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Chair

Mr. Bill Casey

Standing Committee on Health

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• (1605)

[English]

The Chair (Mr. Bill Casey (Cumberland—Colchester, Lib.)): We'll call our meeting to order. This is meeting 94 of the Standing Committee on Health, pursuant to the order of reference on Tuesday, January 30, 2018, Bill S-5, an act to amend the Tobacco Act and the Non-smokers' Health Act and to make consequential amendments to other acts. We're here to do clause-by-clause.

I'd like to introduce our witnesses who are our resource panel whom we will call on when we get in real trouble. Mr. James Van Loon, director general, tobacco control directorate; Denis Choinière, director, tobacco products regulatory office; Anne-Marie LeBel, legal counsel; and Saira David, director, tobacco labelling division and plain and standardized packaging division.

Thank you very much for coming. We'll be calling on you as we need you.

I have notice of a point of order.

Hon. Diane Finley (Haldimand—Norfolk, CPC): Thank you, Mr. Chair.

Mr. Chair, I understand that the government is eager to push this legislation through. I'm all for efficiency. That said, this is important legislation. It is very comprehensive. It's very complex. We heard conflicting testimonies from a number of witnesses. Yet to do the clause-by-clause, I just received these documents last night and this morning. In fact, I was handed one of the amendments after I entered the room today.

Now normally in my experience with committees, the amendments are handed out ahead of time so that the members of the committee have sufficient opportunity to review the documents on their own, then to meet with their caucus members to debate and discuss the positions before they decide how they want to proceed. That opportunity has been denied us, especially as, this morning, we were all required to be in our caucuses, we often have commitments over lunch, and then we've been required to be in the House of Commons. So there has been no opportunity whatsoever for the members to give these amendments the due diligence that they need and deserve.

I do believe that the broader purpose of putting forward good legislation would be better served if all the members had the opportunity to give these amendments the attention they deserve. I

respectfully request that we be given more time so that the quality of legislation is up to the standard that Canadians expect of us.

The Chair: I'm going to turn down that request. It's important that we get legislation through. We often have amendments and proposals in committee with no notice. Last week, Mr. Davies proposed a motion with no notice at all, and we had three minutes and 29 seconds to analyze it I think, on the Liberal side I'm going to turn down your request.

We'll go ahead with clause-by-clause.

Mr. Don Davies (Vancouver Kingsway, NDP): Mr. Chair.

The Chair: Yes.

Mr. Don Davies: I want to make one small correction to the record. I had served notice of the motion that I moved in writing prior to the meeting, but we went into committee business, so it's not quite accurate to say that people just received it then. However, your point is well taken. I don't challenge your decision.

Rather than wait until we get to this in the appropriate part of the bill, I have two questions that I think would be helpful for all committee members if we could have clarified. I am wondering if I could put them to the ministry staff.

One is whether this bill, as it purports to regulate vaping, would also apply to cannabis products. In other words, are the vaping regulations there to regulate vaping regardless of the substance being vaped?

The second question that I had was whether a heat stick—we did hear evidence about heat sticks, and I know there are some amendments from Ms. Gladu on heat sticks—is covered by the definition of tobacco products or vaping products currently in the bill. That will help me to consider the amendments as they come forward. I'm wondering if you have answers.

The Chair: Can we have some help here with that question?

Mr. James Van Loon (Director General, Tobacco Control Directorate, Department of Health): No, cannabis products are not covered in this act. They are carved out. There's an amendment in here that puts one final little detail on making sure that those interfaces are correct, but no.

Second, on heat sticks, yes, they are covered by the definition of tobacco product as it is amended in S-5. S-5 has an amendment to the definition of tobacco product such that—and I'm going to paraphrase a little bit—devices that are necessary for the consumption of a tobacco product are also tobacco products, and they are covered.

The Chair: Does that satisfy your question?

Mr. Don Davies: Yes. May I have just have one follow-up question? I was looking quickly for the definition of vaping products. Are we 100% sure it won't cover cannabis products? You seem to be very definitive about that. I don't doubt it, but I want to be very sure.

• (1610)

Mr. James Van Loon: That would be in Bill C-45. It says the cannabis products are not subject to these.

Mr. Don Davies: Okay.

The Chair: We will proceed with clause-by-clause. I know of no amendments to clause 1 or clause 2, so shall they carry?

(Clauses agreed to)

(On clause 3)

The Chair: I believe there's a proposed amendment to clause 3.

Ms. Marilyn Gladu (Sarnia—Lambton, CPC): Yes. One of the things I think is important is the technology is ever-evolving. Vaping devices change. Different models come out. Heat sticks have come out. There may be other products that come out.

I wanted to make sure the legislation was as up to date as possible. I proposed a few amendments that add the technology that exists today. This one is to define heat stick as a terminology that could have common understanding and add that under the tobacco legislation part of this.

The Chair: Go ahead, Mr. Oliver.

Mr. John Oliver (Oakville, Lib.): I don't know whether it's permissible or not in clause-by-clause, but if in the end the other amendments around heat sticks aren't adopted, then we really don't need a definitional element in the upfront of this.

Can we defer this particular amendment until we have dealt with the other three and then come back to it, or do you want to deal with it upfront?

The Chair: I just asked our legal counsel if we could reverse the order. He said it would be difficult.

What if Ms. Gladu agreed to this? Would that be all right?

Ms. Marilyn Gladu: Absolutely. I'm fine to defer the vote on this until we talk about the other ones because if there are no heat sticks mentioned, then of course we wouldn't need a definition.

The Chair: We're going to defer clause 3 until we get to the very end.

Go ahead, Mr. Davies.

Mr. Don Davies: Again, maybe it might help clarify this point too. That was the purpose of my question to Mr. Van Loon that if heat sticks are already covered under the definition of—I wonder what it would be: tobacco product? Can we get an answer to that? Maybe our legal counsel can advise us whether we need to have a definition of heat stick if it's already covered under the bill.

Mrs. Anne-Marie LeBel (Legal Counsel, Department of Health): I would like to turn your attention to the bill. It's in clause 3, page 2, the definition of tobacco product. If you read the definition, you'll see that in the second sentence it mentions certain

things including “a device...that is necessary for the use of that product and the parts that may be used with the device”. That's the part that would cover the heat stick device.

In terms of the heat stick that goes into the device, it's a product made of tobacco, and it's captured by the first sentence of the definition.

The Chair: Go ahead, Mr. Oliver.

Mr. John Oliver: This is exactly the debate we were trying to avoid, having a debate about whether the existing definition is adequate to cover heat stick. We can have that debate now, but depending on the outcome of the other three amendments, we may not need to have that debate.

That's why I'm asking that we defer this particular amendment until we have dealt with the other three. Or we could have it now.

The Chair: Ms. Gladu.

Ms. Marilyn Gladu: The reason I thought it was worthy of clarification is that it's obviously clear to the people who are expert in this, but I have heard from stakeholders some discussion about the fact that heat sticks should actually be under the vaping regulation because they are not combusted. I just wanted to have clarity.

• (1615)

The Chair: Go ahead, Ms. Finley.

Hon. Diane Finley: I think it's important that we set out as we mean to go on. We need a context in which to decide which of these other amendments are applicable, or whether they're okay as is, or whether they need to be modified. We can't do this unless we know what it is we're talking about, whether there should be separate rules for one product from another, or slight interpretations, or indeed, additions to the amendment, to clarify. We won't know that if we don't know specifically what it is we're talking about.

The Chair: I believe we avoid that issue by delaying and deferring CPC-1 to the very end. I know your point, but I believe that's resolved that issue. We won't be dealing with that until we get to the first batch of amendments later on, and that will decide whether we have to do CPC-1.

Go ahead, Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): If the discussion is done, I'm done, but if we need to carry it on, I just wanted to make a point. Because Ms. Gladu's motion specifically deals with the term “heat stick”, until we get to those definitions we don't know whether we need a specific definition at this point. In support of the deferment, let's wait until we get to those items, deal with those items, and then we can come back as we have some context for this definition.

The Chair: Go ahead, Mr. Davies.

Mr. Don Davies: Not to belabour the point, but there's no debate that's happening right now. We're not debating whether it's a good amendment or not. In light of the advice from the ministerial staff, "heat stick" is already included in the definition. It's already covered by the act. I remain open to being corrected by legislative counsel here, but just as we don't have separate definitions for every kind of cigarette device—they're covered under "tobacco product"—I don't think as a matter of legislative drafting we would pull out of that and define one piece of that if it's already covered under a general definition. Whether or not there are other sections in the act on heat sticks that we may want to pass, or not, we don't need a definition of "heat stick" if it's already covered under a general definition. Otherwise, you would be rolling out every single type of specific product: heat stick, vaping pen, etc. You wouldn't need to do that if it's covered generally.

If we're confident in the advice we're getting, that heat sticks are already covered under that, then I think we can deal with that now. Under no circumstances would we be amending the act to include a definition of heat stick when it's already covered, I think. I don't know if counsel has any advice on that, whether it would be prudent to flesh that out.

The Chair: Go ahead.

Mr. James Van Loon: I'll go a little deeper in the hope of providing a bit of additional clarity.

If we look at the definition of "tobacco product", which is on page 2:

It includes papers, tubes and filters intended for use with [products that are made of tobacco and] a device, other than a water pipe, that is necessary for the use of that product and the parts that may be used with the device.

That device framing there is intended to capture the products that are used to heat tobacco. That puts those inside the definition of "tobacco product".

Then if we go over to the definition of "vaping product", and look down at the bottom, so now I'm on page 3:

It does not include devices and substances or mixtures of substances that are excluded by the regulations, tobacco products or their accessories.

So because those devices became tobacco products, they are not vaping products. This is an amendment, to put in this device thing, and its purpose is to capture these heated tobacco products.

The last thing I would mention on that is this enables a bunch of regulatory authorities within the act. Those things can be fairly nuanced, and different products can be treated differently under those regulatory authorities, if need be.

The Chair: Go ahead, Mr. Oliver.

Mr. John Oliver: My intent in suggesting we defer the amendment—we have, what, 40-some amendments to discuss and debate to go through here—was to exactly avoid that discussion that just took five to eight minutes, which we didn't have to have if we weren't going to have the other amendments. But since we've had them, rather than waste our time and come back to this one again and reacquaint ourselves with it, I'm going to suggest that we vote on this proposed amendment now.

• (1620)

The Chair: Okay.

I see heads nodding.

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

(Clause 3 agreed to)

(Clause 4 agreed to)

(On clause 5)

The Chair: Now we go to clause 5.

I believe there's an amendment there from the NDP. Can one of the NDP members describe NDP-1, please?

Mr. Don Davies: I've been nominated to do that by the NDP caucus. I won't belabour this. This amends the purpose section to include the additional purposes to reduce the burden of addiction, disease, and death from tobacco use, and to incorporate the very oft-repeated goal that we've heard from the health minister and others to reduce the prevalence of the use of tobacco products every year to no more than 5% of the population by the year 2035.

We think this is a desirable amendment because it would allow a broader range of measures under the act. The minister testified before the committee that she wants to achieve that objective, so I think these goals would be more achievable if the government had legislative authority to aim for it in the purposes section.

The Chair: Go ahead, Mr. Ayoub.

[*Translation*]

Mr. Ramez Ayoub (Thérèse-De Blainville, Lib.): If I understand the amendment correctly, I would say it's a little redundant.

Clause 4(1) of the bill talks about "implicating tobacco use in the incidence of numerous debilitating and fatal diseases".

It is very similar to paragraph (e) of amendment NDP-1, which talks about reducing dependence on tobacco products. That's clear. The purpose of the bill is to reduce tobacco use, its consequences, and the resulting number of debilitating and fatal diseases. It's all connected and it's redundant.

It then seeks "to reduce the rate of use of tobacco products to no more than 5% of Canadians by 2035."

Any goal like that is generally laudable. That said, I think setting such a goal now is premature. According to scientific reports, the political will, even the development of the public, can change. Given that the bill is already very broad in scope, I think it's redundant and it does not add anything.

I therefore propose that this amendment not be passed.

[*English*]

The Chair: Go ahead, Mr. Davies.

Mr. Don Davies: Not to belabour the point, but I think the point of redundancy is well taken but not exactly accurate, because the purpose talks about protecting the health of Canadians in light of conclusive evidence implicating tobacco use in the instance of numerous debilitating and fatal diseases, whereas the first purpose that I propose to amend specifically incorporates the purpose of reducing dependence on tobacco products. That is missing from the current purpose.

In terms of reducing the rate of use of tobacco products to no more than 5% by 2035, Mr. Ayoub has made exactly the case for why it should be in the act, because presently it is only a political objective. What I'm proposing is to take a political objective that can change and vary, and make it a legislative requirement. If we're serious about reducing smoking rates in this country to 5% by 2035, which I dare say everybody in this room probably supports, I think putting the proverbial money where your mouth is and putting it in legislation, as opposed to just mouthing it in political platitudes, is called for.

With that, those are my arguments, and I would call for a recorded vote on this matter, please.

The Chair: Okay. No more debate? I call for a recorded vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

• (1625)

The Chair: Okay, I declare the motion defeated.

(Clause 5 agreed to)

(Clauses 6 to 8 inclusive agreed to)

(On clause 9)

The Chair: We have clause 9, with amendment CPC-2 proposed. Does somebody want to speak to that?

Ms. Marilyn Gladu: The topic of conversation here is that everyone who is making their fantastic flavour for vaping, or their specially concocted tobacco-type product has their secret recipe or secret formula. We know that some of the information is allowed to be disclosed, but we want to make sure that, if things wouldn't be disclosed because they're protected otherwise, we wouldn't have to disclose them, and that's what this section is about.

The Chair: Okay.

Go ahead, Mr. McKinnon.

Mr. Ron McKinnon: I believe that this amendment would limit the Minister of Health's ability to provide timely and relevant information on tobacco products to the public, which is a contradiction to the purpose of the bill, which is to protect the health and safety of Canadians, and it would reduce the government's ability to create greater openness and transparency.

I will oppose this amendment.

The Chair: Ms. Gladu.

Ms. Marilyn Gladu: This doesn't prevent a timely response for data that normally would be released. It just says that normally the information would not be released under access to information, that it wouldn't be given to the public.

The Chair: Is there any other debate?

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

(Clause 9 agreed to)

(Clause 10 agreed to)

(On clause 11)

The Chair: We have CPC-3.

Hon. Diane Finley: This is an attempt to protect consumers and also public safety.

We had many discussions about the spread of illegal cigarettes in this country. Believe me, it's a lot worse and with a much greater impact than most of us in this room have acknowledged. I know this personally from over 40 years experience with this industry. Illegal tobacco has been named as the key contributor financially to the blowing up of the twin towers. This is how serious this is. Whether people like to believe that or not, it has been proven to be a fact.

By going to plain packaging, plain tubes, plain filters, etc., both law enforcement and consumers are going to have a very difficult time identifying whether they're getting legal cigarettes. I think that having some markings will help mitigate the spread of tobacco, which by the way, in Canada is a much bigger problem than it was in places like Australia or England because we and our neighbours to the south actually have tobacco-growing industries, some of which are legal here. Neither illegal nor legal tobacco-growing industries exist in those other two countries.

The Chair: Dr. Eyolfson.

Mr. Doug Eyolfson (Charleswood—St. James—Assiniboia—Headingley, Lib.): As a clarification, I don't want to get off the rails, but no reputable scientific source has ever determined that any illegal contraband activity goes up with plain packaging. And the link to the twin towers is absolutely absurd.

That being said, this is unnecessary because there is already provision, from proposed subparagraph 11(2)(b.1), that the Governor in Council can make regulations respecting markings, so this is a level of detail that's not needed in this bill, so I am going to oppose it.

The Chair: Mr. Lobb.

Mr. Ben Lobb (Huron—Bruce, CPC): Many of us have been around and we've seen this show before, going clause by clause with various amendments for clause-by-clause consideration. I know that each of the Liberals have their pieces of paper in front of them and they're to speak on each clause and tell us why it isn't going to pass, and that's great.

I would just ask if the Liberals have any amendments to clauses that we have put forward or the NDP have put forward that they'll actually support, because as much as I'd like to sit here until six o'clock and have a university debate on each clause, if there are none they're going to support, we might as well get on with it.

I don't know what anybody else thinks about that, but I'm not a great guy for wasting time. I'll waste my own, but I don't want to waste others'. I don't know why we're going through this if they aren't going to support any of these.

• (1630)

The Chair: The chair can't predict how it's going to go. We have to go through clause-by-clause.

Mr. Ben Lobb: I would ask Mr. Oliver what he has to say about it.

The Chair: Do you want to speak?

Mr. John Oliver: I think we should proceed through them. I think it's important that the people viewing hear the rationale for proposed amendments and hear the rationale for not supporting or supporting those amendments. I think it's worth proceeding through it.

The Chair: I'll go to Ms. Gladu.

Ms. Marilyn Gladu: I have a real concern about contraband. In my riding there's a significant amount of contraband and I do feel it would be helpful to have the markings. We did hear some testimony from people who said yes it would help to have markings on the cigarettes. While I know it can be put into the regulations, I don't want to leave it to the whim of the regulators to do that when it's such an important discussion that we've had as we've talked about the plain packaging debate. So for that reason I would prefer to keep it.

The Chair: Mr. Davies.

Mr. Don Davies: I think this is going to come up a little later with some NDP amendments, which I'll move a little later, to require health warnings on cigarettes and other tobacco products and the products themselves.

I have to say two things. One is that I agree with Dr. Eyolfson when he says that we've never seen or heard any convincing peer-reviewed evidence that shows any link between plain packaging and increased contraband. I know that claim is made, but I haven't seen any reliable evidence that it's the case. I want that on the record.

Second, it may just be my limited intellect, but I have never quite understood the argument being made as to why the regulating of a package or even the product has anything whatsoever to do with increasing or decreasing contraband as a matter of theory. If the concern is that contraband manufacturers are going to copy legitimate products as a means of confusing law enforcement officials, they'll do that whatever the packaging is.

Apparently they're doing it now, according to Ms. Finley. If they're copying contraband cigarettes now, with the packaging, they'll do it after the packaging changes. Frankly, I'd rather contraband manufacturers copy products that have very, very prominent health warnings on them, than the current situation.

It's not that I don't have a concern for contraband cigarettes. I think Ms. Finley has made the case powerfully that she's concerned about the contraband industry, and I think we share that. What I'm not convinced of, after listening to all of the testimony and reviewing the evidence, is that plain packaging or somehow limiting the plain packaging force, power, or requirements, has any bearing on that.

That's why I'll be opposing the motion, not because I'm not concerned about contraband.

The Chair: Dr. Eyolfson.

Mr. Doug Eyolfson: I'll pass.

The Chair: Go ahead, Mr. McKinnon.

Mr. Ron McKinnon: I just want to make the point that the tax stamp that's on the packages already is a mark of authenticity. We heard a number of witnesses say that it doesn't matter. If people can counterfeit a tax stamp that is designed to thwart counterfeiters, they're not going to have any trouble at all copying anything else.

So I don't really see the point of this. I appreciate the concern but I think it's just irrelevant.

Thank you.

The Chair: All in favour of CPC-3?

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

(Clause 11 agreed to)

(Clauses 12 to 17 inclusive agreed to)

(On clause 18)

The Chair: All right, we go to clause 18. I have a notice of an amendment, LIB-1.

Dr. Eyolfson.

• (1635)

Mr. Doug Eyolfson: The amendment is that Bill S-5, in clause 18, be amended by replacing line 36 on page 12 to line 17 on page 13 with the following:

product, means

(a) that the product

(i) contains a drug that is set out in the prescription drug list, as amended from time to time, established under subsection 29.1 (1) of the *Food and Drugs Act*, or a drug that is part of a class of drugs that is set out in that list, and

(ii) is the subject of an authorization issued under that Act authorizing its sale; or

(b) that the product contains a *controlled substance*, as defined in subsection 2(1) of the *Controlled Drugs and Substances Act*, the sale or provision of which is authorized under that Act.

What that does is allow for decisions to be made, although currently there aren't necessarily any prescription products that are included for vaping. There's some research in the United States on that, and there may be some prescription products coming up that could be administered by a vaping product. This would allow the regulators to authorize the use of this substance if something comes up that is found to be beneficial and can be given in a prescription.

The Chair: Is there any further debate?

Ms. Marilyn Gladu: If this amendment were passed, then, and cannabis gets a DIN, could it then be vaped under the legislation? That's a question for our experts.

Mr. Denis Choinière (Director, Tobacco Products Regulatory Office, Department of Health): One of the amendments that will be brought later on is to clarify how the cannabis act will interface with this. I can give the details at that time, or I can give you them now.

Ms. Marilyn Gladu: This amendment doesn't impact that, then.

Mr. Denis Choinière: Not at all. This is for controlled substances under the Controlled Drugs and Substances Act.

The Chair: Is there any further debate?

(Amendment agreed to)

(Clause 18 as amended agreed to)

(Clause 19 agreed to)

(On clause 20)

The Chair: We'll now go to clause 20, with NDP-2.

Mr. Don Davies: There are two amendments here—NDP-2 and NDP-3. Just so that my colleagues can follow this, they're split over two clauses. Essentially the purpose of both together is to provide regulatory authority to the ministry to require health warnings on cigarettes and other tobacco products. Bill S-5 already provides this authority for vaping products, so already the bill says you can put health warnings directly on a vaping product. I think the reasoning applies with equal force to providing the regulatory authority to do so for tobacco products. Certainly the regulatory authority for warnings should not be less on tobacco products than it is on vaping products.

Among the benefits of this amendment is that it would respond to concerns regarding contraband. It would provide a marking, thus identifying product intended for legitimate sale in Canada. This approach is referenced in international guidelines under the World Health Organization Framework Convention on Tobacco Control. The proposed amendment also arose from testimony from the Canadian Cancer Society and the Quebec Coalition for Tobacco Control.

In my preparation for these hearings, from the witnesses, and in a lot of information I've received from people working on tobacco control in this country, I heard that it's about making sure smokers can actually see the warnings in a prominent place. That's very critical to bringing the message home to smokers that we want to bring home to them. That's why the flip packages and the ability to pull out a warning on a piece of paper and throw it away are considered undesirable. We want to make sure people can see it.

I want to be clear: this doesn't say that the warnings have to be on tobacco products, but it provides regulatory authority to do so. I personally think that having a warning on the tobacco product itself, which I know is an innovation, is something that would increase the effectiveness of health warnings, and perhaps even bring information to the smoker. It may not necessarily be a negative warning, although it probably would be—a warning like “This product contains carcinogens” right on the cigarette. It could also have positive messages, perhaps encouraging the use of vaping products as a harm reduction measure as well.

• (1640)

The Chair: Go ahead, Mr. Oliver.

Mr. John Oliver: Thank you very much.

I'll be supporting this motion and the accompanying one that comes out in clause 22 that Mr. Davies mentioned, for very much the same reasons that Mr. Davies has raised. In fact, we were bringing this motion forward as well. He was in first, so we're happy to support the NDP.

On this particular motion, though, I do want to recognize the contribution that the Canadian Cancer Society has made. They've been incredibly thorough in working through this legislation, working with the department, and coming to the committee and making presentations. I think they've been present at every single one of our meetings, and I know this is one of the areas where they were quite passionate about seeing change. I think at times we have

to recognize the stakeholders and those who are working with the committee to ensure the health of Canadians, and I think the Canadian Cancer Society is an exemplar of that kind of work.

I support the motion and send a big thank you to the Canadian Cancer Society for bringing this to our attention.

The Chair: Thank you for the acknowledgement.

If this NDP amendment passes, Liberal-1 will not take place.

Mr. Lobb, wonders never cease. We're going to see, I suspect, an opposition motion pass here.

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

Mr. Don Davies: For the record, Mr. Chair, I'm as surprised as anybody.

The Chair: As I say, you never know.

I'm going to eliminate Liberal-1, because that has been taken care of.

Now we have CPC-4.

Ms. Marilyn Gladu: One of the concerns expressed by the workers in the tobacco industry is that they produce cigarettes for sale in Canada but they also produce quite a proportion for export. Obviously if they're competing in the U.S. market, which is a market that doesn't have plain packaging yet, they would like to be free to comply with the laws and regulations of whatever country they're shipping into. I didn't see that specifically called out in the legislation, so I wanted a clarification.

The Chair: Is there any debate?

Ms. Sidhu.

Ms. Sonia Sidhu (Brampton South, Lib.): Mr. Chair, I want to oppose this amendment.

Bill S-5 amends the Tobacco Act to clarify that tobacco products that manufacturers sell for export are included in the scope of the act. Tobacco regulation developed pursuant to the legislation can be drafted to exclude products for export from the scope of their application if needed. For example, labelling regulations for tobacco products that require the display of graphic health warning are not required for manufactured products for export. Foreign jurisdictions can apply their own labelling requirements to products sold within the market. That's why I'm opposing this amendment.

The Chair: Ms. Finley.

Hon. Diane Finley: If this is to be explicit in regulation, we haven't received assurances of that.

What we're talking about here is the number of... Manufacturers have indicated to us that hundreds and hundreds of jobs will be leaving this country if that exemption for export is not included, because a vast percentage of the export business is produced in this country not just for the U.S. but for Europe and indeed around the world. Those jobs would be leaving this country permanently if these people were not allowed to produce what was required in those other countries.

The Chair: Is there further comment?

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

The Chair: Shall clause 20 carry as amended by the NDP amendment?

(Clause 20 as amended agreed to)

(Clause 21 agreed to)

(On clause 22)

The Chair: We have another NDP amendment here.

Go ahead, Mr. Davies.

• (1645)

Mr. Don Davies: Mr. Chair, this is just the corresponding amendment to the one that just passed. It completes the amendment to give the regulatory authority to put health warnings on tobacco products.

The Chair: This is identical to LIB-2, by the looks of things. If NDP-3 is passed, LIB-2 cannot be moved.

Is there any discussion?

Mr. Oliver.

Mr. John Oliver: We'll be supporting the motion, as well.

The Chair: Okay.

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

The Chair: That eliminates LIB-2.

(Clause 22 as amended agreed to)

(On clause 23)

The Chair: Now we go to clause 23, CPC-5.

Hon. Diane Finley: The purpose of this amendment is to get past the limitations that are in the original bill, which would prohibit advertising of products that are deemed by Health Canada to be less harmful than cigarettes. That advertising, then, would—I presume—include zero advertising, not just billboards and such but also promotional materials and informative materials, because those are considered part of advertising, to doctors, smoking cessation clinics, and nurse practitioners so that these people could inform their patients, who are trying to find healthier ways to deal with a nicotine addiction, that these products indeed exist. We want to make sure we're helping Canadians who are trying to quit, whereas these people would not be made aware of these products legally, as the bill is originally written.

The Chair: Is there any other discussion?

Mr. Ayoub.

[*Translation*]

Mr. Ramez Ayoub: I want to make sure I understand correctly.

The intent is to ensure that Canadians understand that this product is not good for their health. Is that what you are proposing to add?

[*English*]

Hon. Diane Finley: No, I was trying to say that as the bill was written, manufacturers of products that would be deemed of lesser harm than cigarettes would not be allowed to advertise that fact to people like doctors and nurse practitioners in smoking cessation clinics, nor would those people, even if they were made aware of the products, be allowed to promote those to people who wanted to quit smoking or find a reduced harm product.

It's kind of hard for a doctor who doesn't know about a product to be able to recommend it, but even as the bill is originally written, the interpretation has been that even if they did know about it, they wouldn't be able to tell patients and I think that's contrary to the objective of this bill, which is to reduce harm.

The Chair: Mr. Davies is next.

Mr. Don Davies: I notice that this amendment also uses the term “heat sticks”. I have to say I'm not clear on what the evidence was about the relative health advantages or impacts of heat sticks. This says that it is “directed at a patient using a tobacco product to inform that patient of the lesser health hazards and health effects of vaping products and heat sticks”.

I don't know if the ministerial staff has any information to give us on heat sticks. I'm still not 100% clear that they're the same as or different from vaping products, but for some reason I've formed the impression that heat sticks are a different product and so I'm not sure that I know that heat sticks have fewer health hazards than vaping products. I don't know if there's any information that could be provided by the ministry on that.

Mr. James Van Loon: When we look at vaping products where we're confidently saying these products are less harmful than cigarettes, that's based on an emerging global consensus of science. The most recent U.S. National Academy of Sciences paper on this was an overview of 800 peer-reviewed scientific journals.

On the other hand, testimony given here a couple of weeks ago by Philip Morris pointed at a Public Health England report that said that heated tobacco products might also be less harmful. That report looked at 20 studies, of which 12 were industry, and its number one recommendation was that we need more independent study.

Based on that, Health Canada is not of the view today that we can say that these things are less harmful.

• (1650)

The Chair: Ms. Gladu.

Ms. Marilyn Gladu: In light of Mr. Davies' comments, I would move a subamendment to strike “and heat sticks”, because I see there is resistance to having that included in the bill.

Then I would argue in favour of this amendment, because we did have quite an expert testimony from a doctor who was working in a smoking cessation clinic who is recommending vaping products, which are really currently not allowed under the legislation. We really do want to have this in place so that doctors can recommend more healthy, or less harmful, solutions to their patients.

The Chair: Is your amendment just to eliminate the three words “and heat sticks”?

Ms. Marilyn Gladu: Correct.

The Chair: Mr. Ayoub.

[Translation]

Mr. Ramez Ayoub: Even if the words “heat sticks” were removed, an unnecessary exemption would be created in the bill, because it is not prohibited anyway. The focus would be on vaping and on heat sticks. I'm not sure that we should agree to this amendment, despite the amendment that Ms. Gladu introduced. I don't see what it will add.

[English]

The Chair: All right, Mr. Davies.

Mr. Don Davies: Well, again, maybe I'll ask a question to our ministerial staff.

I think the sentiment of this motion is good. If I take it at face value, I think it is basically trying to make clear that a physician—someone entitled to practise medicine, anyway, by the laws of the province—who is directing a patient using a tobacco product should be able to inform that patient of the lesser health hazards and health effects of vaping products.

My question then, following up from Mr. Ayoub's comments, is this. Is there anything in the bill that prohibits a physician now from talking to patients about the health benefits of vaping products?

Mr. James Van Loon: I am happy to be able to clarify, or I hope I'll be able to clarify.

In the existing Tobacco Act, or paragraph 18...whatever...section 18 is the start of the promotion section. It starts to say what sorts of promotions are not permitted. The second item there, 18(2), is to what does this section on promotion not apply. It says:

(2) This part does not apply to

(b) a report, commentary or opinion in respect of a tobacco product or a brand of tobacco product if no consideration is given by a manufacturer or retailer, directly or indirectly, for the reference to the tobacco product or brand...

If a doctor wants to tell a patient, “I think, in my medical opinion, these are better for you”, that is not a promotion. It is not covered by the Tobacco Act even today. We don't need an amendment to make that safe.

We do have the same language for vaping, by the way.

The Chair: Ms. Finley.

Hon. Diane Finley: My question is to Mr. Van Loon. Under the amendments to this act that we're reviewing now, as I understand it, there would be no advertising to the doctor to advise him or her of these benefits. If they're not aware of them, if nobody's promoted and advertised to them, even through educational promotion, how would they know to be able to do that?

Mr. James Van Loon: This whole section is all about promotion of tobacco products and it's not about scientific research on tobacco products. Nothing will stop people from doing research on the relative risks, if that's their interest, for tobacco products, publishing the results of that research, or discussing it in professional communities, as long as they're not endorsing particular products for money.

• (1655)

The Chair: Go ahead, Dr. Eyolfson.

Mr. Doug Eyolfson: Further to that, I won't say that there is not advertising of medications to physicians, but the vast majority of medications that physicians prescribe have not been advertised to them. It's standard medical practice to review the medical literature and make your decision based on that, not because of advertising. A very, very small proportion of the drugs that I ever prescribed in 20 years of practice were made available to me from advertising.

The Chair: Ms. Gladu.

Ms. Marilyn Gladu: I guess what I had in mind when this was drafted was that when products became available, there would be some kind of brochure that would come to the GP's office that he could pass on to folks who would benefit from that. I would see that as being promotion.

The Chair: Mr. Davies.

Mr. Don Davies: Unless I'm missing something, what the words say are clearly not about promotion of vaping products from a manufacturer to a doctor. It says:

(d) a promotion by a person who is entitled to practise medicine by the laws of a province that is directed at a patient using a tobacco product....

If I read this correctly, this amendment has nothing whatsoever to do with affecting any kind of promotion from a manufacturer of a vaping or tobacco product to a doctor. This is purely about a doctor informing a patient.

Since we've already heard that there would be nothing in this act that would prohibit a doctor from discussing the health benefits of harm reduction tool like a vaping product, I just don't think it's necessary.

The Chair: All right, I'm going to call for a vote on the subamendment by Ms. Gladu, and the subamendment is to remove the three words “and heat sticks” in paragraph (d).

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

The Chair: Now we will vote on CPC-5.

(Amendment as amended negated [See *Minutes of Proceedings*])

(Clause 23 agreed to)

(Clauses 24 to 26 inclusive agreed to)

(On clause 27)

The Chair: On clause 27 we have CPC-6.

Hon. Diane Finley: This is to ensure the minister has flexibility in the future to identify and respond to changing market circumstances, whether that be products that are available or distribution sources.

Years ago, we didn't have such a thing as nurse practitioners, and there are many different health service infrastructures that didn't exist 10 to 20 years ago. This is intended to ensure this legislation has the flexibility to survive the changes—both structural and market—in the next lengthy period of time.

The Chair: Mr. McKinnon.

Mr. Ron McKinnon: I find this amendment troublesome. It will allow tobacco manufacturers to market products as less harmful than other tobacco products.

We've seen this throughout the course of time with the selling of tobacco products. You bring forward a new product with a filter on it and use it to market to a new demographic, or you bring forward a smaller, slimmer version and use it to market to young women. You're always marketing it on the basis of how it's safer, how it's smaller and there's less tobacco.... I think this is akin to asking a smaller hungry wolf to guard the henhouse. I think it's a dangerous thing to support. I will oppose it.

• (1700)

The Chair: Ms. Finley.

Hon. Diane Finley: Perhaps I wasn't clear. This would give the minister the discretion to set regulations in that regard, not the manufacturers. It will impose regulatory flexibility: rather than coming back and trying to alter the law, it puts the implementation in the hands of regulations to provide flexibility.

Mr. Ron McKinnon: Is it going allow her or whoever the minister might be to allow tobacco manufacturers to do this kind of promotion? I don't see that. I wonder if our officials could give us an opinion on this. Does the existing law allow the minister to authorize the promotion of products as less harmful than others?

Mr. James Van Loon: As Bill S-5 is currently drafted, it would not allow that.

Mr. Ron McKinnon: Thank you.

The Chair: Thank you.

Seeing no further comment, I'm going to call for a vote on CPC-6. All in favour? Opposed? The motion is defeated—

Mr. Ben Lobb: On a point of order, Chair, I think if you check the record, there were four voting yea, two voting nay and one not voting. I've been watching very carefully. I know Dr. Eyolfson voted for our—

Mr. Doug Eyolfson: [*Inaudible—Editor*] I withdraw my.... My hand was up and that was my error in putting it up at the wrong time. That's my error.

Mr. Ben Lobb: But he did vote for it and I think we need to check the record on that, because we actually had more yeas on that one than we did nays.

The Chair: I saw more nays, but we'll do it again if you like.

I'm going to call for another vote on it.

All in favour of the amendment? Three. All opposed? Five.

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

The Chair: The motion is defeated, so now we go to CPC-7.

Hon. Diane Finley: The intent here is the same: to allow the minister flexibility in terms of providing restrictions in regulation rather than legislation.

The Chair: Dr. Eyolfson.

Mr. Doug Eyolfson: I oppose this. I think it could have the same hazards as those brought up on the last amendment.

We have a long record of the tobacco industry promoting certain products as less harmful when there's been no evidence of that. Given the difficulty in clawing something back once you approve it, if anything is coming out and making the claim that it's less harmful

or relatively less harmful, I think there should be sufficient time to review it through another legislative cycle. I think the clause as written protects the public from being deceived that certain types of tobacco products are less harmful when in fact they're not.

The Chair: Ms. Finley.

Hon. Diane Finley: I'm confused. It seems to me that both arguments on these say that the minister is going to be subject to pleadings by the manufacturers, whereas my experience with ministers is that they're above and beyond that: they are informed and they have the best interests of Canadians at heart, not the best interests of the tobacco industry. I'm curious as to whether the member has any confidence in any minister, including the existing one. From the sounds of it, I would say no.

The Chair: Dr. Eyolfson.

Mr. Doug Eyolfson: It's not a matter of confidence in the minister. It's the fact that if any new product is coming that is making such a claim, there should be a very long and detailed discussion of it that I think should be subject to the legislative process.

The Chair: All those in favour of CPC-7? Three. All those opposed? Six.

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

(Clause 27 agreed to)

(Clause 28 agreed to)

(On clause 29)

The Chair: Now we go to CPC-8.

Hon. Diane Finley: This is similar in nature to the others, recognizing that due diligence needs to be done to prove that there is harm reduction from new products, but if that research is or becomes available, then I think this is in the interests of achieving the stated goals of this legislation, which are to help people reduce their smoking and to reduce their nicotine intake. This was evidenced by almost all the witnesses who said that assistance and alternate products are needed, and that if we don't make allowances for this new research, the legislative process, with all respect, could take 10 to 12 years to happen. That's an awful lot of people who could die in the meantime because the legislative process is stopping them from pursuing something legally and products becoming available to them that could save their lives.

• (1705)

The Chair: Ms. Sidhu.

Ms. Sonia Sidhu: I want to oppose this amendment because we don't have enough evidence that it's less harmful than smoking cigarettes, and this government is taking a cautious approach to regulating heated tobacco products until sufficient independent research emerges that they are safer than tobacco products. Right now, there is no evidence for that. That's why I oppose this amendment.

The Chair: Mr. Davies.

Mr. Don Davies: I want to second that, particularly in light of the evidence I heard here from the ministry. It may well be that heat sticks eventually are established as less harmful than tobacco, but I don't think that's been established. I'm not confident that it's the case.

I'll state my bias for the record. I think we should be having the strictest tobacco control regulations and laws in the world. Tobacco products are inherently dangerous. They're carcinogens. They're highly addictive. We should be doing everything we can to help current smokers stop smoking and to prevent anybody from picking up any form of nicotine or tobacco product whatsoever.

I understand that this may not be what the tobacco industry wants, but that's not the purpose of the health committee here. We're charged and entrusted with making policies and laws that are in the best interests of the health of Canadians. If there is any doubt whatsoever, any doubt that a measure that's being proposed may lead to someone being exposed to the additional dangers of smoking, then I think it's incumbent upon us to oppose that measure. I will be opposing this one for that reason.

The Chair: Mr. Lobb.

Mr. Ben Lobb: I wondered if Ms. Sidhu could tell us the difference between smoking marijuana—a marijuana cigarette, if you want to call it that—compared to a heat stick or a cigarette stick, whatever they want to call it. Where's the evidence for that?

I know it's apples to oranges, but we're so concerned about heat sticks right now and what everything's going to do for heat sticks. I'm pretty sure a marijuana joint or whatever you're going to do is going to have more impact on you than a heat stick, yet we can't wait to have marijuana. I understand that it's apples to oranges, but I'm also puzzled by the fact we hear these arguments on the other side about heat sticks, yet we're ready to pipe marijuana till the cows come home. I'm not quite sure how we do that.

The Chair: Ms. Sidhu.

Ms. Sonia Sidhu: Mr. Chair, I think that right now we are just making a decision on this point on the heated products. Right now, I think this is the point we are talking about in this legislation.

The Chair: Mr. Ayoub.

[Translation]

Mr. Ramez Ayoub: I cannot help but say that, when you compare marijuana to heat sticks, everything gets mixed up. So far, all the witnesses who appeared before us have always said that no one has died from using marijuana, but that people are dying from using tobacco. There is a big difference. It's actually comparing apples and oranges. We must not look for a problem and see one where there is none.

[English]

The Chair: Mr. Lobb.

Mr. Ben Lobb: I wonder if our officials could tell us what... Again, I guess, your one comment was that there hasn't been enough research, but there has been some research done on the impacts of heat sticks and the different products after they're combusted or whatever you want to call it. If you're going to rank them, obviously cigarettes would be the most potent or toxic in terms of toxins that

come out of them, but where would a marijuana joint rank between a heat stick...? Is a heat stick worse? Or is the joint worse?

• (1710)

Mr. James Van Loon: I wouldn't have the information to answer that question. It is certainly the case that combustible marijuana, when consumed by smoking, has many of the kinds of dangerous constituents that you see in tobacco smoke, but I couldn't answer the question how it benchmarks against heat sticks or other heated tobacco products.

As I said, we're not confident in the information that we have to date.

The Chair: Mr. Davies.

Mr. Don Davies: I don't know that we want to spend too much time comparing this, because we really didn't have evidence before this committee about that. I think it's an interesting question that Mr. Lobb is asking, but I don't think we have the evidence.

I would point out a couple of things. Many of the provisions in the act before us I think are replicated in Bill C-45. I know that many of the sections on promotion and advertising and restricting lifestyle advertising, etc., are similar, if not identical. I have seen a fairly common approach to this legislation in seeking to keep these products out of the hands of children, to discourage the use of the products, and to not have lifestyle advertising.

One other additional factor I would mention is that despite my attempts to have edible cannabis products and concentrates legalized, we had a bit of a compromise on that and they will be legalized within one year of Bill C-45 becoming law. My point is that, once that happens, one difference between cannabis and tobacco is that I'm not sure there are any edible tobacco products, but there certainly are edible cannabis products.

I know that many people prefer edible cannabis products. One of the reasons why I wanted to see edibles and concentrates legalized quicker was for the very reason Mr. Van Loon just mentioned. The least safe method of ingesting cannabis is by smoking it, yet ironically that's what this government preferred to do first, whereas I know that a lot of cannabis users would prefer to ingest cannabis in edible or vaping form, which is less harmful. I do think that's one difference between the products.

The Chair: Thanks very much. I'm going to call for a vote now on CPC-8.

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

The Chair: We now have CPC-9.

Ms. Marilyn Gladu: Notwithstanding that I've heard the discussion about heat sticks—so I won't go there—I think we need to have good science to support the harm reductions that come from all of these different products as they come forward. Once that information is available, I really think the committee should consider that people need to be educated about it. I worry that if we're restricting the advertising too much, you won't be able to actually impart information to the adults who you want to inform so they can get off smoking.

The Chair: Ms. Sidhu.

Ms. Sonia Sidhu: The same as before, Mr. Chair, I want to oppose this amendment because there is not enough evidence. When there's not enough evidence, we cannot reach a decision.

The Chair: All those in favour of CPC-9?

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

The Chair: Will clause 29 carry?

(Clause 29 agreed to)

(Clauses 30 and 31 agreed to)

(On clause 32)

The Chair: On clause 32, we have amendment Liberal-3.

Ms. Sidhu.

Ms. Sonia Sidhu: Mr. Chair, I want to amend Bill S-5 in clause 32 by adding after line 7 on page 19 the following:

23.3 No person shall promote or sell a device that is a tobacco product or a part that may be used with such a device, whether or not the device or part contains tobacco, if the device or part has an appearance, shape or other sensory attribute or a function for which there are reasonable grounds to believe that it could make the device or part appealing to young persons.

The Chair: Mr. Davies.

Mr. Don Davies: I want to speak in strong support for this amendment. I hope it would get unanimous support by all members of this committee. If there's anything we can agree on, it's that we should be doing everything we can to prevent the marketing to children, the attraction, or taking up of tobacco products by children. If we're going to err on any side, I would much rather err on the side of doing everything we can to make sure products are not marketed that could be appealing to children.

I would point out one thing. The history of the tobacco industry over the last decades has been one of unbelievable marketing expertise as they get incredibly sophisticated in terms of how they try to make these products attractive to people.

I must also say for the record that it has been a documented history through litigation that the tobacco industry has a documented history of suppressing important information about their products that are damaging, about the health impact of their products. For years, they suppressed evidence linking cardiopulmonary disease and cancer about their products from the population and customers they sold to. Then they started marketing products under misleading terms like “lights” or “milds” when they knew that those products really had no corresponding lack of damage to their customer base.

There was just a recent court decision in Quebec ordering damages of I think \$15 billion against tobacco companies for similar kinds of misfeasance.

I think in this bill here we should all be supporting any measure that seeks to close every door possible to tobacco companies trying to make their products attractive to anybody—but most importantly, to children and young people.

• (1715)

The Chair: Ms. Gladu.

Ms. Marilyn Gladu: Absolutely. I'm supportive in terms of keeping all of these products away from young people. The only comment I would offer is it looks like it's a very hard-to-enforce thing. What “appearance, shape or other sensory attribute or function” is appealing to a young person? Who will judge that? Is a candy-pink vaping tube? I have seen some of those. To me, that would be something appealing to a young person, but is it, or not?

While I will support the motion, I do think that needs to be very well considered in the regulation.

The Chair: All in favour of LIB-3?

(Amendment agreed to)

(Clause 32 as amended agreed to)

(Clauses 33 to 35 inclusive agreed to)

(On clause 36)

The Chair: Clause 36 has a whole array of amendments.

We will start with LIB-4.

Mr. Ron McKinnon: Chair, I'm going to withdraw this motion. I will not move it.

The Chair: Is that legal?

That's legal.

On NDP-4, Mr. Davies.

Mr. Don Davies: The purpose of this amendment is to restrict the advertising of vaping products, particularly to make sure they are not accessed by young people. This amendment would establish strengthened restrictions on the location of vaping product advertising to match the provisions restricting tobacco advertising in the Tobacco Act, and also, for that matter, the cannabis advertising in Bill C-45.

At present Bill S-5 contains few or no restrictions at all regarding the location of advertising. That means that such advertising could appear on television, on billboards, at movie theatres, on public transit buses and shelters used by children going to school, at ice rinks where minor hockey is played, and so on. Bill S-5's current vaping product advertising restrictions are weaker than those of every other developed country with similar legislation except the U. S. The provisions regarding the location of vaping product advertising are in fact so weak they resemble those in the 1964 tobacco industry voluntary advertising code in Canada.

I think it's incumbent upon us to tighten these up. I think we heard the minister say that she was very supportive. In fact, she wants us, I think, to tighten up the advertising restrictions on vaping. This one in particular states:

If the promotion is made using a means of telecommunication, the promoter must take reasonable steps to ensure that the promotion cannot be accessed by a young person.

So this one deals specifically with telecommunications. It's consistent with what I recently said, that we have to close every single door to make sure that nicotine cannot be marketed in any way to children. We should do everything possible to accomplish that. That's what this motion does for telecommunications.

The Chair: Is there any further debate?

Mr. Ayoub.

[*Translation*]

Mr. Ramez Ayoub: Thank you, Mr. Chair.

Although I agree with the principle of protecting young people and even the general public or adults, I find this amendment to clause 36 unclear. It has a notion that is vague and does not provide a reasonable definition of the steps to limit young people's access to advertising through telecommunications. Clearly, it prohibits advertising targeted at young people. This is the case for both tobacco and vaping products.

I understand the meaning of the amendment, but I think it is somewhat vague. In any case, to protect young people, they are already prevented from having access to those advertisements. Perhaps our legislators could elaborate on this.

There is already a legal structure that prevents companies from making ads like that and that protects young people. But it strikes a certain balance, allowing adults to discover certain products, especially vaping products.

For those reasons, I am not convinced that we should pass this amendment.

• (1720)

[*English*]

The Chair: Mr. Davies.

Mr. Don Davies: I have two things. I have a comment and a question to our ministerial staff.

One of the benefits of this amendment that I understand—this is what I've been informed, anyway—is that presently you cannot ban tobacco advertising, let's say on television. What our regulations say is this kind of thing: putting in a law that says promotion on telecommunications—reasonable steps have to be taken that they can't be accessed by a young person—effectively eliminates advertising tobacco products on television. That's what I'm advising is the purpose of this type of amendment.

Mr. Ayoub has raised some concerns that I'd like to put to Mr. Van Loon.

Is it the case that in the bill currently that without this amendment there are restrictions on vaping advertising on telecommunications, that we could prevent those from reaching children?

Mr. James Van Loon: There are numerous restrictions about advertising and how it can target young people. Advertising cannot be appealing to young people. Particular flavours that might be appealing to young people are not permitted. Advertising that is directed at youth is prohibited. That would cover anything telecommunications-wise.

In the other place, this discussion of where young people are going to see ads took place. They were concerned as well, and introduced an amendment to the bill that provides this strong regulatory authority for Health Canada to propose regulations respecting advertising for vaping products. That's a very broad regulatory authority.

We've already put out a consultation document on what sorts of things we would be proposing to do as part of using that regulatory authority. That's kind of the state of play as it stands today.

Mr. Don Davies: I want to make sure I understand. Thank you for that.

My information is that Bill S-5 currently contains no restrictions at all regarding the location of ads. When I said that advertising could appear on billboards, at movie theatres, on public transit, near shelters, at ice rinks, is that correct, or are you telling me that Bill S-5 prohibits that or there's regulatory authority under the act that could prohibit that?

Mr. James Van Loon: A direct answer to your question is that on the day that Bill S-5 passed, it was unamended from here. Yes, that would be possible to put on billboards and stuff like that. Those ads would not be allowed to be appealing to kids; they would not be allowed to be lifestyle advertising. Furthermore, we do have this very broad regulatory authority to narrow that right down. With regard to any consultation document we put out about the regulation of vaping products in August of last year, we put some additional parameters about how we would propose to use that regulatory authority. It does talk about sports arenas and other places where there are lots of kids congregating.

• (1725)

The Chair: I see no further debate, so we will go to a vote on NDP-4.

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

The Chair: Now we'll go to LIB-5. My note here says that if it's adopted, NDP-5, LIB-6, and NDP-6 cannot be moved because of a conflict.

On amendment LIB-5, go ahead, Mr. McKinnon.

Mr. Ron McKinnon: I will be withdrawing this amendment in favour of LIB-6.

The Chair: We'll go to NDP-5.

Mr. Don Davies: This amendment would remove the provision in the bill that allows vaping product lifestyle advertising in bars and in publications sent to an adult. We've heard lots of evidence on this. It's very clear that even though vaping products have measurable health advantages over tobacco products, clearly we as a health committee, nation, or government do not want to be encouraging anybody to start the habit of ingesting nicotine in any form. The problem with this bill—and I think this was also squarely addressed by the minister—is that when you allow lifestyle advertising in places frequented by adults, such as bars, you are subjecting non-smokers who are still relatively young—18, 19, 20, or 21 years old—to advertising that is not meant to inform them of the harm reduction properties of vaping products. Rather, the way the bill is currently structured, they'll be subjected to measures, promotions, and advertising that will encourage them to take up the ingestion of nicotine by vaping products. There was no evidence before this committee that suggested that this was desirable or our goal. In fact, it's the opposite.

I would encourage my colleagues to support this.

The Chair: Dr. Eyolfson.

Mr. Doug Eyolfson: Thank you.

I agree with everything that Mr. Davies said about the importance of this.

The only reason I'm not supporting this is simply that we're proposing an amendment that has exactly the same sentiment and addresses exactly the same problem, but our staff who were reviewing it found that the language was better and clearer. For no other reason I'm opposing this in favour of the next amendment, which is LIB-6.

The Chair: Mr. Davies.

Mr. Don Davies: Thank you for that.

Can you maybe help me out? It may affect whether I proceed with this or not. How is the Liberal wording preferential?

Mr. Doug Eyolfson: I can't find the current wording right now of the NDP amendment, but our amendment says that Bill S-5, in clause 36, be amended:

(a) by deleting lines 22 to 29 on page 21;

(b) renumbering the remaining provision and amending all references to it accordingly.

I don't have the comparison to that at this moment.

The Chair: Mr. Oliver.

Mr. John Oliver: I think we should be dealing with each amendment as it is and not looking forward in what's to come. I think we should vote on this one and move on to the next one.

The Chair: Ms. Gladu.

Ms. Marilyn Gladu: I prefer LIB-6 because it renumbers the remaining provisions and amendments—all the references to it—so it's a better amendment of the exact same thing.

The Chair: Mr. Davies.

Mr. Don Davies: Let's be clear and then we can move on. My amendment says that Bill S-5, in Clause 36, be amended by deleting lines 22 to 29 on page 21.

Here's the Liberal amendment. That Bill S-5, in Clause 36, be amended:

(a) by deleting lines 22 to 29 on page 21;

It does exactly the same thing, except that it adds—and Liberals have referred to this before:

(b) renumbering the remaining provision and amending all references to it accordingly.

We all know that's unnecessary. Whenever you amend the bill, obviously everything else gets renumbered. There is zero difference between the NDP and the Liberal amendments, and the Liberals know it. The only reason they're voting against the NDP motion right now is that they don't want to support an NDP motion to improve a bill that the Liberals proposed, which went through the Senate and which allows lifestyle advertising for vaping products in bars, which we know is an undesirable provision in the bill. The Liberals want to look like they're the ones who are removing it, not the NDP. Let's be clear about this. It's going to happen one way or the other, because the NDP has the majority on this committee, but let's be clear: the only reason the Liberals are voting... against the NDP motion here is that ours was in first and ours does exactly what they want to do, first. Let's not insult anybody's intelligence by trying to suggest that the Liberal amendment is better than the NDP's. It's identical to the NDP amendment.

• (1730)

The Chair: Mr. Lobb.

Mr. Ben Lobb: I agree exactly with what Don is saying. I wonder if our clerk here could tell us if part (b) of amendment LIB-6 is redundant. Obviously, you would do that anyway. If amendment NDP-5 passes, you're obviously going to adjust everything. Is that correct?

Mr. Olivier Champagne (Legislative Clerk, House of Commons): Yes and no.

With regard to the renumbering, it is. Amending all references to it accordingly normally requires other amendments, and those other amendments exist. The Liberals have submitted them. They are amendments LIB-8, LIB-12, and LIB-14. In my opinion, if we adopt amendment LIB-6, those other amendments will be adopted as a consequence of that.

Mr. Ben Lobb: If there were no amendment LIB-6 and we only had amendment LIB-5 to deal with, can you tell us what we would do then? Sorry, I mean amendment NDP-5. If we had only amendment NDP-5 and we didn't have amendment LIB-6 at all, what would you do?

Mr. Olivier Champagne: I would say that amendment NDP-9 is the consequence of amendment NDP-5, because removing that element, which is what NDP-5 does, requires removing a reference to that element, and that's what amendment NDP-9 does. I think the Liberal package goes a bit further in terms of renumbering as a consequence of what amendment NDP-9 would do. I know it's a bit confusing, but I have to say that the amendments are different even though they have the same effect on the clause, the portion of the bill we're looking at right now.

The Chair: Mr. Davies.

Mr. Don Davies: I'm sorry, but did you say it was your opinion that the amendments are different?

Mr. Olivier Champagne: They are in some ways, in their consequential effects.

Mr. Don Davies: Well, I want to say for the record that we worked with legislative counsel. We submitted all of our amendments to legislative counsel. With the greatest of respect, that is the most ridiculous explanation of difference of amendments I have ever heard. Both amendments delete the same sections of the act. To say that, well, one is materially different because one says that we renumber the rest of the act, we all know that the renumbering happens. There are other amendments here that don't say "and renumber the act accordingly". Renumbering happens automatically. And to actually suggest, sir, to this committee, that saying to then consequently renumber the act is a material or significant difference that makes an amendment better, I believe, is disingenuous.

Also, to go on to say that if we remove and delete this section that later references in the act to the part that we deleted will have to be deleted is a matter of pure legislative function.

The last I will say is that if that's the case, sir, then the next time we submit our legislative drafts to legislative counsel, that should be the advice given to every member here, because we certainly would have put those words in if that were different, and that's not the advice we got from the legislative drafters.

The Chair: Mr. McKinnon.

• (1735)

Mr. Ron McKinnon: Chair, I think we're spinning around in circles. I'd like to call the question.

The Chair: Mr. Lobb.

Mr. Ben Lobb: Thank you.

I'd like to make a subamendment to Mr. Davies' amendment.

The Chair: I need to get a ruling here.

All right, I can't do that, so we're going to go to Mr. Lobb.

Mr. Ben Lobb: I'd like to make a subamendment to Mr. Davies' amendment NDP-5 and I'd like to put below what Mr. Davies has put and I'd like to add "renumbering the remaining provision and amending all references to it accordingly". That's how I'd like to have my subamendment go. Okay?

The Chair: Okay.

Mr. McKinnon, did you have a comment?

Mr. Ron McKinnon: I was hoping to call for the question, but no....

The Chair: Mr. Davies.

Mr. Don Davies: Thank you for that.

I accept that friendly amendment, and now of course the NDP amendment is identical to the Liberal amendment that would come after this. It's identical in every respect.

As Dr. Eyolfson said, he agrees with the motion and the amendment; the only reason that he wouldn't support it is because the wording was different in Liberal-6.

I would certainly expect his support now, as well as all of the other Liberals, if in fact the purpose is to amend the act in a positive way and not instead to oppose for political posturing purposes.

The Chair: Mr. Oliver.

Mr. John Oliver: I'm confused about committee process.

There are amendments that have been tabled and circulated. If every time some other party sees an amendment coming that they prefer the language of, they simply—earlier than the other one—change their motions to adopt those languages.... I mean what's the process here?

I think we should vote on this subamendment. There's a really good motion that I think achieves what Mr. Davies wants to achieve. It's the issue that the Minister of Health spoke to. It's coming. I feel that this is just disintegrating into...I don't know what.

There are also Liberal amendments that were required because of this change that the NDP didn't pick up, so it isn't the same standard of motion as the Liberal motions coming forward. Starting to amend a motion based on another party's motion that's sitting after theirs doesn't make sense as good committee process.

I wouldn't be supporting this. I think we should get on with these motions.

The Chair: Mr. Davies.

Mr. Don Davies: If Liberals don't want to support the NDP motion because they want to be the ones who make the change, then they should say so.

However, let's be very clear here. The subamendment moved by Mr. Lobb now makes the NDP motion identical to the motion that's coming after. Anybody who's watching these proceedings or who reads these proceedings should know that the vote that's about to occur on Mr. Lobb's subamendment is to make the NDP motion identical to the Liberals' motion that will come next.

If Liberals vote against the subamendment, then they are voting against making the NDP motion, identical to the one they want to support. People should be clear on that.

The Chair: We have a subamendment by Mr. Lobb.

Mr. Don Davies: I'd like a recorded vote, please.

The Chair: Okay.

(Subamendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: The subamendment is defeated, and now we'll go to the amendment NDP-5 as originally tabled.

Mr. Davies.

Mr. Don Davies: I'd like to speak to the motion.

I don't know if any Liberal will have the courage to explain why they just voted against adding words that they said were the very reason they preferred their amendment. When those words were to be added to the NDP motion, for some inexplicable reason, they voted against it.

This motion that the NDP has moved is a necessary improvement to the bill. It was a clear flaw, drafted by the Liberals when they first introduced it, which would have allowed lifestyle advertising for vaping products targeted at non-smokers. I'm glad that it's being corrected, but I think that people should have a clear understanding of the political motivations of the Liberals in passing this.

● (1740)

The Chair: Okay, is there any further debate?

Mr. Don Davies: I'd like a recorded vote, please.

(Amendment negated: nays 6; yeas 3)

The Chair: We go now to LIB-6.

Mr. John Oliver: It's my honour to bring this motion forward. I want to echo Mr. Davies, who made some excellent comments about the need for this legislation. I think the importance of the committee process is that when legislation is brought forward to committee, we hear from our witnesses and from the informed public about whether the bill is working or not working. We heard from multiple witnesses that there was a problem with lifestyle advertising and it needed to be eliminated. I think what really struck me was that the Minister of Health, when she came and spoke to this legislation, said that she'd already heard that and that she would be supporting and looking for an amendment dealing with this in particular.

Lifestyle advertising risks glamorizing vaping products. Creating positive associations with vaping products is unacceptable. We have a challenge with nicotine in our society. We can't be advertising to our youth to promote the use of nicotine.

I think it's quite an appropriate motion. In addition, unlike the NDP motion, it does deal with amending references. I will let the committee know that two more amendments were required because of this change. They will be coming later on, dealing with clause 61 and clause 63. I think that's the main difference, that we're referencing those.

With that, I would be happy to move this amendment.

The Chair: Mr. Davies.

Mr. Don Davies: Well, I certainly agree with Mr. Oliver in substance—we join on the issue of it—but I would point out that as the mover of it, he should move it certainly as a substantive improvement but with no honour, given what just occurred. I have to point out the disingenuousness of his last comment. He made a reference to the fact that this motion contained the words “renumbering the remaining provision and amending all references to it accordingly”, and that this is an advantage of his motion. That he just voted against adding those exact words to the NDP amendment must be recorded for posterity.

The Chair: Mr. Oliver.

Mr. John Oliver: I just wanted to reiterate again the comments I made with respect to Mr. Lobb's subamendment on the previous motion. To me, the gamesmanship is on Mr. Davies' side of the table here. We had a motion, it had differences from his motion. We're in a committee process here. We're going amendment by amendment, motion by motion. Trying to build up your own motion because you see other things coming further down the road that you think make your motion better—I don't think that's what our committee process is about.

I think there's been enough said on this. We should have the vote. It's just about good committee process and the transparency of how we're dealing with these motions and what you bring to the table in the first go, not what you build sitting here after everybody else's amendments are in front of you.

The Chair: Mr. Lobb.

Mr. Ben Lobb: Since Mr. Oliver brought that up, basically it was a technicality; basically.

If you want to be collegial on a committee, you could have given it to Mr. Davies. I mean, you guys will get all yours passed. You could have given one—you gave him one earlier—you could have given him two and that would have been pretty nice of you to do.

I think that would have been a very nice, collegial thing to do.

● (1745)

The Chair: If LIB-6 is adopted, NDP-6 cannot be moved, and LIB-8, LIB-12, and LIB-14 are also adopted as a consequence.

All those in favour of LIB-6? It's going to be interesting.

(Amendment agreed to)

We now have to bypass NDP-6 and go to LIB-7.

Mr. John Oliver: I'll be withdrawing LIB-7.

The Chair: Okay.

Now we go to NDP-7.

Mr. Don Davies: Thank you, Mr. Chair.

This amendment is directed at a different part of vaping promotions. It has to do with incentives.

This would add restrictions on the location of permitted incentive promotions. It would restrict permitted incentive promotions, for example price discounts, to specialty vaping product retail stores. At present Bill S-5 would permit, in places where young people do not have legal access, extensive incentive promotions for vaping products. But as we heard, although young people may not have access to these locations, these are places like bars, casinos, concerts, where non-smokers would be exposed. So for much the same reason we want to ensure that advertising is not targeted at non-smokers for nicotine, we want to make sure that incentive promotions are not targeted at non-smokers as well.

Again, Mr. Chair, I just want to reiterate that the only merit we heard from vaping products for tobacco is they are a preferable nicotine delivery system to tobacco. Nobody says they're safe and nobody says that there are health benefits to them and nobody wants any Canadian who presently doesn't ingest nicotine to take up the habit of ingesting nicotine by vaping products, so why would we permit incentive promotions to be targeted at non-smokers?

The Chair: Mr. Ayoub.

[*Translation*]

Mr. Ramez Ayoub: Once again, I fully understand the meaning of the amendment, but its scope will eventually make it conflict with provincial and territorial legislation, since we do not fully and definitively know where the vaping products will be sold. We know in some cases, but it remains to be determined in other cases. This will therefore create a conflict.

The advertising aspect, the promotion of the products, can also pose a problem. The rules governing the sale of vaping products will be stricter than those governing the sale of tobacco products. We want to protect young people and even adults, and we want the rules to be consistent, but there must be a balance. We have to inform the public, the people, but we must not promote products related to tobacco use in particular.

For those reasons, we will vote against the amendment.

[*English*]

The Chair: Okay.

Seeing no further debate, all in favour of NDP-7?

Yes, Mr. Davies.

Mr. Don Davies: I wanted to ask the ministerial staff a question.

Mr. Ayoub mentioned he felt there could be jurisdictional issues with this amendment. Quite honestly, this legislation is riddled with references to controlling promotion, marketing, and advertising, which I would imagine would normally fall under provincial legislation. I would guess that under tobacco legislation the federal government has clear jurisdictional authority to make laws concerning promotion and advertising, and we've done it all over the bill.

Is there any legitimacy to Mr. Ayoub's claim this amendment may have posed jurisdictional issues with the provinces? Or perhaps the legislative clerk can offer some opinion.

• (1750)

Mr. Denis Choinière: Parliament has the authority under criminal law to limit some activities, but usually not to the point to decide this type of retail establishment versus that other type of establishment, which the amendment in front of us does not do, but it does end up limiting vape shops. That will not allow youth in there for both types of activities, that is the activity of making an offer and the activity of furnishing. It would narrow the activities that would be allowed for promoting and providing the product.

As it stands right now in the bill, as we mentioned before, we're trying to find a balance, where adults who would not necessarily be in those locations, in vape shops, but other locations where youth are not allowed would be able to receive the offer, but not to be provided with the product. That was the balance that was being aimed for.

The Chair: Mr. Davies.

Mr. Don Davies: Thank you for that. I'm not clear that I have an answer to the jurisdictional question on that, but I want to read into the record what the amendment says. It says that Bill S-5, in clause 36, be amended by replacing line 24 on page 22 to line 10 on page 23 with the following:

30.6 No manufacturer or retailer shall, in a place other than a retail establishment where vaping products are ordinarily sold and to which young persons do not have access,

(a) provide or offer to provide any consideration, direct or indirect, for the purchase of a vaping product, including a gift to a purchaser or third party, bonus, premium, cash rebate or right to participate in a game, draw, lottery or contest; or

(b) furnish or offer to furnish a vaping product in consideration of the purchase of a product or service or the performance of a service unless the product purchased is a vaping product.

That's the amendment under consideration here. I guess it gets to the basic point where, do we as a health committee favour, or do we not favour, a provision in this act that would stop the manufacturers of vaping products from giving gifts or contests or trying to lure by giving some sort of advantage to people to vape nicotine. I don't know what the balance is there. I don't think as a health committee we should be passing a law that allows the incentivizing of people to purchase vaping products in any context.

I'm wondering, where's the balance for that? What is the valid public health rationale for letting vaping companies try to incentivize people to use vaping products, other than in a retail store for vaping? What possible social value is there in letting vaping companies give gifts to lure people in places like concerts or bars or hockey arenas? Can you help me with the balance? What is the corresponding balance of the advantage of such consideration or luring?

Mr. James Van Loon: Thank you for the question.

Keeping in mind that sites for adults only, where children and young people are not permitted, are the places where informational advertising for tobacco is still permitted, the balance we're trying to go after there is allowing additional promotional abilities for vaping products in those same places.

I'd say at the same time, though, that this prevents people giving away vaping products. That's proposed section 30.5. This is only about the offer, and then any delivery on that consideration has to be in a vaping store.

The Chair: Mr. Davies.

Mr. Don Davies: Do we allow similar promotions for tobacco products? Can a tobacco company go into a bar and say, "Here's a contest to win a carton of cigarettes. You've got to pick it up in the retail store"? Do we allow that?

Mr. James Van Loon: No, we don't allow that.

Mr. Don Davies: Then why would we allow it for vaping products?

• (1755)

Mr. James Van Loon: Again, we're trying to strike a balance between protecting people from inducements and offering a viable pathway, a safer alternative, to cigarettes.

The Chair: Are there any other comments or debates?

We'll call for a vote on NDP-7.

Mr. Don Davies: Could we have a recorded vote, Mr. Chair, please?

The Chair: Sure.

(Amendment negatived: nays 5; yeas 4)

(Clause 36 as amended agreed to)

(On clause 37)

The Chair: Now we have CPC-10 on clause 37.

Ms. Marilyn Gladu: Chair, I'd like to withdraw CPC-10.

The Chair: Wow, accepted. Perfect.

(Clause 37 agreed to)

(On clause 38)

The Chair: We are on NDP-8 on clause 38. Now, if adopted, NDP-10 and NDP-11 are also adopted as a consequence.

Mr. Davies.

Mr. Don Davies: This turns to the flavours part of the bill, and we heard some evidence about this. If I understand it correctly, and perhaps ministerial staff can correct me or add some information if they feel it's necessary, the legislative scheme that's set out is to ban flavours in vaping products that are scheduled. So only the flavours that are scheduled are banned.

We heard some testimony about the undesirability of such an approach, particularly given the creativity of the tobacco and nicotine industry. There was some worry that there would be an endless chasing of the tobacco and nicotine industry as they come up with ever more creative flavours and ways to describe those flavours.

The purpose of this amendment is to restrict promotions for all flavours that could be appealing to young people rather than just those set out in schedule 3. The prohibition on promoting vaping devices containing flavours set out in schedule 3, we believe is too narrow. The scheduling approach would also force the government, as I've said, to constantly play catch-up, as to evade regulation the industry develops new flavours that aren't already listed.

This amendment would still permit the sale of flavoured vaping products, but it would prohibit promotions for all flavours that could be appealing to young people. Again, I think we are all in agreement that all nicotine products should in no way be made appealing to young people. We all should agree that the tobacco industry is like the zombie of the corporate world. It continues to come, no matter what the regulation, to try to make its products appealing. It will exploit every loophole, shade every regulation. Rest assured, nobody in this room should have any doubt that if we don't take every step to close doors in this legislation, that industry will find ways to try to make its products appealing to everybody.

I think everybody on this committee heard very disturbing testimony that...I can't remember the exact numbers but over 80% of people begin smoking before they're 18. Obviously when the industry is dealing with a highly addictive substance like nicotine, it has a great incentive to try to get young people to try its products. Because they're highly addicted, they'll be addicted very quickly. Then it has consumers who find it very difficult to quit.

I'm the worst kind of non-smoker, I'm a reformed non-smoker. I smoked for 16 years and I quit for 16 years and I tell you I tried to quit every day for 16 years. It's literally the hardest thing I've ever had to do. Let's close the door on flavours in here that could be

appealing to young people, colleagues. Yes, it might make it more difficult for industry. It may have to make sure that it's flavouring its products—for smoking cessation, by the way—because we're not trying to create vaping products that are attractive to nicotine users. We're trying to direct them as a smoking cessation tool for current smokers.

We did hear evidence that the flavouring assists in that delivery. That's fine. Maybe there can be some menthol, certain kinds of flavourings that are targeted to adults. But let's close the door on allowing any possibility of flavouring vaping products that might be attractive to children.

I hope I can get my colleagues' support for this amendment.

• (1800)

The Chair: Okay.

Dr. Eyolfson.

Mr. Doug Eyolfson: I agree with everything you're saying on this.

The provisions you're talking about to prohibit this are in proposed section 3.46. However, the problem I have with your amendment could have the opposite effect of what you intend in that the related provisions right now that would be replaced are needed to provide some flexibility. Later on some evidence might show some sort of flavouring or some sort of additive that we don't think right now is appealing to young people, and it might turn out to be. It gives the legislative flexibility to do that. It's covered in the later clause, but it may remove the flexibility as well to add other flavours and things like that. So for that I'll oppose it.

The Chair: Mr. Davies.

Mr. Don Davies: I would like to refer my colleagues to schedule 3. This is what it says now. Here's what's banned. Confectionery, dessert, cannabis, soft drink, and energy drink. Those are the categories. Those are loopholes you can drive a truck through.

I think anybody voting against this amendment should have no illusion that once this bill becomes law, there will be vaping products that have all sorts of flavours to them that will be appealing to children. Then the only option at that point is to let the market be exposed and then try to play regulatory catch-up.

Here's the problem with it. Every day that you will allow a tobacco or nicotine product out in the market is a day that someone's going to start and try it. Because of the highly addictive nature of the substance, people are going to get addicted. Because of the highly addictive nature of it, those people are going to find it very difficult to quit.

We also heard evidence by the way—this was not fleshed out a lot—I think Dr. Strang said at the last meeting that he felt there was some evidence people who start vaping may the pick up tobacco products.

What we're doing by not closing the door on this right now is letting the industry come up with their sophisticated flavouring. Young people are going to be attracted. Young people are going to start. They are going to get hooked. Some of them are going to move on to tobacco products, and then maybe once it gets up to the rarified attention of the order of cabinet, by that time we will make some legislative changes to the schedule. By that time, it's too late. A certain number of those Canadians will be hooked, and a certain number will die. Let's rest assured that's what we're doing by not approving this amendment now.

I would just say one other thing, colleagues. It's better to review this. This is new legislation. Vaping products have never been regulated in this country. This is the very first regulatory regime we are putting in place. Let's err on the side of making it very tight on flavouring. If, Dr. Eyolfson, your concerns come to pass, then we can always loosen the regulations later. But by leaving flavouring open now, we are basically subjecting Canadians to known health consequences that we could prevent right now.

The Chair: Mr. Eyolfson.

Mr. Doug Eyolfson: The last thing I'm going to say about this is first of all this is covered in the other provisions 30.46 and 30.48. I'm not suggesting that this removes the authority to loosen it. Your amendment removes the authority to tighten it up, and that's why I'm opposing it. I want to accomplish everything you're talking about. This amendment will not accomplish that.

• (1805)

The Chair: Mr. Davies.

Mr. Don Davies: Sorry, I didn't understand Dr. Eyolfson's comment, because it certainly was not our intention to do the opposite of what it intends. The amendment says that "No person shall promote a vaping product, including by means of the"—and then it adds the words—"that the product has a flavour that could be appealing to young persons."

I don't know how in any way tightening the flavouring prohibitions in the act to make sure they could not convince young persons could have any intended effect other than to make flavouring less appealing to young persons.

I'm sorry. What section is he referring to? Is it 30.46? I just want to make sure I understand what those sections are that have his concern. Is it section 30.46? I'm sorry, it's difficult numbering. Is it 30.4, 30.6, and 30.8? It's section 30.46. Let me get to that. Is it subsection 30.46 (1)?

Ms. Marilyn Gladu: Yes, and then the end of that sentence "appealing to young persons".

Mr. Don Davies: It says:

No person shall display on a vaping product or on its package an indication or illustration, including a brand element, that could cause a person to believe that the product is flavoured if there are reasonable grounds to believe that the indication or illustration could be appealing to young persons.

That's what I thought it was but the difference there, Dr. Eyolfson, is that that's a regulation that is targeted at the indication or illustration on the package, not the flavouring itself.

My amendment refers to schedule 3 and it talks about actually prohibiting manufacturers from flavouring their products at all with flavours that could be appealing to children.

This section talks about how that may be indicated on the package to children. I would respectfully suggest there's a difference between those two.

I don't know. If I'm wrong, maybe if the Ministry has any opinion on that?

The Chair: Is there any other comment?

I'm going to bring NDP-8 to a vote.

Mr. Don Davies: [*Inaudible—Editor*]

The Chair: We have a request for a recorded vote.

All in favour of NDP-8?

(Amendment negated: nays 5; yeas 4 [*See Minutes of Proceedings*])

(Clause 38 agreed to)

(Clauses 39 to 43 inclusive agreed to)

On clause 44, we have NDP-9.

This cannot be moved because LIB-6 was adopted and this negates that. NDP-9 is out. What about LIB-8? It's the same thing.

Shall clause 44 carry?

Ms. Gladu.

Ms. Marilyn Gladu: We can vote on that. I was just going to point out that it's 6:10. I thought the meeting was going to go until 6:00.

Mr. John Oliver: We started the meeting [*Inaudible—Editor*], we're done at around 6:15...

The Chair: There's another committee coming in at 6:30, so we're good until 6:15, if that's all right with everybody. We'll just carry on. We're making good progress.

Shall clause 44 carry as amended?

• (1810)

Mr. John Oliver: Sorry, does that include LIB-8?

The Chair: Yes.

(Clause 44 as amended agreed to)

(Clauses 45 to 51 inclusive agreed to)

(On clause 52)

The Chair: We have LIB-9 on clause 52. If adopted, LIB-10 is also adopted as a consequence.

Dr. Eyolfson.

Mr. Doug Eyolfson: Basically this provides the government with the ability to more rapidly respond to health concerns related to tobacco. It means that the regulatory process would apply to tobacco regulations so this wouldn't.... It would make the government more reactive to respond to changes in the market and changes in products.

The Chair: All those in favour of LIB-9?

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

(Clause 52 as amended agreed to)

(On clause 53)

The Chair: On clause 53, we have LIB-10. It's already adopted.

On clause 53, we also have LIB-11.

Dr. Eyolfson.

Mr. Doug Eyolfson: I'd like to propose the amendment as listed. Basically this amendment relates to clause 18, so it modifies clause 53. It allows substances regulated by the Controlled Drugs and Substances Act to be excluded from regulation. It allows the use of prescription products.

The Chair: Is there any discussion?

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

(Clause 53 as amended agreed to)

(Clauses 54 to 60 inclusive agreed to)

(On clause 61)

The Chair: We have Liberal-12.

It's already adopted. Perfect.

(Clause 61 as amended agreed to)

The Chair: On clause 62, I see no amendments, so I'm going to declare that carried.

(Clause 62 agreed to)

(On clause 63)

The Chair: We go to Liberal-13.

Ms. Sidhu.

Ms. Sonia Sidhu: Mr. Chair, I would like to propose that Bill S-5 in clause 63 be amended by replacing line 32 on page 40 with the following:

(2), 23.1(1) or (2) or 23.2(1) or (2), section 23.3, subsection 24(1) or (2), section 25,

The Chair: Ms. Gladu.

Ms. Marilyn Gladu: What does this amendment do?

Ms. Sonia Sidhu: This proposed amendment to clause 63 would create an offence in section 47 to the proposed tobacco and vaping products act identical to that for the prohibition already set out for proposed section 30.41, vaping devices.

The Chair: All in favour of Liberal-13?

(Amendment agreed to)

The Chair: Liberal-14 is already adopted, so now we go to NDP-10.

Mr. Davies.

Mr. Don Davies: I'm pretty sure that NDP-10 is a consequential amendment to the flavouring that would maybe not be relevant. Was that right?

Because NDP-8 was defeated, I think NDP-10 and NDP-11 are consequentially defeated. Am I right?

The Chair: I'm sorry, I was distracted.

Mr. Don Davies: I believe that NDP amendments 10 and 11 are consequentially defeated because they were companion amendments to NDP-8.

• (1815)

The Chair: Okay, so we'll declare that defeated. You're withdrawing it, in other words.

(Clause 63 as amended agreed to)

(Clauses 64 to 67 inclusive agreed to)

(On clause 68)

The Chair: On clause 68, we have Liberal-15.

Mr. McKinnon.

Mr. Ron McKinnon: This amendment proposes to amend the definition of "manufacture and sell" in the Tobacco Act to clarify that these activities include the manufacture and sale of tobacco products for export. I think it's pretty straightforward.

The Chair: I see no debate, so I'll call for a vote on Liberal-15.

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

The Chair: Pardon?

Hon. Diane Finley: I was trying to voice an objection.

The Chair: Well, we were in a vote.

(Clause 68 as amended agreed to)

(Clauses 69 and 70 agreed to)

The Chair: Now on clause 70.1, we have a new clause by CPC-11. We have declared this inadmissible because it affects the excise tax, which was not involved in the first original bill.

Hon. Diane Finley: Could I ask the clerk what the protocol is? If an amendment has been submitted and then deemed rejected, what is the protocol to advise the people who submitted that? I'll start with that question.

The Chair: I have a ruling, and that is an amendment is admissible if it proposes to amend a statute that is not before the committee. The Excise Act is not before the committee and it was not part of the original bill, so I'm declaring it out of order.

Hon. Diane Finley: I'm asking what the procedure is to advise the people who submitted the amendment of that situation rather than here at the table.

Is there a process whereby they have the courtesy of being advised ahead of time?

The Chair: It's upon request by the member. They request, I guess—I'm just repeating—if this is admissible or not.

Hon. Diane Finley: Is there no responsibility incumbent upon the people who deemed it inadmissible to advise the submitter?

The Chair: I'm making a ruling and I'm advising you now. This is the first opportunity I've had to do it.

Hon. Diane Finley: This is the first opportunity we've had to debate the issue of whether it should be considered admissible.

I would submit that with all the discussion there's been about making this safer, making the smoking world safer—and by that, I would include consumer safety—the reduction of the presence of contraband would go a long way toward that. It also pertains to public safety. It's long been known in the industry that one of the most effective ways to control contraband is to control the acetate tow.

The minister herself raised this point while she was here. She said that the control of contraband was something she took very seriously, that the ministry took very seriously, that they were aware of the difficulties here. I believe the phrase was “one of her top priorities” to attack the contraband market. This is one of those devices and materials that has been referred to within this bill as terms of being under control for control purposes.

I would submit that as part of the device, this is something that should be included in this bill. It's a wonderful opportunity for the government to make good on its commitment to help.

The ministry officials would perhaps have some comment to make on this.

The Chair: Look, it's a fundamental rule. The rule is that since the Excise Act, 2001 is not being amended by Bill S-5, it is the opinion

of the chair that the amendment goes beyond the scope of the bill and is therefore inadmissible.

It isn't up to the health officials. This is a process rule. You can't amend another act if the original bill doesn't include that act. If the original bill is not affecting the Excise Act, you can't drag the excise tax in and amend it.

• (1820)

Hon. Diane Finley: This isn't about excise tax; this is about control of a specific ingredient, as is done with many ingredients—we said, all the other ingredients—within the tobacco products.

Is that correct?

The Chair: However, it doesn't mean the Excise Act. The amendment affects the Excise Act.

Hon. Diane Finley: It would also affect various portions of this bill.

The Chair: Well, it affects the Excise Act. We can't be affecting other acts that aren't in the original bill.

Now I have Mr. Oliver.

Mr. John Oliver: Mr. Chair, I move that we adjourn.

The Chair: We're past due, so I am going to adjourn.

The meeting is adjourned.

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