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Monday, March 19, 2018

Chair

Mr. Bill Casey

Standing Committee on Health

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● (1530)

[*English*]

The Chair (Mr. Bill Casey (Cumberland—Colchester, Lib.)): We will bring our meeting to order. This is meeting number 95 of the Standing Committee on Health. We are studying Bill S-5, an act to amend the Tobacco Act and the Non-smokers' Health Act and to make consequential amendments to other acts.

I have previous notification of a point of order from Ms. Finley.

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

Mr. Chair, the intention of my point of order is to put on the record my concern about rushing Bill S-5 through Parliament, and more specifically through this committee, without proper study and without the much-needed due diligence. It expands upon the concerns I raised at the February 28 meeting of this health committee.

I'm very much afraid of the consequences of plain packaging and how it may increase the use of contraband tobacco, both because of increased cost to the consumer as well as decreasing consumer knowledge of the brand of tobacco product. I doubt that plain packaging will have much of an impact on smoking rates, as we've seen recently in Australia. It may actually lead to an increase in the total consumption of cigarettes.

In Australia, as you may have noted in a recent March 12 article in *The Australian,* the University of New South Wales questions the effectiveness of measures to reduce smoking that have been put in place in that country, and that was without even considering the black market contraband purchases that are now widely available since plain packaging was introduced there.

Even a small increase in contraband means an increase in funding for organized crime and for terrorist organizations. We heard from Dr. Eyolfson that he considered me ridiculous for confirming the threats to Canada from the sale of contraband tobacco, but, Mr. Chair, these threats have been documented by such groups as the Library of Congress Federal Research Division; the congressional 9-11 Commission; the Cato Institute; the Macdonald-Laurier Institute; the United States Government Accountability Office; the International Consortium of Investigative Journalists; the Royal Canadian Mounted Police-led Combined Forces Special Enforcement Unit contraband tobacco initiative; the Ontario Provincial Police contraband tobacco enforcement plan; the federal Financial Transactions and Reports Analysis Centre, which you may more commonly known as FINTRAC; U.S. Immigration and Customs Enforcement, which specifically cited Canadian intelligence officials who helped prosecute international jihadi terrorists who were using contraband tobacco to fund their activities; Interpol; the OECD; the Center for International Maritime Security; the Organization for Security and Co-operation in Europe; and the Center for the Analysis of Terrorism. It's quite an impressive list.

None of these organizations that have either researched or directly dealt with contraband and its negative effects in Canada were called before this committee to discuss the potentially negative consequences of this bill. The groups that sell and profit from contraband tobacco are, or have links to, international terrorist organizations and organized crime organizations. This committee did not hear from law enforcement officials, who will have to deal with the mess that this bill could create if we do not do our due diligence.

Mr. Chair, we need to learn from our errors and from the errors of others. In the 1990s, both Conservative and Liberal governments learned about the risks of overtaxing tobacco products. An explosion in contraband occurred, so they lowered taxes on tobacco, and, not coincidentally, that reduced illegal contraband sales.

Unfortunately, recently both the Ontario Liberals and the federal Liberals have increased their taxes on tobacco in their latest budgets. I'm not against increasing luxury taxes on unhealthy products, but I am against it when it drives up sales of illegal contraband that fund all sorts of nasty activities.

Weeks after their forgettable budget, the Liberals seem to be set on giving another potential gift to contraband in the form of plain packaging. Bill S-5 very much feels like an omnibus bill, because it changes very different aspects of the tobacco industry, including plain packaging for tobacco products and regulating the vaping industry, among other measures.

Thankfully, Bill S-5 will not ban nicotine and vaping products as they have done in Australia. I say "thankfully" because many smokers want to quit or at least practise their addiction in a much safer way, but I do have concerns that Bill S-5 could be too strict on the vaping industry as well.

Mr. Chair, the last meeting was a great source of frustration. We had not heard from very many witnesses who could have educated the committee on many different aspects of this bill. Instead, we plowed ahead with clause-by-clause consideration on amendments that we got barely 24 hours before the meeting—some of those amendments being received the day of, in fact, after our arrival in the room for the meeting.

● (1535)

We did not have sufficient time to properly understand the amendments nor what their impacts could be, which is why I did not vote on any of those amendments. I didn't feel that I had been adequately informed about them or that I had an opportunity to see what the consequences, good and bad, could be. I want to be diligent.

Procedurally, when a bill such as Bill S-5 comes before Parliament, it's important that we as legislators not rush the process. It's imperative that we proceed responsibly.

Our responsibilities as members of Parliament are described on pages 404-405 of the fourth edition of Bourinot's *Parliamentary Procedure and Practice in the Dominion of Canada*, published in 1916, and I quote:

> All the checks and guards which the wisdom of English parliamentarians has imposed in the course of centuries upon public expenditures now exist in their full force in the parliament of the dominion. ...when burthens are to be imposed on the people, every opportunity must be given for free and frequent discussion, so that parliament may not, by sudden and hasty votes, incur any expenses, or be induced to approve of measures, which may entail heavy and lasting burthens upon the country.

In a ruling from Speaker Fraser on April 14, 1987, regarding the government's use of majority to limit debate on important bills, Speaker Fraser had this to say:

> It is essential to our democratic system that controversial issues should be debated at reasonable length so that every reasonable opportunity shall be available to hear the arguments pro and con and that reasonable delaying tactics should be permissible to enable opponents of a measure to enlist public support for their point of view. Sooner or later every issue must be decided and the decision will be taken by a majority.

I believe that we've just scratched the surface on the first part of Speaker Fraser's comments with regard to Bill S-5, and we are nowhere near the “sooner or later” part of this.

Occasionally the House and its committees take the necessary time to consider complex legislation. The Naval Aid bill of 1913 was such a case with regard to granting a $35 million donation to Great Britain for its navy. At the committee of the whole they kept the House going, virtually in continuous session, for as long as two weeks. That was the first time that closure had been used in our chamber. We had the famous and lengthy pipeline debate in 1956, the Energy Security Act of 1982, and we had a very lengthy debate on GST. Mr. Chair, quite frankly, the ability to have such debates is one of the last great tools of a democracy.

Beauchesne's sixth edition *Parliamentary Rules and Forms*, chapter 3, outlines some elements of the Constitution Act and our system of government that I believe are very relevant to this point:

> More tentative are such traditional features as respect for the rights of the minority, which precludes a Government from using to excess the extensive powers that it has to limit debate or to proceed in what the public and the Opposition might interpret as unorthodox ways.

Beauchesne further describes the fundamental principles of our democracy as, and I quote:

> To protect a minority and restrain the improvidence or tyranny of the majority; to secure the transaction of public business in an orderly manner; to enable every Member to express opinions within limits necessary to preserve decorum and prevent an unnecessary waste of time; to give abundant opportunity for the consideration of every measure, and to prevent any legislative action being taken upon sudden impulse.

Mr. Chair, I'm citing these points not to have endless debate but rather to gather as much information pertinent to Bill S-5 as is possible and to hear from a wider range of witnesses to provide us with this information. This committee has set everything aside to try to rush this legislation through here and through Parliament without what I believe is the necessary due diligence.

I urge this committee, before it's too late, to listen to more witnesses and seriously consider the consequences of enacting Bill S-5 without due diligence. I ask that the chair reopen the calendar to hear a wider range of witnesses and that the committee commit to getting this Bill S-5 study done right by reopening the study and delaying a committee stage referral to the House of Commons.

● (1540)

The Chair: Is that a motion? Do you have a...?

Hon. Diane Finley: I just ask the chair.

The Chair: You asked the chair; all right.

Hon. Diane Finley: It's a point of order. I believe that's the correct procedure.

The Chair: I was expecting a motion in the end.

I have to declare that we're going to continue on with our process. It was agreed by the committee to have a certain number of meetings and a certain number of witnesses, and we're continuing on with that plan.

Mr. Lobb, you have a point.

Mr. Ben Lobb (Huron—Bruce, CPC): Thank you, Mr. Chair. If the committee will just indulge me for a minute, I would like to read a motion into the record today. Thank you very much.

I submitted the motion on Wednesday, March 14, so it is in order. I move:

> That, pursuant to Standing Order 108(2), the Committee undertake a study of Health Canada's recent decision to make Cystagon unavailable and of the impact of this policy change on the approximately 75 children and young adults in Canada suffering from the life-threatening effects of cystinosis; that the Minister of Health, government officials, and Canadians affected by cystinosis be invited to appear no later than Wednesday, March 28, 2018; that the Committee report its findings to the House; and that, pursuant to Standing Order 109, the Committee request that the Government table a comprehensive response to the report.

Committee members will all have access to the motion if they want to deal with it at this time. What I would like to say, Mr. Chair, if I can have another moment, is that a resident in the riding I represent is here today. Erin Little, from just outside of Port Elgin, Ontario, is in Ottawa this week for a conference dealing with rare disorders and rare illnesses. She was able to get her flight changed today to be able to sit at the committee and to hear this motion read into the record. I appreciate the committee's leniency to allow me to do that. I know it means a lot to her family and those who are supporting her.

Hopefully the committee will consider this motion, because in my experience there are a few things that are urgent in some ways, or in some cases even life-threatening, and certainly this motion would be considered both because of the urgency behind the medications that are available.

I would also like to say that I know the minister's staff is here today and had an opportunity to speak with Ms. Little briefly, and I appreciate that as well. It was very nice of them to do that. Hopefully that will continue on with the dialogue. If the committee would like to deal with this motion now, that would be great. I have no intentions of delaying the work of the committee here today; I just appreciate the opportunity to read the motion.

Thank you.

The Chair: Do we have unanimous consent to discuss this motion now?

Go ahead, Mr. Davies.

Mr. Don Davies (Vancouver Kingsway, NDP): I have a point of order. It's certainly Mr. Lobb's prerogative to do so, but I'm not sure if he's just reading the motion into the record. I think he's given us 48 hours' notice. I can't tell if he's reading it into the record and we'll discuss it at some other time, or if he's actually moving the motion right now to debate the motion and have a vote on it. It's not clear.

The Chair: I'm not clear either. I do appreciate the time and the way you've presented this very much. Many things we deal with at this committee are urgent and important, and even emergent. We often discuss whether something is urgent or an emergency or a health care issue or whatever, but we do understand and appreciate the way you presented the motion. I'm just not sure how to proceed. Does anybody have a comment?

Mr. John Oliver (Oakville, Lib.): You need to answer Mr. Davies' question.

Mr. Ben Lobb: I'm prepared to move the motion at this time if we're going to deal with it. I would say it is moved and we can discuss it right now. As I said, it's not my intention to delay the work that we are doing here today. If we could we take a few minutes, fine, and then we could move on to Bill S-5 and pharmacare and complete the work the committee has planned for today.

● (1545)

The Chair: We have a motion to discuss this. It's just very difficult, because we have Bill S-5 and pharmacare and other motions that are waiting to be discussed that are probably just as urgent and as emergent, although I acknowledge how important this issue is. Does anybody have a thought on where our direction is?

Mr. John Oliver: I want to thank Mr. Lobb for bringing the motion forward and I think there is an important discussion here. Basically, besides Cystagon, there is a second drug, Procysbi, which has the same active ingredient for treating cystinosis. Neither of them was approved in Canada until just recently, and all patients had to go through Health Canada's special access program, SAP, to acquire the drugs.

Just recently the change was that the other drug has been approved, Procysbi, and for the most part, patients and doctors are now being directed to use that drug. There is an issue with it. That drug is significantly more expensive than Cystagon, and there is active work under way right now to renegotiate the pricing on that alternative drug.

What is still true today is that Health Canada will continue its practice of considering requests to access Cystagon through SAP, just as it's been done in the past. Patients were always accessing it through SAP. It's done on a case-by-case basis in accordance with established criteria. Practitioners who want to continue accessing Cystagon for their patients through the SAP can do so provided they identify the clinical reasons that treatment with Cystagon and not Procysbi is more optimal for their patients. Physicians, in discussion with their patients, are uniquely placed to determine the best treatment for their patients, taking all aspects of their health and well-being into account.

The fundamental statement in this motion, “Health Canada's... decision to make Cystagon unavailable”, is not correct. It's still available through the SAP on a case-by-case basis, just as it has been. There is an added requirement for the practitioner to identify why it's preferable clinically to Procysbi, but otherwise it's still available to patients. For that reason, I wouldn't support the motion. It is still available to patients through the SAP with a practitioner's request.

The Chair: Go ahead, Ms. Gladu.

Ms. Marilyn Gladu (Sarnia—Lambton, CPC): Thank you, Chair.

Thank you to my colleague for bringing the motion.

My understanding as well is that the new drug that it's been replaced with is not as effective as the previous drug, so there is some threat to the patients, the 75 children and young adults who have this condition.

I want to put on record as well that although the special access system is in place, many times even when the doctor authorizes the medication, the special access is being denied by the government. I had an issue with this just this week in my riding. A six-year-old girl who came back from Jamaica returned with hookworm. You may have seen some of this in the paper. There was another fellow. Both were denied. The fellow had to go to the States to get the medication, at huge expense. Fortunately I was able to escalate the issue to the chief health officer, who was able to reverse the decision, but I think there is an issue there in addition to the Cystagon.

The Chair: Go ahead, Mr. Lobb.

Mr. Ben Lobb: Further to Mr. Oliver's and Ms. Gladu's comments, I hear what Mr. Oliver is saying. The special access program obviously precedes this current government. There have been criticisms of it in this current government and in governments before.

The reality is that when a physician says that the patient, because of the condition, should receive a certain drug, but it is rejected by Health Canada, that's one of the issues that we deal with. It's important because I think, with reference to what Mr. Oliver is saying, that's how we hope the program is to work: if the physician says, “Yes, the patient should receive drug X, Y, or Z” to give the patient the best chance for a good outcome, we believe that Health Canada would grant that and allow for that drug to be provided. In some cases, and in this case, not only do the patients receive the best outcome with it, but it's also a fraction of the cost.

I think it would be great to hear from witnesses, whether they be physicians, concerned family members, or Health Canada. It would be great to have them appear before the committee to give us some understanding as to why they do what they do—in this case, why they are rejecting what a physician has recommended when the patient has had some significant positive outcomes with the drug. I think that would be all we're asking. We're not asking to slam the government, the minister, or the department. I'm just trying to do the right thing in a non-partisan way, and hopefully we could have a unanimous recommendation to do something positive for not just the 75 families who are dealing with this, but probably hundreds if not thousands of other families who face this very stressful situation of receiving 30-day, 60-day, or whatever number of days' access to the drug mentioned.

I would ask that the committee consider that proposal. Hopefully Mr. Oliver and the Liberals, even if they want to amend it—I would be open to that—would allow a chance to have a hearing in front of this committee.

Thank you.

● (1550)

The Chair: Go ahead, Mr. Oliver.

Mr. John Oliver: In response to Ms. Gladu's comment, my understanding is that unlike the hookworm example, it is the same active ingredient in both of the alternative medicines.

I do want to say that the Government of Canada is clearly committed to ensuring that Canadians have access to safe, effective, and affordable medicines. Again, this drug has always been accessed through the SAP, the special access program. If the committee wants to do a big review of the SAP, that's a different topic altogether, but it continues to be available through SAP.

A physician has to request it and make the case on behalf of their patient. There's really nothing different, except that the alternative drug is now available without going through the SAP. It's more expensive, but, as I said, there is active work under way to reduce the price of it.

I don't know what more there is to study here. The drug is still available to patients if their physicians make the case for it and represent for their patients through the SAP, just as they have always been doing. I really don't see the need for this particular motion, and I won't be supporting it.

The Chair: Are there no other comments?

Go ahead, Mr. Lobb.

Mr. Ben Lobb: I have just one last comment, and then I'm happy to take a vote on it, if that's the way it is.

Next time Ms. Little's family is rejected by Health Canada, I just hope I can get hold of Mr. Oliver and that he is willing to go to bat for her. This is a case in which you have to fight tooth and nail every time you're rejected, and that's not the way it should be. You have a life to live and families have lives to live. It's not just Ms. Little's; it's all sorts of other families. When you're rejected, it must be a pretty tough thing to face. To think that you have to battle and battle to get it overturned so that you can get it must be quite a thing to deal with.

As I said, I'm glad that a member from the minister's staff was able to talk to Ms. Little today. That's great, but I think it would serve the committee well to hear and understand what families go through when they are rejected. I know what's supposed to happen sounds right, but that's not always the way it happens. I think it behooves committee members, to be quite honest, to understand what families go through when they do get rejected and face that uncertainty.

I'll say just one other thing. I am obviously not a pharmacist and I'm obviously not a doctor, but I will say this: the medications, the dosages, and the amount in each dosage are not the same in the two medications, and that does make a big difference. I'll give you one example.

Suppose the dosage is once every 12 hours. If your child vomits, obviously the medication comes up. If that is the case, you have no idea how much has been absorbed into the body. It could be very little. That's just a great example of the difference between two dosages per day and three dosages per day. There are differences. That's why it's so good to have this come to the committee so that we can hear about it.

I know I said I wasn't going to drag this out. I've heard both sides, and if we want to do a vote, then that will deal with it today.

Thank you.

The Chair: Just before we do the vote, I think it was Mr. Brown who brought up the thalidomide question. He had a constituent in the audience who was a victim. He didn't get what he wanted on the first day, but he was persistent. The committee ended up influencing the policy of the government, and it was addressed.

It wasn't addressed the first day. It wasn't even addressed the second day. It wasn't addressed maybe in the first week, but we definitely did have an influence on that issue, and it did result in a change, just through an action similar to what you've done.

You've put it on the table. It's public now. No matter what happens in the vote that we're going to have in a second, you've done a good job of getting it on the table, and we all respect what you've done.

I'm going to call a vote on the motion.

● (1555)

Mr. Ben Lobb: Could I ask for recorded vote, please?

The Chair: Yes.

Go ahead, Mr. Oliver.

Mr. John Oliver: I'm just wondering if, given your comments, Mr. Lobb would like to bring more evidence forward. Does he want to hold the vote now, or does he want to defer the vote and bring something back to the committee before we have a vote on his motion? I think the motion does not state what the facts are right now. The drugs are still available through the SAP.

Mr. Ben Lobb: I'm quite happy to have the vote right now, but I would just like to say that Ms. Little's daughter has been denied twice. I think that should be evidence enough for all committee members to want to know how it can be that a mother and her daughter get denied twice.

Again, I'm happy to be able to present this to committee. We'll see where the vote goes and we'll carry on.

The Chair: Okay. We'll have the vote.

All those in favour?

The Clerk of the Committee (Ms. Marie-Hélène Sauvé): Mr. Oliver....

Mr. John Oliver: I have a comment.

I don't think the committee would ever be in the business of reviewing a physician's direction to Health Canada on why a drug was needed and why Health Canada and the physicians there decided that it wasn't appropriate. In a case as isolated as one family, I don't think that's the committee's business.

The Chair: Okay. Now we'll have the vote.

(Motion negatived: nays 5; yeas 4)

The Chair: I declare the motion defeated.

Okay. Now we're going to go back to—

Go ahead, Mr. Boulerice.

[*Translation*]

Mr. Alexandre Boulerice (Rosemont—La Petite-Patrie, NDP): Mr. Chair, since we are dealing with motions and we are well along in that process, it would be unfortunate to have to stop now. I apologize to the witnesses, and I am going to try to do this as quickly as possible.

My colleague, the member for Vancouver Kingsway, submitted a motion last week. Since the 48-hour deadline has passed, the motion may now be presented. I would like to read it and then see if the members of the committee have comments to make. I would like us to vote on the motion today.

The motion read as follows:

> That, pursuant to Standing Order 108(2), the Committee undertake an emergency study of no fewer than three (3) meetings in order to develop recommendations on actions that the federal government can take, in partnership with the provinces and territories, to better regulate pre-mixed drinks with high alcohol, caffeine, and sugar content; that the Committee report its findings and recommendations to the House no later than June 2018; [...]

As you know, Mr. Chair and members of the committee, a teenager met with a tragic death in Laval, Quebec. Her name was Ms. Athéna Gervais. In the morning before going to school, she had consumed one of these very sweet drinks with a high alcohol content —the alcohol content is in fact about 12%—and this is sold in grocery stores and convenience stores, to minors unfortunately. Each canned drink contains alcohol that is equivalent to approximately four glasses of wine. This is extremely dangerous. Since these drinks are very sweet, people do not feel the effect of the alcohol immediately.

We are concerned by the possibility that these products continue to be sold in Quebec and in Canada. They are dangerous to our adolescents and young adults. Moreover, all of the marketing and ads for these products are targeted directly to teenage boys and girls. A few weeks ago, an ad for one of these products advertised a “special for the break weekend”, in other words, the school break. That publicity was clearly not addressed to you or me, Mr. Chair.

We want to avoid a reoccurrence of the type of tragedy the family of Athéna Gervais has just experienced. That is why it is imperative that a study be done quickly on the impact of these drinks and on what Health Canada should do. Health Canada announced today that it would hold a citizens' public consultation, an initiative we applaud. We think that is a good thing but it is not enough. The Standing Committee on Health has some work to do. We can invite experts, physicians, specialists and social workers to appear. They could tell us what they think the best approach would be to prohibit these products, in whole or in part, or to control their labelling, publicity and marketing. I think it is our responsibility to do that, and I encourage everyone to vote for this motion.

● (1600)

[*English*]

The Chair: Thank you very much.

Go ahead, Mr. Ayoub.

[*Translation*]

Mr. Ramez Ayoub (Thérèse-De Blainville, Lib.): Thank you, Mr. Chair.

I thank my colleague opposite for this motion. I am very much aware of the situation concerning poor Athéna Gervais, who lost her life. And I take this opportunity to extend my condolences to her family.

No one wants to see another tragedy. In Quebec, the provincial government is taking action, and the federal government is as well. The Minister of Health has ordered Health Canada to look into the matter with her provincial and territorial colleagues. We are taking action.

I welcome the motion. I saw it last Friday, and it covers most of what needs to be done. Our committee is independent, and given that I would like to support the motion, with some amendments. I don't know if my colleague is ready to accept amendments, but personally I would like to propose a few. I would change certain words to highlight the urgency of the situation.

When I read the passage “That [...], the Committee undertake an emergency study”, I interpret that as meaning “immediately”.

We have another motion on the table, and it is probably, if not certainly, very important as well. However, we have a lot of files to study. Personally, I would change “an emergency study” to “urgently”. This would allow us to study this file within our deadlines—the motion proposes that a report be submitted at the latest by June 2018. This change would allow us enough time to hold the three two-hour meetings proposed in the motion to meet with witnesses.

Below that, I would add the word “combining” in order to bring the three elements of the sentence together, because otherwise the sentence is very vague. And so, I propose: “to better regulate pre-mixed drinks combining high alcohol, caffeine and sugar content”. We are talking about large containers with a lot of alcohol and sugar in them. Those are the amendments I propose.

If you accept these changes, I will support the motion.

[*English*]

The Chair: Ms. Gladu is next.

[*Translation*]

Ms. Marilyn Gladu: Thank you very much, Mr. Chair.

I would like to thank my colleague for his motion.

I understand the problem, but it is very important to point out that other provinces, for instance Alberta and Ontario, prohibit the sale of drinks containing alcohol, a high sugar content and caffeine.

The federal government has to put regulations in place to prevent deaths associated with the consumption of this type of drink.

[*English*]

The Chair: Go ahead, Mr. Boulerice.

[*Translation*]

Mr. Alexandre Boulerice: Thank you, Mr. Chair.

I thank my colleague from Thérèse-De Blainville for his kind words for the Gervais family.

I am in favour of the amendments he wishes to make to the motion. These are friendly amendments that align with the spirit of the motion. If the mover of the motion accepts the amendments, should we vote in favour of the amendments before we vote on the motion?

Since I am the person submitting the motion, I welcome the proposed amendments and I support them.

[*English*]

The Chair: We have to deal with the amendments first, so we'll call for a vote on the amendments.

The amendments are to change the words from “emergency study” to “urgently”, and to add mixed drinks with both high alcohol, caffeine, and sugar content. Is that correct, Mr. Ayoub?

Mr. Ramez Ayoub: It's a combination.

The Chair: What you're trying to do, I think, is to say we're not going to do a study on drinks with high alcohol, another one on drinks with caffeine, and another one on drinks with sugar content. You want to say it's all combined.

● (1605)

Mr. Ramez Ayoub: It's all combined.

The Chair: We have to get the right words here. What are the right words?

Mr. Ramez Ayoub: What's the right wording?

The Chair: If we say, “mixed drinks with both high alcohol, caffeine, and sugar content”, does that do it?

Mr. John Oliver: There are actually three elements. It would be “mixed drinks combining high alcohol, caffeine, and sugar content”.

Mr. Ramez Ayoub: Exactly.

Mr. John Oliver: It's “mixed drinks combining high alcohol, caffeine, and sugar content”.

The Chair: All right.

Mr. John Oliver: I think it's just “urgent”, so it's “...undertake an urgent study of no fewer than three meetings....”

The Chair: All right.

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

The Chair: Now we will vote on the motion as amended.

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

The Chair: It's interesting that as the health committee, we deal with urgent issues here. It doesn't matter where they come from. If they're urgent, we deal with them in the proper way, and I think that was the proper way to do that.

Thank you very much, everybody.

Now we go back to Bill S-5. I was hoping to get to a bit of pharmacare today, but it's looking like we might not make it.

We're on clause 71. There are no amendments.

(Clauses 71 to 74 inclusive agreed to)

The Chair: Go ahead, Ms. Gladu.

Ms. Marilyn Gladu: You will recall that at the last discussion of Bill S-5, we brought an amendment on acetate tow. It was ruled out of order because it called for changes to the excise tax law in order to be implemented. It's been reworded, so in order for it to be considered, I would ask for unanimous consent to reopen clause 8.

The Chair: All right. We need unanimous consent to reopen clause 8 so we can amend it. Do we have unanimous consent?

An hon. member: No.

The Chair: We don't have unanimous consent.

(On clause 75)

Now we'll move on to clause 75, which has an amendment, LIB-16.

Ms. Sonia Sidhu (Brampton South, Lib.): We propose that Bill S-5, in clause 75, be amended by replacing line 14 on page 44. This is with reference to refillable vaping containers, to provide industry with time to develop refillable vaping devices that meet child-resistant closure requirements. There's no clarification on how toxic the liquid is. As Health Canada plans to introduce regulations that would deal specifically with these risks, amendment is necessary.

The Chair: Is there any other debate on Liberal amendment 16?

Mr. Don Davies: I'm just wondering if ministry staff can explain a bit more the impact of this amendment, please.

Mr. James Van Loon (Director General, Tobacco Control Directorate, Department of Health): This amendment would simply create.... As it stands right now, if all of these vaping products become subject to the Canada Consumer Product Safety Act, they will also be subject to all the act's regulations, including the Consumer Chemicals and Containers Regulations. This is the thing that's going to require containers of nicotine-containing fluids to have child-resistant closures on them. It just so happens that the way "container" is defined in the Consumer Chemicals and Containers Regulations would also capture refillable vaping tank devices, the big, hand-held jobbies that you see people standing outside vaping on, which are the ones that successfully deliver enough nicotine to supplant tobacco for some users. These would have to have child-resistant closures.

As we have heard from industry over the last year, they don't have the technology to put child-resistant closures on those devices. We're concerned that if we proceed as is now, those devices will not be conforming with the Consumer Chemicals and Containers Regulations and won't be available on the market. One of the big purposes of this act is to give those things a viable pathway to market. That said, the department is looking at what regulations should be in place. Industry has informed us that they think they might be able to have child-resistant closures for those devices within a year, so we'll be moving to regulate on those over the coming period. It basically creates a bit of space for industry to adapt.

● (1610)

The Chair: Thanks very much.

Is there any further debate? All in favour of amendment LIB-16?

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

The Chair: Shall clause 75 carry as amended?

(Clause 75 as amended agreed to [See *Minutes of Proceedings*])

(Clauses 76 to 79 inclusive agreed to)

The Chair: For proposed new clause 79.1, we have amendment LIB-17.

Go ahead, Mr. Ayoub.

[*Translation*]

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

I want to point out that the purpose of the amendment I am going to propose is to exclude vaping substances that contain cannabis, as well as cannabis-related devices that are not tobacco products, the focus of the bill on tobacco and vaping products. In this way, vaping substances containing cannabis and the majority of cannabis-related accessories would only be subject to Bill C-45, the Cannabis Act. This amendment would only come into effect when the relevant provisions of Bill C-45 also come into effect.

And so I would like to move the following motion:

That Bill S-5 be amended by adding after line 14 on page 47 the following new clause:

"79.1 If Bill C-45, introduced in the 1st session of the 42nd Parliament and entitled An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts, receives royal assent, then, on the first day on which both subsection 204(1) of that act and section 3 of this act are in force:

(a) the definition *accessory* in section 2 of the Tobacco and Vaping Products Act is replaced by the following:

accessory means a product that may be used in the consumption of a tobacco product, including a pipe, cigarette holder, cigar clip, lighter and matches, and also means a water pipe. It does not include *cannabis accessories*, as defined in subsection 2(1) of the Cannabis Act. (*accessory*)

(b) the portion of the definition *vaping product* in section 2 of the Tobacco and Vaping Products Act after paragraph (d) is replaced by the following:

It does not include devices and substances or mixtures of substances that are excluded by the regulations, *cannabis*, as defined in subsection 2(1) of the Cannabis Act, *cannabis accessories*, as defined in that subsection, tobacco products or their accessories. (*produits de vapotage*)"

That is the change I am proposing.

[*English*]

The Chair: Are there any other comments on that amendment? All those in favour of the amendment?

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

The Chair: Shall clause 79.1 carry as amended?

Mr. Ramez Ayoub: No, Mr. Chair, it's an amendment and it carried.

The Chair: There's nothing like a new clause.

(On clause 80)

The Chair: On clause 80, we have CPC-12.

● (1615)

Hon. Diane Finley: This amendment is there so that industry will have an opportunity to respond effectively to the coming into force so that they can be in compliance.

The Chair: Is there any other discussion?

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): It's my understanding that government tobacco regulations currently take six months. That's the standard. That's the usual thing. The manufacturers have historically been able to accommodate that. Given that the objective of plain and standardized packaging is protecting the health of young people, particularly from being subjected to inducements to use tobacco, I think that this longer period for implementation would be detrimental to that goal.

There is also a development process once the regulations are gazetted in the *Canada Gazette* that gives people a chance to give feedback for them. I think there is ample time for manufacturers to respond. I will oppose this amendment.

The Chair: Go ahead, Ms. Finley.

Hon. Diane Finley: From an operational perspective, the ability of the manufacturers to comply is going to depend to a large degree on what type of packaging is prescribed. Right now, most Canadian cigarettes are packaged in a flip-top package. That said, there has been a lot of talk I've heard about going to the push pack.

The push pack is what is commonly used for contraband cigarettes. The reason they use it is that it's manufactured on equipment that was thrown out by the large manufacturers many years ago. That equipment is no longer made.

If all of the manufacturers are going to have to go out and buy new equipment, they have to be able to design the equipment, place the orders, and find someone who will make it for them, because this equipment is not manufactured anymore. Otherwise, they will not be in compliance despite whatever best efforts they can put forward.

If we're going to demand that they comply, then I think we need to give them the opportunity to do so, given the very strong likelihood that we could be demanding that they use outdated equipment.

The Chair: Ms. Gladu is next.

Ms. Marilyn Gladu: First, I think it's rich that the government, after waiting until the third year of their mandate to get around to this bill, would suddenly be in such a hurry. With all due respect for the stakeholders who testified, they are going to need time to convert over. In some cases it's equipment and in some cases it's compliance with the various regulations. I agree that the regulations will take some time, but I think we should respect the input we heard and accept this amendment.

The Chair: Go ahead, Mr. Davies.

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

I'm wondering if the ministry can help me out with an explanation of how the rollout of this bill is intended to happen as it is presently drafted. When will it come into force, and how much time does that give the industry to respond?

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

The act puts in place a variety of different coming-into-force provisions. Some things come into force right away—some of the promotion restrictions, for instance. Others come into force after 180 days. Indeed, many other things are simply regulatory authorities, and nothing will come into force until the regulation is gazetted for consultation and then finally gazetted.

On the plain packaging, for instance, the act doesn't do anything other than create the potential for those regulations, and then we will gazette those. They will have their own coming-into-force period.

Is that sufficient detail?

Mr. Don Davies: I think so. Ms. Finley expressed some concerns about there not being enough time for the industry's transition to the push pack and so on. Judging by your answer, I'm assuming that would be part of the plain packaging regulations that are not drafted yet. If that's the case, can you give us a general idea of how long it would be before the regulations you would expect would be drafted, promulgated, and enforced?

Mr. James Van Loon: I can tell you that we're working hard on those regulations. We have already consulted on what they will look like. When the minister will offer those to the Governor in Council for consideration is up to the minister. I wouldn't be able to say.

● (1620)

Mr. Don Davies: Have ministry staff met with manufacturers of tobacco products in Canada?

Mr. James Van Loon: I have met with manufacturers of tobacco products in Canada on a couple of occasions since becoming the DG, and other staff have in the past as well.

The Chair: Go ahead, Ms. Gladu.

Ms. Marilyn Gladu: I think we need to consider some of the things that will take time. Mr. Van Loon has indicated that some of the changes would be immediate, such as the advertising restrictions. Well, people would have advertising in place, and they would have to deal with other situations, such as inventory you have to get rid of if you're with the Canadian convenience store owners group.

I think we need to allow a little bit more time than what has been put in place. I don't think we can leave it and hope the regulations are going to cover it. I think we have some due diligence here.

The Chair: All in favour of CPC-12?

(Amendment negatived)

The Chair: Now we go to amendment LIB-18. Go ahead, Ms. Sidhu.

Ms. Sonia Sidhu: Mr. Chair, I would like to propose:

> That Bill S-5, in Clause 80, be amended by replacing lines 26 and 27 on page 47 with the following:
>
> "38 and 40, subsections 44(2) and (5), sections 56, 62 and 63, subsections 68(1) to (3) and sections 69 and 70 come into force on the 180th"

This amendment to clause 80 would ensure that proposed subsection 68(4) would come into force upon royal assent.

The Chair: Is there any discussion?

Mr. Don Davies: I would just like to know from ministry staff what the purpose and effect of this amendment would be.

Mr. James Van Loon: I will get to the right page.

Mr. Don Davies: Sure.

Mr. James Van Loon: Thank you. This amendment deals with the coming into force of the amendment to schedule 1. That's it. It gives 180 days.

Mr. Don Davies: Just so we know for the record, what does schedule 1 do?

Ms. Anne-Marie LeBel (Legal Counsel, Department of Health): It's schedule 1 of the current Tobacco Act. It lists ingredients that are not permitted in tobacco products. The changes that were made to clause 68, I believe, were to exclude tobacco products manufactured or sold for export. Those changes, with this clause, would come into force upon royal assent of the bill.

Mr. Don Davies: Okay. Thank you.

The Chair: Seeing no further debate, I'll call for a vote on LIB-18.

(Amendment agreed to)

The Chair: Now we go to LIB-19.

Go ahead, Mr. McKinnon.

Mr. Ron McKinnon: This is essentially a technical amendment. It affects the coming into force of different aspects of this legislation. Specifically, it adds the following:

> (8) Subsection 75(3) comes into force on a day to be fixed by order of the Governor in Council.

Actually, I'd like the officials to speak about why this amendment is needed.

Mr. James Van Loon: Thank you for the question. Yes, simply, if you look at the way the carve-out for the tank devices is set up, you see that it's carved out of the CCCR, and then the next clause says it's back in, and that clause comes into force upon order in council. It just basically allows us to reapply the Consumer Chemicals and Containers Regulations to the tank devices at a time to be fixed by order in council, if that turns out to be the right way to approach this.

Mr. Ron McKinnon: I see this as really a housekeeping amendment.

(Amendment agreed to)

(Clause 80 as amended agreed to [See *Minutes of Proceedings*])

(Clauses 81 to 85 inclusive agreed to)

(On schedules 2 and 3)

The Chair: Now we have amendment LIB-20, which is on the schedule.

Go ahead, Mr. Ayoub, Your Worship.

● (1625)

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

[*Translation*]

An amendment to Bill S-5 would prohibit the sale and manufacture of vaping products that include the ingredients listed in Schedule 2, and the sale of vaping products that promote the flavours listed in Schedule 3. This amendment to section 69 of the bill would add a list to Schedules 2 and 3 to exclude vaping products that are made or sold for export.

This means that a Canadian company could sell a vaping product for export to the United States or other foreign markets, which would contain the additives listed in Schedule 2 or which promotes the flavours listed in Schedule 3.

I thus propose that the bill be amended by replacing the portion of items 1 to 9 in column 2 of Schedule 2 on page 51 by the following —I will only read one item of the nine contained in part (a) —"vaping substances, except prescription vaping substances and vaping substances that are manufactured or sold for export".

In part (b), I move that we replace the portion of items 1 to 5 in column 2 of Schedule 3, which is also found on page 51. In this case, the first two items, 1 and 2, refer to "vaping products, except prescription vaping products and vaping products that are manufactured or sold for export". Items 3 to 5 refer to "vaping products, except vaping products that are manufactured or sold for export".

That is the proposed amendment.

[*English*]

The Chair: Thank you.

Are there any comments on LIB-20?

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

The Chair: Now we go to CPC-13.

Ms. Marilyn Gladu: Thanks.

You will remember the testimony we heard on vaping—that it's not harmless, and that in some cases people receive respiratory harm from vaping. You remember we had the discussion about popcorn lung, about whether it exists and whether we'd heard about it. I asked one of the witnesses if he'd heard of it. He said no, that they've had vaping in Europe for 10 years, and in England, and this is not a concern.

Interestingly enough, the reason it's not a concern is they've banned diacetyl as an ingredient in the flavours. This amendment adds that to the things that wouldn't be allowed in any of the ingredients to prevent that from happening here.

The Chair: Are there any comments or questions?

Mr. Don Davies: To the ministry staff, I'd like to know if there's any comment or additional information that might be helpful to us in view of Ms. Gladu's statement.

Mr. James Van Loon: Popcorn lung and its association with diacetyl is a known phenomenon in workplace exposure scenarios, where people have large amounts of continuous exposure to high levels. We're not aware of any incidences of lung tissue scarring—that is, popcorn lung—occurring with vaping products. I think that's it for now.

The one other thing I'd point out is that even in the absence of a prohibition against that substance here, vaping products are subject to the Consumer Product Safety Act, which contains a general prohibition against the sale of anything that's a danger to human health and safety, an unreasonable hazard. If the evidence comes out that makes us think, yes, this is unreasonably hazardous in these products, the prohibition would be there to do it, and we can make regulations under either of the acts.

The Chair: Go ahead, Ms. Gladu.

Ms. Marilyn Gladu: I had my staff look into the regulations for the U.K. and Europe to see whether or not it was there. It is there and it is banned, so I'm just suggesting that we learn from them and not wait.

The Chair: Go ahead, Mr. Davies.

Mr. Don Davies: What would be the impact of adding this as a prohibited substance? Why not be cautious? If I play devil's advocate, if we're not sure of the potential harm, but it could be there, and if the European experience is as Ms. Gladu describes, what would be the impact of our adding this to the list of prohibited substances? How would it impact the industry in how they're currently marketing or manufacturing their products?

● (1630)

Mr. James Van Loon: To a certain extent, I guess that's a question that could have been directed to industry. Certainly diacetyl is used in some flavourings, particularly to create buttery flavours. That may make the product more appealing to some people. That's it. Appealing flavours have been an important part of the success that some people have had in quitting smoking by using vaping products. That's all I can offer.

The Chair: Okay. Is there no more comment?

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

The Chair: Now we would have NDP-11, but you previously said you were not going to carry that forward.

Shall the schedules carry as amended?

(Schedules 2 and 3 as amended agreed to [See *Minutes of Proceedings*])

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Mr. Don Davies: Mr. Chair, could I have a recorded vote, please?

The Chair: Sure.

Shall the bill as amended carry?

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

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

Some hon. members: Agreed.

Mr. Don Davies: Now you're pushing it, Mr. Chair.

Voices: Oh, oh!

The Chair: I have one question that came up about the timing and the advance notice to the industry to adapt to the change. I didn't get a clear answer that the industry is going to have the time required to make the change after the bill is passed and gazetted.

Can you give us some thought on that or shed some light on it?

Mr. James Van Loon: Certainly. Thank you for the question, Mr. Chair.

As I understood it, the principal concern was about the plain and standardized packaging provisions and how difficult they might be to put in place.

As I said, there will be a regulatory proposal on plain and standardized packaging. It will be out for consultation. That consultation will be for at least 75 days, as it has international trade considerations. Then there will be some time while the department figures out what to do with everything it heard and recommends further to the minister what to do with that.

Typically, when Tobacco Act regulations are finally gazetted in *Canada Gazette* part II, they come with a six-month period of coming into force.

The Chair: Thanks very much.

That concludes our study of Bill S-5.

We're going to take a little break and then we're going to go into committee business. It will be in camera because we have some work-related issues to deal with and some witness lists.

We'll take a break for a few minutes. Thank you very much. In five minutes we'll come back.

[*Proceedings continue in camera*]