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Chair

Mrs. Joy Smith

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● (1100)

[*English*]

The Chair (Mrs. Joy Smith (Kildonan—St. Paul, CPC)): Good morning, everyone, and welcome to the health committee.

We're very excited about our committee because we work so well together and get a lot done, and I have to commend all the committee members for that.

I would like to welcome Ruby Dhalla. I haven't had a chance to do that. It's a pleasure to have you on committee, Ruby.

Of course, Mr. Dosanjh, I welcomed you before. It's good to see you here.

And we have Glenn Thibeault. Welcome to our committee as well.

And yes, Monsieur Dufour, I never forget you. So there we go. We welcome Monsieur Dufour just on a general basis when he comes in, and we sing Happy Birthday to him on his birthday.

I'd like to welcome the other visitors we have today. From the Department of Health, we have Diane Labelle, Robert Ianiro, and Athana Mentzelopoulos.

Committee members, today we have Bill C-36 before us, and the proposed operational budget in the amount of $15,150 for the committee's study of Bill C-36, an act respecting the safety of consumer products. I put that motion forward to be adopted.

Some hon. members: Agreed.

The Chair: Thank you.

The plan for Bill C-36 is as follows. We had said, as committee members, that when legislation came up we would take the legislation first and foremost and get it done. What we're looking at are witnesses from the department today. On Thursday the minister will join us for an hour and then we'll have witnesses on Thursday. And the following Tuesday we have additional witnesses and then we'll do a clause-by-clause. And we're hoping a week today to get the clause-by-clause completed, basically because there's been a lot of study on Bill C-36 and there are few amendments, so we as a committee have decided this is the way we want to proceed.

We will begin now with a presentation from Athana Mentzelopoulos. How do you pronounce it?

Ms. Athana Mentzelopoulos (Director General, Consumer Product Safety Directorate, Department of Health): Athana Mentzelopoulos.

The Chair: Mentzelopoulos, okay.

We will begin with a seven-minute presentation. Following that, we will go into our questions and answers with the first round.

Please begin.

Ms. Athana Mentzelopoulos: Thank you, Madam Chair, for the opportunity to appear before you to discuss Bill C-36, the proposed Canada Consumer Product Safety Act.

As you know, the Minister of Health introduced this latest version of the legislation in June of this year. Each generation of this bill has been an improvement over the last and reflects the ongoing approach that we take to consumer product safety; that is, we are always looking for the most effective and efficient ways to maintain consumer safety while at the same time ensuring a free flow of goods.

The free flow of goods is related to the post-market regime for consumer safety in Canada. The post-market regime is not something we are proposing to change with this bill. We do not now propose, nor would we propose, that industry be required to seek certification from or otherwise notify the government when new products are introduced for sale in Canada. However, while the vast majority of consumer products are unregulated in this country, we do have a number of regulations and prohibitions in place for consumer products, and we work to promote compliance. Bill C-36 would provide an important authority in this regard: a general prohibition against products that pose an unreasonable danger to consumers.

Today the Hazardous Products Act is our legislative basis for consumer safety in Canada. It establishes what is essentially a permissive regime, where a product is allowed in Canada unless it is specifically regulated or prohibited. The general prohibition addresses those products that pose an unreasonable danger to human health or safety.

We expect that industry is already using appropriate standards and risk assessment methods in its evaluation of the safety of its consumer products before being placed on the market.

The general prohibition also supports one of the three key areas that we focus on for improvement in consumer product safety, and that is active prevention.

Modernized authorities developed to correspond to our globalized and post-market consumer product environment will assist us in preventing product safety problems before they arise and before significant risk can develop.

In addition to active prevention, we are focused on targeted oversight and rapid response as key areas for improvement in our consumer safety regime. Bill C-36 has new powers requiring manufacturers and importers, upon request by the minister, to provide safety test and study results for their products for verification by Health Canada. This supports targeted oversight while keeping the accountability for safe products with industry.

In addition to record-keeping, the requirement for mandatory reporting of product incidents will help us to respond rapidly when problems develop. Our major trading partners, the United States and the European Union, have already modernized their consumer safety legislation. Bill C-36 would bring Canada in line with them on reporting of incidents and recalls.

While the legislation would modernize a very dated system for consumer safety in Canada, we expect to continue to see a very robust voluntary approach to recall by industry. That has also been the experience in the United States.

We know that the vast majority of industry in Canada acts responsibly and we know they value their reputation. Unfortunately, there are still cases where industry either seeks to dismiss a risk or to avoid accountability. In those cases, government requires the tools to take action to protect consumers. Bill C-36 would give us the authority to do so.

Our partners have been generous. The United States in particular, owing to the similarities in our industry, continues to help us when it is taking action as a result of the mandatory reporting system and corrective action systems it has in place now.

Frequently, recalls initiated in the U.S. are either simultaneous in Canada or are closely timed. Information from the U.S. has helped us in Canada so that we are able to determine the extent, if any, of recalled products that might be present here. We thank our neighbours for this support and we hope to be more equal partners in consumer safety as a result of this legislation.

● (1105)

Like other elements of the Hazardous Products Act, the current schedule of fines and penalties can lead to the impression that the repercussions of product safety lapses are simply a cost of doing business. For example, the maximum fine under the HPA is now set at $1 million. Bill C-36 would raise that to $5 million for some offences or more for offences committed knowingly or recklessly.

The key elements of Bill C-36 I know are familiar to many of you on this committee, but there are some important improvements. Specifically, we have made six changes to the legislation since it was before you last.

The first change is a change to authorities for recall and other orders. Previously these authorities would have been assigned to an inspector. Now the minister is made expressly accountable for the authorities. This change addresses the concerns we have heard from some stakeholders that the critical and important authority of a mandatory recall should rest with senior officials.

We have also made two changes in adjusting the wording around inspectors' powers.

The definition of “storage” is now clear in the legislation and it does not apply to goods stored by individuals for their personal use. We have also removed a clause for inspectors to pass over private property so that the provision no longer includes the phrase “and they are not liable for doing so.”

The fourth change—having listened to the committee during previous hearings on this bill and on others—is an improvement to the wording on the provision for an advisory body meant to clarify what was meant by “public advice”.

Fifth, we responded to concerns on review orders, and the bill sets out a 30-day review period.

And finally, a prohibition on BPA, bisphenol A, in polycarbonate baby bottles has been added, ensuring an ongoing high level of protection for consumers.

In summary, the department believes Bill C-36 will provide the legislative foundation for active prevention, targeted oversight, and rapid response. The legislation offers certainty and transparency for industry. It gives consumers the information they need to make good product choices. It equips the government with new authorities that are calibrated to a global marketplace and a post-market regime. These new authorities are consistent with health and environmental legislation already in place in Canada. And this legislation would bring us into line with the level of protection provided to consumers in the United States and the European Union.

Those are my comments, Madam Chair, and we are prepared to take your questions.

● (1110)

The Chair: Thank you so much.

We'll now go into the first round. The first round is seven minutes per person for Q and A. We will start with Mr. Dosanjh.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you for being here today, all of you.

Since I come to this rather late and this bill has a long history, I want to ask about what happened in the Senate during the last round. If you know, I'd be happy to hear from you. My question specifically is this. Senator Furey and Senator Banks had introduced some amendments. I'm asking these questions because if we can clarify them here, it might not be held up in the Senate. It might be easier that way.

I don't know what Senator Furey's concerns were. He tells me they were dealt with.

In terms of Senator Banks' concerns, I don't have the information on them, on what they were. Generally speaking, they were that individuals, with respect to disclosure of information, don't have the same protections that businesses or industry might have, where the minister has the discretion and the authority to disclose information.

I'd like you to tell me if you know what Senator Banks had introduced and whether or not that has been dealt with in this. If not, what is the rationale?

Ms. Athana Mentzelopoulos: I hesitate to characterize the senator's concerns, but as I understand them, he was concerned, as you say, with the disclosure of personal information.

We imagine, for example—and I'm going to ask Mr. Ianiro to fill in the blanks—a case where we receive a report of an injury of someone as a result of a consumer product. How do we ensure that the personal information is protected?

There is provision in the legislation for being able to use the information if there is a requirement to share it on the basis that we would want to prevent any further injury. We've worked closely, though, with the Privacy Commissioner to ensure that everything we have provided for is consistent with the privacy legislation.

I'll hand it off to Robert.

Mr. Robert Ianiro (Director, Consumer Product Safety Bureau, Department of Health): Thank you for the question.

The provision in the bill that the senator is likely referring to is clause 15, which deals with personal information. The fact is that we do collect some personal information. This provision allows us to share that personal information when we feel it is necessary to do so to deal with a health and safety issue. The amendments that were being proposed at the Senate would, in some cases if not all cases, potentially force us to collect even more personal information.

There was this notion that we should be providing notice and notification to anyone prior to disclosing the personal information. In some cases, we don't have enough information to re-identify that individual; in some cases, we would actually have to be collecting more information in order to contact them and say that we're disclosing information.

Perhaps of more importance is the fact that we don't see many situations in which sharing of personal information, such as the name of the victim in an incident or the details of the person's address, is required in order for us to carry out our actions to better protect health and safety.

Let me give you a concrete example. If we were to come across an incident relating to a particular children's product, what we would really want to be sharing with other jurisdictions is not details of personal information. Rather, we would say that we have evidence to suggest that there was an issue with product X involving a child of six months, and that we were concerned, and we would ask if they were hearing of anything else that would align or match with what we were hearing.

We really didn't feel that any changes or amendments were required. As I said, we in fact came to the conclusion that there is a possibility that we would actually have to start acquiring more personal information.

Perhaps I can just end with a note that the privacy commissioner's office did review the bill and did give it a pass, a clean bill of health, and there were no issues at all with respect to the collection or the management of personal information. As well, the assistant privacy commissioner did appear before the Senate committee to share her comments in those regards.

Thank you.

● (1115)

Hon. Ujjal Dosanjh: Thank you.

I have two brief questions. One, I'm assuming that you may have briefed Senator Banks. If you haven't, maybe you should take the opportunity to do that. That's number one.

Second, I noticed that there is a bit of a difference in the wording in clauses 15 and 17. In clause 15, you can share the information to address a "serious" danger. In clause 17, it has to be "serious and imminent" danger. Can you tell me why there is the distinction between business information, which has to involve serious and imminent danger, and personal information, which has to involve only serious danger?

Mr. Robert Ianiro: The provisions in clause 17 are for serious and imminent danger, and in those cases we are not required to have confidentiality agreements in place. Those would be situations in which we feel there is obviously something of grave concern that we want to share, and we are required to provide notice within one business day of the disclosure of that information.

With respect to the wording in clause 15 about addressing solely a serious danger, that is consistent with our wording in.... Is it clause 16?

Hon. Ujjal Dosanjh: No. There's—

Mrs. Athana Mentzelopoulos: I think the distinction in particular is that for clause 17, we are contemplating the release of information to the public, whereas in clause15, we are contemplating the release of information to another government. We are raising the standards somewhat in terms of its being very—

Hon. Ujjal Dosanjh: I'm sorry, but I disagree. Clause 15 says that you can disclose information "to a person or a government".

Mrs. Athana Mentzelopoulos: It is "to a person or a government that carries out functions relating to the protection of human health or safety".

Hon. Ujjal Dosanjh: Okay. In clause 17, you believe that you might want to share the information with the public at large.

Mrs. Athana Mentzelopoulos: That's correct, yes.

Hon. Ujjal Dosanjh: But why is the qualifier "imminent" not present in clause 15? I mean, you'd want to share it with the government, or the person, if there is an imminent danger.

The Chair: I'm sorry, Mr. Dosanjh, you didn't catch my eye.

It's now Monsieur Malo.

[*Translation*]

Mr. Luc Malo (Verchères—Les Patriotes, BQ): Thank you very much, Madam Chair.

I would like to thank our witnesses for being here with us this morning as part of our first meeting on Bill C-36. Of course, this is not the first meeting that our committee has had regarding the bill because, as you know, we had already studied it once before, but unfortunately, Parliament was prorogued. We therefore have to start all the work over again.

There is the issue of the mail and e-mails that each and every one of us here has received in our offices since our last meeting on the topic, and which deal more particularly with the bill's constitutionality. I imagine that you have also received such comments and concerns.

Can you tell us whether you examined that specific aspect of the bill and whether or not you believe that the bill is constitutionally acceptable?

● (1120)

Mrs. Athana Mentzelopoulos: I apologize, but for greater clarity, I prefer answering in English.

[*English*]

I believe I know exactly the correspondence you're referring to, and yes, we have analyzed it in considerable detail and the short answer to your question is yes. We believe that we are fully in line.

Did you want to add anything to that?

[*Translation*]

Ms. Diane Labelle (General Counsel, Legal Services Unit, Department of Health): As you are well aware, the Minister of Justice is tasked with reviewing each bill in order to ensure that it properly reflects the government's obligations pursuant to the Charter of Rights and Freedoms. That review was done by the minister and the Department of Justice. Moreover, a bill is also examined to see whether it is well founded, i.e., whether Parliament does indeed have the power to adopt such a bill. In fact, we can confirm that we have conducted such a review and that the bill falls within Parliament's authority regarding criminal matters and properly reflects the government's charter obligations.

Mr. Luc Malo: Very well, I thank you for those points of clarification.

I am sure you know that when the government tabled Bill C-52, which is the previous version of Bill C-36, a number of consumers were concerned that the law could apply to natural health products. An addition, clarification or change was brought. In subsection 4(3), which deals with the application, the following is clearly stated:

> 4.(3) For greater certainty, this act does not apply to natural health products as defined in subsection 1(1) of the *Natural Health Products Regulations* made under the *Food and Drugs Act*.

Can you tell me why, in this case, people today are still concerned by the fact that Bill C-36, the latest version of the act respecting the safety of consumer products, might affect natural health products?

[*English*]

The Chair: Who would like to answer?

Go ahead.

Ms. Athana Mentzelopoulos: I wish I could explain the concern. It's very explicit in the legislation. We've taken great pains to make it clear that the legislation does not apply to natural health products. Some of the concerns do go beyond that.

[*Translation*]

Mr. Luc Malo: Could there be a way around this provision so that the bill applies to natural health products?

[*English*]

Ms. Athana Mentzelopoulos: No, there is no way. There is a way, but it would have to come back before Parliament to be amended so that the scope of the legislation would be changed—for example, to remove the provision in subclause 4(3). So yes, there is a way, but certainly it would be the purview of parliamentarians to do so.

[*Translation*]

Mr. Luc Malo: But the version we have before us, i.e., Bill C-36, in no way affects natural health products. Is that correct?

Ms. Diane Labelle: Madam Chair, evidently, neither the Governor in Council nor the minister could amend the wording of the legislation. Parliament alone has that authority. Therefore, the wording of the legislation cannot be amended as regards natural health products.

Mr. Luc Malo: Excellent. Thank you.

As you know, a good part of the authorities arising from this bill will be included in the regulations, and the minister does have some discretionary power, as conferred on him by the legislation. That was the case with other bills, when the regulations had been submitted to a committee for a broader review prior to adoption.

How does your department envisage the drafting of the regulations, the comments that will be elicited and their implementation?

● (1125)

[*English*]

Ms. Athana Mentzelopoulos: There are probably a number of ways I can reassure you in that regard. First of all, the constraint of the legislation is clear. It's laid out in the legislation itself. There are clear restrictions, for example, on inspectors' powers. Inspectors are limited to what is described in the legislation in terms of their verification, for example, of compliance with the legislation.

There are a number of mechanisms that ought to reassure folks in terms of the transparency for the regulations. There is the *Canada Gazette* process that we have to go through for the making of regulations, in any case. There is also the provision that was added, I believe at this committee, which has been retained, whereby any foundational regulations would have to be laid before both the House and the Senate, so that's an added layer of scrutiny.

There is also the provision, again as a result of this committee, for an advisory committee, and that has been retained here as well.

The Chair: Thank you, Ms. Mentzelopoulos.

Now we'll go to Mr. Thibeault.

Mr. Glenn Thibeault (Sudbury, NDP): Thank you, Chair.

Thank you for coming today and providing us with information.

To be very clear, is there anything in this bill that can be deemed non-compliant with the Canadian Charter of Rights and Freedoms?

Ms. Athana Mentzelopoulos: No. I'll ask my colleague to elaborate.

The Chair: Madame Labelle, would you like to comment as well?

Ms. Diane Labelle: Thank you, Madam Chair.

Thank you, Mr. Thibeault, for the question.

The issue that arose particularly in the Senate centred around the use of inspectors' powers. At the time the explanation and the letter that was tabled with the chair of the committee of the Senate that was hearing the bill confirmed that the Minister of Justice scrutinizes every bill for consistency with the charter, and no such inconsistencies were reported.

The concern appears to be the fact that inspectors, having reasonable grounds to believe that a regulated activity is taking place in a building or a conveyance, may enter to verify compliance or prevent non-compliance solely for the purpose of administering the act, and it seems that the concern that was expressed was why weren't inspectors required to have reasonable grounds to believe that an offence was created and that a judicial warrant was necessary. And in fact the Supreme Court of Canada has recognized the necessity for administrative regimes to verify compliance. That is the type of regime that is set up in Bill C-36, and it goes only to the predominant purpose of ensuring compliance with the statutes and the regulations.

The inspector powers in no way engage an individual's penal responsibility. If it were a matter for a criminal investigation, then yes, either an inspector or a law officer would require a judicial warrant from the court under the criminal court, but that is not what we're talking about in Bill C-36.

Mr. Glenn Thibeault: Perfect, thank you.

Today you read in the newspapers that jewellery made with toxic metal is still sold in Canada. It's the cadmium. That's where I start wearing two hats, as a father of a seven-year-old daughter and a three-year-old daughter. My seven-year-old wears it. My three-year-old eats it. I'm sure all parents across the country are worried every time they read something like this.

Can you, I guess in the Coles Notes version, differentiate between what we currently have in place and what this bill is going to do, and how this is going to better protect our children and make parents feel a little better?

Ms. Athana Mentzelopoulos: Thank you for the question.

I have a four-year-old. I think he's just coming out of the eating foreign objects phase—I hope.

What's developed with cadmium today is probably a very good example of the way we might approach product safety differently had we had these provisions in place. I'm speaking in particular of the general prohibition.

With our existing legislative regime, Madam Chair, we have the Hazardous Products Act, which takes a very product-specific approach. So we have, for example, regulations that stipulate limits on the presence of lead. In order for us to be able to take an enforcement approach to cadmium, we need to develop regulations that would stipulate something similar. It would obviously be corresponding to what we would learn as a result of science.

As you've suggested, the problem with cadmium is not wearing it, but ingesting it. At what level does it begin to create a problem? We're not sure. It's an issue that has started to develop recently in a couple of years of cyclical enforcement, because we are on alert for the presence of heavy metals. When we've been testing for lead we've been alive to what might also be other problems with similar products. In 2009 we didn't see a problem with cadmium. We were looking; we were on alert. It is something that has developed this year, in 2010.

For us to be able to develop regulations, as you know, is a necessarily time-consuming process. It requires consultations. If we had the general prohibition in place and we had the scientific basis to determine that at a certain level the presence of cadmium in certain products poses a danger to children or to people in general, then we would be able to actually use the general prohibition as a basis for enforcement. As it stands, in the absence of regulations, we've done what we've done today, which is a voluntary approach. We've used a voluntary approach in the past. It has been productive, but given what we might find in the marketplace going forward, it's probably something we would regulate.

● (1130)

Mr. Glenn Thibeault: So will Bill C-36 then improve the recovery rate? I know we're talking about only 10% to 15% of recalled products making it in right now. Especially if we want to get all of this cadmium off the market, will this look at ways of improving the recovery rate?

Ms. Athana Mentzelopoulos: A lot of how we improve the recovery rate will come from effective procedures. But a really important provision in Bill C-36 is through document retention. So should the bill pass, industry is required to retain one level up and one level down the supply chain of documents. That is specifically designed to facilitate the recovery of recalled items, to know where they have been distributed, where they have come from, and to be able to track them down. That's in addition to the procedural approach of recall effectiveness to follow up in the marketplace to ensure that materials and products have been removed.

Is there something you want to add, Robert?

Mr. Robert Ianiro: The only other point I'd like to add is that the orders that could be issued for corrective action could also include specific instructions on the types of documentation and information that needs to be provided to Health Canada to do exactly what you're suggesting, which is the effectiveness of the recall. So under Bill C-36 we would have the ability to do that and we would be leveraging information that Mrs. Mentzelopoulos discussed under the document retention provision.

The Chair: Thank you so much, and thank you, Mrs. Mentzelopoulos.

We're now going to go to Dr. Carrie.

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

I want to thank the officials for being here again to help explain this very important bill to us and the Canadian public.

There has been a lot of misinformation and perhaps interpretation and just misunderstanding of some of the aspects of the bill. One of the things that's close to this committee's heart is tobacco and we worked very hard together and we passed Bill C-32. I think everybody here is very proud of that. But tobacco products have a permanent statutory exemption under this bill. Only the propensity for ignition is included in the regulatory framework, and some of our stakeholders have insisted that this exclusion be deleted in the interest of the overall health of Canadians.

So why have you not changed this since the last bill? I was wondering if you could explain it to everybody in plain language and maybe give an example.

Mr. Ianiro, I talked to you about this before in one of the briefings. Would you be able to put that on the table for us?

Ms. Athana Mentzelopoulos: The broad answer is that the government's view is that Parliament has enacted valid legislation regarding tobacco. Tobacco use is a unique social and health problem, and the Tobacco Act was developed specifically to try to manage that problem. In addition, the Tobacco Act has been subjected to constitutional challenges and we know as a result of the Supreme Court decision in 2007 that it is validly enacted legislation. So there is a firm basis for management of tobacco in the context of the Tobacco Act and no need to address it in the Canada Consumer Product Safety Act.

● (1135)

Mr. Robert Ianiro: In regard to the one item relating to tobacco and tobacco products that is covered in the statute, and this is in subclause 4(2), which discusses the ignition propensity, I just wanted you to perhaps clarify that.

The Tobacco Act covers items relating to health, and it was in fact the Standing Joint Committee for the Scrutiny of Regulations that has requested that the department look at and deal with the safety aspects relating to tobacco and tobacco products. So when I referred to safety, it would include things like ignition propensity, which are often referred to as fire-safe cigarettes. This is deemed to be a safety issue and not a health issue and therefore outside the scope of the act.

The standing joint committee has requested that those regulations currently enacted under the Tobacco Act be moved under the Hazardous Products Act. In fact we are just carrying over that request to Bill C-36 so that we will have the ability to deal with the one aspect in response to the standing joint committee and to continue to have legally binding requirements for fire-safe cigarettes in Canada.

Mr. Colin Carrie: Excellent. Thank you very much for explaining that.

The other thing I've heard about is interpretation, like the word "danger", and it depends on who you talk to. Electricity can be dangerous; knives can be dangerous.

Could you explain to me what constitutes a danger and where in the bill these rules are established?

Ms. Athana Mentzelopoulos: I believe it would be most productive to start with the definitions. In the definitions it reads:

> "danger to human health or safety" means any unreasonable hazard—existing or potential—that is posed by a consumer product during or as a result of its normal or foreseeable use

Essentially, when we talk about "unreasonable", we're really trying to get at the notion that there are some consumer products that are inherently dangerous—a chain saw, a kitchen knife, there are others—that we consider to be reasonable dangers because they're part of the utility of the product. In stipulating what, then, would be considered an unreasonable danger, there is already existing, as a result of international standards, a great deal of expertise in industry itself—some of the standards that we've developed. We have implicitly, in our own regulations, to a considerable extent, the definition of what constitutes making sure something is safe. These are all elements of determining whether or not something constitutes an unreasonable danger. Also, through the consultations we're doing on the system for mandatory reporting, we have provided some further elaboration on what would constitute an injury as a result of an unreasonable danger.

So the parameters are well established in the legislation and there is considerable input and advice that we get from the work that goes on in the design industry and in other jurisdictions as well as here.

Mr. Colin Carrie: All right.

Did you want to add anything there, Mr. Ianiro?

Mr. Robert Ianiro: The only thing that I could add is that we continue internationally to develop standards that in fact will better support industry in providing them with guidance and practical tools to do the sorts of assessments right across the board in the entire supply chain. One specific standard that comes to mind is a standard being developed with over 23 countries involved—and Canada is one of them leading the pack—which is an ISO standard, the International Organization for Standardization. It's working on a standard that would help, in particular, small and medium-sized enterprises, but in fact all industry, everything from the design of a product to the manufacturing, all the way down to what would happen at distribution and retail. It's these sorts of guidance and practical tools and standards that would also help inform industry on determining what poses a danger and the sorts of things to think about through their supply chain processes.

Mr. Colin Carrie: We all heard of these independent review boards that act as procedural safeguards when reviewing an inspector's orders. This legislation has Health Canada officials who are not part of the original investigation reviewing decisions that other Health Canada officials have made. This seems to be a concern with some stakeholders, so I was wondering about this. Do you think this legislation goes far enough? Or could you comment, and again in plain language that I could explain to a constituent of mine in regard to independent boards? If there's a decision being made, how do we go about looking after somebody who has a problem with the process?

● (1140)

Ms. Athana Mentzelopoulos: The legislation provides for considerable oversight. In fact, every order has a mechanism for review. In addition, for those individuals who might not be happy with the review, there is recourse as well to the Federal Court. As well, in the broader context the process for regulation-making and the requirement for foundational regulations to bring them before the House are other layers. The provision for an advisory committee is another important consideration in terms of the oversight.

Diane, would you like to add on the review mechanisms?

Ms. Diane Labelle: Yes, if I may, Madam Chair.

The Chair: Madame Labelle.

Ms. Diane Labelle: The procedural safeguards that are implied in that question are dealt with in the legislation and in the legal system.

Officials, including the Minister of Health, who exercise powers granted to them in a statute enacted by Parliament—and in this case it would be Bill C-36—are compelled by law to act reasonably. That is to say, they must make decisions with impartiality and fairness. Fairness requires them to act reasonably and to afford procedural protection to the person who is affected by their decision. Officials, including the minister, cannot act in an arbitrary manner. And as I've mentioned, under Bill C-36 this protection is afforded to a person requesting a review of an order.

I would like to add that the legal requirements—the principles of administrative law—do not require that every appeal or review mechanism be structured like courts or quasi-judicial tribunals in order to ensure procedural fairness. And while the minister designates the review officer, once the officer is designated he or she makes the decision and cannot be dictated to, although they can take into account guidelines and departmental policies in making a decision.

The Chair: Thank you, Ms. Labelle.

We're about to go into our five-minute second round, but I'm going to make an announcement now. Because members of Parliament start their day early and we have to bring in lunch for the members only, I'm going to encourage members, as they're questioning, to go to the back and grab their lunch. This might be the only opportunity to do that until late this evening, so I wanted to remind you that lunch is for the members only, at the back.

We will now go into the second round, five minutes. That means two and a half minutes each for question and answer, and I'm going to be very strict.

We'll start with Dr. Duncan. Go ahead.

Ms. Kirsty Duncan (Etobicoke North, Lib.): Thank you, Madam Chair.

Thank you very much to the witnesses. We appreciate your time and effort.

I guess I'm still struggling with clauses 15, 16, and 17. Can you explain to me, please, the very slight differences in the wording?

In clause 15 it's without the consent of an individual and it's to address a serious danger. There's no mention about the public. In clause 16 it's imminent and there is the issue of public. And in the last one it's serious and imminent and there can be public disclosure.

Can you explain to me the differences in those three clauses, please?

Ms. Athana Mentzelopoulos: I know you've been studying it since the first question. Do you want to take it?

Mr. Robert Ianiro: Thank you, Madam Chair, for the opportunity to perhaps clarify those provisions further.

Let me begin with clause 15, which deals, obviously, solely with personal information. Clause 15 will basically allow the minister to share information with other persons or governments involved in the types of activities we at Health Canada are involved in to protect the health and safety of Canadians. In this particular case, the focus is specific to consumer products and agencies involved in consumer product safety. So this really gives us the ability to share personal information in situations where we feel that it is necessary—again, with other government agencies—to carry out our duties.

On the earlier question relating to why we have the word “serious” only in clause 15 and not “serious and imminent”, if the wording was “serious and imminent”, both of those conditions would have to be met. It would constrain us in our ability to share information, since both of those conditions would have to be met.

Clause 16 deals with confidential business information. In order for us to share that type of information, we require confidentiality agreements to be in place with the parties with which we share that information. Again, the information we would share would be related information that is required for us to carry out our business. It's again related to health and safety and consumer protection.

Clause 17 is very similar to clause 16 except that it would be the sharing of confidential business information without a confidentiality agreement in place. The clause is there to deal with situations in which there is a very serious and imminent danger and we don't have time, perhaps, to get a confidentiality agreement in place if it doesn't exist. There is an urgent need for intervention, and we want to share that information to better protect the health and safety of Canadians and take immediate action. In fact, it was also an amendment made at this committee that required that of us if there wasn't a confidentiality agreement in place. There is a requirement now in the bill for the minister to provide notice to the owners of that confidential business information within one business day after disclosure of that information.

I hope that helps clarify those three provisions.

● (1145)

Ms. Kirsty Duncan: It does help. Thank you very much.

If you look at clauses 17 and 15, in clause 17 you don't have to share beforehand. You don't have to notify beforehand. And in clause 15.... I guess I'm trying to get at where the protection for the individual is. There seems to be more protection in clauses 16 and 17 than there is for the individual in clause 15.

Mr. Robert Ianiro: The protections for individuals exists insofar as the information we would be disclosing in any statute is also subject to the provisions of the Access to Information Act and the Privacy Act.

Perhaps I can turn it over to our legal counsel, who could speak to some of the other legal statutes that are in place to support that.

Ms. Diane Labelle: Clause 15 does not set aside the Privacy Act. Those protections granted or provided through the Privacy Act continue to apply. The reason for clause 15 is to provide lawful authority to a government in a situation in which it needs to exchange information. As explained by my colleagues, in this situation Health Canada would have very little information that would identify an individual. It's usually at an aggregate level, and it would take great efforts to re-identify an individual. But in the case that an individual could be re-identified, this protects both the individual and the government institution in sharing that information.

This is not just about sharing with international agencies; it's also about sharing within government departments and with provincial counterparts. Even to function within Canada we need these types of authorities. It's also required to meet the obligations the government has under section 8 of the charter, which imposes protections against unlawful search and seizure.

The Chair: Thank you very much.

We'll now go to Ms. Davidson.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thanks very much, Madam Chair.

Thank you very much for being here with us this morning.

I know this is a bill that everybody around the table is anxious to see move forward.

In your opening remarks you commented that there are new powers in Bill C-36 requiring manufacturers and importers, upon request by the minister, to provide safety test and study results for their products.

Now that the minister has discretionary powers and can ask for safety testing and so on, what would trigger that request, to begin with, and then how would the process work after it has been triggered? What will the minister make her decision on to determine whether or not there is a danger?

● (1150)

Ms. Athana Mentzelopoulos: Thank you for the question.

In general, what we would anticipate would trigger a request like that would be a suspicion of non-compliance. If we think, for example, of a product such as children's jewellery, in which we think there may be a problem with the level of lead in it, we might ask suppliers—that provision, I believe, is related only to importers and manufacturers, so it stays at a higher level of trade—to provide test results to verify that their products are within the regulated limits.

That's probably a good example, or one of the best examples I could give you.

Mrs. Patricia Davidson: One of the other issues we talked about in predecessors to this bill was the number of inspectors who were going to be needed to make sure this bill is efficient. Can you tell me a little about what progress has been made as far as inspectors are concerned, what kinds of tools are necessary to process this function, the staff necessary? Do you feel the resources are going to be there?

Ms. Athana Mentzelopoulos: To the general question of whether I feel the resources are going to be there, yes. The funding that's been provided through the food and consumer safety action plan is considerable. It's approximately $70 million over five years, as well as ongoing funding.

Specifically with respect to inspectors, the funding for the numbers of inspectors is doubled, so what we will see over the period of the first time period of the food and consumer safety action plan is an increase from approximately 45 inspectors to approximately 90.

To your question about the process for staffing up, there are all of the attendant processes in government to do it, but we're making good progress.

Robert, do you know the exact numbers of where we are with staffing?

Mr. Robert Ianiro: In specific reference to inspectors, as indicated, prior to the five-year action plan being announced we had approximately 45 inspectors. We've already hired an additional 20, so we're already up to about 65 and well on our way to doubling that capacity by year five of the action plan, which is 2012–13.

Mrs. Patricia Davidson: Can you tell me a little bit about the penalty process that is in this bill? There are going to be heftier fines. Do you feel that there's going to be adequate enforcement?

I think we all feel that the fines system is probably going to be a big deterrent, making people comply with this. Could you give me your comments on that, please?

Ms. Athana Mentzelopoulos: The bill does introduce a very much modernized scheme for fines and penalties, the upper limit being $5 million for serious offences, and even more if they're committed knowingly. That's up from a limit of $1 million under the Hazardous Products Act.

It's important to say that I believe we have industry in Canada that wishes to be compliant. I think we have, for the most part, industry players who value their reputation. But we had, or we have now under the Hazardous Products Act, fines schemes that, for those who are not the more responsible players.... They may tend to look at it as a cost of doing business. I'm confident that the modernized fines would take us out of the realm of something that could be considered a cost of doing business.

Mrs. Patricia Davidson: Thank you.

The Chair: Thank you, Ms. Davidson.

We now have Monsieur Dufour.

[*Translation*]

Mr. Nicolas Dufour (Repentigny, BQ): Thank you very much, Madam Chair.

I would like to thank the witnesses for appearing today. I also thank Ms. Davidson for her question. The Bloc Québécois has the same concerns regarding the number of inspectors. Since she is a member of the government party, I would encourage her to put some pressure on her government to ensure that we have a sufficient number of inspectors to properly implement Bill C-36.

I would have a few brief questions. First, the preamble of the bill contains what appears to be a definition of the precautionary principle. It read as follows:

> [...] whereas the Parliament of Canada recognizes that a lack of full scientific certainty is not to be used as a reason for postponing measures that prevent adverse effects on human health if those effects could be serious or irreversible;

In your view, what was the government's intention behind that statement?

● (1155)

[*English*]

Ms. Athana Mentzelopoulos: Essentially, Madam Chair, the reference is to the precautionary principle. So this gives us the provision in cases where the evidence might be suggestive but may not be definitive. It may still be evolving. We would have the authority to act. I think a good example, although obviously not under the auspices of this legislation, is what we've done with bisphenol A and polycarbonate baby bottles. There was enough of a suggestion that there could be a problem with the exposure to infants and newborns to BPA through baby bottles that we acted to prohibit the presence of that substance in those products.

I think that's probably the best example, the recent example of how that provision might materialize.

[*Translation*]

Mr. Nicolas Dufour: Once again, according to Bill C-36, it will of course be up to the minister to respond in the event of such a recall.

[*English*]

Ms. Athana Mentzelopoulos: The minister would certainly be accountable for any intervention in such a situation.

[*Translation*]

Mr. Nicolas Dufour: Very well. Thank you very much.

Again with regard to the preamble of the bill, there is an overall view of consumer products and the environment. One can read the following:

> [...] whereas the Parliament recognizes that, given the impact activities with respect to consumer products may have on the environment, there is a need to create a regulatory system regarding consumer products that is complementary to the regulatory system regarding the environment;

And yet, this is something that can only be found in Section 16 and 17. Therefore, the Fertilizers Act and Seeds Act are excluded from the bill. And yet this bill contains a direct link with the environment. It is also a matter of disclosing personal information.

Does the government intend to develop environmental requirements as part of the regulations?

[*English*]

Mr. Robert Ianiro: There are a couple of threads to that question, first and foremost with regard to the complementarity between health and safety in Bill C-36 and environmental legislation. We're dealing with health and safety relating to consumer products. CEPA really is the statute in place to deal with environmental concerns. They do have the ability to deal with both environmental and health issues if a substance is deemed to be toxic under paragraph 64(c) of CEPA. The reason we are making reference in the preamble and in other places in the bill, such as clause 16, is for the simple fact that through our work and through the work of other departments, you will often come across information or situations that should or could lead to actions under other statutes.

For example, Ms. Mentzelopoulos described the bisphenol A prohibition that was put under the Hazardous Products Act and will be carried over to Bill C-36. One of the issues that came up through our analysis was whether there were any concerns to the environment and potential release of bisphenol A into groundwater or through the effluent out of manufacturing. Just this past weekend, Environment Canada announced some action in that area. So that's a concrete example of why we're making reference to the environment and giving ourselves a certain degree of flexibility, so that there could be sharing of that type of information to not only better protect the health and safety of Canadians but the environment, upon which, of course, our very life depends.

[*Translation*]

Mr. Nicolas Dufour: If I understand correctly, the objective is to actually facilitate relations with the other departments in order to better apply—

Mr. Robert Ianiro: That is correct.

Mr. Nicolas Dufour: Thank you very much.

[*English*]

The Chair: Thank you.

Ms. McLeod.

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

I think I would like to go back to my colleague Mr. Thibeault's sort of quest for a before-and-after example and take it into a specific product in a specific place and what would have happened before and what will happen now.

You didn't have quite enough time to really sort of follow through both sides of those examples.

Ms. Athana Mentzelopoulos: Do you mind if I continue to use the cadmium example?

Mrs. Cathy McLeod: Sure.

Ms. Athana Mentzelopoulos: Okay, thank you.

Right now with cadmium we do have some regulations pertaining to the use of cadmium in surface coatings, ceramic glassware, but we do not have established in regulation an allowable limit or any restrictions on the presence of cadmium, for example, in children's jewellery.

With the Hazardous Products Act we really are required to stipulate in specific regulations that are targeted to particular uses or particular products. In order for us to have the basis to take enforcement action.... For example, having found this year the presence of cadmium in children's jewellery, the only way our inspectors can take action on that is if they have the basis in regulation.

We may proceed under the Hazardous Products Act to develop the regulations that would provide that basis for action. As you probably are aware, the minister released this morning a request that industry take a voluntary approach and avoid any products that have that or not use the substance.

In the context of the Canada Consumer Product Safety Act, this legislation, it would be in particular the general prohibition that would allow us the parameter to take action. So if we knew, for example, that cadmium above a certain limit in a particular product —because it is likely to be mouthed or sucked or chewed by a young child—would or could pose a health problem and unreasonable danger, we could use the provision of the general prohibition as the basis for our inspectors to act very quickly and to move forward with a recall, whether it would be mandatory, which we would have the provisions for in the legislation, or voluntary, where we have a company that says yes, they recognize the problem and they move quickly to recall the product.

So it comes back to whether you have a very narrow product-specific focus, as we do now with the Hazardous Products Act, or the ability to take action when you've determined that in fact there is a danger to human health or safety more broadly.

● (1200)

Mrs. Cathy McLeod: I'm sure that throughout your time you've had some good consultations with Canadian business. In general, are they describing this is going to be a positive step for them? What has been the feedback from Canadian business?

Ms. Athana Mentzelopoulos: I would characterize the feedback generally as quite positive in the context, for example, of the general prohibition. The requirements that we are placing are requirements that already exist in large part. They are things that industry is aware of because of the results of decisions, for example, in liability cases that have been before the courts.

As I've said, we have an industry in Canada that largely values its reputation, wants to ensure it's providing safe products. The general prohibition really codifies those requirements and makes it transparent. It helps to build a level playing field.

In many respects, the provisions that we have in this legislation are already in place in other jurisdictions as well. So given the global nature of the marketplace, we have companies in Canada who are already subject to mandatory reporting provisions, for example, in the United States. So for many of the players in industry, they are familiar with the kinds of provisions, and if not the specific provision, they're already working to ensure they have safe products, and they appreciate the level playing ground.

Mrs. Cathy McLeod: You did talk earlier about having benefited from a relationship with the United States in terms of their legislation. I guess what I would like to understand a little bit better is do you have sort of an appropriate program system, databases? Does the U.S. have one? Are you developing one? Is it going to be shared? So talk a little bit about how we're going to appropriately track and monitor what's happening.

Ms. Athana Mentzelopoulos: Thank you.

At the moment we have a system in place for tracking consumer complaints, and I believe it's a robust system. We have to build on that system, because for mandatory reporting we expect we will be receiving quite voluminous raw data. Whenever there is a serious incident, there will be a requirement upon industry to provide a report. We're currently building that system. We have a lot to learn—and we are learning it—from the United States; they've already implemented their system. We have worked closely with them and studied how it has gone for them, and all of that is feeding into the design of our own system.

We're also consulting. We first issued a kind of consultation paper on what that parameters would be for the mandatory reporting system; it is on our website now. We've been using it as a basis for a quite considerable discussion that Mr. Ianiro has had with various industry players. We're starting to receive comments on it. We were asked, actually, to extend the comment period and have done so. It lays out what we would expect our regulatees to report on and starts to define the parameters. Once the consultation period closes, this will all feed into the design of the system.

Did you want to add anything, Robert?

● (1205)

Mr. Robert Ianiro: The only thing I would add is specifically on the question of how we're liaising with the U.S. and, going forward, how we would share information. In fact, for both our consumer incident reporting form, which is available on our website in a smart, fillable PDF form, as well as the analogous form for consumer reports of incidents, we've looked at other jurisdictions, in particular the U.S., and have tried to harmonize those forms as much as possible. And we have engaged in discussions with the United States Consumer Product Safety Commission. Down the road, we would hope that a report in the U.S. would be equivalent—almost the same form, with the same fields—to what would be submitted in Canada.

All of that work is ongoing, and I would say already there is a great degree of harmonization.

The Chair: Thank you, Mr. Ianiro.

Now we'll go to Monsieur Dosanjh.

Hon. Ujjal Dosanjh: Thank you.

I'm sorry to be a bit of a pest, but I want to revisit clauses 15 to 17.

The Chair: You left yourself open, but I'm not saying a thing.

Hon. Ujjal Dosanjh: I've been called worse; don't worry.

I looked at the Library of Parliament summary on the history of this section and at Senator Banks' amendment. It talks about essentially providing the same kind of protection to personal information that you provide to corporations or businesses. Why is it so difficult for you to draft it in a way that provides the same protection? When you first share it with a person, or a government in the position of having an obligation for the protection of health and the like, why couldn't you have the same prohibition that it not go public? And if it does go public, Banks' amendment provided you at least six months to notify the person, not just one day, because you had no agreements with the individual.

I'm wondering why it is that you can't provide that protection. The scenario that you paint, Mr. Ianiro, isn't the only scenario wherein you might be sharing information about people. It's not just a six-year-old child who has some problem and you simply don't give their address or name and just share the information. The scenarios could be extremely difficult and complicated.

I'm not satisfied that Banks' amendments are unreasonable, and if you can't satisfy me, we may end up introducing those amendments here.

When you came to brief me, I hadn't looked at the provisions. I simply thought that what you were saying was eminently reasonable. Now I look at the provisions and I look at what he was seeking, and it's not unreasonable. He's not preventing you from sharing information; he is simply saying to you, please give them the same protection: that first you share the information, if it's not that serious, with the proviso that it not be made public, as you do in clause 16, and then, if you have to share it, you have not just one day but six months to notify the person.

The Chair: Mr. Dosanjh, your time is running out. I think you want an answer, right?

Hon. Ujjal Dosanjh: No, I just wanted to make sure that they understood that I'm extremely concerned about this.

The Chair: Okay.

Would somebody like to...?

Ms. Labelle.

Ms. Diane Labelle: Let me reinforce the response, Madam Chair, that we provided to Dr. Duncan.

Individuals do have greater protections than businesses, in fact. The government's Privacy Act continues to apply, and the protections granted to individuals with respect to their personal information continue to apply. This does not override the Privacy Act. It does, however—

Hon. Ujjal Dosanjh: Yes, it does, constitutionally, when you pass a law subsequent to a previous law, unless you say privacy law impacts all laws.

Ms. Diane Labelle: In this case, it does not say “notwithstanding the Privacy Act”, so it's to work in a complementary fashion with the Privacy Act. The Privacy Act is not ousted here. What it does is provide government with an opportunity to work with other governments, including our own provincial governments, when a serious danger comes up and needs to be shared with another government so that appropriate policies and interventions can be taken.

● (1210)

Hon. Ujjal Dosanjh: But you have the same availability in the business situation. Why are you providing them with a protection?

Ms. Diane Labelle: My understanding is that the Privacy Act provides a greater protection to individuals than any statute does with respect to businesses—

Hon. Ujjal Dosanjh: Then to satisfy Senator Banks, why not repeat those protections here?

Ms. Diane Labelle: That is something that can be looked at, but in essence we try not to duplicate Parliament's legislation.

Hon. Ujjal Dosanjh: You're going to have to do one or the other. Either you're going to have to amend it or you will at least have to indicate that the Privacy Act would provide some protections.

Senator Banks is not a lawyer—well, maybe Senator Banks is a lawyer, but I'm a lawyer, and I'm having difficulty, so I think you're going to have to make some effort to deal with it.

Ms. Diane Labelle: The second concern from the government's perspective is that the requirement to notify after six months would actually create a legal obligation on the government to actually collect more personal information than it would normally.

The government does not automatically receive all the identifiers with respect to an individual. You might know their age and the type of injury they've suffered, but you don't necessarily know where they live or who they are and what their names are. Notification by the government would require an additional collection of personal information, which I think then defeats the Privacy Act.

We would simply say that the privacy commissioner appeared before the Senate committee and expressed the view that from a privacy aspect, there were no concerns.

The Chair: Thank you, Ms. Labelle.

Go ahead, Mr. Uppal.

Mr. Tim Uppal (Edmonton—Sherwood Park, CPC): Thank you, Madam Chair.

This legislation is obviously geared towards protecting consumers, protecting Canadians, from products that might be dangerous to them, but I'd like to ask you about Canadian businesses. How does this impact Canadian businesses, both those that play by the rules and those that may not? Also, how is it good for Canadian businesses?

Ms. Athana Mentzelopoulos: Given my previous statements that for the most part we have a very responsible industry in this country, I think the tangible impacts of this legislation would probably be marginal for most of Canadian industry, especially given, as I mentioned, that there's already a requirement in other jurisdictions and that much of our industry involves international players, so they do exercise such things as document retention. They're already responding to requirements, for example, for mandatory reporting in other jurisdictions.

There are some quite specific requirements. For some in industry, the requirements will be new, but the design, for example, of mandatory reporting is really oriented to make sure we have a system that's efficient and user-friendly. The requirements will be clear.

We have also taken it as a bit of a principle to aim at the highest levels of trade; for example, if I may come back to the clause 12 authority, in which the minister has the authority to request test results, we've targeted that at the higher levels of trade—importers and manufacturers—where the responsibility really ought to lie, rather than having such a requirement at, for example, the retail level.

I think we've calibrated it to where the accountability lies in the supply chain, and we've also tried to make sure that we've calibrated the requirements to what different levels in the supply chain are capable of.

In terms of an overall benefit, certainly I would come back to the level playing field. In terms of codifying the requirements to ensure safe products through the general prohibition, these are requirements that exist now. This makes it clear for anyone in industry that they have a responsibility to ensure that the products they're selling to Canadians are safe.

Mr. Tim Uppal: I'd like to speak to you about the possibility of design flaws. A child's toy may be safe in the sense of what it's made of or what it is, but if the design is such that a child could very likely break off a piece and put it in his or her mouth or something, is there a plan? Are you following the design of products as well?

Mr. Robert Ianiro: Thank you for that question.

There is no doubt that there is a broad range of players, and the supply chain is quite extensive. If you go back to the uppermost level, it definitely includes designers. How we've structured the general prohibition in a statute is by refocusing the emphasis on creating that safety net again, to deal with products that may not have specific requirements or a specific regulation, to take into consideration safe design, to know what you're using in your products, and to consider their reasonable and foreseeable use.

As per some of my earlier remarks, we do understand and appreciate that we need to give practical tools and guidance to industry in the way of handbooks, guidance documents, and policies. There are a lot of international standards in place, as well, that we would be leveraging. I indicated as an example the ISO/PC 243 standard, which does take that broad look at consumer product safety—to factor in design, to factor in manufacturing protocols, and to look at quality assurance. All of these things have been built in and will continue to be built as part of the broader framework of the legislation.

● (1215)

Ms. Athana Mentzelopoulos: I would just add that through the food and consumer safety action plan, one area that has been resourced is standards development, so that will also be quite beneficial in the context of your question.

Mr. Tim Uppal: You spoke about this legislation as being very much in line with the U.S. How does this legislation work in the EU? How do we compare with legislation there on product safety?

Ms. Athana Mentzelopoulos: This is a Canadian approach, but we've certainly designed it to ensure a similar level of safety compared to our trading partners. In the EU, for example, they have a general safety requirement that is similar to the general prohibition, which really is an effort to keep the accountability for safety of products with industry.

In the United States, the provisions around mandatory reporting are very similar—document retention.... Given that we felt we needed a Canadian approach, we wanted a similar level of protection to prevent, for example, product dumping. I believe we have achieved that balance.

The Chair: Thank you very much.

We'll now go to Mr. Thibeault.

Mr. Glenn Thibeault: Thank you, Madam Chair.

In its study of Bill C-36 in May 2009, this committee heard from *Options consommateurs* that there is a need for a national recall register, maybe something like the inclusion of a public complaints or a reporting database that can be updated. I think a good example of that is the Canadian Food Inspection Agency, which has its food recall list up on the Internet. Is that something you would be willing to consider? Have you looked at it? Is there anything like that in this bill?

Ms. Athana Mentzelopoulos: There isn't a provision in the legislation. I'm not sure we need a legislative mechanism to institute that kind of thing.

We do have information on the web now about all of the recalls that have been undertaken. As well, we always work hard to make sure there is information about recalls where it's been an industry initiative. We maintain a listserv that's growing constantly. For the complaints, we have a PDF smart form. We want to try to make the information available and as user friendly as possible. As technology advances, we're always looking at ways to ensure that we're using the technology to its maximum to get the information out.

Mr. Glenn Thibeault: Where would you get that information? For example, just recently Fisher-Price and some of its products were put on there, but the products haven't been on the shelf for the last three or four years—maybe even five years in some cases. How do we ensure that in terms of technology, it's in real time?

Mr. Robert Ianiro: In October 2008 we launched a new recall website that actually includes pictures and is searchable by a variety of terminology, and by dates and product categories. That database can be accessed through a button on a toolbar of Health Canada's web page. As Ms. Mentzelopoulos also mentioned, we have a listserv that continues to grow in the thousands, where you'll get an automatic e-mail alert every time a voluntary recall is posted.

We posted over 250 recalls so far this year. We're definitely on track to probably exceeding the 305 that we issued last year. All that information is uploaded in real time. It obviously does require some time for us to reach a voluntary agreement with the manufacturers to issue those recalls, but that is all publicly available information. As well, our advisories, our warnings, and other key policy or consultation documents are sent out in fairly wide proactive net through our listserv.

● (1220)

Ms. Athana Mentzelopoulos: I would just add that Fisher-Price was something we worked on with the United States. They had received information through their own mandatory reporting system. We worked closely with them because we knew that the supply had been in Canada as well. It was a joint effort.

Mr. Robert Ianiro: I apologize; your question was specific to Fisher-Price. You can go to that website and get every single picture, every single model, the product lines, the hazard that was identified, the number of units sold in Canada, whom to contact, and the 1-800 number for Fisher-Price. All that information is available publicly on our database.

Mr. Glenn Thibeault: In relation to the other side of it, if mistakes happen, is there a mechanism in place for appeals? If so, can we have it, or would it be considered independent?

Ms. Athana Mentzelopoulos: Can I just clarify? Do you mean in the context of an order?

Mr. Glenn Thibeault: Yes. Suppose we thought toy product A from company A was toxic, and something was done, but then they realized there was an error. Is there an appeal process for them to present X, Y, and Z, and if that appeal process does exist, is it independent?

Ms. Athana Mentzelopoulos: For every order that's provided for in the legislation, there is a review mechanism. I'll ask my colleague, Madam Labelle, to speak to the independence issue, but I would like to underline that for every order there is a review mechanism.

Ms. Diane Labelle: In terms of independence, there is independence in decision-making. While the minister designates the official, the review officer, the decision itself is made by the review officer. It cannot be dictated by anyone else, so there cannot be any interference with the decision-making process. In that sense there is independence and there are procedural safeguards.

The Chair: Sorry, Mr. Thibeault; your time is up.

Go ahead, Dr. Carrie.

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

I was wondering if we could go back to what my Liberal colleague was talking about. You mentioned that the privacy laws apply to the provisions of this bill. My understanding and my challenge is that there's a lot of misinterpretation or misinformation being spread around about this bill. You talked about redundancy, and my understanding is that if we have something called the Privacy Act here, it's overriding legislation that would protect individuals, and you don't have to state that implicitly in this legislation. That's my understanding.

Could you use plain language for us, and maybe even give examples, so that we could clarify that to people who come to us with the question?

Ms. Diane Labelle: I will address the first part of your question with respect to the Privacy Act and why, in our view, it's not necessary to repeat the provisions in Bill C-36.

The Privacy Act is a quasi-constitutional document. In other words, it prevails over any other statute unless there are express provisions in the legislation provided for by Parliament that set aside the Privacy Act. This is not what clause 15 does. Clause 15 in actuality is there to respect some of the requirements under the Privacy Act. It provides, under section 8 of the Privacy Act, that if there is going to be disclosure, it has to be under lawful authority, and that's what clause 15 does. It's also in a very constrained manner. It's only with respect to information that needs to be shared with others exercising a health and safety regulatory function, such as that of Health Canada.

Mr. Colin Carrie: Would you be able to provide us with some plain-language examples? You mentioned earlier that although the intent would maybe be different, the six months might actually even make things a little bit worse. The government would have to collect more information. Could you comment?

Ms. Diane Labelle: It certainly would create a legal obligation on the government if it had to notify individuals within six months. I believe that my colleague Robert Ianiro, from the Consumer Product Safety Bureau, can provide examples as to the type of personal information they receive and how difficult it would be to identify the individuals in a lot of cases.

● (1225)

Mr. Robert Ianiro: I'm trying once again to wrap my head around the amendment. I can perhaps think of an example in which, if we're informed by a mother in Toronto that her child had an issue with their crib—a drop-side crib, for example—and she reported those details to us, the amendment that's being proposed is that if, for whatever reason, we needed to disclose personal information with another agency or with a provincial or another government about the specifics of that incident, within six months of that disclosure we would have to inform Mrs. Smith that we're disclosing that information.

The issue is that we may not have enough information from Mrs. Smith originally to contact her, and second, if she's not there, then we actually cannot share the information.

From our perspective, from an administrative perspective, it's quite difficult. Again, there are other protections and provisions that exist.

From an operational perspective, we don't deal a lot with personal information, but if this type of amendment were to be made in this legislation, it potentially sets a fairly significant precedent wherever there are other agencies collecting perhaps much more personal information. That would be very difficult and very onerous to manage, and in some cases potentially impossible.

Mr. Colin Carrie: You stated that the Privacy Commissioner was in the Senate, where a lot of these questions were directed. What was her answer, again?

Mr. Robert Ianiro: That is correct. The assistant commissioner appeared before the Senate committee and did not raise any issues at all with respect to privacy and Bill C-6 at the time.

The Chair: Thank you very much.

We now have completed both rounds, so we can adjourn, or—we have a bit more time—if anybody would like to ask a question or two, we could go on to another five-minute round, as long as I keep strict with the time.

Would anyone here like to start? Ms. Dhalla?

And Monsieur Malo, do you have a question as well?

We'll hear Ms. Dhalla and then Mr. Malo.

Ms. Ruby Dhalla (Brampton—Springdale, Lib.): Thank you very much for coming before the committee today. I'm going to ask a question probably addressing some of the concerns that my colleagues Mr. Dosanjh and Dr. Carrie have addressed in regard to the amendments and the whole issue surrounding privacy.

In consultation and discussion with some of the stakeholders—and there's a long history with the bill from Bill C-6 to Bill C-36—you guys have incorporated all of the amendments that the House had suggested. The amendments that were put forward by the Senate committee, which were defeated, have also been incorporated. The amendments by both of the senators that were passed by them at their particular standing committee have not been incorporated.

Can you give light to the committee, from what you know, on why those particular amendments by both Senator Furey and Senator Banks were not incorporated?

Then in a response to Mr. Dosanjh, Diane mentioned that they could be considered. Perhaps you could shed light for the committee and come at it from a different perspective.

Ms. Athana Mentzelopoulos: I'm not sure how helpful we can be in the specific details. We may want to revisit it with information about each of the amendments.

In general, the concerns that were voiced at the Senate were very much related to inspectors' powers. The changes made between Bill C-6 and Bill C-36 were really to address some of the issues—for example, a concern that inspectors might have the authority to—

The Chair: Excuse me, let me just interrupt for a minute.

Ms. Dhalla, you asked a question and you haven't listened to any of the answer.

Ms. Ruby Dhalla: I'm sorry, he was asking me to follow up on something else.

The Chair: Could we just pause so that you could listen to what she said?

Ms. Ruby Dhalla: I like to listen through my earpiece.

The Chair: Oh, that's wonderful. Earpieces are good.

Continue, please.

Ms. Athana Mentzelopoulos: Madam Chair, the changes that we've made between Bill C-6 and Bill C-36 really speak to some of the concerns that were expressed around inspectors' powers. For example, there's concern that an inspector might be able to enter a home for the purposes of looking at goods that were stored for personal use. It's very clear now that the actions for an inspector are confined, first of all, to the legislation, and that goods stored for personal use, for example, are outside of the realm of what the inspectors could look at.

In addition, there was some concern about what the liability might be for passing over private property. We've addressed that as well.

So really, we looked at the totality of the concerns. They were very much oriented around inspectors' powers. We believe that we've addressed them through the amendments we've made.

Again, in terms of each specific amendment, I think we would have to come back with the details of each of them, if that were what was requested.

● (1230)

Ms. Ruby Dhalla: If we could get that information, that would be helpful.

Also, Robert had given an example of a woman calling in regarding a crib and the difficulty in terms of not being able to collect personal information. Wouldn't it actually be about the crib itself and the manufacturer versus the personal information of the mother who called in?

Mr. Robert Ianiro: There's no doubt that we would end up collecting all that information as well. I only spoke to the personal information, since the question was specific to personal information. There's no doubt that information on the product, the name, where it was purchased, who manufactured it, whether it was returned to the retailer or was still in their possession—all of those would be the sorts of questions that we would definitely compile.

Again, my remarks were just specifically on personal information, since the question was relating to that topic.

Ms. Ruby Dhalla: Okay. Thank you.

The Chair: Thank you.

Monsieur Malo, I think you had a question.

[*Translation*]

Mr. Luc Malo: I have a brief follow-up question to that of Ms. Davidson, which M. Dufour also echoed in his round of questioning. It deals with the increase in the number of inspectors.

I am pleased to see that everyone agrees that the government must increase the number of inspectors, and thus not delegate all product inspection to the industry. You have told us that the number of inspectors would increase from 45 to 90 by the end of fiscal 2012-2013.

I am simply wondering how you came up with that number of 90. Was that based on the $70-million funding envelope over five years and a mathematical calculation by dividing wages, etc., in order to come to 90? Or was consideration given to the scope of the bill and everything that is needed to really carry out the work, pursuant to the law's obligations? How did you come to that number?

[*English*]

Ms. Athana Mentzelopoulos: I'll ask Robert to fill in the blanks. He was there personally during some of the discussions.

Essentially, there was a recognition that we needed more resources amongst our cadre of inspectors. We've done the analysis to ascertain, for example, where we have.... We want to go where the work is, essentially.

In my own travels recently, as the new DG, I visited with the regions. We don't necessarily have a uniform number of inspectors associated with each region. In British Columbia there is a lot of volume with imports, and we need to make sure we're resourced appropriately. It's the same in Ontario; a considerable extent of industry is found in Ontario. Obviously we would have—and this is the case—more resources in Ontario than we might find in areas where, for example, there's less industry, less import activity. In Quebec as well we have obviously larger numbers; it correlates to going where the work is and making sure that we're addressing the need.

Did you want to add to that, Robert?

Mr. Robert Ianiro: Sure.

I think part of the answer also is that we've been focusing a lot around solely increasing our capacity of inspectors, which is clearly very important. We are doubling that capacity. By the fifth year of the action plan, 2012-13, in fact we will have overall doubled the entire complement in consumer product safety. We actually will have increased by about 125 employees.

I think it's important to recognize that we also are hiring more analysts to do testing and verification at our laboratory. With the introduction of the general prohibition, there's going to be a lot more research, hazard evaluations, hazard assessments, risk assessments. We're bringing in mandatory incident reporting. We need to have people sitting behind computers triaging the data, analyzing the data. These are all individuals beyond and in addition to the inspectors.

So it's a fairly broad complement of new employees. Inspectors are obviously very critical. We have those who would be devoted to risk assessment, those devoted to standards development. I think also a very critical piece, given the post-market regime of consumer product safety in Canada and worldwide, is the critical importance of outreach. There are also resources and new staff devoted to outreach. That includes outreach to industry in terms of understanding their obligations, as well as outreach to consumers, since we all have a role to play. As regulator, obviously, as government we have a role to play. Consumers have a role to play. Obviously manufacturers and industry have a role to play.

So it's much, much broader than just inspectors.

● (1235)

[*Translation*]

Mr. Luc Malo: Madam Chair—

[*English*]

The Chair: Just a very teeny one.

[*Translation*]

Mr. Luc Malo: I am addressing you, Madam Chair, I am no longer speaking to the witnesses.

If ever the witnesses are aware of the details as to how the new and current employees will be deployed in the various trades, committee members would appreciate receiving that information.

Thank you very much.

[*English*]

The Chair: Thank you.

Ms. Mentzelopoulos, is that possible to do that?

Ms. Athana Mentzelopoulos: Yes, Madam Chair.

The Chair: All right. We will ensure that you have that, Monsieur Malo. It would be our pleasure.

We now go to Monsieur Thibeault. Do you have any questions, sir?

Mr. Glenn Thibeault: I have just one follow-up very quickly. Some of the—I hate to say "negative"—people are concerned with this bill and basically don't want it to be seen that we're creating a dragnet where anything can be considered a potential danger—like we have to put a big warning sign on scissors that you shouldn't run with them. Anything is possible, but what is practicable?

Is the definition "danger to health and human safety" in Bill C-36 too broad?

Ms. Athana Mentzelopoulos: I would say that given how it's subsequently defined in some of the policy elaboration we're doing, including through the consultation we're doing on mandatory reporting, no, it's not too broad.

I think that in program delivery we are always going to have a responsibility to provide precision, to be transparent to our regulatees, to provide the policy elaboration. But it does give the scope within, for example, reasonable and foreseeable use.

You mentioned you have a three-year-old daughter. We have toy experts whose life is literally to try to look at toys through the eyes of children and imagine all the various ways they can get at them, pull them apart, and make something that wasn't previously a problem into a problem.

So in terms of trying to anticipate the unexpected, as you say, we do need some latitude. And we get a lot of advice from legal colleagues on this. We have to provide the precision to give transparency so that regulatees know what it is we expect.

Mr. Robert Ianiro: Maybe I can just give a few other examples of wording or terms that are used in other statutes in other countries that would be analogous to our "danger to human health or safety".

One of the risks of providing any more specificity is the very nature of the general prohibition and the definition of "danger to human health or safety" is to create that safety net to deal with unforeseen hazards, unregulated products, unregulated hazards.

The European Union has what is referred to as a general product safety directive, where they basically say you can only manufacture and sell safe products. We talk about not being able to manufacture, import, advertise, or sell something that poses a danger. The United States in their Consumer Product Safety Act basically defines a "substantial product hazard".

So there are analogous definitions and terminologies that are used worldwide, and they are for the exact same reasons as what we would have. I think the simple answer would be we don't think it's too broad and it is required to support the general prohibition in the manner that we've explained.

Mr. Glenn Thibeault: Thank you.

The Chair: Okay, is your question answered, Monsieur Thibeault?

Now we will go to Ms. McLeod.

Mrs. Cathy McLeod: Thank you, Madam Chair.

This perhaps is a little bit of an unusual question, but again it helps me and perhaps others understand how both this new product safety act will work and some of the responsibilities of the department.

I had a very unusual situation last week where a constituent brought in a fry pan. This particular fry pan was from China, and when she read the fine print it said if you leave it on the stove it could kill birds. This was in print. So she was very concerned about this particular fry pan and what is it that would kill a household bird and was it hazardous to humans. So again in my pursuit of examples, maybe walk me through this as to how your department would handle this, whether it would ultimately decide that this substance that kills birds is hazardous to humans.

● (1240)

The Chair: Who would like to take that question?

Mr. Robert Ianiro: I'll try that one.

The labelling you're referring to, I would suspect, not having all the details, is reminiscent of labelling that is in place under Proposition 65 in the state of California, whereby you're required to label pretty much any product that contains any substance that is a known carcinogen, mutagen, or reprotox.

What I find a bit intriguing and perhaps bizarre in this situation is that it's about potentially killing birds. All I could suggest is that I think it's stemming from overheating frying pans. There is a certain chemical in the frying pans, which is often what's called PFOS. I'm not even going to try to give you what that stands for, but I'm pretty sure it's perfluorinated octanal sulfonate. It is something that's used in non-stick. If you put your frying pan on a stove for extended periods of time at high heat, it will release these fumes, and they could potentially kill birds.

I think we would probably be a bit more concerned if it were.... This is not to suggest that I'm not a bird lover, but we obviously would be more concerned with human health, with respect to Bill C-36, which is what we're here to speak to you about.

Mrs. Cathy McLeod: So in this particular case, if someone brought this forward, you would assess it against the substance. You would determine whether Bill C-36 was....

Mr. Robert Ianiro: Exactly. There are a couple of elements. The first thing is—we didn't raise this, and it didn't come up in any of the questions—that we have new requirements in Bill C-36 that don't currently exist under the Hazardous Products Act. These relate to false and misleading claims relating to certification or health and safety claims. If it is indicated that something meets standards of CSA, the Canadian Standards Association for electrical safety...those types of things would be prohibited. So there are some new labelling and misleading and false claim requirements under the bill.

Speaking specifically to what we would do if we got that complaint, clearly we would need to identify whether it falls within the scope of the act. Clearly in this case, a frying pan does; it is an unregulated product. If it contained a substance of concern and we did a risk assessment and determined that there was an exposure to that substance and that therefore potentially it created a danger to human health or safety, we would have the ability.

It's an interesting example, because it's an unregulated product. Currently, under the HPA it would be very similar and analogous to the cadmium example we've used. Going forward, under Bill C-36, if there is a substance of concern that is found in the consumer product and there is exposure to that substance, then we would have the ability and the authority to take action.

The exposure is critical, because you could have a substance in a product that isn't accessible: there is no exposure; it isn't available. And it's only through that exposure that there actually could be a health concern.

The Chair: Thank you, Mr. Ianiro. We are absolutely, fully assured that you do love birds and we really appreciate your insightful dialogue, because we certainly learned something new.

Just for clarification, Ms. McLeod, you said you were going to bring the product in, meaning not the dead bird but the substance it was exposed to. Is that right?

Mrs. Cathy McLeod: This particular constituent left this frying pan with me, so I actually will.

The Chair: Oh, very good. Well, we look forward to its arrival.

We'll now go on to Mr. Dosanjh.

Hon. Ujjal Dosanjh: Ms. Labelle, can you take me through your thinking on the applicability of the Privacy Act and this particular act, as to which would override which? You mentioned that the Privacy Act is quasi-constitutional. I've never heard that word before. Something is either constitutional or not. I know that certain pieces of legislation override others, depending on whether one is specific or general.

Can you take me through that?

● (1245)

Ms. Diane Labelle: With respect to the expression “quasi-constitutional”, the Supreme Court of Canada has recognized status for certain statutes—the Privacy Act, the Official Languages Act. In other words, it's very hard to set aside these statutes, without express mention by Parliament, in a piece of legislation.

Madam Chair, I would ask that I may call upon my colleague Elspeth Gullen, who has expertise in privacy law, to provide further information to Mr. Dosanjh.

The Chair: Please go ahead.

Ms. Elspeth Gullen (Legal Counsel, Legal Services Unit, Department of Health): Thank you, Madam Chair.

I haven't got a copy of the Privacy Act in front of me, but I've dealt with the Privacy Act and the Access to Information Act for a number of years. The Privacy Act has certain provisions, of which section 8 concerns disclosure without the consent of the individual. The premise is that you have to have the consent of the individual, save and except certain examples that are set out in section 8 of the Privacy Act. One of them, and it's subject to a new act of Parliament, is that you have the authority. And what this bill is attempting to do is to provide the authority to provide without consent. However, that does not usurp the other provisions in the act that govern the protections afforded to the individual in the disclosure of personal information.

For example, there is still the provision that if there is to be disclosure subject to a subpoena, there is disclosure in the public interest. Those continue to apply. But as my colleague Diane Labelle has noted, the Supreme Court of Canada has noted that the Privacy Act has a quasi-constitutional status: the Supreme Court of Canada decision of Dagg.

Hon. Ujjal Dosanjh: That's exactly what I was thinking. You could actually then provide, under this particular piece of legislation, in clause 15, personal information beyond the crib. It could be personal. Crib is not personal; what happened to the crib is not personal. For that, this is an area where you don't have to argue what you're arguing, because that example is not really valid in terms of your argument. Personal information isn't the crib or what happened to the crib; it's about the identity of the individual or something that might identify the individual. You haven't argued that at all.

My concern is that if you then did give personal information, you could as a government stand up and say, “Oh, sorry. We did that, but it was in the public interest”, because a court would then assess the situation as to whether or not it was in the public interest and would allow that to happen.

What I'm saying is that this particular regime that you have in clause 15, which is different from clauses16 and 17, doesn't provide the safeguards under those circumstances to individuals. I'm a little worried. I'm just expressing that to you.

Ms. Elspeth Gullen: Thank you.

Again, I can't emphasize more that there are protections afforded in the Privacy Act to individuals. This proposed piece of legislation does not override those. When you're looking at the confidential business information—you're talking about the differences in clause 17—you're looking at common law issues. But in the Privacy Act, the other protections still are afforded to the individuals. They're still there.

Hon. Ujjal Dosanjh: Thank you.

The Chair: Thank you so much, Mr. Dosanjh.

We have completed the third round. We don't have time to complete another one. We even added an extra person in there.

I thank the witnesses very much for coming today and for all your insightful information.

Ladies and gentlemen, the meeting is adjourned until next day. The minister will be here next day.

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