Reproduction Act. It further exemplifies that process.

I would move it with an amendment adding the word "Senate" wherever it says "House of Commons".

The Chair: Or "both Houses of Parliament".

Ms. Judy Wasylycia-Leis: Yes, "both Houses of Parliament".

The Chair: Okay, thank you.

Dr. Carrie.

Mr. Colin Carrie: That's it exactly. Thank you very much.

The Chair: So "both Houses of Parliament" is the slight amendment in here.

It now begins as follows:

> 66.2 (1) A regulation may be made without being laid before both Houses of Parliament if the Minister is of the opinion that

(Subamendment agreed to)

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

(On clause 67—*Interim orders*)

The Chair: Monsieur Malo, BQ-7.

[*Translation*]

Mr. Luc Malo: Madam Chair, we believe that the interim order should be exempt only from the application of section 9 of the Statutory Instruments Act.

[*English*]

The Chair: All in favour of BQ-7?

(Amendment negatived)

The Chair: BQ-8.

Monsieur Malo.

[*Translation*]

Mr. Luc Malo: Madam Chair, according to clause 67, if the minister is ever required to make an interim order, the matter could be brought before both Houses of Parliament or notice could be given within 15 days after the order is made. In my opinion, 48 hours' notice would be more appropriate, in an emergency situation, in order for the matter to be brought to Parliament's attention as quickly as possible.

[*English*]

The Chair: Is there any discussion or comment?

All in favour of BQ-8?

An hon. member: Is it doable?

The Chair: I don't know. I asked for discussion but there weren't any hands.

Is there any comment from the officials about this particular amendment?

Ms. Jane Allain: This provision in this standard of a 15-day requirement to table in Parliament is set out elsewhere in federal legislation. It also appears in the Quarantine Act and the Food and Drugs Act. The purpose of this is for the minister to take prompt action to address a serious and imminent danger to the health and safety of the public. The minster is required to table within 15 days, and that's the standard set out elsewhere in legislation.

[*Translation*]

Mr. Luc Malo: I maintain that 15 days is too long a period of time to inform parliamentarians of the making of an interim order. I feel that this 15-day provision which is also contained in other acts should also be reviewed, Madam Chair.

● (1715)

[*English*]

The Chair: I'm sorry, I lost my translation. You'll have to repeat that, Mr. Malo.

[*Translation*]

Mr. Luc Malo: Parliamentarians are entitled to receive notice of an interim order much sooner than within 15 days. The problem is that in the case of the Quarantine Act, 15 days may be too long a period of time. The time frame should be shortened in that act as well as in Bill C-11.

[*English*]

The Chair: Thank you.

Do we have any comments or discussion?

(Amendment negatived)

(Clause 67 agreed to)

(Clauses 68 to 72 inclusive agreed to)

(Schedules 1 to 5 inclusive agreed to)

The Chair: In the preamble there was a slight change.

Dr. Carrie, could you speak to it again, quickly?

Mr. Colin Carrie: The change replaces lines 5 and 6 on page 1 with the following: “that human pathogens and toxins pose varying levels of risk to the health and safety of the public”.

(Amendment agreed to)

The Chair: Shall the preamble pass with the amendment?

Some hon. members: Agreed.

The Chair: Shall the short title pass?

Some hon. members: Agreed.

The Chair: Shall the title pass?

Some hon. members: Agreed.

The Chair: Shall the bill as amended pass?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill as amended for use by the House at report stage?

Some hon. members: Agreed.

The Chair: Thank you, ladies and gentlemen. We did it. Applaud yourselves.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
http://www.parl.gc.ca
