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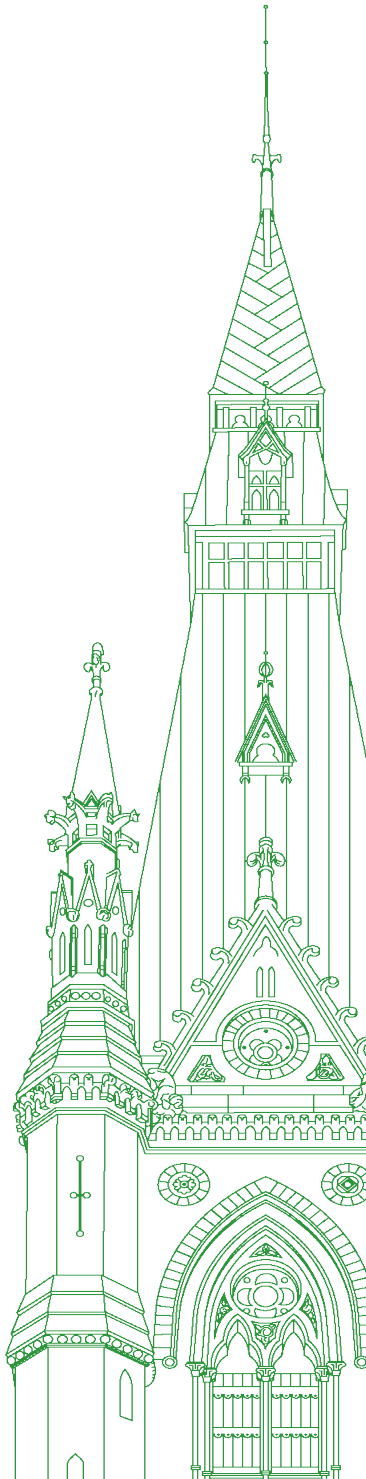

Chair: Mr. Sean Casey

Standing Committee on Health

Thursday, November 28, 2024

● (1600)

[*English*]

The Chair (Mr. Sean Casey (Charlottetown, Lib.)): I call this meeting to order.

Welcome to meeting 142 of the House of Commons Standing Committee on Health.

In accordance with our routine motion, I'm informing the committee that all remote participants have completed the required connection tests in advance of the meeting.

Pursuant to an order of reference adopted by the House of Commons on Wednesday, May 29, the committee is resuming its clause-by-clause consideration of Bill C-368, an act to amend the Food and Drugs Act in relation to natural health products.

I'd like to welcome our witnesses, who are available as experts for any questions related to the legislation that members may have. From the Department of Health, we have David Lee, chief regulatory officer of the health products and food branch; and Kim Godard, director general of the health product compliance directorate.

I recognize Mr. Naqvi and then Mr. Julian.

Mr. Peter Julian (New Westminster—Burnaby, NDP): Mr. Chair, I indicated half an hour before the meeting that I wanted to be first on the list.

Mrs. Laila Goodridge (Fort McMurray—Cold Lake, CPC): On a point of order, unless I'm incorrect, I believe Dr. Ellis had the floor when we suspended the meeting. Therefore, he should still have the floor.

The Chair: We adjourned the meeting. We're starting anew.

Mr. Naqvi, go ahead.

Mr. Yasir Naqvi (Ottawa Centre, Lib.): Chair, I'd like to put forward a motion. I move:

> That, pursuant to Standing Order 97.1, the committee request an extension of 30 sitting days to consider Bill C-368, an act to amend the Food and Drugs Act (natural health products), referred to the committee on Wednesday, May 29, 2024, to give the bill the consideration it requires, and the chair present this request to the House.

I believe my office has forwarded this motion to the clerk in both English and French so that it can be distributed to the members.

Thank you.

[*Translation*]

Mr. Luc Thériault (Montcalm, BQ): Mr. Chair, I would like to have a hard copy of the motion. We can continue our discussions once we've received it.

[*English*]

The Chair: We will suspend to provide a paper copy of the motion to all parties. We'll then have Mr. Julian and Dr. Ellis.

Mr. Peter Julian: I was actually first on the list, Mr. Chair. I'm quite aghast that you would not respect that.

The Chair: The meeting is suspended.

● (1600)

_____(Pause)_____

● (1605)

The Chair: I call the meeting back to order.

The motion has been circulated. It is in order. The debate is on the motion.

Mr. Julian.

Mr. Peter Julian: Mr. Chair, you will not do that again, please. When the clerk prepares a list, you have to go by the order in which it is entrusted. I find it deplorable that you basically shifted a list that had been prepared half an hour before the meeting.

I'm going to vote against this motion for an extension. As you know, Mr. Chair, on Monday I served notice that I'll be withdrawing NDP-1 and I intend to withdraw NDP-2 in favour of the Bloc's amendments to this bill.

I have two things to say. First off, the filibuster and the games that we've seen from both Conservatives and Liberals around this bill, I think, have been very counterproductive to consideration of the legislation. We've had filibusters from the Conservatives now for a couple of weeks on a variety of things trying to block consideration of the bill, and now we have the Liberals trying to block consideration of the bill.

I believe the bill can and should be adopted today with the amendments that make sense and improve the legislation. Mr. Thériault has offered a couple of paths to solutions, and I support those. I indicated last Monday, after consultations with the Canadian Health Food Association, that I would be supporting Mr. Thériault's amendments.

I believe we need to move to clause-by-clause. We need to complete consideration of the bill and make those improvements that are necessary so that the bill will also pass through the House of Commons.

My final point is this, Mr. Chair: I have circulated a notice of motion, as you know, that states a response to the concerns within the natural health product industry regarding the lack of consultation when it comes to regulatory changes, including Health Canada having to justify measures with a clear rationale, provide evidence to justify these measures, examine whether defining "therapeutic product" is the best language and ensure that Health Canada conduct authentically representative consultations with stakeholders in the industry, and that this be reported to the House.

To make it clear and transparent with all members of this committee, I intend to move that motion only once we have considered and completed clause-by-clause consideration of the bill. This bill should be completed today. I hope that both Conservatives and Liberals will end the games they've been playing around this bill so that we can improve the bill, because it does require improvement, and that we can move forward, then, to other items on our agenda in the coming weeks in the health committee.

The Chair: Thank you, Mr. Julian.

Dr. Ellis, go ahead.

Mr. Stephen Ellis (Cumberland—Colchester, CPC): Thanks very much, Chair.

As you might say in politics, wow, that was a bit rich, given the fact that Mr. Julian's original motion, NDP-1, was the wrecking motion for this wrecking amendment to this bill. Everybody around this table knows it, and what Mr. Julian should be doing is saying thank you to the Conservative team, who saved his bacon, considering the fact that if we had not talked out the last meeting, he would not have had the ability to consult with the stakeholders, which he clearly failed to do previously, and understand that his amendment would have wrecked this bill totally and absolutely. Now, very sadly, he's trying to turn the table.

Let's just call this what it is: absolutely ridiculous political theatre from somebody who made a giant mistake and refuses to admit it. It would be the appropriate thing to say your wrecking amendment, NDP-1, would have wrecked the bill and you're sorry for that, and to say, "Thank you, Conservative team, once again, for saving my bacon."

But will you do that? No. You're going to get on your soapbox and say that you now are the saviour of the natural health products industry. This is insanity. We have been here fighting this since the last time your coalition with the Liberals allowed the omnibus bill to pass that created this mess in the first place. If you had stood up in the original instance, none of this would have happened. It's a sad state of affairs.

Mr. Peter Julian: I have a point of order, Mr. Chair.

Dr. Ellis again seems to have forgotten that he has to direct his comments through you.

The Chair: That's a fair point, Dr. Ellis.

● (1610)

Mr. Blaine Calkins (Red Deer—Lacombe, CPC): But he didn't challenge the truth.

Mr. Stephen Ellis: I will take that point, Chair; you are correct.

The Chair: It drags down decorum when you attack someone directly. It's far better when you do it through the chair.

Mr. Stephen Ellis: I don't know about that, Chair. I think the point has been made here about exactly what has happened. That member of the NDP, that person down there at the end of the table, decided to team up with the Liberals to attempt to wreck this bill, Chair. It's unacceptable. It was unacceptable on behalf of the thousands of stakeholders from whom we received thousands of emails on Tuesday evening. Chair, through you, I know why he changed his mind, because he too received those same emails.

Anyway, that being said, I would like to seek unanimous consent to pass Mr. Thériault's two amendments to this bill and move forward.

The Chair: We have a motion in front of us. You can do anything by unanimous consent.

Dr. Ellis, can you repeat exactly what you're seeking unanimous consent of the committee to do?

Mr. Stephen Ellis: Chair, I would like to seek unanimous consent to pass the two Bloc amendments to this bill and then accept this bill as is and return it back to the House of Commons with our work completed.

The Chair: You've heard the terms of the request for unanimous consent.

Is it the will of the committee to adopt the two Bloc amendments and report the bill back to the House?

Mr. Yasir Naqvi: No.

The Chair: This is not for debate. This is a yes or no.

[*Translation*]

Mr. Luc Thériault: I just have a point of order. I tabled three amendments.

[*English*]

The Chair: Did you mean all three amendments?

Mr. Stephen Ellis: Yes, I meant three.

The Chair: Adopt the Bloc amendments and report the bill back to the House with those amendments.

Is there any objection to that?

Mr. Yasir Naqvi: Yes.

The Chair: There is objection to that.

We're back on the motion presented by Mr. Naqvi and next on the list is Mr. Calkins.

Mr. Blaine Calkins: Thank you, Chair.

I want to thank my colleague, Dr. Ellis, for his accurate assessment. I wish I could say I found it passing strange, Mr. Chair, but I've been in this place for a long time, as have you and as has the member for the New Democratic Party. I guess I shouldn't be surprised at this point by anything at all.

You would think, Mr. Chair, that a member of a political party that found itself in a situation where it accepted carte blanche everything that the minority government was going to do would be a little more gracious when offered a path to redemption on the issue of being able to rescind the clauses in Bill C-47, which Bill C-368 seeks to do. You would think that a member for the NDP would be gracious in accepting a path to redemption for his proposed amendment to this bill, which would have changed this bill in its entirety. Instead of accusing people of filibustering, you'd think he would have been gracious and said thank you for buying him the time to figure out that he was once again wrong, as he, I would argue, Mr. Chair, often is.

I appreciate the fact that he is now going to need unanimous consent, I believe, Mr. Chair, in order to withdraw his amendment. I'm just musing publicly on whether I should be as gracious as he has been to me in giving him that or whether I should actually say no and make him vote against his own amendment. That would be the fun thing to do, Mr. Chair, but I'll be the bigger person in this.

Hopefully, we will get to the point where we can withdraw NDP-1 and do the right thing on behalf of the industry that relies on getting this legislation and these regulations right and the 80% of Canadians who rely on natural health products.

I will enjoy taking the higher road.

Thank you, Chair.

● (1615)

The Chair: Thank you, Mr. Calkins.

[*Translation*]

Mr. Thériault, you have the floor.

Mr. Luc Thériault: Thank you, Mr. Chair.

We are currently discussing Mr. Naqvi's motion, and I find it very galling for the Liberals to introduce such an amendment.

We wouldn't be discussing Bill C-368 if the government had been transparent in the first place, and if it hadn't hidden Bill C-47 in an omnibus bill, a mammoth bill, without partnering with industry. That isn't how we get things done in politics. We're here because there's been an attempt to give the industry a raw deal.

However, there was an intention behind that. It was to tighten up the rules and the legislative framework to ensure that bad actors or bad apples would be pushed out of the industry or that they paid for their bad reputations and actions that don't meet industry standards. That's why we need to get it right.

Remember, Mr. Chairman, that at one point, we had to have the minister and Health Canada officials appear before our committee to explain what was going on with the regulations. It wasn't even a study; it was a request. They came to give us explanations, and we realized that, with respect to the regulatory framework they wanted to create, particularly with regard to recovery costs, they were completely wrong. In fact, this meant that the model established for pharmaceutical products would be transposed into a natural health products model.

Whether the Liberals like Bill C-368 or not, it's necessary. The basis of Bill C-368 is necessary to create another legislative and regulatory environment for natural health products. That's what we're trying to do here, and that's what my amendments are trying to achieve, which is to strike a balance with respect to the interests of an industry. We don't want to destroy this industry because of a few bad actors. This pertains much more to small or medium-sized businesses than very large ones.

It was illogical and inconsistent to simply transpose the pharmaceutical model to another for natural health products. But we were good sports and we proposed amendments. People told us that they didn't want to question the basis of Bill C-368, but they maintained that we were contravening the ministerial order, which had allowed us to replace nicotine products that aren't properly regulated, once again, because Health Canada did a bad job. We were told that there was a legal vacuum and that we shouldn't do that because it would give free rein to bad actors.

Those people came to warn us about the unintended consequence of Bill C-368, and we listened to them. We proposed an amendment. I'm going to correct it again today, because people think we need to distinguish between nicotine-based products that are used as nicotine replacement therapy and tomatoes, cauliflower and eggplants. We received thousands and thousands of emails telling us to be careful when we say that a product contains nicotine. Vegetables and fruits contain nicotine. I'd have had to eat 10 kilos of eggplant today to reach the nicotine content of one cigarette.

Still in the spirit of calming things down and listening to everyone's comments, we changed the amendment in question to add clarification and ensure that Parliament's intent wasn't misunderstood.

What we're doing here today is paying attention to what people told us.

● (1620)

Industry representatives told us that they wanted to preserve its reputation. However, it doesn't make sense to impose fines of $5 million on the pharmaceutical industry, as planned. This explains our third amendment to Bill C-368. This amendment will allow for discussions to establish the regulatory framework for appropriate fines.

That's what the government should have done. It should have had a proper discussion with people instead of trying to pull the wool over their eyes with an omnibus bill. That's not the way to do politics. Today, we're proposing a motion to, supposedly, amend Bill C-368, on which there is a consensus on this side of the table, so that it can be passed in the House of Commons. However, this is a dilatory measure, but not in the way you understand it. The intent is to delay passage of Bill C-368. We'll end up with a bill that we know full well won't pass the House in its current version.

For those reasons, I agree with Mr. Ellis. If the Liberals are acting in good faith, if they really listened to the people who came to testify and if they saw the turpitude of Health Canada, they'd do things differently. Witnesses told us they had evidence that the methodologies used are totally biased. Saying that 88% of an industry and over 900 companies aren't compliant is an aberration. They would fail a methodology 101 university course.

Personally, I'm not here to waste my time, but to find points of convergence and a balance so that everyone can benefit. Consumers need to regain their confidence in natural health products, and imposing an established pharmaceutical model isn't going to do that.

I hope that I've convinced my colleagues opposite to proceed with the study of Bill C-368.

Finally, if I may, I move adjournment of the debate on the motion.

[*English*]

The Chair: The motion to adjourn debate is a dilatory motion. It is not debatable.

(Motion agreed to)

(On clause 1)

The Chair: We will move to clause-by-clause now.

The chair calls clause 1, and when we adjourned last week, we were at NDP-1.

Mr. Julian would like to speak to that.

Mr. Peter Julian: Thank you, Mr. Chair. I withdraw NDP-1.

The Chair: A motion to withdraw an amendment requires unanimous consent.

Is it the will of the committee to withdraw NDP-1?

Mr. Stephen Ellis: No.

The Chair: It is not. The only way to get rid of NDP-1 is to bring it to a vote and defeat it.

We have Mr. Julian, please.

Mr. Peter Julian: Mr. Chair, I've worked on lots of committees over the years. I have never seen a member actually deny unanimous consent, because part of the committee process is to be able to amend and at times withdraw amendments that are put forward. This is the first time in 20 years that I've seen this kind of tactic. It's unfortunate. I will be voting against this amendment in favour of BQ-2.

I notified committee last Monday about this, and I'm quite frankly surprised and very disappointed that any member would deny unanimous consent to withdraw, because in all of the legislation I've done over the years, that's never happened.

● (1625)

The Chair: We have Ms. Goodridge.

Mrs. Laila Goodridge: Thank you, Mr. Chair.

I think it's really a frustrating space that we're in, and I appreciate the fact that we're trying to get rid of this wrecking amendment. I know my office had thousands of emails come in. We had our phone ringing off the hook with calls from Canadians who were worried about losing their natural health supplements.

One of the more interesting ones is that a woman wrote to me saying that this is so problematic and that it would shut down businesses like hers. This is the big reason she took a step back in her herbal business. She shared that this also greatly affects indigenous medicine keepers and their ability to use their inherent right to medicine. This came from a very proud Métis woman.

I think that this goes to show how problematic this bill was, and so I'm happy that my colleague from the NDP has finally come to see that the amendment he put forward was going to ruin the bill and was going to return us to the space that the Liberals so carelessly brought us into when they decided to completely wreck this industry without so much as consulting with the industry or any stakeholders on this.

However, what can we expect? This is a government that thinks they are above any set of rules. They have no capacity to manage their own time or space. They see everything out of control, and it's evident here in this committee, even in the fact that the Parliamentary Secretary to the Minister of Health tried to extend the deadline on this, because he was so afraid of Canadians getting to have the right to their supplements.

We, on this side of the House and on this side of the table very clearly believe that Canadians have the right to make those choices and that Canadians who choose to use natural health products should be allowed to continue making those choices. The very common-sense bill from my colleague Mr. Calkins absolutely will do a good thing in bringing back that space of freedom and hopefully improve the outlook for women like the one I heard from, who said she took a step back in her business because of that omnibus bill that didn't have any conversation or actual oversight. They did this intentionally to be away from any scrutiny.

I am happy that we might be able to get to a space where we can reverse the damage that these Liberals have done.

Thank you.

The Chair: We have Ms. Sidhu on NDP-1.

Ms. Sonia Sidhu (Brampton South, Lib.): Mr. Chair, I just want to make a point clear on Mrs. Goodridge's point. Mr. Naqvi wanted an extension in case the bill was not finished today. We can go as fast as we can, but if by chance we didn't finish clause-by-clause, then we would not have a situation where the bill is referred back to the House unamended.

The Chair: Are there any further interventions with respect to NDP-1?

(Amendment negatived: nays 6; yeas 5 [*See Minutes of Proceedings*])

The Chair: That brings us to BQ-1. BQ-1 was proposed since our last meeting. It has the identifier 13454222, just so that we know we're talking about the same thing.

● (1630)

Mrs. Laila Goodridge: Could you say that again?

The Chair: The identifier is 13454222, and it says on the top of it, I believe, "new/nouveau BQ-1". That is what is next, should Mr. Thériault choose to move it.

[*Translation*]

Mr. Thériault, you have the floor on amendment BQ-1.

Mr. Luc Thériault: Thank you, Mr. Chair.

I'll be brief.

The only natural health products that will be included in the definition of therapeutic products will be those that contain nicotine and are used for nicotine replacement therapy. This is similar to what we had proposed, but this amendment makes Parliament's intention very clear.

People were worried that it would also affect chamomile, since it's said to contain nicotine. However, as far as we know, Health Canada never intended to issue warnings about fruits and vegetables. We proposed this amendment so that everyone could support the bill.

It's very clear that therapeutic health products are drugs or devices, or any combination of them, as well as natural health products that contain nicotine and are used for nicotine replacement therapy.

The Chair: Thank you, Mr. Thériault.

[*English*]

BQ-1 is now before us. I must advise the committee that if this amendment is adopted, CPC-1 cannot be moved due to a line conflict.

I recognize Mr. Calkins next on BQ-1.

Mr. Blaine Calkins: Thank you, Chair.

I want to thank the mover of the amendment for bringing it forward. I just want to say on the record, and repeat what I said when I appeared before the committee as the sponsor of the bill, that my preference would be that this particular item be dealt with separately and that this product be dealt with under different laws and regulations.

However, given the fact that I don't think this side of the table can be confident that the government side of the table would know how to do that appropriately, this seems to be the most reasonable solution.

Therefore, Mr. Chair, it is not with regret but with frustration, I think, that we will be voting in favour of this amendment because the government has simply not figured out the difference between health products and things that are not natural health products, and we have no reason to believe that they ever will.

As I said, it would be my preference not to handle it in this way, but because this issue does, I believe, need to be handled in some manner, it is a reluctant vote of approval for this amendment from myself as the sponsor of the bill.

The Chair: Thank you, Mr. Calkins.

Mr. Naqvi, please.

Mr. Yasir Naqvi: Thanks, Chair. I appreciate Mr. Thériault's amendment. I would like to move a subamendment to that particular amendment, and it reads as follows: "That Bill C-368 in clause 1 be amended by replacing lines 7 to 11 on page with the following: Therapeutic product means (a) a drug or device; (b) any combination of drugs and devices; or (c) a natural health product within the meaning of the natural health products regulations that contains nicotine or its salts."

[*Translation*]

(*therapeutic product*)

[*English*]

I believe the clerk has probably received this subamendment, in both English and French. That could be circulated to the members so that we can then have a conversation.

Perhaps, Chair, I can present my comments on this, or we can wait until it's circulated before. I'm in your hands.

● (1635)

The Chair: I would encourage you to go ahead and offer your comments. I expect that members by now, or very shortly, will have an electronic version.

[*Translation*]

Mr. Thériault, if I understand correctly, you want to receive a paper copy of the subamendment.

Is that right?

Mr. Luc Thériault: No, it won't be necessary.

If I understood correctly, my colleague is proposing to change "and" to "or", but I don't agree.

The Chair: We are now going to—

Mr. Luc Thériault: Mr. Chair, I didn't think that, at this stage of the clause-by-clause study, we could move a subamendment to an amendment.

I thought we should withdraw the amendment rather than move a subamendment.

The Chair: No, it isn't necessary.

[*English*]

Mr. Naqvi, there's no need to suspend. Everybody has it electronically. If you want to speak to it, you go right ahead.

Mr. Naqvi, go ahead, then Ms. Goodridge.

Mr. Yasir Naqvi: Thank you very much, Chair.

I think Mr. Thériault and other members will see that this doesn't take away from the amendment that he's proposed, but in fact it strengthens it. This change is needed to ensure that the amendment is adequately defined to encapsulate all relevant nicotine-containing natural health products, including those that contain nicotine salts, which is important. I wouldn't mind asking the experts why a reference to nicotine salts is important.

Additionally, by relying on a specific type of therapy, like nicotine replacement therapy, this may open opportunities for tobacco companies to modify the indications of their product to bypass certain measures. This subamendment corrects that and captures exactly what Mr. Thériault is trying to accomplish. However, the addition of the salts part to nicotine is important.

Chair, I would like to ask our experts why that is important.

Mr. Lee, Ms. Godard, thank you for being here. I know you've been very patient at this committee. I'm glad that we're going through the amendments.

Can you please explain why specifically referencing nicotine salts in this bill is important?

Mr. David Lee (Chief Regulatory Officer, Health Products and Food Branch, Department of Health): Our understanding in the formulation is that this is to preserve the youth protection measures associated now with nicotine. If it just says nicotine, it means nicotine-free base. There are other forms of nicotine that can be made. We want to prevent the argument that they don't fall under the youth protections just because of a different chemical presentation. This is really to make sure it's very clear and the youth protections apply. That's its technical operation.

Mr. Yasir Naqvi: That's great. Thank you.

The Chair: We have Ms. Goodridge, please.

Mrs. Laila Goodridge: I just wanted to clarify that a little bit further. In reading through this, I found that nicotine salts are often used in vaping. It's unfortunate that the Parliamentary Secretary to the Minister of Health could not have provided us with his subamendments in advance, because he very clearly had them, and that would have allowed us to save some time and possibly move through this unamended.

How could we expect the Liberals to be prepared for a meeting?

I will leave it at that.

The Chair: We have Dr. Ellis, please.

Mr. Stephen Ellis: I'll echo some of those comments. We are watering down Bill C-368 by these amendments because we learned here in committee very clearly that the current administration, the NDP-Liberal government, is unable or unwilling to amend the TVPA, the Tobacco and Vaping Products Act.

I think it's a shame that we have to water down a bill based upon the fact that the minister, whom we've had here at committee before, doesn't have a clue on how to amend the TVPA. We heard that from witnesses. We heard them say that this bill needs to be amended, because it would take too long for the NDP-Liberal government to figure out how to amend the TVPA. That's the job of a parliamentarian. However, that's obviously lost on the current federal Minister of Health, who is unable to do that, and clearly unable to do his job.

Therefore we're left with disappointing those stakeholders and those thousands and thousands of Canadians whom I know Mr. Thériault referred to, from whom he received emails, as did we on this side of the House, to say watering down this bill is not a great idea. They are very concerned about their access and very concerned about the collapse of the Canadian natural health product industry, as we heard from multiple testimonies.

Thank you, Chair.

● (1640)

The Chair: Thank you, Dr. Ellis.

Are there any further interventions with respect to the subamendment?

[*Translation*]

Mr. Thériault, you have the floor.

Mr. Luc Thériault: Mr. Chair, I initially thought we were replacing the word “and” with “or” in the rest of the sentence. Now, I understand that we want to add, “or its salts and is used in nicotine replacement therapy”.

I don't have the text in front of me, but my understanding is that (c) would read as follows: “(c) a natural health product, within the meaning of the Natural Health Products Regulations, that contains nicotine, or its salts and is used in nicotine replacement therapy.”

Is that correct?

Mrs. Laila Goodridge: No, the words “or its salts” would replace the rest of the sentence.

Mr. Luc Thériault: Okay.

By writing “or its salts,” we wouldn't need the rest of the sentence.

Is that really the case?

The Chair: Yes, that's what is being proposed.

Mr. Luc Thériault: Is that what Mr. Lee said earlier? So we could remove the rest of the sentence and that would reflect exactly the same intention.

Is that correct?

[*English*]

Mr. David Lee: Mr. Chair, the inclusion of “and its salts” modifies nicotine because nicotine can be in different forms, so it just gets the whole set of nicotine. The rest of the phrase “in nicotine replacement therapy” is a different issue. That's what it's used for.

The caution there was just that there could be language that companies introduce to say that it's just for temporary stopping so that it doesn't fall within the measures.

We would give this a broad interpretation faithfully to say that it doesn't include, as you say, trace amounts in vegetables and so on. We understand the function of that, but the “and its salts” goes to basically the idea of nicotine, so they can't get around the youth protection. It's just to make sure that, whatever way you make it chemically, it's included.

[*Translation*]

Mr. Luc Thériault: If we keep the words “and which is used for nicotine replacement therapy”, what will that take away or change?

[*English*]

Mr. David Lee: It would add clarity that it is not, as you say, trace amounts, because there can be the occurrence of nicotine in things that are not purposely made for smoking cessation.

We would need to interpret it very broadly so that, again...small language changes so that it's basically still a replacement therapy in spirit. We would need to interpret that, but I think we could.

[*Translation*]

Mr. Luc Thériault: I'm sorry, that may be a result of the interpretation, but I didn't understand what Mr. Lee was saying.

Mrs. Laila Goodridge: I didn't understand it in English either.

Mr. Stephen Ellis: We didn't understand that either.

Mr. Luc Thériault: So I'm not the only one.

Could we be clearer, without spending too much time on the amendment?

I would like to introduce the words “or its salts,” but I still want us to maintain the part of the sentence that refers to nicotine replacement products, because that's what was mentioned in the ministerial order and presented to us here.

● (1645)

[*English*]

The Chair: Okay.

[*Translation*]

Mr. Luc Thériault: Would the people on the other side of the table accept that, to speed things up?

[*English*]

The Chair: We can't subamend a subamendment, so if it's not satisfactory in the form that it's been presented, the only option is to defeat it and to introduce new wording.

Mrs. Laila Goodridge: I'm going to ask for unanimous consent.

[*Translation*]

The Chair: If I understood correctly, Mr. Thériault wants a little more clarity before making a decision.

[*English*]

Go ahead, Ms. Goodridge.

Mrs. Laila Goodridge: Thank you, Mr. Chair.

I seek unanimous consent to move the following subamendment:

> That Bill C-368 in clause 1 be amended by replacing lines 7 to 11 on page 1 with the following:
>
> “therapeutic product” means
>
> (a) a drug or device;
>
> (b) any combination of drug or device; or
>
> (c) a natural health product within the meaning of the Natural Health Products Regulations that contains nicotine, or its salts and is used in nicotine replacement therapy;

The Chair: Do we have unanimous consent to adopt that subamendment?

[*Translation*]

Mr. Luc Thériault: I would suggest that as well.

[*English*]

The Chair: All right.

(Subamendment agreed to)

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

The Chair: BQ-1 as amended is carried. Therefore, CPC-1 cannot be moved.

Is there any debate on clause 1 as amended? Seeing none, shall clause 1 as amended carry?

(Clause 1 as amended agreed to [*See Minutes of Proceedings*])

The Chair: That brings us to new clause 1.1.

[*Translation*]

(On clause 1.1)

We move to amendment BQ-2, proposed by Mr. Thériault.

Would you like to introduce your amendment, Mr. Thériault?

Mr. Luc Thériault: Yes, I'll introduce it.

Amendment BQ-2 is to allow the minister's right of recall. Industry people told us that there was no problem in this area and that only bad actors would be affected. In addition, Health Canada told us that very few bad actors didn't co-operate.

It's important to know that recalls are voluntary and that this isn't a problem. However, we were also told that the industry values its reputation and that it wanted to ensure that bad actors were punished. That's why I'm adding this element, which aims to maintain the current regulations and to restore a certain number of sections of the Food and Drugs Act.

This is amendment BQ-2.

I move that Bill C-368 be amended by adding after line 10 on page 1 the following new clause:

> 1.1 The Act is amended by adding the following after section 2.2:
>
> 2.21 Despite the definition of *therapeutic product* in section 2, sections 21.3 to 21.303 and regulations made under paragraphs 30(1.2)(f.01) and (f.02) apply to a in section 2, subsections 21.3 to 21.303 and regulations made under subsections 30(1.2)(f.01) and (f.02) apply to a *natural health product* within the meaning of the *Natural Health Products Regulations*.

I would like to clarify that subsections 30(1.2)(f.01) and (f.02) are part of amendment BQ-3, which amends the penalties.

As I was saying, the minister's right to recall is guaranteed. We were asked whether there was a risk of serious harm to health. Subsection 21.3 responds to that. If there's no doubt that a health risk exists, which minister wouldn't want that authority?

This amendment takes nothing away from Bill C-368 since it clarifies that under the natural health products regulations the minister will have a certain right of recall.

I have two pages of explanations, but I'll stop here, unless there's a problem.

● (1650)

The Chair: Thank you, Mr. Thériault.

[*English*]

I have Mr. Naqvi and then Mr. Julian.

Mr. Yasir Naqvi: Thank you, Chair.

I'm just trying to understand the technical implications of this amendment.

Perhaps I can go back to either Mr. Lee or Ms. Godard, whoever is the appropriate person who can explain to us what the original clause meant that's in the bill as tabled, and what's the difference with the change that's being presented or moved by Mr. Thériault.

An hon. member: [*Inaudible—Editor*]

Mr. Yasir Naqvi: No. This is the committee where we do the work. Welcome.

The Chair: Mr. Naqvi is entitled to put opinions on the record. It is relevant and pertinent to the discussions.

Go ahead, Mr. Lee, please.

Mr. David Lee: Could I just clarify, Mr. Chair? We're on new clause 1.1 and you want an explanation of how this has changed.

This seems to again add in the ability to recall, clearly, but also, it adds in certain environmental measures: getting information, being able to change a label, contrasted with changing a label for human health. That is of concern, but certainly the intent to make sure environmental changes can come up, recalls can take place both for human health and environment...it's clear there.

Also, making sure that regulations can be made underneath those, I think that part of the text is clear, but I think the absence of the label change power, for example, although including it for environmental measures...we were just trying to understand that inclusion.

Mr. Yasir Naqvi: That's helpful. Thank you.

The Chair: I have Mr. Julian and then Mr. Thériault.

[*Translation*]

Mr. Peter Julian: As I explained last week, we support the idea that Health Canada should continue to have the ability to order a mandatory recall of products in the rare cases where a company doesn't meet health and safety requirements.

It must be said that the industry has a good track record in this regard. For the rare cases that may arise, we have to give Health Canada that capacity. That's why I said last Monday that I supported amendment BQ-2.

The Chair: Mr. Thériault, you have the floor.

Mr. Luc Thériault: I thought I could speed things up, but for Mr. Naqvi's benefit, I'll read my two pages.

The recall power that's left to the minister is found in subsection 21.3(1) on page 16 of the Food and Drugs Act. It reads as follows:

> 21.3(1) If the Minister believes that a therapeutic product presents a serious or imminent risk of injury to health, he or she may order the person who sells the product to (a) recall the product; or (b) send the product, or cause it to be sent, to a place specified in the order.

This recall power is accompanied by a provision in subsection 21.3(2) that allows for corrective action and the possibility, in subsection 21.3(3), on page 17, to prohibit the sale of a therapeutic product. It also includes a provision for products that pose a serious risk to the environment, which is to say, subsection 21.303, on page 17. This includes any prerogative associated with it, including the ability to change the label and packaging of a product in the event of a serious risk to the environment.

Subsection 21.2, which provides for the requirement to change the label in the case of a serious health risk and which may be of interest to Mr. Naqvi, is therefore not repeated. However, it's found in sections 16 and 17, on page 13, of the natural health products regulations. So the minister can require that the label be changed without Vanessa's Law applying.

As I was saying, we still have the recall power, but it's based on part of the sections of the current Food and Drugs Act and, above all, on the natural health products regulations, which we always forget and which govern the practices of this industry. As such, it's very clear from sections 16 and 17, page 13, that there are two possible scenarios where Vanessa's Law wouldn't intervene. If the product label is non-compliant, Health Canada may take enforcement action and use powers such as seizure and detention, in addition to stopping the sale of a product, suspending the product licence, and possibly cancelling it. Vanessa's Law isn't needed for that.

Second, if the product label is compliant, but Health Canada wants the company to modify it for safety reasons, Health Canada may require the company to make the modification or drop the product. If the company doesn't comply, Health Canada has the authority to issue a notice of discontinuance or suspend the product licence.

Section 16 of the current natural health products regulations allows Health Canada to ask a company to change its labelling, including adding new warnings, if the minister has reasonable grounds to believe that a natural health product may no longer be safe when used under the recommended conditions.

I don't know what Mr. Naqvi is looking for. Perhaps he doesn't want us to agree, but I hope that the work we are doing here will encourage the Liberals to vote in favour of the bill in the House. That's what I'm looking for. That's the common sense approach we want to take.

● (1655)

[*English*]

The Chair: I have Mr. Naqvi, please.

Mr. Yasir Naqvi: Thank you very much, Chair.

I'm trying to understand the depth and scope of this particular amendment and have a clear view of it. I do want to move a subamendment to this motion, which will read as follows—and again, it has been—

Mrs. Laila Goodridge: I have a point of order.

The Chair: We have a point of order from Ms. Goodridge.

Mrs. Laila Goodridge: It has become very clear that the Liberals decided to have a whole bunch of subamendments to the amendments that we've had in place for a while. While we do have requirements to have them in to the clerk, I think it is absolutely insane that we do not have these subamendments before we are getting here, so that we can actually have some planning before we come into this meeting.

I get that they've decided they're going to play this game here, but this is leaving all of us who actually want to provide good work for Canadians in the dark. We still don't have the text of the subamendment. If it was clear that he was going to be moving a subamendment, why didn't we have this earlier?

● (1700)

The Chair: Subamendments can't be moved until an amendment is moved. The amendment has been moved, and now the subamendment has been moved. It is in order. There's no violation of the rules.

Go ahead and present your subamendment, Mr. Naqvi.

Mr. Yasir Naqvi: Thank you.

If Ms. Goodridge had allowed me to finish my sentence, I was going to say that it's with the clerk in both English and French, and I'm sure it's being circulated. The subamendment reads as follows:

> 1.1 The Act is amended by adding the following after Section 2.2:
>
> 2.21 Despite the definition of therapeutic product in Section 2:
>
> (a) sections 21.2 to 21.303 and 30.01 and paragraph 30(1.2)(f) apply to a natural health product within the meaning of the Natural Health Products Regulations;
>
> (b) despite sections 31.2 and 31.4, section 31.1 applies to any contravention of an order made under sections 21.2 to 21.303 or 30.01 with respect to a natural health product, within the meaning of the Natural Health Products Regulations, as if it was a contravention relating to food;
>
> (c) where the Minister has made an order under subsection 21.3(1) to recall a natural health product within the meaning of the Natural Health Products Regulations;
>
> (i) section 21.5 applies in respect of any actual or potential contravention of subsection 21.3(3), with respect to the natural health product, and—

Mrs. Laila Goodridge: I have a point of order.

[*Translation*]

Mr. Luc Thériault: I have a point of order, Mr. Chair.

The Chair: Go ahead, Mr. Thériault.

Mr. Luc Thériault: Mr. Naqvi read the subamendment very quickly, which I sincerely think showed a lack of respect toward me and the interpreters. The interpreters are doing their best, but it's impossible to understand what he's doing. I'd like him to table a copy of his subamendment in writing.

I think what's happening here is insulting. I really thought Mr. Naqvi was a good guy, but I can see he's playing political games. He lectures the Conservatives constantly. That's Parliament for you, as far as I'm concerned: You've got the government on one side, the opposition on the other, and you play the game.

I'm deeply insulted by the parliamentary conduct of Mr. Naqvi, who is the parliamentary secretary to the minister.

The Chair: Mr. Thériault, it's not my intention to defend Mr. Naqvi, but I should inform you—

Mr. Luc Thériault: Mr. Chair, I'm asking him to table his subamendment in writing as soon as possible.

The Chair: Mr. Thériault, this is—

Mrs. Laila Goodridge: I have a point of order, Mr. Chair.

The Chair: I'm rendering a decision on Mr. Thériault's point of order, Mrs. Goodridge; then I'll give you the floor.

Mrs. Laila Goodridge: I'd just like to have some clarification.

[*English*]

The Chair: Go ahead, Ms. Goodridge.

Mrs. Laila Goodridge: Knowing that you cannot have a subamendment before an amendment is moved, could we ask that one of the many Liberal staffers who are sitting in the back perhaps go and print copies of every single subamendment they plan on moving? Then when each of them is moved, we can have it in front of us so that we can actually be dealing with this, and interpreters can have it so that everyone can understand the conversation that's happening in real time. I don't think this is unreasonable to ask for.

The Chair: The subamendment has been circulated.

Does the meeting require a suspension in order to look at it before we resume?

Mr. Blaine Calkins: It's very substantive.

The Chair: Do we want a suspension to have a look at it?

An hon. member: Yes.

The Chair: Okay, the meeting is suspended.

● (1700)

(Pause)

● (1705)

The Chair: I call the meeting back to order.

I'll give the floor back to Mr. Naqvi to finish presenting his subamendment, please.

Mr. Yasir Naqvi: Could you repeat that again, Chair?

The Chair: You have the floor.

Are you finished presenting your subamendment? If so, you can cede the floor, and we'll go to the next person on the list.

Mr. Yasir Naqvi: No. I wasn't finished reading it. Let me finish doing this.

I want to apologize to Mr. Thériault. My intent was not to insult him or our interpreters if I was reading too fast. My apologies; it was not by design or intention.

The last part, so that it's on the record, is:

> (ii)(2) despite sections 31.2 and 31.4, section 31.1 applies to any contravention of subsection 21.3(3) or of a regulation made under paragraph 31.2(f) with respect to the natural health product as if it was a contravention relating to food.

Chair, that's the subamendment. May I speak to it now?

The Chair: Yes.

Mr. Yasir Naqvi: We have some concerns with the amendment that Mr. Thériault has presented. The amendment would revoke all Vanessa's Law authorities for NHPs to manage serious health and safety risks, with the exception of the minister's ability to order a recall. Other authorities, including the supplementary rules authority that would allow Health Canada to take action on pseudoephedrine, would be revoked.

For example, it would allow the minister to direct a label change if an NHP is deemed to pose a serious risk to the environment but not if an NHP poses a serious risk to human health. That clearly does not make any sense. While we all agree that the ability to order a recall is an important tool, this amendment would not extend to other measures that can be used to address serious issues, such as the ability to apply to a court to impose an injunction, or to direct label or packaging changes when serious risks are identified. The injunction authority in particular is a critical power to deal proactively with cases of non-compliance, allowing the courts to direct a person to stop an action that contravenes the act. In addition, the effectiveness of the recall power relies on having an appropriate fines and penalties regime to ensure compliance.

We have heard from Health Canada officials that $5,000 is too low. For some large businesses, this is just the cost of doing business. While we understand that concerns that the maximum fine for therapeutic products is too high for NHPs, we are proposing to apply the maximum fine for food products to NHPs. This strikes a balance between a meaningful fines and penalties regime and recognizing that NHPs are distinct from prescription products.

I also want to emphasize that we think it's important for Parliament to determine appropriate fines and penalties, rather than have the Governor in Council determine this without parliamentary oversight. I would hope that all my colleagues would agree with that principle.

The subamendment that I have proposed would preserve the most essential authorities needed by the minister to protect health and safety in the most serious circumstances. This includes the authority for the minister to direct a label or package change, which is in section 21.2; the authority for a court to impose injunctions, which is in section 21.5, in relation to a recall; and the authorities that have been recently used to strictly regulate nicotine replacement therapies, which are contained in section 30.01. We firmly believe that these authorities are essential to address serious health and safety issues when they emerge.

This subamendment would also preserve tougher fines and penalties for contraventions of a recall or supplementary rules order. It proposes to use the fines and penalties named under section 31.1—the penalties used for food, not therapeutic products, as I mentioned a moment ago. It also includes the authority for a court to issue injunctions with respect to a contravention of a recall order. Fines and penalties for all other contraventions of regulatory requirements would return to the lower levels prior to Vanessa's Law.

Finally, the subamendment that I propose to BQ-2 is also to achieve the intent of BQ-3. We have added a provision that sets out what offence provisions apply to a contravention of the recall order, and a reference is added to the regulation-making power for recall in paragraph 30(1.2)(f) so that it applies to NHPs.

I wanted to present that to you and have that on the record.

● (1710)

I recognize that the subamendment has a lot of provisions, but it is very much in keeping with the amendment presented by Mr. Thériault, just ensuring that it covers the breadth and scope of the authorities that are given to the minister as they relate to nicotine replacement therapies. That's the extent of it.

I'll stop here, Chair. I do have some questions for the experts to help understand, for the benefit of all members, the intent behind this subamendment. If you're okay with that, I can pose those questions to the experts as well.

● (1715)

The Chair: You can pose the questions to the experts while you have the floor. If you want somebody else to intervene and then pose questions, just get back on the list, or you can do it now.

Mr. Yasir Naqvi: I'd rather do it now while it's fresh in folks' minds.

The Chair: Go ahead.

Mr. Yasir Naqvi: Let me start with question number one. I'll go to Mr. Lee. He seems to be answering questions, or Ms. Godard, whoever is capable. I just don't want to presuppose.

We've heard from colleagues that Health Canada wouldn't need the supplementary rules provision to take action on pseudoephedrine, which is a precursor to the production of meth. Can you explain what makes pseudoephedrine different from other precursors, and why other legislation couldn't be used in this particular case?

Mr. David Lee: Mr. Chair, it is correct that when it's just used as a precursor, ephedrine and pseudoephedrine are regulated in a different framework as controlled products. Because here it's a health product, it's approved for a therapeutic use—decongestion—and it's then used by organized crime, dismantled and made into methamphetamine. Because it's sitting under the Food and Drugs Act, we needed to find a way to make sure that it didn't go out in an uncontrolled way to those who wanted to use it for, again, lethal purposes.

That's really the difference. It's not a straight precursor. It's actually a health product that can be repurposed, and that's why we needed to deal with it specially. Having the supplementary measures would be very important to keeping it behind the counter, or in front of the counter, just to make sure that organized crime, for example, cannot get it and repurpose it.

Mr. Yasir Naqvi: Thank you. That's a very specific purpose as to why this change is necessary.

Can you explain further when an injunction power could be used and why it's important?

Mr. David Lee: Mr. Chair, an injunction power is a very important enforcement tool. If you're prosecuting, it can take a very long time. In the case of something like a recall, if a company is not obeying the recall, it's very important to go to the court and get them to reinforce the fact that the company really needs to follow this order. You can do that in a very brief way. You can also make sure that, again, if there's ongoing contravention, the court can then supervise the situation. It's another tool of enforcement. Again, it goes to the courts. They adjudicate it, but it can be a very rapid measure, keeping in mind that recalls are really where there's an imminent threat to human safety.

Mr. Yasir Naqvi: Again, you have to apply to the court to get an injunction if somebody fails to follow the recall order that has been issued.

Finally, Mr. Lee, can you also explain why the power to direct a label change when health risks are identified is important?

Mr. David Lee: Mr. Chair, again, just as a clarification, the reason the label change power was included in the act for therapeutic products in the first place was to make sure we didn't have to intervene by seizing a product or removing its licence. Actually, that's often not in the best interest of patients or consumers because, again, they don't get the product, and at that point it's just over a labelling issue.

Having a label change power that's really geared.... It's very important that the threshold is that you do it to prevent an injury and only then. It's really making sure that you can instruct that through an order, to have it become a safe labelling, again.

In terms of the regulations, they don't have the power to instruct a change in label. There are rules about complying with the label expectations, but if there's something dangerous on the label, then, basically, the idea of the order would be to mandate that change without disrupting supply. It gives the company a chance to relabel and to make sure that you're not taking the product away from Canadians. That's really the idea of a label change power. Again, it's reserved only for those times when there's a potential injury that we have to intervene in.

● (1720)

Mr. Yasir Naqvi: That's it for me.

Thank you.

The Chair: Thank you, Mr. Naqvi.

We'll go to Dr. Ellis, please.

Mr. Stephen Ellis: Thanks very much, Mr. Chair.

In spite of the fact that Mr. Naqvi has an entire department at his disposal, it's clear that he didn't consider this beforehand. That's a sad state of affairs. This is a substantive amendment.

I mean no disrespect to you, Mr. Lee, but this certainly does not give anybody on this side of the table any chance to really consider and look at the act and understand how it may apply. You expect us to make this decision on the fly.

Mr. Naqvi, as the rest of us did, had the ability to put forward any amendments that he wanted to. Obviously, now at the eleventh hour, he chooses to make a substantive subamendment to a very straightforward BQ-2.

That being said, there are a couple of things to consider. If this bill went back to the House unamended, none of these powers would actually exist at all. I think the other ridiculous thing that we fail to consider here is that there is no substantiation that recall powers need to be extended at all. Nobody has provided one shred of evidence. In fact, we've asked for it. Sadly, the NDP-Liberal coalition voted against a common-sense Conservative motion to compel people who talked about serious adverse events to bring them forward. Then we wouldn't even have to have Mr. Julian's motion. We wouldn't even have to talk about it because we would have had evidence to consider, which, once again, he voted against in his lack of support to the natural health products industry. That being said—

Mr. Peter Julian: I have a point of order, Mr. Chair.

That is complete disinformation. I moved the UC motion that actually compels that information.

The Chair: When you get the floor, you'll be able to address that, but it's not appropriate to do it through a point of order.

Go ahead, Dr. Ellis.

Mr. Stephen Ellis: Thanks very much, Mr. Chair.

Again, as you know, we have an experienced parliamentarian who clearly doesn't know the rules. That being said, he did vote against the Conservative motion to require those people who made disparaging remarks to provide that information to this committee, which didn't happen.

That being said, I think the other thing for folks around this table to consider is this: What's the evidence to say that ephedrine or pseudoephedrine are a significant problem inside the NHP industry and that we need this regulation? Does anybody have any evidence? Does Mr. Naqvi have any evidence? I see that there is no evidence to say that this is necessary.

I would like to ask the experts here from the department this: Are ephedrine and pseudoephedrine being addressed anywhere else by this government? If so, where? What is the likelihood of this substantive subamendment foisted upon the committee playing a significant role in the illegal trade and traffic of ephedrine and pseudoephedrine?

Mr. David Lee: There is presently in place an interim order addressing ephedrine and pseudoephedrine. It basically requires the intervention of a pharmacist to be able to access it. This is for the reason that we don't want it out being made into methamphetamine. There is a legal operation there.

It's being made under the interim order power, which only lasts for a year. The departmental intent or hope is to be able to move this over to the supplementary rules. You really landed in a spot where we can deal with the issue.

Mr. Stephen Ellis: Thanks very much.

What you're telling me is.... The requirement for ephedrine and pseudoephedrine to be held behind the counter in pharmacies is not something new. This has been going on for some time now. I see your concurrence on that.

That being said, why would we muddy the waters inside the natural health products legislation that we have before us and that we know is important to 80% of Canadians so that Health Canada...so that the clueless Minister of Health can introduce legislation because he can't figure out how to do it any other way? Is that the answer to the question?

Mr. David Lee: Mr. Chair, I think the departmental intent always was to mitigate the safety risk. That's why, after the body that makes suggestions for behind the counter or not stepped away from the issue. In fact, they made a ruling that they would not deal with natural health products anymore. The department intervened to make sure, again, that we're protecting against the manufacture of methamphetamine.

There's a law there now. It's sitting on the books. It's operating. It's functioning quite well, in fact. The only idea here is that we'd like to remake it. Again, the department would like to remake it to make sure that protection subsists and that it stays, making sure that the product doesn't go astray into organized crime.

● (1725)

Mr. Stephen Ellis: Thank you very much.

Through you, Chair, are you telling me that there is no other legislation besides this legislation that the Department of Health could have found to protect Canadians from using ephedrine and pseudoephedrine to create methamphetamine? That's question number one, so put that in your back pocket.

Number two, please enlighten the committee as to how many instances there have been inside the NHP industry of difficulty with ephedrine and pseudoephedrine specifically in its use to create meth or crystal meth.

Mr. David Lee: The answer to the first question, Mr. Chair, is basically that it is a health product, and it's under the Food and Drugs Act, and then under that are the natural health products regulations. Since it's there, we needed to find a way to allow it to still be sold as a natural health product.

One way to do it is to remove it from the market and to put it in a controlled scheme. We want it to still be presented to the market so that people can use it, but then cannot abuse it. The control is really on making sure it's not sold in large quantities to those who want to abuse it. That's really the mechanism.

I would refer you to the rationale given to the public in making the interim order. It had the evidence. It had discussions. We had discussions with law enforcement, who were in favour of this to make sure that we controlled the behaviour. It's pretty egregious to have the methamphetamine out there. Really that was the intent.

Mr. Stephen Ellis: Thanks very much, sir. I appreciate that.

Through you, Chair, one more time, since I didn't know this was coming, how could I possibly prepare and read the egregious reports to which you refer?

I'll ask you one more time. How many times have natural health product manufacturers or distributors been implicated in using ephedrine or pseudoephedrine in the creation of methamphetamines?

Mr. David Lee: Mr. Chair, it's not the industry. The industry makes their health product. After that, it leaves them. It's out on retail shelves. It's beyond their control at that point. It's really not the companies doing the repurposing. That's not really their business model. It's organized crime that buys a quantity and then repurposes it in their labs.

Mr. Stephen Ellis: I understand that, Mr. Lee. I guess what you're suggesting is that somebody could make a significant purchase of bulk amounts of natural health products containing ephedrine or pseudoephedrine and could use them for nefarious purposes.

My question for you is this: To the best of your knowledge, has that ever happened?

Mr. David Lee: Yes, law enforcement has raised that as a concern, that it is being repurposed.

Mr. Stephen Ellis: I'm sorry. They raised it as a concern. I understand that, but has it happened?

Mr. David Lee: Yes.

Mr. Stephen Ellis: If so, please enlighten us. When did it last happen?

Mr. David Lee: I'm sorry, Mr. Chair, but I don't have that detail.

Again, it was a foundation for making the interim order. We did consult with the provinces. We consulted with law enforcement and with the sector, actually. There is support, generally, to make sure that the product can be sold on the market as a natural health product—it's very useful for that—but also that it's not abused. You can't buy it in large quantities. Again, the foundation is in that order.

Mr. Stephen Ellis: I understand that part, and I'm sorry to interrupt you. I do understand what the concern is.

My question for you is this: Has this actually happened, or is it a theoretical concern?

Mr. David Lee: The interim order we made was not based on a theoretical concern.

Mr. Stephen Ellis: Once again, here we are. We've been down this road with respect to natural health products many times.

Sir, this is not directed to be specifically negative toward you, but what we hear are these thinly veiled ideas that say, “Yes, this has happened,” but not one person has been able to give specific evidence or table it with this committee, nor has there been a desire, sadly, among the other members of this committee to have that information tabled for consideration. I think that's irresponsible of everybody who's raised a concern here.

We heard another group that said it had 700 adverse events. One of the adverse events it named was somebody reading a label wrongly and being dissatisfied with the product they had. Is that an adverse event? I don't think so.

Again, as I've said previously, 13,000 Canadian seniors are hospitalized every year because of prescription products. Does that mean they're bad? No. Does that mean we need to gut the regulations related to prescription drugs? I don't think so, but it might.

Now, here we are again. We're left with somebody saying, “I think there's been a report, or maybe there has been, and I don't know what the report is.” Nobody's showing it to me. Do you have it with you? Can you bring it up on your phone? Can you distribute it to the committee?

If you have that, it's appropriate here because once again, Mr. Naqvi, in his lack of preparedness, has foisted upon the committee a substantive amendment, which might be important for the safety of Canadians, but it might not be.

How could we possibly be expected to make a decision? If this is that important an amendment—once again, Mr. Naqvi should have done his homework—he should have submitted an amendment like everybody else around this table did. What do we have once again? Oh, this is a subamendment.

Chair, there is another thing I would ask you to consider. If this is that substantive a subamendment that it changes the original intent of the amendment, is it really admissible? That's a very significant thing to consider here, because we have not had any evidence provided to the committee to make an appropriate decision with respect to pseudoephedrine.

There's a difficulty for us as good legislators sitting around the table, especially given the fact that we're in the midst of a study here at the health committee on drugs and drug use within this country. We understand the difficulties associated therein. Certainly, we want to be cautious. I understand that. We can't reduce the risk to zero. The difficulty here, though, is we have a substantive amendment that's unsubstantiated.

The other part we need to understand clearly is that if this amendment fails to pass, do you have the ability under the Food and Drugs Act to make amendments outside of this particular bill, Bill C-368? Is there an ability to make amendments outside of Bill C-368 to protect Canadians from the potential diversion of ephedrine or pseudoephedrine, whether it be from prescription, over-the-counter or natural health products?

Do you have that ability? Answer yes or no, but you don't have to just answer yes or no; you can expand on it, if you so desire.

● (1730)

Mr. David Lee: Mr. Chair, just to clarify, the hypothetical is if we did not have the supplementary rules order in play, would we be able to address the ephedrine and pseudoephedrine and, potentially, other substances? The answer is not in the way we have in the interim order.

We could try to make the interim order again, but again, that lasts a year. It really is reserved for situations of very high-level emergency. Here, we thought it was justified.

Again, it is important to find a stable solution for this, and that really was the most fitting from an instrument point of view.

Mr. Stephen Ellis: Through you, Chair, what you're telling this committee is if Bill C-368, which was brought forward by my colleague, didn't exist, there would be no other way for your department to address pseudoephedrine or ephedrine getting into the wrong hands. Is that what you're telling me?

I'm sorry. I don't believe that, but if that's what you're telling me, that's what you're telling me.

Mr. David Lee: I'm not sure that's what I said, Mr. Chair. What we did was try to create the best solution we could.

Again, the natural health product could be out there on the shelves. We're not interfering with it as a legitimate product. We didn't want to do that. All the rule does—it's quite simple—is say to make sure that somebody doesn't show up and buy a whole crate of it and walk off when it's not for personal use.

Mr. Stephen Ellis: Mr. Lee, again, I'll interrupt you. We understand that portion of it.

My point is if Bill C-368 did not exist.... I'm sorry. You've known that Bill C-368 has existed for some time, and I'm supposed to believe today that a substantive amendment brought forward by Mr. Naqvi with respect to this very specific but important problem would not have been able to be addressed anywhere else.

I'm also supposed to believe that he thought this up between Tuesday and today and that it shouldn't have been brought forward as an amendment on its own. Is that what I'm supposed to believe? I don't believe it.

● (1735)

Mr. David Lee: Mr. Chair, again, to be precise, I don't think I was conclusive at all on not being able to do it another way. I think the deliberation was...and again, the supplementary rules order works against an unintended use. We approve with an intended use. This is an abuse that goes beyond that. It was an instrument specially created for that. It also works for the nicotine replacement products.

The theme of each of these products is really that it's being used in a way or presented in a way that's not the intended use. That was the departmental thinking: that was the best way to solve it. It doesn't say there's not another way, but that was the best way to solve it.

Mr. Stephen Ellis: Again, just for clarity, is there another way, besides interfering with the passage of Bill C-368, that the department could deal with the issue of unintended diversion of ephedrine or pseudoephedrine from prescription, over-the-counter or natural health product sources?

Mr. David Lee: It's something I couldn't conclude right now, Mr. Chair. It's something we would have to examine: what alternate ways. Again, because the way we did do it is both through an interim order, which has limitations, but then also with the supplemental rules, alternate ways would need to be examined. Again, making an instrument takes a lot of deliberation, even if it's a Governor in Council proposal.

Mr. Stephen Ellis: Through you, Chair, though, what you just said was that basically—for the benefit of Canadians—changing the rules is very difficult.

Mr. David Lee: Mr. Chair, I think what I'm trying to indicate is that the production of methamphetamine is a very important problem for the department and Canadians. We put a tool in place. It mitigates that risk. The other benefit is that it allows the natural health product to still be sold, so it's a very well-tailored instrument to use.

That's really the departmental thinking, and the supplemental rules set-up actually allows for that balance between availability, still, and making sure that abuse doesn't occur. That's really what I think the intention is of the instrument.

Mr. Stephen Ellis: If you continued down the same road the department is on at the current time and renewed the supplemental rules you have, that's also a possibility. Is it true?

Mr. David Lee: As a legislative proposal once again? Is that what you're saying?

Mr. Stephen Ellis: Yes.

Mr. David Lee: That would be the will of Parliament.

Mr. Stephen Ellis: If this particular subamendment, which, again, is substantive, were defeated here, there's no reason that the will of Parliament could not be used to renew the supplemental rules to which you've already alluded.

Mr. David Lee: I think, Mr. Chair, that's beyond me to answer. I'm an official with technical advice. That goes into parliamentary opportunity and procedure.

Mr. Stephen Ellis: It's really the will of Parliament to do that, but absolutely it could be done.

Mr. David Lee: If you're talking about placing something in the Food and Drugs Act, yes, that's the process.

Mr. Stephen Ellis: Yes.

I think what we've heard from Mr. Lee is that these changes are difficult. Obviously, this NDP-Liberal government has not made these changes for some reason, and again have waited until the 11th hour to attempt to subamend an amendment inside a bill that is not their own in order to regulate problems that they can't see fit to regulate themselves out of, which I find absolutely difficult to believe.

Chair, I would suggest to you that this is a substantive amendment because of the fact that an entire department can't see its way to regulate out of this, and it would take some time. It would take an act of Parliament.

Here in this committee, we are expected to accept the subamendment as not being substantive, deliberate on it without any prior warning and then make a decision that an entire government department cannot make in several years. If that's not the definition of a substantive amendment or subamendment, I don't know what is.

I'll leave it at that.

The Chair: Ms. Goodridge, go ahead, please.

Mrs. Laila Goodridge: Thank you, Mr. Chair.

I'm very concerned about the use of ephedrine when it comes to a chemical precursor. It devastates communities. I've seen it right across my riding and in rural communities across the country.

This triggers some thought bubbles in my head related to something we haven't studied as we've been looking at our study of the addiction crisis here at our health committee. We probably need to look more at these chemical precursors. What I'm hearing is that we don't have the tools at our disposal. We're looking at potentially adding one possible tool to deal with one substance, but I don't think that's enough to deal with chemical precursors when it comes to fentanyl or other things. We need to be doing everything we possibly can if we want to take steps in the right direction on the addiction crisis.

The part I have frustration with is that we're being....

Mr. Lee, I have no reason to doubt your sincerity in bringing this information forward. What I question is that we haven't heard this as a concern up until this point. Mr. Naqvi has known for a long time that this bill is before this committee. He chose not to bring forward any amendments, but decided instead to subamend when he realized this was going to be a problem. It didn't give us an opportunity to consult with any witnesses to see whether this does what you guys say it does. While I would like to trust you, I don't. Canadians don't trust this government, especially when it comes to natural health products. We heard that very clearly. My office has received thousands of emails and hundreds of phone calls. This is something that is too serious to trust, in the eleventh hour, that a very large, substantive amendment is going to cover it.

For that reason, I have to vote against it.

● (1740)

[*Translation*]

The Chair: Go ahead, Mr. Thériault.

Mr. Luc Thériault: Thank you, Mr. Chair.

I'll try to be brief.

It seems to me the precursors issue could be resolved under the precursor control regulations or the Controlled Drugs and Substances Act.

The only reason this issue is suddenly being raised, as the minister has done, is to counteract the dynamic of Bill C-368, since he knows the Standing Committee on Health is studying the overdose issue.

If Health Canada does a proper job, I'd like to think it might suggest a way to address that issue within another legislative framework, such as the two I just mentioned. I don't think this subamendment would solve the problem. It's inadmissible because it's a substantive, not formal, amendment. All the explanations that have been provided prove that. We can also solve the problem in a different way.

I'm sorry, Mr. Chair, but I'm looking forward to the vote.

I know that Mr. Naqvi can keep on talking, but it seems to me that a problem that can be solved in a different way and that should have been solved before now shouldn't necessarily prevent us from moving forward. You can't include all the concerns that anyone may have in a single amendment simply because the bill under study doesn't currently cover a certain aspect. And by the way, the subamendment isn't very clear for the moment.

This aspect is already covered by other pieces of legislation such as the precursor control regulations and the Controlled Drugs and Substances Act. That act clearly provides that it covers every substance that can be used to manufacture drugs. If something's missing, we need only amend it.

If my understanding is correct, an interim order made to address this problem must be renewed. I therefore propose that it be renewed and that Bill C-368 be adopted. If the government is seeking a long-term solution, it will amend the related acts and regulations.

I encourage Mr. Naqvi to withdraw his amendment.

● (1745)

The Chair: Thank you, Mr. Thériault.

[*English*]

Mr. Naqvi, go ahead, please.

Mr. Yasir Naqvi: Thank you very much, Chair.

I'm not going to take too long. I have no intent of belabouring this debate, but there are a few important issues that came up that are important to address.

What I've been hearing clearly from the officials is that we cannot use other laws on precursors since this is a health product. In other cases, we would have to take the product off the shelves and regulate it as a controlled substance.

In the current context, this problem doesn't exist because we have Vanessa's Law. This gap only comes into play because of the bill that Mr. Calkins has presented. Otherwise, there's no issue because we do have a law on the books that gives Health Canada the appropriate authority to deal with this matter.

Now we find ourselves at a juncture with the amendments that are being suggested by Mr. Thériault that create that gap. The purpose behind the subamendment that I have proposed is to narrow that gap so that we don't run into it. It's a remedial step that I'm taking.

I'd rather not have Bill C-368, as we've stated before, because we think it's a bad law. It creates precisely the kind of issues that we are trying to address now by way of a band-aid mechanism.

Now, Mr. Ellis loves to throw insults left, right and centre at all of his colleagues without any parliamentary respect. He's entitled to do whatever. He'll be judged by them or his loved ones on the manner in which he treats them. I won't stoop to his level.

He often talks about lack of preparation. Perhaps he should have done his homework. The interim order he says is not available is on Health Canada's website. He can find it. He can read it. It has lots of footnotes. I've read it. I don't know why he did not do his homework, but I leave it to him as to how he manages his time.

I'll just put this on the record. In the interim order it says:

> Canadian law enforcement agencies have brought to Health Canada's attention that they have found single-ingredient ephedrine NHPs, in particular authorized 8 mg ephedrine formulations, in clandestine laboratories that manufacture methamphetamine.

That information is available.

To Mr. Thériault, I'm not trying to be too cute by half here or trying to do a run-in. I'm merely trying to strengthen his amendment.

If Mr. Julian had not withdrawn his amendment, NDP-1, this problem would not exist, because that had actually managed that particular gap. Now that is gone. That's why I'm forced to present this subamendment for consideration, so that we can further bolster and strengthen Mr. Thériault's amendment.

Mr. Peter Julian: Mr. Chair, on a point of order, Mr. Naqvi is an experienced parliamentarian. He knows what the amendment deadline was, and he knows he could have submitted that amendment at any time.

The Chair: That's not a point of order.

Go ahead, Mr. Naqvi.

Mr. Yasir Naqvi: I'm presenting an amendment to an amendment. It's tabled. My spirit is simply that.

We've heard from the officials that we are not taking away from Mr. Thériault's amendment. It makes it better. It strengthens it. There are a few gaps that have arisen as a result of that amendment. What my subamendment is doing is eliminating those gaps so that the true intent of his amendment, if passed, can actually take appropriate force.

● (1750)

The Chair: Thank you, Mr. Naqvi.

[*Translation*]

Mr. Thériault is the next speaker on the list. However, I must inform you that our resources will be available only until 6:22 p.m.

Mr. Luc Thériault: On a point of order, Mr. Chair.

The Chair: Go ahead, Mr. Thériault.

Mr. Luc Thériault: I still haven't received the text of the subamendment in writing. I want to have it in writing. I don't understand why we still don't have it.

Mr. Stephen Ellis: I don't either.

Mr. Luc Thériault: We've been discussing it for some time. Why haven't we received the text of the subamendment yet?

The Chair: It was emailed at 5:01 p.m.

Mr. Luc Thériault: When you email something while we're deliberating, it might be a good idea to inform us of the fact. That's the least that can be done. I have to request that a paper version be sent to us every time someone tables a motion or amendment. We work from paper copies now.

I don't want to prolong matters because that counts against my team, but it seems to me there was enough time to print the document while we were discussing it. It facilitates matters. If we don't have a written text, we have to work with several screens at the same time; we have to use the telephone and so on. That's not how we should be working. Could we please be more rigorous?

The Chair: We're in the process of preparing a paper copy. Do you want us to suspend or continue?

Mr. Luc Thériault: Yes, I'm asking that we suspend. I'll present my comments once I have a hard copy of the text.

[*English*]

The Chair: All right. The meeting is suspended.

● (1750)

_____(Pause)_____

● (1755)

The Chair: I call the meeting back to order.

Mr. Thériault, you have the floor.

[*Translation*]

Mr. Luc Thériault: Thank you, Mr. Chair.

Upon reading the subamendment, I see that we're stepping back from what we discussed earlier, particularly the fact that Mr. Julian withdrew his amendment.

Consequently, I'm just going to vote against the subamendment; that's all. We can go to the vote as soon as possible.

[*English*]

The Chair: Mr. Calkins.

Mr. Blaine Calkins: Thank you, Chair.

I've tried to understand the rationale provided by the mover of the subamendment. I, too, am frustrated, because on the surface, this appears to be well thought out and substantive enough that it should have been in the original package of amendments, not moved as a subamendment.

Mr. Ellis intimated whether or not this subamendment is actually in order because it substantially changes the nature of the original amendment. I don't know if you have decided, Mr. Chair, that the amendment is in order.

I find it passing strange that the rationale and justification for doing this are somehow to help law enforcement, which usually relies on things like the Criminal Code and the Controlled Drugs and Substances Act to do its job. Given the fact that there is a renewable interim order in place to already deal with these precursors, I think this is another attempt to play politics with the industry. I don't think this is the right place to be dealing with precursors for drugs. They should be in the Controlled Drugs and Substances Act and the Criminal Code.

You're asking the natural health products industry and the consumers of those natural health products to take on the responsibility of preventing organized crime. That's the responsibility of the police and law enforcement agencies. It's the responsibility of the government to make sure that adequate provisions are in place in the Controlled Drugs and Substances Act. This is criminal. We're talking about criminal behaviour here and in the Criminal Code of Canada.

For those reasons, Mr. Chair, I believe this may be disguised as a well-intentioned effort, but it's missed its mark insofar as where it needs to be addressed, and I'll be voting against the subamendment.

The Chair: Thank you, Mr. Calkins.

The speakers list is now exhausted.

Is it the will of the committee to adopt the subamendment proposed by Mr. Naqvi?

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

The Chair: That brings us to BQ-2 as presented.

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

(Clauses 2 and 3 agreed to)

The Chair: That brings us to new clause 3.1. There is an amendment in your package. It is NDP-2.

Mr. Julian, do you wish to move NDP-2?

● (1800)

Mr. Peter Julian: As I mentioned earlier, Mr. Chair, I withdraw NDP-2.

The Chair: It hasn't been moved. We'll just go right to BQ-3.

[*Translation*]

Mr. Thériault, do you want to present amendment BQ-3?

Mr. Luc Thériault: Thank you, Mr. Chair.

To better understand the change proposed by amendment BQ-3, see paragraph 30(1.2)(f) on page 40 of the Food and Drugs Act.

Additionally, to provide some clear context, I'm going to read subsection 30(1.2), which appears under the heading "Regulations — therapeutic products".

> 30(1.2) Without limiting the power conferred by any other subsection of this section, the Governor in Council may make regulations

Now going back to amendment BQ-3, I move that Bill C-368 be amended by adding after line 13 on page 1 the following new clause:

> 3.1 Subsection 30(1.2) of the Act is amended by adding the following after paragraph (f):
>
> (f.01) respecting the recall of *natural health products* within the meaning of the *Natural Health Products Regulations*;
>
> (f.02) prescribing penalties for the contravention of subsection 21.3(3) in respect of a *natural health product* within the meaning of the *Natural Health Products Regulations* or of the regulations made under paragraph (f.01);

The industry and Health Canada people will have to discuss this amendment before the fines are determined. We will have to do things properly. As I've said from the outset, the fines imposed must be proportionate to the offences committed within the industry. We've discussed this at length and observed that the fines are disproportionate, which, incidentally, is why Bill C-368 was proposed.

Amendment BQ-3 would therefore make it possible to put regulations in place, and the current provisions would apply in the meantime.

The Chair: Thank you, Mr. Thériault.

[*English*]

Mr. Naqvi, go ahead, please.

Mr. Yasir Naqvi: Thank you, Chair.

Mr. Lee, I have a question in relation to this amendment. As I think I alluded to in my earlier comments, as I read this amendment, it gives the Governor in Council the authority to set fines as opposed to Parliament. My preference would be that Parliament should have the power to determine the quantum of the penalties and not the Governor in Council, or on the other hand the cabinet.

Is this out of the norm? Is what Mr. Thériault is suggesting out of the ordinary? From a regulatory perspective, what's your preference as to how the power should be outlined?

Mr. David Lee: Mr. Chair, at least for the Food and Drugs Act, this is not something we have seen before. We understand the intent is to make sure there's robust discussion and consultation in setting the fine.

I have one technical observation. I think it is very important to clarify that the word "penalties" doesn't occur in the act. We actually have the words "fine" and "terms". I don't know if this speaks to both with regard to the Governor in Council. I guess the intention is to sort of set a fine level, but there are also terms of imprisonment on.... When it comes to penalties, it's just to clarify whether it means that both might be set by the Governor in Council.

In any case, it's a highly unusual inclusion. It is usually something that Parliament does directly. It doesn't delegate fine levels or prison terms, as an observation. Basically, that process would take some time to make the regulation, so there's some ambiguity in the meantime. I suppose we would need to default back to the $5,000 level. Again, if there's a recall situation and getting compliance, that would be a very difficult level to deal with.

Yes, it is a very unusual delegation to the GIC. Again, our thought was that there are lower fine levels in the act to point to by section number other than the $5,000 level and not leave it to, again, that delegation down to the Governor in Council.

● (1805)

The Chair: Do you have anything further, Mr. Naqvi?

Mr. Yasir Naqvi: That's it. Thank you.

The Chair: Thank you.

[*Translation*]

Go ahead, Mr. Thériault.

Mr. Luc Thériault: The last part of paragraph (f.02) is clear: "…or of the regulations made under paragraph (f.01)". That would enable the government to determine appropriate penalties.

We currently want to maintain the existing provisions until the government makes new regulations. It seems to me that a consultation process should be required in order to establish new regulations, but no one has been consulted to date. The government proceeded in secret, without being transparent. It tabled Bill C-47, and fines of up to $5 million were suddenly imposed on industry people.

For the moment, no one has demonstrated that the industry was as recalcitrant as was said. The Auditor General's report made it clear that Health Canada was unable to perform its duty to inspect. I imagine Health Canada would be in a better position to do so in the context of the discussions on the cost recovery regulations.

Amendment BQ-3 would clearly make it possible to proceed with consultations for the purpose of developing appropriate regulations for natural health products. That requires discipline, of course. Fines of $5,000 may not be enough.

The amendment clearly states: "…within the meaning of the *Natural Health Products Regulations* or of the regulations made under paragraph (f.01)".

Fines may be applicable in the meantime, but they would be the fines provided for under the natural health products regulations currently in force.

[*English*]

The Chair: Are there any further interventions with respect to BQ-3?

Seeing none, shall BQ-3 carry?

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

(Clause 4 agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

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

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: Congratulations, Mr. Calkins.

Is there any further business?

Dr. Ellis, do you have something?

● (1810)

Mr. Stephen Ellis: I move to adjourn, Chair.

(Motion agreed to)

The Chair: We're adjourned.