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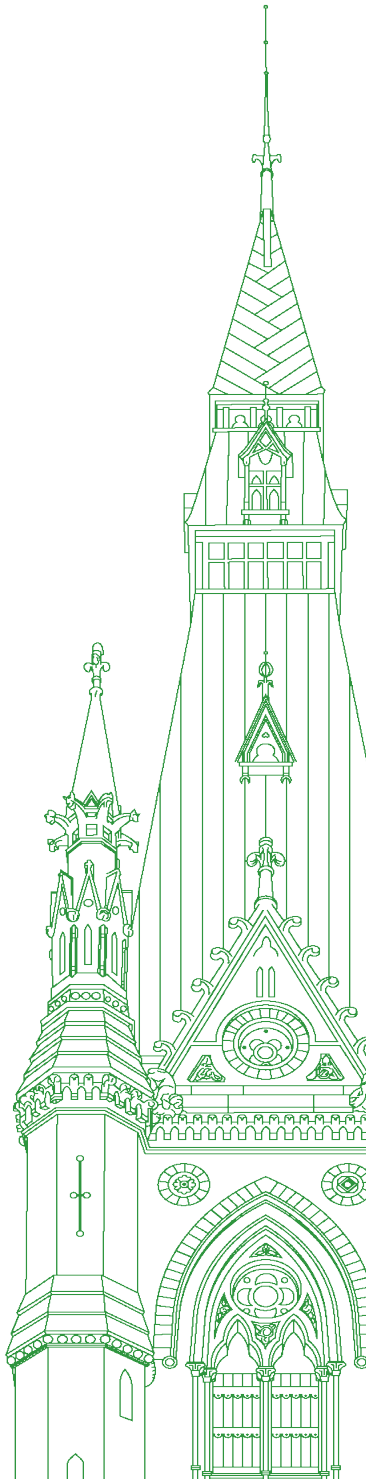

Chair: Mr. Francis Scarpaleggia

Standing Committee on Environment and Sustainable Development

Tuesday, November 22, 2022

● (1550)

[*English*]

The Chair (Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.)): I call the meeting to order.

In accordance with our routine motion, I'm informing the committee that all witnesses have completed technical tests. Thank you very much to the witnesses for that.

Many of the witnesses are already familiar with the way we operate when there's a virtual component. Essentially, could you keep your microphone on mute until you happen to be speaking? Members are familiar with the routine as well.

Today we begin meeting number 38 of the committee. We are having our first meeting of witnesses on Bill S-5, an act to amend the Canadian Environmental Protection Act, 1999, to make related amendments to the Food and Drugs Act and to repeal the Perfluorooctane Sulfonate Virtual Elimination Act.

We have with us, for our first panel, three panellists.

[*Translation*]

First, we welcome Dr. Claudel Pétrin-Desrosiers, a family doctor and president of the Association québécoise des médecins pour l'environnement, the Quebec association of physicians for the environment.

Next is Ms. Cassie Barker, senior program manager, toxics, from Environmental Defence Canada.

Finally, we have Ms. Lisa Gue, national policy manager, from the David Suzuki Foundation.

The witnesses will have three minutes each for their opening remarks. We will then move on to questions.

Without further delay, Dr. Pétrin-Desrosiers has the floor for three minutes.

Dr. Claudel Pétrin-Desrosiers (Family Doctor and President, Association québécoise des médecins pour l'environnement): Thank you.

Hello, everyone. Thank you for inviting me to appear before you today.

To begin, let me say very clearly that I am unequivocally in favour of updating, adequately reforming and strengthening the Canadian Environmental Protection Act, or CEPA. After more than 20 years, it was due, as they say.

I am a family doctor in Hochelaga-Maisonneuve, a part of Montreal known for being quite poor. Historically, this part of the city has been exposed to higher levels of atmospheric pollution than other parts, and that has been the case for decades. To this day, the health of people in this part of town, including my patients, is threatened by industrial projects, a lack of green space, and heat islands caused by poor urban planning.

I am telling you this because I believe that the modernization of the Canadian Environmental Protection Act, along with a stronger legislative framework to assess and monitor toxic substances, including greenhouse gases, would help me protect my patients' health on a daily basis, and also help protect the health of people in other parts of Canada. In the interest of equity, the CEPA must include an environmental justice strategy, and we have a few proposals to that effect.

In view of climate change, which is recognized as the greatest threat to human health of the 21st century, the loss of biodiversity, which is associated with the growing risk of pandemics, and increased pollution levels, the right to a healthy environment must be seen as a true collective priority. There is no room for partisanship on this issue.

Moreover, COP27 just ended, in Egypt, where Canada was represented by the Minister of the Environment, the Honourable Steven Guilbeault. In the final document, the Sharm El-Sheikh implementation plan, the minister, along with all member countries of the United Nations Framework Convention on Climate Change, recognized the importance of the right to a healthy environment.

If we are ready to take this step internationally, it is also time to do so here, in Canada. We must therefore strengthen the implementation framework for the right to a healthy environment in Bill S-5, and we have a few amendments to propose in that regard.

In recent years, there have been advances in scientific knowledge about the various forms of pollution. In Canada alone, we now know that it leads to more than 15,000 premature deaths and costs us $120 billion every year. Atmospheric pollution is toxic for nearly every organ in the body, and at all stages of life. It affects the heart, the brain, the lungs, the kidneys and so on. We can put an end to that.

A modernized CEPA must not only recognize the right to a healthy environment, but also include the highest air quality standards. That requires strong language in Bill S-5 for protection and prevention.

Let me be clear: by supporting the amendments we propose in our brief to strengthen Bill S-5, and thereby adequately reforming the CEPA, you have the opportunity to considerably improve the life of millions of people in Canada. That is a tremendous privilege, but it is also a responsibility.

We made the mistake of waiting for more than two decades to review this act. We cannot afford to wait any longer.

Thank you.

● (1555)

The Chair: Thank you very much, Dr. Pétrin-Desrosiers.

I should mention that Mr. Benzen is replacing Mr. Kitchen today, and Mr. Morantz is replacing Mr. Deltell.

I would also remind you that we started the meeting 20 minutes late, so I plan to continue the meeting until 5:50. We have the room until six o'clock, but we can stop at 5:50.

Ms. Barker now has the floor for three minutes.

Ms. Cassie Barker (Senior Program Manager, Toxics, Environmental Defence Canada): Hello, everyone.

[*English*]

Thank you, ENVI members.

I am Cassie Barker, senior program manager of the toxics program at Environmental Defence.

My colleagues and I appreciate this opportunity to appear before this committee and to work together to strengthen this bill.

CEPA is essential to human and environmental health. It provides the government the authority to act on urgent mandates, such as reducing climate-changing greenhouse gases and banning single-use plastics. Bill S-5 is a starting point, but it requires changes to make it a stronger, more rigorous reform of the sections of CEPA that are up for review.

Our proposed amendments will help the government clarify and focus their ambition on securing environmental rights and improving chemicals management.

I would like to raise two transparency-related issues in our proposed amendments. In our submission, this is recommendation two, which relates to labelling. It establishes a new requirement for the minister to ensure that harmful substances are disclosed on the labels of consumer products. This is in clause 20.

Also, recommendation eight, which relates to confidential business information, requires reasons to accompany a request and puts the onus on the requesting party to demonstrate the necessity for confidentiality—this is subclause 50(2)—and it mandates disclosure of the names of substances and organisms when in the public interest, such as when permits, conditions, notices or prohibitions apply. That is in clause 53.

First, on transparency and labelling, people in Canada currently have limited access to information regarding the chemicals found in many products, some of which lead to harmful exposures with potentially serious health and environmental effects. Without complete ingredient labels, information about exposures is unknown. Ingredient disclosures can drive product reformulation, safer substitution and market reform. Providing information on the hazardous substances in products ensures greater transparency and facilitates the consumer's right to know.

Product companies are already complying with disclosure, transparency and labelling requirements in other jurisdictions, such as the EU and the U.S., including California. Government has a duty to uphold health protection, illness prevention and environmental justice. In order to be effective, mandatory labelling must include disclosure of the presence of substances that have been determined to be toxic or that are suspected of being capable of becoming toxic.

Second, we can set a higher bar for confidentiality claims in order to expand public access to data about environmental and health risks.

We respectfully request your support for these amendments, and we look forward to future opportunities to improve CEPA to more fully realize its vision of precaution and protection.

Thank you.

● (1600)

The Chair: Thank you very much. That was three minutes on the dot. It was well timed.

Ms. Gue, from the David Suzuki Foundation, the floor is yours.

Ms. Lisa Gue (Manager, National Policy, David Suzuki Foundation): Thank you, Mr. Chair.

It's truly an honour to appear on this first panel on Bill S-5. This bill has been a long time coming. I was on maternity leave when this committee initiated the review of CEPA, and we just celebrated my son’s seventh birthday.

ENVI made 87 recommendations for strengthening CEPA. The bill in front of you doesn’t address nearly all of them. However, it does propose long-overdue updates to Canada’s legislative framework for assessing and controlling toxic substances, and it would recognize the right to a healthy environment for the first time in federal law.

I will focus my remarks on the latter, but I would be happy to answer questions about any of the recommendations in our joint brief.

There are only a handful of countries in the world that do not recognize the right to a healthy environment in law, and, sadly, Canada is one of them. Bill S-5 would change this, creating a duty for the government to protect the right of every individual in Canada to a healthy environment, within the scope of CEPA, and laying the groundwork for a framework to implement that right.

This will help align CEPA with the UN resolution recognizing the right to a healthy environment, which passed unanimously at the most recent General Assembly, and the COP27 cover text calling on parties to “respect, promote and consider their respective obligations on human rights...when taking action to address climate change”.

Incorporating the right to a healthy environment in CEPA will be a historic development in Canadian law, so it’s important to get it right.

A crucial Senate amendment fixed problematic language in the formulation of the right in the original bill, but there is a corresponding change that needs to be made to the requirements for the implementation framework. The legislation should not presuppose that consideration of social, health, scientific and economic factors will always justify limiting the right.

Second, we recommend an explicit requirement for the implementation framework to specify how the right to a healthy environment will be upheld in relation to substance assessments and enforcing ambient air quality standards. This would provide a measure of certainty in the law that the framework will address these two critical CEPA responsibilities where we see real opportunity for the right to a healthy environment to drive results on the ground and save lives.

Third, we recommend incorporating key principles related to the right to a healthy environment into section 2 of CEPA as administrative duties. Bill S-5 sets out the principles of environmental justice, non-regression and intergenerational equity in relation to the right to a healthy environment implementation framework, but it does not require these principles to be upheld, only considered. Reinforcing these principles as duties in section 2 would give them greater force and ensure that they are applied consistently throughout the act.

Before I close, I want to recognize the many individuals who have passionately and persistently called for Canada to recognize the right to a healthy environment in law. Some of them are your constituents, and you've probably heard from them.

We hope you will rise to the occasion and pass a CEPA modernization bill that all Canadians can be proud of.

Thank you.

● (1605)

The Chair: Thank you very much.

That takes us to our first round of questioning, which is the six-minute round.

We start with Mr. Kurek.

Mr. Damien Kurek (Battle River—Crowfoot, CPC): Thank you very much, Mr. Chair.

Thank you to the witnesses for kicking off the Bill S-5 study.

It's an important series of subjects that are addressed in Bill S-5, and I would just note that it's unfortunate that a motion passed recently by this committee limits some of the important debate that I certainly believe needs to be taken into account in relation to a subject that's as important as this.

I'll go through each of the witnesses.

One of the issues I've certainly come to find very important to address—and I'm hoping you can provide some insights—is the interactions between the federal and provincial governments and how jurisdictions need to co-operate when coming to address something as important as the environment.

I'll start with Ms. Gue in the room here, and then I'll move to our online witnesses. On that relationship between the provincial and federal jurisdictions, how do you see that either being addressed or not being addressed in Bill S-5?

Ms. Lisa Gue: Thanks for the question. It's a very big and eternal question, I guess, in environmental governance in Canada, and possibly the subject for another committee study.

Bill S-5 is a package of amendments to CEPA. The federal jurisdiction under the Canadian Environmental Protection Act has been examined and upheld by the Supreme Court of Canada. I think within the range of topics we're addressing today, it's clear that we're discussing the federal responsibility jurisdiction under CEPA.

Mr. Damien Kurek: Thank you.

Ms. Barker, you're the next one I can see on the screen. Would you like to address the interplay between federal and provincial jurisdiction and how you see that and interpret that through the bill we have before us?

Ms. Cassie Barker: I would add that in cases where the provinces are seeking to take leadership on these issues, industry has repeatedly requested that the federal government take leadership on toxics. I think this is an opportunity for this committee to respond to that call, take a strong, progressive view on how we manage chemicals in this country, really follow the requests that are being made by industry to see this federal leadership take place, and support the provinces in their efforts as well.

Thank you.

Mr. Damien Kurek: To our final witness, do you have anything you'd like to add on that?

[*Translation*]

Dr. Claudel Pétrin-Desrosiers: I share the opinion stated by my two colleagues a few minutes ago. The reform of the Environmental Protection Act is an opportunity not to be missed if we are to reassert strong national leadership on the health of people living all across Canada. We must take this opportunity. Everyone has the right to live in a healthy environment.

That summarizes my thoughts on the issue.

[*English*]

Mr. Damien Kurek: Thank you very much.

Ms. Barker, in your comments you articulated some of the concerns about stakeholders and industry. I'm wondering if you'd care to expand a little bit on the important aspects for stakeholders. That includes those within industry and within different aspects of the economy. The renewable and green-tech sector is also affected by this. I'm wondering if you'd care to expand on some of the impacts you see Bill S-5 having on the economy generally.

There's about a minute left, I believe.

● (1610)

Ms. Cassie Barker: I would say you're correct in that this is indeed an opportunity for many sectors in Canada to have the playing field addressed so that their efforts towards cleaning up their own supply chain are acknowledged and supported by this government. I think we have heard repeatedly from industry supporting this legislation. I think there is definitely an opportunity for us to capitalize on a cleaner, greener economy.

I would say that having strong rules that enable that cleaner, greener economy as part of Bill S-5 and CEPA does nothing but move us faster, and in a more clear fashion, towards that future.

Thanks.

Ms. Lisa Gue: Is there a second left for me to add to that, Mr. Chair?

The Chair: You have 10 seconds.

Ms. Lisa Gue: Very quickly, I think it's clear that the future global economy is a clean, green economy. Strong, effective and up-to-date environmental protection laws will be crucial for levelling the playing field and, as the previous speaker mentioned, ensuring clarity across the board and positioning Canada to succeed in that economy.

The Chair: Thank you.

We'll go to Mr. Longfield now.

Mr. Lloyd Longfield (Guelph, Lib.): Thank you, Mr. Chair.

Thank you to the witnesses for seven years of work, in some cases, with our committees, whether here or in the other place. I have looked at the testimonies from the other place. There was a lot of good discussion there, and I thank you for that as well. That's helping us to get a bit of a head start.

Ms. Gue, you mentioned the recent United Nations resolution, which was adopted in October of last year. Resolution 48/13 recognizes the “right to a clean, healthy and sustainable environment”. Is this the type of wording we should be looking towards for this legislation, to include the other words here of “clean, healthy and sustainable environment”?

Ms. Lisa Gue: Just as a quick update to that, I think you're referring to the resolution passed by the United Nations Human Rights Council last October. The Human Rights Council actually brought the resolution forward to the United Nations General Assembly. The resolution at the General Assembly passed with unanimous support, including the support of Canada, just a few months ago.

I think there are slight differences in how the right is expressed in different statutes, resolutions and constitutional texts. In our view, the language in Bill S-5 captures the essence of this right. But the complementary wording in the UN resolution provides helpful interpretative value as well.

Mr. Lloyd Longfield: Great. Thank you.

I will just stay with you here for a bit.

In the Senate's discussions on this, there was a lot of discussion around data and access to data. When we look at the substances that are on the domestic substances list and how we give access to that, there are 30,000 substances on that list. That is a list to manage for sure.

On November 4, Environment and Climate Change made a new tool available to the public that links users to the draft and final screening assessment reports for substances under CEPA. Subclause 13(2) proposes an amendment that seeks to ensure that the environment registry is maintained as a database.

Have you had a chance to look at this existing tool from Environment and Climate Change Canada to know whether this is satisfying what was being discussed in the Senate prior to its being introduced?

Ms. Lisa Gue: The CEPA registry is a very important, already established tool. There's always room for improvement, for sure. Unfortunately, I haven't had an opportunity to explore this new search function. Those are documents that are available already on the CEPA registry.

While you raise the issue of public access to data, the search platforms are one question. I think the bigger issue that we would bring before the committee is the need to really better control claims for confidentiality in the data that is submitted to the federal government in relation to CEPA responsibilities.

Bill S-5 makes one important step in this direction by requiring persons submitting data to provide reasons with their requests for it to be kept confidential. I do accept that the Government of Canada has responsibilities to protect confidential business information when it does indeed meet that test. The problem is that right now those claims are automatically accepted.

We are proposing, as you'll see outlined in our brief, an amendment to Bill S-5 that would create a presumption of non-confidentiality and require the minister to review those claims with reasons and only approve claims that are indeed legitimate.

By the way, we see in a report from the U.S. EPA, where confidential business information claims are routinely audited, that as much as a third are actually rejected and found to be inadmissible. Presumably many of those same claims are being made in Canada and are being automatically approved due to lack of oversight.

● (1615)

Mr. Lloyd Longfield: Thank you.

You are actually leading into my next question for Ms. Barker. That has to do with TSCA in the United States. We have a lot of business between companies on both sides of the border. As we look at how other countries are managing toxic substances, is there something we need to pay attention to from TSCA in the United States, in terms of the things that were just mentioned around approvals? Or are there any other things we should include in our study?

That's for Ms. Barker.

Ms. Cassie Barker: Thank you so much for the question.

I would say that Canada has done a better job of framing.... Where TSCA has not necessarily deemed substances to meet their threshold where their restrictions necessarily come into play, the CEPA toxic...is quite a useful tool for triggering criminal and other powers, which the federal government is then able to use for substances that meet our toxic substances threshold.

I would say that we do have some very useful and powerful tools. Unfortunately, those tools aren't necessarily all put to use in managing chemical substances.

The Chair: Thank you. We'll have to stop there.

[*Translation*]

I will now give the floor to Ms. Pauzé.

Ms. Monique Pauzé (Repentigny, BQ): Thank you, Mr. Chair.

Thank you to all the witnesses for being here. Before I begin my questions, I wish to say something.

I have not been working on this issue for seven years, but I have devoted a lot of energy to it. I have spoken to Mr. Weiler and the minister about it. I even took part in two meetings with public servants, via Zoom, as well as meetings with the organizations in order to properly understand Bill S-5. The motion adopted last week shows disregard for all the work that my assistant, Célia Grimard, and I have done. I wanted to say that. I wanted to say that I do not approve of this situation at all. I wanted to use this first meeting on Bill S-5 to make everyone listening know that time for debate has been limited and the process has been accelerated. If we end up with a law that is not clear enough to protect the environment and public health, that will in my opinion be the result of the decision to limit democratic debate and public consultation.

Thank you, that is what I wanted to say.

Now I have a question for Ms. Gue.

Your organization is calling for an accountability framework for the implementation of management plans. You stated that, since there are no mandatory timeframes in the current act, the implementation of control measures is many years if not decades behind. During all those years, these delays have resulted in unnecessary risks to human health and the environment.

What would you recommend to improve Bill S-5 to bring us up to date, to remain current on scientific advances and thereby avoid the type of situation you highlight?

● (1620)

Ms. Lisa Gue: Yes, that is indeed a big weakness in the current bill. All the measures proposed in the bill, such as the obligation to uphold the right to a healthy environment, are actually contingent on the decision to declare a substance as being toxic and to set up a risk management program for that substance. Unfortunately, there is nothing in the current act or in the bill that guarantees that such a program will indeed be set up. Those are some of the improvements that I mentioned. I believe that my colleague who will be testifying during the second part of the meeting will talk about this more.

We are recommending that Bill S-5 set clear deadlines for risk assessments, as well as timelines for the publication of proposed recommendations in order to manage the risks associated with these toxic substances. There should also be an obligation for the minister to be responsible for setting up such a risk management program.

Ms. Monique Pauzé: Thank you very much, Ms. Gue.

My next question is for Dr. Pétrin-Desrosiers.

You are one of the co-authors of “Policy Brief for Canada,” which is a document that you worked on in conjunction with the Lancet Countdown on Health and Climate Change.

You are also one of the co-signatories of a letter, which was sent to members of our committee and MPs, highlighting the need to reinforce the Canadian Environmental Protection Act. This letter states that “chemicals go onto the market and into use before their effects on human health and the environment are fully understood.” You gave cosmetics as an example.

Do you know any countries whose legislation on chemicals would be good models to follow? If so, what are the best practices that we should concentrate on?

Dr. Claudel Pétrin-Desrosiers: That is a complex question. These substances act in different ways and it's not always possible to establish a direct correlation. Often, the cumulative risks associated with various substances can make an assessment very difficult. The truth remains, however, that we are regularly exposed to many toxic substances.

When the Canadian Environmental Protection Act was passed at the end of the 1990s, we knew very little about endocrine-disrupting chemicals and their various combinations. Our knowledge of the subject has greatly increased over the past few years, however.

France has been one of the leaders in this field with its proactive and stringent regulations on endocrine-disrupting chemicals. This is a field that is very close to my area of expertise, which is health. France has made regulations that target certain risks such as exposure to endocrine-disrupting chemicals in certain healthcare settings. Let me give you an example for clarity. In the hospital, we sometimes have to rehydrate patients with saline solutions. The solutions come in plastic bags, and the tubes connected to these bags contain a lot of endocrine-disrupting chemicals. France has taken measures to reduce exposure to these chemicals. I would say that France has made important strides in its legislation over the past few years.

Ms. Monique Pauzé: Thank you so much for that. When we have a concrete example, it helps us to move forward better.

My next question is for Ms. Gue.

The old version of the act was aimed at eliminating pollution; now, the act is about controlling and managing pollution. Do you get the impression that we are going backwards rather than forwards?

The Chair: Ms. Gue, you have 15 seconds to answer the question. You can always provide more details during another exchange.

Ms. Lisa Gue: I will answer very quickly.

The bill is presenting the requirements in a different way. We see what is being proposed here as a good thing, because priority is being given to banning certain toxic substances, including carcinogenic and mutagenic substances, as well as toxic substances that cause reproductive problems.

The Chair: Thank you.

Ms. Collins, over to you.

[*English*]

Ms. Laurel Collins (Victoria, NDP): Thank you, Mr. Chair.

My first question is for Ms. Gue. I appreciated your comments on the right to a healthy environment. I think many Canadians are worried about the limitations the government put on the right to a healthy environment in the bill. That's part of why the amendments made by the Senate are so crucial.

You're proposing other amendments to strengthen it. You raised concerns about how the bill sets out consideration of relevant factors in the right to a healthy environment. Can you talk a little about the importance of the recommendation you're suggesting?

In addition to that, you also put forward a recommendation for an amendment establishing principles of environmental justice, non-regression and intergenerational equity. Can you also explain to the committee the crucial nature of these principles?

● (1625)

Ms. Lisa Gue: Thank you for the questions.

In the section related to the implementation framework for the right to a healthy environment, Bill S-5 requires that the framework elaborate on “the reasonable limits to which that right is subject, resulting from the consideration of relevant factors, including social, health, scientific and economic factors.”

We're proposing an amendment to this section, because it's a mistake to consider that relevant factors would be relevant only in terms of limiting the right. If these factors are relevant, it should be acknowledged that they are relevant more broadly. The law needs to allow for consideration of those factors in order to justify, in some cases, the full application of the right or even expansion of the right—not only its limitations.

We would suggest an amendment to reword that section to require relevant factors to be considered in interpreting and applying that right, and in determining any reasonable limits to which it is subject.

In terms of the key principle of the right to a healthy environment, I'll first highlight the principle of environmental justice, which is something this committee recently examined in its study of Bill C-226. I'll read for you, again, a definition the U.S. Office of Environmental Justice offers:

> Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. This goal will be achieved when everyone enjoys the same degree of protection from environmental and health hazards, and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

In our view, again, this key principle needs to be established as a duty to be upheld throughout the administration of the whole act, not just considered in relation to the implementation framework—which, at the end of the day, will live as a policy document outside the act. This is the opportunity for you, the legislators, to anchor these essential principles in the law and ensure their applications throughout CEPA.

Very quickly, the principle of non-regression is borrowed from international human rights law and prohibits backsliding or the weakening of environmental protections, once granted, in the absence of a scientific basis.

The principle of intergenerational equity simply requires fairness among generations in the use and conservation of ecosystems and natural resources.

Ms. Laurel Collins: Thank you so much.

It seems very clear that these three principles need to be put into the legislation as duties.

You talked a bit about how the principle of environmental justice, as a duty, is especially complementary to Bill C-226 on environmental racism. I think both of these bills also speak to the need for a separate office of environmental justice to help carry out this work. I'm curious about your opinions on that.

Ms. Lisa Gue: Thank you very much for the question.

I would refer the committee members to the recommendation of the Green Budget Coalition to fund a high-level office of environmental justice, modelled after that which exists in the U.S. and has existed for several decades. In fact, it was launched by former president Bush, Sr. and has stood the test of time across multiple administrations from both parties in the U.S.

Getting CEPA modernization right is the task in front of you today. After this bill passes—hopefully before my son's next birthday—it will also be essential to ensure capacity to fully implement these requirements.

● (1630)

Ms. Laurel Collins: Thank you so much.

When it comes to the enforceability of the right to a healthy environment.... We know that section 22 hasn't been opened up, but if a citizen enforcement mechanism isn't fixed, what do you see as the barriers to implementing this right?

Ms. Lisa Gue: Thank you.

In brief, another huge gap in Bill S-5 is the failure to strengthen citizen enforcement provisions in CEPA. We would urge the committee to look at that at the earliest opportunity.

The Chair: Thanks very much.

We'll go to the second round. I'm going to chop off 20% for everybody so that we can have enough time for the next panel. We're talking four minutes, four minutes, two minutes, two minutes, four minutes and four minutes.

We'll start with Mr. Kurek.

Mr. Damien Kurek: I will cede my time to Madame Pauzé.

[*Translation*]

Ms. Monique Pauzé: Thank you.

Dr. Pétrin-Desrosiers, in your work, you study climate change and its impact on health. Sadly, things are not getting any better.

Why is it essential to shore up the weaknesses in CEPA right now, and I stress right now?

Dr. Claudel Pétrin-Desrosiers: Actually, it is never too late to act in favour of the environment in order to reduce mortality rates and health problems. We have been waiting for the reform of the Canadian Environmental Protection Act for 23 years. It has to get done sometime, and the act states that there must be regular reforms. Over the past few years, this requirement has not been followed.

We know that when we fail to act for the environment, whether it be in the fight against climate change, habitat fragmentation or the decline in biodiversity, there are disastrous consequences in terms of people's health.

Conversely, we also know that when we act to protect the environment, there are health benefits. When we look at economic factors and worry, for example, that there might be revenue losses or costs associated with certain policies, it is important to look at the health benefits that these positive and ambitious climate policies can have. Generally speaking, when we act decisively to protect the environment, economic gains follow.

At the risk of repeating myself, you should know that here in Canada, air pollution costs us $120 billion per year. In Quebec, that works out to $30 billion a year. Better air quality standards would allow us to reduce these costs and invest the money elsewhere. Moreover, our citizens would enjoy better health and could be more involved in their communities. We have to seize this opportunity right now.

Ms. Monique Pauzé: Do you have an example of more stringent clauses that could be put into the bill?

Dr. Claudel Pétrin-Desrosiers: We could include much stricter air quality standards. Our knowledge of air pollution has increased greatly over the past few years, as well as our understanding of various pollutants and the interactions between them. We could set high Canada-wide standards that are in keeping with the best standards, such as those suggested by the World Health Organization.

In addition to having standards, you also have to make sure that they are being met. It is therefore important that the act contains ways of ensuring that the standards are being met and that we have the means to check this. There also has to be a way of following up with consequences if ever the standards are not met by certain stakeholders.

Ms. Monique Pauzé: Thank you very much.

Ms. Gue, the lawyers who work with the Canadian Environmental Law Association have suggested that Bill S-5 should be strengthened by including definitions so that the notions contained therein are better understood, which would also reduce the likelihood of any semantic debate that could follow.

Are you of the opinion that such a change would be useful?

Ms. Lisa Gue: Yes, that is an interesting suggestion. Details are obviously important. We could define certain key terms to make them clear to all. However, if the definition of a term is too restrictive, that can limit enforcement of the act. The devil is in the details.

I would also say that some of these terms are commonly used, and I'm not sure whether there is really any uncertainty as to their meaning.

● (1635)

The Chair: Ms. Pauzé, shall I give you two extra minutes right now, which would allow you to continue?

Ms. Monique Pauzé: Thank you, Mr. Chair.

Ms. Barker, I have a question for you. You said Canada is lagging in terms of labelling. You spoke of a solution that would take citizens' rights into account.

Is there a solution or a way to proceed that would allow us to uphold the rights of citizens who want to know what they are buying, and the rights of businesses, that have confidentiality concerns?

Ms. Cassie Barker: Thank you for the question.

[*English*]

I would say that we are not talking about eliminating confidentiality. Canada has a very comprehensive regime for managing the confidentiality of the data that is provided to them by applicants in their process for chemicals assessments and management. What we are seeking, and what the government broadly is seeking in its own policy lab process, is transparency and looking for models of how to bring forward supply chain transparency.

I think labelling is only one piece of the puzzle in terms of disclosing ingredients. As I mentioned before, in the EU and in California, companies are disclosing and labelling at a much higher standard than what we are currently seeing in Canada.

We also heard from our colleague, Dr. Pétrin-Desrosiers, about endocrine-disrupting substances and the leadership that other jurisdictions are taking to ensure that people are able to avoid exposures during critical windows of development if possible.

[*Translation*]

The Chair: Thank you, we have to stop there.

I will now give the floor to Ms. Taylor Roy.

[*English*]

Ms. Leah Taylor Roy (Aurora—Oak Ridges—Richmond Hill, Lib.): Thank you.

First, thank you to the witnesses who are here, not just for being here, but for all the work you've put into making recommendations to us, meeting with us and ensuring we have a good sense of what your concerns are with this suggested legislation that's before us.

I'd like to start with one issue that the member opposite mentioned about the need for deadlines and the delays that are harmful to people's health and the environment. In that context, given that it's been 23 years since this legislation was last updated, I'm wondering whether you feel that there is an urgent need to pass this legislation and that we should be trying to move forward without any unnecessary delay tactics and get this done this year.

What are your thoughts on that, Ms. Gue?

Ms. Lisa Gue: Well, of course I would be very concerned by any delay tactics—parliamentary tricks—to delay passage of this important legislation that has been so long in the making. We do, however, call on this committee to thoroughly consider the bill in front of you and make the necessary amendments: to roll up your sleeves, go the distance and make this the best bill it can be. I don't think that has to be a long process.

The reality is that the original version of this bill was actually introduced in the House before the last election, after a lengthy process of review, as I mentioned, including examination by this committee and multiple engagement processes led by Environment and Climate Change Canada.

I think the committee is well positioned to examine the issues without delay, and I hope you will see fit to approve the amendments we are recommending. I would love to see an improved bill passed by the end of the year, if that is possible. If it takes a bit longer to get it done, I can wait a bit longer, but let's make sure to avoid any further unnecessary delays in updating CEPA.

● (1640)

Ms. Leah Taylor Roy: Thank you very much.

Do you feel that you've had sufficient time to meet with members and give testimony to the Senate and to this committee, given the timeline that we've established?

Ms. Lisa Gue: Again, thank you for the invitation to appear to appear before you today.

We have submitted to you our.... In fact, the NGOs on both panels today have submitted a joint brief to you to make maximum efficiency of your reading time.

We are available to you to continue this conversation as needed.

Ms. Leah Taylor Roy: Thank you so much.

[*Translation*]

My next question is for Dr. Pétrin-Desrosiers.

We know that our lifestyles have an impact on our health and the environment. Can you please explain to the committee how healthcare systems can be allies in protecting the environment? What is the link here with the bill that we are studying today?

The Chair: You have approximately 25 seconds to answer the question.

Dr. Claudel Pétrin-Desrosiers: Healthcare systems are responsible for 5% of Canada's greenhouse gas emissions. The government therefore has a responsibility in this regard. It has, however, taken certain measures over the past few months in keeping with international initiatives that seek to lessen the environmental footprint of healthcare networks.

However, in addition to greenhouse gas emissions, people are frequently exposed to various toxic substances in healthcare settings, such as endocrine-disrupting chemicals.

We have to establish a link with CEPA to regulate these substances, so that patients leave a smaller footprint in our healthcare networks.

The Chair: Thank you, Ms. Taylor Roy.

Ms. Collins, you have the floor for two minutes.

[*English*]

Ms. Laurel Collins: Thank you, Mr. Chair.

My next questions are for Ms. Barker. Thanks so much for both your remarks and your recommendations on labelling. It seems clear that what the government has proposed on labelling in Bill S-5 falls short.

Can you speak a bit more about the importance of the right to know what's in the products that we use to consumers, workers and individuals who are particularly vulnerable or at risk? How do you see product labelling as supporting the right to a healthy environment?

Ms. Cassie Barker: I agree. A right to know is fundamental, and I think that we're talking about people who are burdened with multiple sources and cumulative impacts of multiple product-based exposures, and their own attempts to manage those exposures. The labelling would be the absolute floor to support their ability to do that.

What we know is that labelling enables product reformulation, in that when you're forced to label hazardous ingredients, companies will reformulate their products, which takes the burden off the individual.

When products are cleaner and when products contain fewer hazardous ingredients, people who aren't able, because of their own socio-economic status, to make choices for cleaner, greener products.... This would make a much more equitable playing field for people who would like to make better and cleaner choices for their family, but are unable to do so.

In addition, I would say that the right to a healthy environment piece that you were talking about in terms of labelling and the right to know is, again, very much an absolutely basic piece of transparency when we are purchasing products. Our ability to know what's in those products shouldn't be in question.

The Chair: Thank you.

Mr. McLean, you have four minutes.

Mr. Greg McLean (Calgary Centre, CPC): Thank you, Mr. Chair.

Let me congratulate the witnesses on being here today.

I'm going to ask Ms. Gue some questions, first of all.

Ms. Gue, you testified here today that Canada is one of the few countries without legislative or constitutional recognition of the right to a healthy environment. You also talked about that being passed unanimously by the United Nations, which is all very interesting, especially when you look at the map of the countries that have constitutionally enshrined this or constitutionally provided provisions for a healthy environment.

All of those countries you list here are the majority of the countries in the world. Do you think the majority of them have better environmental practices regarding these types of hazardous materials than we have in Canada?

● (1645)

Ms. Lisa Gue: Thanks for the question.

Of course, the rule of law is the crucial factor in translating legal obligations to results on the ground, and we know that unfortunately not all countries have effective rule of law systems in place to ensure that even constitutional obligations are upheld.

Comparing apples to apples here and looking at Canada's environmental performance compared to what we might consider our peer jurisdictions, I would actually encourage the committee to invite Dr. David Boyd as a witness. He has examined this very question. He's one of the leading academics in the area of environmental rights and the UN special rapporteur—

Mr. Greg McLean: Okay. Thank you. We've invited you and accepted you to be here.

Ms. Lisa Gue: Quickly, the punchline is that the answer is yes. Countries that recognize the right to a healthy environment do tend to perform better on all manner of environmental indicators.

Mr. Greg McLean: Okay. Let me ask the blunt question, then.

Of all these countries that are coloured in on the map that's provided here in terms of environmental rights, do these countries by and large have better environmental outcomes regarding chemical management than Canada does?

Ms. Lisa Gue: Well, again, we can't compare apples to oranges—

Mr. Greg McLean: Yes, we can. Do they have better environmental outcomes for things like dumping toxic substances in rivers? Do they have better life outcomes in terms of length and quality of life, morbidity, mortality and all these things that we actually measure?

Do these countries have better outcomes than the current regime we practise in Canada, where we actually enforce the law?

Ms. Lisa Gue: Thank you for that last bit. It is key and relates also to the question that MP Collins raised earlier, which is that it's important to upgrade the law and it's important to ensure capacity to implement these new requirements. Without that missing ingredient, it will not make a difference. We see that being the truth, the reality on the ground, in some other countries.

My understanding of Dr. Boyd's research is that comparing Canada to peer jurisdictions where the rule of law is upheld is that, yes, countries that recognize the right to a healthy environment do tend to perform higher on all manner of environmental indicators. I would hope for the same outcome in Canada.

Mr. Greg McLean: Thank you.

I don't see the same outcomes environmentally in almost every one of these countries that are on this list in regard to their monitoring of the environment and their mortality. Most of these people die having had much shorter lifespans than Canadians have, and most of these people have less fulsome lives from a health perspective than Canadians have.

I do challenge your answer there, because I don't think it's fulsome. Would you like to be more clear?

Ms. Lisa Gue: Yes. I think the member countries of the European Union are probably the most relevant examples that I could point you to. I don't think you would find the same conclusion.

The Chair: Ms. Thompson, you have four minutes.

Ms. Joanne Thompson (St. John's East, Lib.): Thank you.

Ms. Gue, if I could, I'll begin with you and actually go back to your conversation with Ms. Collins. You've just referenced that. It was around the principles of environmental justice and the principles of intergenerational equity. I think those are so very important. Thank you for bringing that forward.

Could you speak to how this can be indeed achieved? Could you drill down a little more in terms of how we can ensure this does become a measured outcome—or as much as you can measure it—of the act?

Ms. Lisa Gue: Yes. Thank you for the question.

These proposals, as amendments to CEPA, would complement the requirement under Bill C-226, once passed, for a national strategy on environmental racism and environmental justice.

One of these key principles, the principle of environmental justice, the key principle of the right to a healthy environment, requires the integration of a human rights lens into environmental decision-making to ensure that environmental protections protect every Canadian. This has been a blind spot in Canadian environmental law.

In the absence of these clear requirements, what we see is that sometimes policies are set and risks are assessed based on outcomes for the general population, which is one important assessment, but that can mask particular risks to particular communities or individuals. Too often, those are also economically disadvantaged communities and racialized communities, groups of people who also lack power in the decision-making process.

Integrating a human rights lens into environmental decision-making, as Bill S-5 proposes, will force a bit of a paradigm shift here. It's important that this bill does require the development of a framework about exactly how to implement that in the CEPA decision-making, because it's a muscle that isn't being flexed right now, and it will be such an important update to the Canadian Environmental Protection Act. I think this needs to be part of decision-making across the board, but CEPA is a very good place to start.

● (1650)

Ms. Joanne Thompson: Thank you.

For the record, would you explain to the committee what the term “vulnerable environment” references?

Ms. Lisa Gue: That term was added through an amendment that Senator McCallum introduced in the Senate. I would invite you to seek her views on her intentions behind that amendment.

Ms. Joanne Thompson: Thank you.

How does the government ensure that the additional transparency measures in Bill S-5 for corporations don't divert their attention toward reporting instead of actually doing the work necessary to avoid harm, actually doing the risk management?

Ms. Lisa Gue: Are you referring to the new requirement for reasons to be provided with confidential business information requests?

Ms. Joanne Thompson: Certainly, but in general, just across the bill, how is it that we make it detailed enough that there's meat there in reporting?

The Chair: You have 10 seconds, please.

Ms. Joanne Thompson: Certainly, you can answer in writing after.

Ms. Lisa Gue: Seeing the chair raise the red flag here, I'll just be very brief.

If we find ourselves in a position where the volume of toxic chemicals on the market makes it impossible to thoroughly assess, monitor and report on exposure to them, then we have a problem.

The Chair: Okay. You have to stop there.

Thank you to the witnesses for a very interesting discussion to kick off our study. We'll now take a break and go on to our second panel.

Thanks again. It was very enlightening.

● (1650)

_____(Pause)_____

● (1655)

The Chair: We'll get going with our next panel, which includes, from the Canadian Association of Physicians for the Environment, Dr. Jane McArthur, director, toxics program; and Melissa Daniels, manager, toxics program. We have, from Dow Canada, Mr. Scott Thurlow, senior adviser, government affairs. He is no stranger to this committee. From Ecojustice, we have Dr. Elaine MacDonald, program director, healthy communities.

Each set of witnesses has three minutes. We'll try to get it all done by 5:50 p.m., which I think is possible.

We'll start with Ms. Daniels for three minutes, please.

Ms. Melissa Daniels (Manager, Toxics Program, Canadian Association of Physicians for the Environment): Thank you for inviting me today as a witness. I'm joined by Dr. Jane McArthur, CAPE's toxics program director.

I'm a member of the Athabasca Chipewyan First Nation, a community downstream from the Athabasca tar sands, and I'd like to acknowledge my presence on my homeland, Denendeh, and Treaty 8 territory. I have a background in nursing, and I represented my own first nation as a lawyer to protect our homelands from environmental degradation caused by tar sands development. Today, I am here to speak about why we need to strengthen CEPA.

Being downstream from one of the largest industrial projects in the world has shaped who I am as a person. CEPA has been in existence since I was a child, but despite its being our primary environmental legislation, I have witnessed its failures to protect our homelands and our people. Indigenous communities have been unfairly burdened with a devastating legacy of toxic chemicals that pose a threat to our health and well-being.

I am haunted by the giant unlined tailings dams located beside the Athabasca River that house toxic compounds from the tar sands industry, which we have long suspected to be leaching into the river. There has not been a day in my adult life where I have not considered what will happen when one of them—or both of them—finally breaches and contaminates one of my life bloods, which is already experiencing critically low levels from massive industrial water withdrawals.

The change of season is a significant time to our people, and spring marks a time of renewal and rebirth. This season officially begins when the snow melts and the river breaks up, but instead of celebrating, I experience overwhelming anxiety because it also marks the beginning of our annual oil spill that industry creates through its release of toxic emissions that accumulate in the snow during the winter months and run off into the river when it melts. Our spring rainfall once represented a time of sacred cleansing, but now, due to climate change, we experience floods, and I cannot help but think, “Is this going to be the one that causes the tailings dams to breach?”

The Chair: Excuse me, Ms. Daniels. Your background is blurred. I know this sounds odd, but it apparently can impact the sound quality. The interpreters are asking if it's possible to de-blur it.

Ms. Melissa Daniels: Yes.

The Chair: There we go.

Thanks. Go ahead.

Ms. Melissa Daniels: With our spring rainfall, because of the floods, I cannot help but think about what's going to happen if the tailings dams breach or if this is going to cause it. Is there a plan in place to protect our community, to protect our river, to protect our future generations? Despite calls for a comprehensive health study on the impact of the tar sands development on downstream communities, we've never had the same completed. I firmly believe that had they been located somewhere else, the government would have demanded industry build a world-class water monitoring facility, and yet we've been left unprotected.

Hydraulic fracturing for natural gas also occurs in Treaty 8. We have no idea what industry is injecting into the bones of mother earth or the cumulative and synergistic effects of mixing all these toxic compounds together, because this information, unlike our health and the environment, is deemed protected.

While we are dehumanized, our homelands are being destroyed by uncontrolled industrial development. We deserve both justice and accountability, which includes not only transparency but also clearly delineated timelines when it comes to assessing toxic chemicals and obtaining safer substitutions.

CEPA was to be reviewed every five years, and yet here we are, almost 25 years later, finally getting around to strengthening parts of the act. While I'm grateful to be included today, because indigenous people have been structurally excluded from participating in processes like this, I do not bring good news. Our communities have been ringing alarm bells for decades about the devastating health and environmental impacts of industrial development, which have been largely ignored by decision-makers.

● (1700)

The Chair: Thank you, Ms. Daniels.

Ms. Melissa Daniels: We cannot have environmental legislation that again is just pushed through and not impactful.

The Chair: Ms. Daniels, we'll have to stop you there.

Actually, this committee, in 2007, did a study of the Athabasca River watershed using the work of Dr. David Schindler. You're bringing back some interesting testimony.

We'll go now to Mr. Thurlow for three minutes.

Mr. W. Scott Thurlow (Senior Advisor, Government Affairs, Dow Canada): Good evening, Mr. Chairman and members of the committee.

I am here on behalf of Dow Canada. Dow operates in over 30 countries. We strive to be the most innovative, customer-centric, inclusive and sustainable material science company in the world. Given our global footprint, our company has a great deal of experience on the issues of chemicals management around the world.

Bill S-5 does a lot of crucial things, but the most important is that it sets the stage for the next phase of chemicals management in Canada. True to the CMP's history, it mandates that the ministers engage with stakeholders to establish a new set of assessment and management priorities. The ongoing engagement with stakeholders is key to ensuring that Canadians have confidence in the products they use every day and are assured that the safe management of substances is being carried out by the ministers. The “dear ministers” clause created in proposed subsection 76(1) is a new tool for establishing that confidence and complements existing information-gathering provisions in the act.

The ministers will also engage with Canadians on incorporating into the administration of CEPA their right to a healthy environment. Who better than Canadians themselves to engage in that discussion?

Without delving too deeply into the substantive debates at second reading, there were many points raised by all parties that we would be pleased to offer comments on. Whether it's the so-called watchlist, the new bifurcated schedule 1, the demands that Bill S-5 places on confidential business information, and the Senate's suggestions, we would be happy to answer any questions you may have about these subjects.

How a substance is sent or added to schedule 1, part 1—the substances of highest risk—is an important discussion and requires extensive consultation. Knowing that a priority will be given to prohibition, we must create a system that recognizes the role of transformative chemistry in the economy.

Dow would support an amendment that would add precision to those substance designations to ensure that only the substances that are truly a risk are captured in this list. I would welcome questions from MPs on the perils of using hazard markers for substance deselection without appropriate scientific context and exceptions.

On the issue of confidential business information, I want to be clear that industry has no issue providing information confidentially to the government. We are confident that the government will use that information to protect the health and safety of Canadians and preserve its confidentiality. Changes in this space may not have their intended impact but could certainly benefit our competitors. We urge the committee to be mindful of this as it considers this bill.

Finally, I'd like to flag the so-called watch-list that is being proposed by the ministers. It's redundant and a marked departure from the risk-based approach. If the government wants to send a message to industry about the use of a substance, a "significant new activity" notice accomplishes this task by requiring industry to obtain permission from the government before a substance is approved for new use or significantly increased volumes. That speaks loudly, I can assure you. I would implore this committee to consider an off-ramp for that clause.

I would welcome your questions.

The Chair: We'll now go to Dr. MacDonald.

Dr. Elaine MacDonald (Program Director, Healthy Communities, Ecojustice): Good evening, and thank you for inviting me to testify to this important bill.

I appeared before this committee six years ago, I think, when it first began its review of CEPA, so I'm very pleased to be here to speak to Bill S-5 after all of this work. It has not been quite as long as Lisa and her maternity leave.

My colleagues have already addressed several of our joint recommendations of strengthening the bill, so I don't want to repeat those, given my limited time, but I do press upon the committee to build upon the amendments made by the Senate and the wisdom of the Senate to uphold things like the watch-list and to strengthen the recognition of the right to help the environment, including the framework and the recognition, as Lisa spoke to.

I'm going to speak specifically to amendments we're seeking with respect to timelines and ensuring accountability. My thunder got stolen a little bit by some of the questions, but I'm going to go ahead anyways.

Specifically, we're seeking amendments to three areas through clauses within the bill with respect to timelines: the planning in clause 19; the toxic substance assessments in clause 21; and the risk management of toxic substance in clause 22. These clauses are where the rubber hits the road. Let me explain.

Priority planning, which Scott just mentioned, is under clause 19. It's very similar to the chemicals management plan, but there is no requirement within the priority planning section to set timelines or update the plan. We are recommending amendments to require timelines and plan updates to ensure that the plan remains current and is updated at least every five years.

Delays in the assessment and management of toxic substance equal delays in the implementation of many of the important provisions my colleague spoke to that strengthen the bill, such as the recognition of the right to a healthy environment, consideration of vulnerable populations and cumulative affects. Waiting several years for an assessment to be finalized after submitting comments is unacceptable. I am in that place right now on several comments I have submitted, five years on some of them.

It only puts the environment and human health at risk, because action delayed is action denied, and it also undermines public participation. To prevent multiple-year delays, we recommend a one-year time limit between the proposed and final risk assessments, but we also allow for an inclusion of an extension if additional data or additional studies are required.

Lengthy delays can also occur in the implementation of risk management plans, which typically involve several measures. The CEPA clock, as it is locally known, refers to timelines written within CEPA requiring one risk management regulation or instrument to be proposed within two years and finalized within 18 months. There is no such timeline for subsequent regulation instruments in the risk management plan, and it's very common for there to be multiple ones, and this leads to years and years of delay.

Bill S-5 requires a minister to publish a statement respecting the development of subsequent regulations and instruments that specify, to the extent possible, an estimated time frame, but to provide greater certainty, we recommend that Bill S-5 be strengthened to require timelines for every planned risk management regulation and instrument, and those timelines, when possible, should correspond to the two-year CEPA clock requirement.

I think I'm out of time.

● (1705)

[*Translation*]

The Chair: Thank you.

Mr. McLean will be the first in this round of questions.

Ms. Pauzé, did I understand correctly? You wish to give four of your six minutes to Mr. McLean?

Ms. Monique Pauzé: You understood perfectly, Mr. Chair.

The Chair: All right.

In that case, Mr. McLean, you have 10 minutes.

[*English*]

Mr. Greg McLean: Thank you.

Thank you to the witnesses for being here today.

My first question is going to be for Mr. Thurlow.

You talked about the importance of the watch-list that's being put together here. This is important legislation. We've been looking at this for quite some time, since it was put on our plate here in Parliament, and I can assure you that we have numerous intervenors trying to say we need to meet with them to go over this, and I know we're parsing that in this committee, in terms of the number of people who can get in on this.

We're parliamentarians. You know this, Mr. Thurlow. We don't know the chemistry the way you do. We don't know how this is going to interact with all the biological factors the way you do. We're all drinking from the firehose here regarding the changes we need to make in order to get good legislation for Canadians.

With that preamble, we're looking at trying to do a deep dive on what we need to do here. It's legislation that's been designed over a number of years with the input of experts, of people who are involved in this business like your company and your industry association. There have been many changes to this along the way.

Would you suggest that some of those changes in the other place have been less than constructive, and, if so, what damage to the chemical industry management in Canada has been done by potential amendments that happened on the way here, and how would we address that?

● (1710)

Mr. W. Scott Thurlow: There's a lot in that question, and I thank you very much for it.

Mr. Chair, I implore you not to give me homework the way that the chair of the Senate committee did. In the homework assignment he gave me, he asked for us to research every other jurisdiction in the world to find a watch-list, and we couldn't. This asks the question about why we need this watch-list.

Now, as it has been explained to us, the watch-list is a signal to industry to avoid the use of certain chemicals after a risk assessment has been completed and they have been found not eligible to be added to schedule 1. It is a tool to send a signal to industry to avoid the use of these substances.

As I said in my opening remarks, if government wants to do that, a "significant new activity" notice does that job admirably. If you want to send a signal to industry to tell them to stop using something, a stop sign works, and that's what a SNAc is. We need to have permission after a SNAc is put in place to increase our use of a substance or to change the use of that substance.

Now, I'm not going to say that we have to delete the watch-list, although I would like you to delete that list. At the very least, could we have an off-ramp, so that if the hazard profile of a substance changes because of new scientific evidence, a petitioner, a citizen or a company can go to the minister and say that they have this new information and to please remove the substance from the watch-list.

That's part of the answer to your question.

Now, what the Senate did to the watch-list was that it said, well, we'll take a substance off the watch-list if we add it to schedule 1. Well, that's a little bit of a coy move, because they've then decided that the substance has to be managed so there's no point in it being on the watch-list anymore. It's no longer sending that signal to industry.

An amendment on the other side of the ledger that allows a substance to get out of this proverbial parking lot—or as I call it, the defamation list—where it is proven in the future that the hazard profile that would end up on the watch-list is reduced, would be very much appreciated.

Mr. Greg McLean: Thank you for that.

I've gone through the background on the bill, and there are some clauses that I would like your input on here.

Clause 53 adds new sections 317.1 and 317.2 to list circumstances under which "the Minister [of the Environment] may disclose the explicit chemical or biological name of a substance" or "the explicit biological name of a living organism" even if "a request for confidentiality has been made". These include circumstances where.... It lists them.

Is this at all a deterrent to business in your industry, if confidentiality is going to be breached, potentially without even notification from the minister to the company in question? Is this only in Canada, and will it be a deterrent to business evolving in Canada?

Mr. W. Scott Thurlow: As originally drafted, Bill S-5 has changes to the "confidential business information" provisions of CEPA, but those are changes that—provided the adequate notices provided to the owners of that information, and provided they have a right of reply—are acceptable.

There are other amendments that have been circulating about mandatory disclosures, about a public disclosure in advance of an approval. Those are the types of amendments that will really stop innovation. Those are the types of amendments that will not necessarily provide the public with any new useful information, but will absolutely provide our competitors with the useful information as we disclose this confidential business information. I would warn the committee against those types of changes.

Mr. Greg McLean: Let me go further, because there's also a provision in here where "The Minister [of Health] may disclose confidential business information" to other government departments or other governments—international governments, I'm presuming—for the purpose of managing an environmental risk or to protect the environment. This disclosure may take place without notice to, or the consent of, the person whose affairs the information relates.

Is that going to cause an international problem for your company if they actually start doing their innovation and development here in Canada?

Mr. W. Scott Thurlow: There are two ways of answering your question, and I'm going to use the way that makes the departments look good first. In the past, when there have been these questions about who holds confidential business information, they have bent over backwards to find the owners of that information to ensure that before they make a public disclosure of any kind, the people who own that information have the opportunity to put up their hand and say, "Wait a second, this is not a good idea. This is still something that we believe to be important to the business confidentiality of our company."

How this particular clause operates in the future is going to depend as much on our OECD partners, how they hold that information and how their access laws are designed.

Our access to information laws are designed on a trilogy of acts, and when an access request is made for anyone's information, and there is a question about that confidential business information, the onus is on industry to prove to the government that they shouldn't disclose it if the government plans on disclosing it through an access to information request.

I've filled out thousands of those requests and replies, and I believe the government does a very good job at safeguarding that information.

● (1715)

Mr. Greg McLean: I have another technical question for your response to this committee.

Subclause 49(1) makes it an offence under CEPA to fail to notify a person to whom a substance or living organism on the domestic substance list is transferred of the responsibility to provide information to the minister.

Is an offence under CEPA a criminal offence that's being passed on? What is the penalty for that criminal offence?

Mr. W. Scott Thurlow: Unfortunately, that part of the statute will depend a lot on the discretion of the prosecuting lawyer. There is a very wide range of potential offences under CEPA. It can include jail time.

Mr. Greg McLean: Thank you very much.

I'm going to switch now to Ms. Daniels. Thank you very much for your testimony.

We have gone through legislation here just recently in this committee with Bill C-226. It was a private member's bill brought forward on environmental racism. There are numerous parts of this bill that we're looking at today that, in my opinion, seem to overlap, including the consideration of the effect on vulnerable populations, such as indigenous populations. Much of that is what you spoke to.

Do you think that addressing it in this bill, which is updating a very important piece of legislation that the government has, and having another bill is going to cause some confusion? Do we need to have two bills that address the same environmental racism or the consideration of the effects on vulnerable populations?

Ms. Melissa Daniels: Thank you for your question.

I'm going to defer this question to my colleague Jane, as she was the one who testified on Bill C-226.

Dr. Jane E. McArthur (Director, Toxics Program, Canadian Association of Physicians for the Environment): Thanks, Melissa.

Hello again, Mr. McLean. I was here on Bill C-226.

I think my colleague with the David Suzuki Foundation, Lisa Gue, spoke to this to some degree in the first panel. We believe that these pieces of legislation would be complementary. Part of it is in the implementation and the establishment of how both of these pieces of legislation would be moving forward to address the problems of environmental injustice and environmental racism.

One of the things that Bill C-226 lays out is very clearly around the problem, specifically, of environmental racism. What we see with CEPA and Bill S-5 is a broader framework that recognizes that intersection of racism, but in the broader environmental justice framework and around vulnerable populations.

I think these are complementary pieces that are both critical to our understanding.

If I may, we are coming to you as an intersection of environment and human health—

The Chair: We're going to have to stop there. Thank you for your answer.

Mr. Duguid, you have six minutes.

Mr. Terry Duguid (Winnipeg South, Lib.): Thank you, Mr. Chair.

I want to thank all of our witnesses for their excellent and interesting testimony today.

I have two questions. I think I will ask them separately. They deal with some of the points of tension in the bill, where I think there are legitimate views on all sides.

Ms. MacDonald brought up the issue of timelines. Let's use the issue of timelines for assessment as one of our examples. Obviously, there's the need to assess a certain chemical quickly to protect the health of Canadians and to put pressure on the system to do that. The other pressure is to do our assessments properly, so we're making sure that the research is robust and it is giving us all the information we need to assess. Another issue would be resourcing these processes—which the government often doesn't do properly—which causes delays.

I wonder if there is an agreement among industry and the environmental community on this issue that there might be timelines set, but there might be a bit of a safety valve so that the appropriate research can take place.

That's for whoever wants to go first.

● (1720)

Dr. Elaine MacDonald: To explain the timelines recommendation, the timeline that we're frustrated by right now is the lack of a timeline between the proposed risk assessment being published—most of the work has been done at that point and there's a proposed risk assessment that's public comment—and then finalizing that risk assessment. That is where there's a gap and there is no timeline in CEPA.

In our experience, especially for what you might call more controversial substances, we've seen waits of five-plus years to see final assessments. Risk management can't start—and it doesn't start for years after that—until the assessment is finalized and that substance is added to schedule 1. They can then move forward with doing instruments and regulations to manage the risk.

Having this long period and gap between proposed and final is the real problem. If there is the need for additional research that wasn't done at the proposed step in the draft risk assessment, we put in this opening to extend that one-year timeline to allow for that, but that is the frustration we're dealing with.

Mr. W. Scott Thurlow: Don't take my word for it. Ask the Auditor General. The Auditor General, in reviewing the chemicals management plan, said that one of the key issues on the accountability and for the confidence of Canadians was how long the process takes.

Now, I know what some of those hurdles are: the cabinet directive on streamlining regulation, international trade obligations and notifying our partners about what instruments we're going to put in place. Also, elections slow down risk assessments as the machinery of government stops. In the timeline you're talking about—2006, 2008, 2011—there were more elections in Canada than there were in Italy.

There are extraneous variables—

The Chair: Now, let's not exaggerate, Mr. Thurlow.

Voices: Oh, oh!

Mr. W. Scott Thurlow: Well, it was close.

The machinery of government stops when the House is dissolved, and that really does slow things down.

Mr. Terry Duguid: The next area where I think there's a pretty wide divergence is the whole area of confidential business information. We want to protect innovation and IP. On the other hand, we want to be as transparent as possible. If things are being hidden that should be public, that is not a good thing. Is there some sort of sweet spot where industry and the public would agree?

Mr. Thurlow, you mentioned that you don't mind sharing information with the government. Could there be some sort of independent body or mechanism that would do these assessments?

Also, then, on the whole TSCA process, I'm unfamiliar with it. Are we ahead of the U.S. or behind?

Mr. W. Scott Thurlow: I'll answer the TSCA question first because it's an important one.

TSCA is framed after the Canadian Environmental Protection Act. Barack Obama signed it into law after it passed through the U.S. Senate on a universal voice vote; it's a bipartisan bill that was supported.

Now, they're a little slower at assessing chemistries than Canada is. We've done approximately 4,300 already or are on the end of doing 4,300. They'll get to that number in about 2130. They're taking a much more deliberate approach. Again, that's their system, and it's a different system.

Mr. Terry Duguid: Can I have a quick comment? I have 45 seconds. What about some sort of independent—

Mr. W. Scott Thurlow: I don't see the need for that, quite frankly. The reason for saying that is that the government does a very good job at holding information in a confidential way. I am very comfortable on the confidential business information with the original language of Bill S-5 prior to it being amended by the Senate.

Dr. Elaine MacDonald: I just want to note that TSCA does require auditing of a certain proportion of confidential business information claims, and the audits that the U.S. EPA has done have found that up to a quarter of them don't meet the bar partially or fully.

I've shared that information; I think there's a link to it in our brief. It just demonstrates that Canada is behind the U.S. with respect to how they're handling CBI requests.

Mr. W. Scott Thurlow: I think that's an unfair assertion, because CBI becomes CBI when somebody asks for it, so if the government is holding it until such a point that no one asks for it, it doesn't matter if it's CBI. It's when someone asks—

● (1725)

Dr. Elaine MacDonald: You can't ask for things you don't know about.

The Chair: Maybe that's a homework assignment for both of you.

Voices: Oh, oh!

Mr. W. Scott Thurlow: Oh no.

The Chair: Thank you, though. It's a very interesting discussion.

We will go to Madame Pauzé for two minutes.

[*Translation*]

Ms. Monique Pauzé: My question is for Ms. Daniels or Ms. McArthur.

I want to talk about microplastics. We know that microplastics are present in the environment. There are microplastics floating in the ocean. We have heard a lot about the plastic ocean. Sometimes, the microplastic particles are light: they break up and wind up in our bodies. That is what many studies are showing.

I'm talking about this because plastics are on the list contained in the schedule, but some stakeholders do not agree. They are wondering if plastics should be listed elsewhere.

Can you please briefly describe how dangerous plastic pollution is for human health?

[*English*]

Ms. Melissa Daniels: Jane, would you be able to take this one?

Dr. Jane E. McArthur: Sure.

I think this is an area where we're illustrating the importance of updating our laws and regulations. This is an area where the science has evolved quite dramatically as our shifts in manufacturing and products have changed.

There is an emerging body of science that links exposure to microplastics with adverse human health outcomes. They have now detected microplastics in blood samples, so we are seeing it very deeply in the human body.

We know from research that there are connections between some of the things in plastics that are endocrine disrupting. In the prior panel, my colleague, Dr. Pétrin-Desrosiers, talked about some of the problems with endocrine-disrupting chemicals. We know that EDCs are connected to reproductive problems, breast cancer and other forms of cancer and thyroid problems.

We really do need to take seriously what we're seeing in the science—the new science, the emerging science and the existing science—about plastics.

The Chair: Thank you very much.

Ms. Collins, you have six minutes.

Ms. Laurel Collins: Thank you, Mr. Chair.

I want to thank all the witnesses for their testimony.

My first set of questions are for Dr. MacDonald.

Thank you for your comments on the need for clearer timelines and accountability in order to prevent multi-year delays and provide certainty.

I want to start by asking you about the recommendation on safer substitution. Can you explain to the committee what is meant by "safer substitution" and how this could be integrated into CEPA?

Dr. Elaine MacDonald: This is what we see the watch-list doing and why we think it is so important. The watch-list is an early-warning system to warn us that these substances are, potentially, ones you want to avoid substituting if another substance is banned or restricted. We call it "regrettable substitution" when a substance is restricted, so another substance replaces it and we later find out that the other substance is also toxic and of concern. The watch-list is intended to prevent that regrettable substitution from happening by putting out an early-warning system on substances that haven't been assessed, but where there is suspicion they're similar to other chemistries that have been assessed and could be toxic.

Therefore, it's an administrative list. It's not enforceable, but it is an early warning that says, "Don't use these chemicals as potential substitutes for something else that could be banned." That's one of the powers of the watch-list, in my mind, and why I like it so much and want to keep it in Bill S-5.

Ms. Laurel Collins: Thank you so much.

In your recommendations, you also mentioned including an amendment on fixing the public request for assessment mechanism. Can you go into a bit more detail about this amendment and why it's so important?

Dr. Elaine MacDonald: Yes. Bill S-5 adds a new section where a member of the public can ask the ministers to assess a substance and determine whether or not it is toxic. It adopts language from the existing CEPA that is now used for something called the "priority substance list", which is a part of CEPA that is rarely used.

That language is problematic, because it doesn't clearly state that the minister has to give a clear answer of "yes" or "no" to such a request. We experienced this ourselves when we put in a request, some years ago, asking the minister to review plastics to determine whether they should be added to the toxic substances list. This was before plastics were added, obviously. We got a response from the minister at the time—I won't say who the minister was—that did not answer the question of whether or not plastics should be reviewed.

When we looked at CEPA and wondered if there was a way to press them on this, we saw that the actual language just says something like, "the minister must tell you what they're going to do about it"—I can quote that exactly—rather than saying the minister must give a clear answer of "yes" or "no".

We're asking for that language—which has been carried over into this new section from the priority substance list section—to be amended, in order to make it a requirement for a minister to give a clear response. That's very straightforward.

● (1730)

Ms. Laurel Collins: Thank you so much.

I also want to give you an opportunity to talk a little more about confidential business information. It seems clear to me that we need a higher bar for confidentiality claims, especially given what you said about the disparity between what the U.S. and Canada are doing.

Can you talk a bit more about that?

Dr. Elaine MacDonald: Yes. We see Canada as being behind, in terms of not reviewing these. These are accepted. Bill S-5 adds the requirement to provide reasons, but there's no requirement in Bill S-5 for a minister—or a minister's delegate—to actually look at these and determine whether they truly meet the bar for CBI.

We are simply saying they must be reviewed and determined to be confidential. We're calling this a bit of a "reverse onus", because we're putting this task in the laps of ministers and saying, "You have to look at these CBI claims, at least, and determine whether they do, in fact, meet the bar of what should be held to be confidential."

Ms. Laurel Collins: Is the government—

Dr. Elaine MacDonald: This is done in Europe and the U.S. We just want Canada to start doing it, too, because there is evidence showing that there are frivolous CBI requests out there, or requests that do not meet the bar of CBI.

Ms. Laurel Collins: Is Canada doing any kind of auditing right now? Do we have clear data on it?

Dr. Elaine MacDonald: There's nothing published publicly. There is no information at all, in terms of how CBI claims are handled internally, within the department. There's no public information.

Ms. Laurel Collins: That seems troubling.

Mr. Chair, how long do I have?

The Chair: You have a minute and a half.

Ms. Laurel Collins: Okay, that's great.

Could you talk a bit more about how Bill S-5 establishes a new planning process to establish priorities for substance assessments and control? You spoke a bit about this. Can you explain how your recommendations are going to address these gaps and, if there is time, additional accountability for actions to control toxic substances and how they might be enhanced?

Dr. Elaine MacDonald: Yes, for sure.

I think it's in clause 19 that Bill S-5 sets out a new priority planning process. Once the bill comes into force, they'll have two years to set out a new plan that's going to identify the priorities under CEPA for the assessment and management of substances. Consultations are involved and so on.

However, the bill does not actually say anything about how that plan is going to be updated, whether the plan will be renewed or how new substances that may come in through the public request mechanism, for example, will be added to that plan. We see the need for that priority planning section to have clear timelines attached to it when they publish the plan, so we have a little bit more accountability and certainty with respect to how the plan is going to roll out.

We also think the bill should be amended to require the plan to be updated at least every five years, ideally less than that.

Those are our main recommendations for priority planning.

The Chair: We'll have to stop there.

We'll go to our second round, which will be four-minute and two-minute rounds.

Mr. Kurek, go ahead.

Mr. Damien Kurek: Thank you very much, Chair.

I appreciate the testimony from the witnesses.

Mr. Thurlow, I'm wondering if you could unpack the implications of whether this bill affects Canada's place in terms of the competitive environment, specifically regarding the chemistry industry, since I know that's something you're a part of. What impact would this have on Canada's place in the world in terms of competitiveness?

Mr. W. Scott Thurlow: I think it would continue the 20-year legacy of Canada's extremely advanced position on chemicals management. That's why the part of the bill that Dr. MacDonald just referred to needs to advance as quickly as possible. It's so we know what the future of chemicals management will be in Canada and, quite frankly, so that industry can start getting ready to respond to those inquiries.

Mr. Damien Kurek: If we get it wrong, what happens?

Mr. W. Scott Thurlow: If we get it wrong, there is the opportunity for innovation to be deselected out of the country and go into other jurisdictions.

On the confidential business information piece, there was one amendment from the Senate—on living organisms, admittedly—where they required demonstrable need to be the test for the approval of a new living organism. That is a marked departure from the risk-based approach.

Mr. Damien Kurek: Speaking of the risk-based approach, some of the amendments that the Senate made affect that.

Can you expand a little bit on why that may be problematic in terms of its effects on the industry and the correlated effects on the safety of Canadians? Is there anything you'd like to speak about?

● (1735)

Mr. W. Scott Thurlow: I don't know about the second half of your question, because we are part of a global marketplace. What I would tell you is that if innovation was going to happen and there were potential confidential business implications, that innovation wouldn't happen in Canada.

Similarly, industry wouldn't invest in the most modern technologies that they've developed in other countries either. If it would have to be deployed in Canada with the potential of that confidential business information being put into the public domain, Canadians would not benefit from, for example, those newer environmental technologies.

Mr. Damien Kurek: Just to clarify, you're saying that if we don't get it right and end up creating a less competitive environment, we may actually negatively impact the health and safety of Canadians.

Mr. W. Scott Thurlow: That is very much the case.

Mr. Damien Kurek: Okay.

In your opening statement, you talked about the need to add precision to substance designation. I think that's certainly incredibly important. I would suggest it should probably be one of the biggest focuses of this bill, first when it was introduced in the last Parliament and then in the more than year-long delay we had for the bill that we now have before us.

I'm wondering if you could expand on how you would ensure that this added precision is in fact brought forward. Do you have any suggestions for the wording of the legislation we have before us? There's about a minute.

Mr. W. Scott Thurlow: Thank you very much.

Absolutely. What we have seen through the approximately 4,300 risk assessments is that Health Canada or Environment Canada will identify an exposure that is of concern and that needs to have a specific risk management instrument created, but it's not all exposures and it's not all forms. Whether it's a dust, a rock or a certain chemistry and formulation of those chemistries, they don't always have the same risk for exposure because of their bioavailability.

We would suggest an amendment, a proposed subsection 77(2.1), which would allow for the ministers to offer more precision for what they want to manage. This is incredibly important for schedule 1, part 1 because, as someone on a previous panel noted, there is a default to prohibition. If we're going to be prohibiting substances, we want to make sure we are limiting that prohibition to the substance of concern.

The Chair: Thank you very much, Mr. Thurlow.

We'll go to Mr. Weiler for four minutes.

Mr. Patrick Weiler (West Vancouver—Sunshine Coast—Sea to Sky Country, Lib.): Thank you, Chair.

I appreciate all the witnesses being here today and the tremendous expertise that they bring to this subject.

I also want to recognize the work that one of the former members of this committee, Will Amos, did in the 42nd Parliament, the work he did both prior to being an MP and then as part of this committee.

My first question goes to Dr. MacDonald.

In their study, the Senate Committee on Energy, the Environment and Natural Resources noted a concern coming out of their work that the right to a healthy environment cannot be protected unless it's made truly enforceable and that the procedural and technical requirements of section 22 of CEPA might make this right unenforceable.

I know that there have been about 20 years since that section has been used. I hope that you could give some advice to this committee on what we may be able to do with the sections of the bill that are opened up right now to have that right be more enforceable.

Dr. Elaine MacDonald: That's a tough one. We did have recommendations that we had put forward pre-bill with respect to section 22—sections 17 to 22—in case the bill did open up those sections. That's where my focus has been.

I think there may be opportunity through the implementation framework to look at some aspects of how we could build in some quasi-enforcement. There's a two-year time frame to develop an implementation framework with respect to the right to healthy environment. I think looking at ways to have some kind of complaint or enforcement mechanism through that may be something, but I really would encourage the government to look again at sections 17 to 22 of CEPA and go back to some of our early recommendations pre-bill on how to strengthen those sections.

Disconnecting the requirement for investigation before bringing in an environmental protection action was one of the recommendations. Removing some of the cost barriers to a citizen's bringing enforcement action under section 22 would be another one, as is removing the idea that the Environmental Protection Act can only be brought when there's a highly significant risk. That was the recommendation that the department made in their earlier discussion paper, to remove the word “significant” and just say when there's a risk. That was, for some reason, not followed through in the bill.

I didn't answer your question directly. I went back to section 22, but I still think that a future bill could maybe help address those issues with respect to sections 17 to 22.

● (1740)

Mr. Patrick Weiler: Those are some points that are very well taken, both on the implementation plan and for future revisions of this bill, if ever. There are other aspects or parts of this bill that I would like to see opened up as well, like disposal at sea, for instance. That's a big issue in British Columbia.

Dr. Elaine MacDonald: Yes, I'm familiar with that one, too.

Mr. Patrick Weiler: We'll have to cross that bridge when we get there.

My second question for you, Dr. MacDonald, is around the fact that Canada is one of the few developed countries in the world that don't have mandatory ambient air quality standards.

I'm wondering if you have any suggestions as we're contemplating this bill today about how we might be able to integrate some of those types of standards within the right to a healthy environment.

The Chair: That's a great question. I'm really interested in it as well, but can you do it in 30 seconds?

Dr. Elaine MacDonald: Yes, we do have a recommendation in our brief that's specifically that the implementation framework should include a requirement for the minister to take action when a Canadian air quality standard is exceeded to try to address that issue. Working it in through, once again, the implementation framework of the right to healthy environment is how we see that there could be some action taken on air quality, given the lack of national enforceable air quality standards.

[*Translation*]

The Chair: Thank you.

Ms. Pauzé, you have two minutes.

Ms. Monique Pauzé: Thank you, Mr. Chair.

Thank you to the witnesses.

I have a question for you, Ms. MacDonald.

We have been asking you questions about transparency. Some stakeholders are saying that transparency is a nice idea, but it is difficult to enforce. Consequently, certain aspects of transparency should be strengthened in Bill S-5. You have given some examples.

I would like to call your attention to Schedule 1. In the current version of the Canadian Environmental Protection Act, Schedule 1 has “Toxic substances” as a title. In this proposed version of Bill S-5, this title has been withdrawn, which is concerning.

What do you think?

[*English*]

Dr. Elaine MacDonald: That's a loaded question. It's an interesting question.

I was initially concerned when I saw that, too, but then, when I went back and looked at the act and the bill, everywhere they talk about schedule 1, they still refer to it as a "list of toxic substances", throughout the legislation. That hasn't changed in terms of how schedule 1 is described. It is still described throughout CEPA and in Bill S-5 as "the list of toxic substances". Removing the title from the schedule doesn't have any.... I'm not concerned about serious legal implications of removing the title. That's where I've landed on that question.

[*Translation*]

Ms. Monique Pauzé: In that case, could you tell us or repeat for us which aspects of transparency should be strengthened in Bill S-5?

[*English*]

Dr. Elaine MacDonald: I think we heard Cassie Barker speak earlier to the issues around labelling. That's one big piece of transparency. We've talked about having a reverse onus system, in which the confidential business information requests are reviewed by the minister or a delegate to ensure that they, in fact, meet the bar for a CBI. Those are two pieces for transparency.

Publishing things like timelines under the priority planning, as well as under the risk management plans, is something we've also requested to be amended to ensure greater transparency.

Those are, I think, four examples that I can pull out on improving transparency on reporting.

The Chair: Thank you, Dr. MacDonald.

We'll go to Ms. Collins for two minutes.

Ms. Laurel Collins: I have a question for Mr. Thurlow and a question for Ms. Daniels.

First, really briefly, putting aside some of the other pieces around the CBI, on the question of whether or not the government should be auditing, would you support the government doing a similar kind of small audit in alignment with what the U.S. does?

Mr. W. Scott Thurlow: I'm not sure that I agree with the underlying assumption that they're not doing these audits. Access to information requests are conspicuously published on the government website, and they are audited by Canadians.

Ms. Laurel Collins: On the rationale of the CBI, if they aren't auditing, would you support some provision to create an audit in alignment with the U.S., yes or no?

Mr. W. Scott Thurlow: I can't answer that question, because the underlying premise of the question is incorrect.

Ms. Laurel Collins: I need to ask Ms. Daniels—

● (1745)

Mr. W. Scott Thurlow: We have a trilogy of acts that apply to all confidential business information—

Ms. Laurel Collins: I'm so sorry to cut you off, but I want to ask Ms. Daniels a question.

Ms. Daniels, could you talk a bit about the cumulative effects and the lack of planning requirements? Specifically, what impact does that have on indigenous communities, especially in the work that you've done as a nurse?

Ms. Melissa Daniels: Thanks for the question.

My connection is becoming unstable right now—I'm in the Northwest Territories—so I'm going to defer this to Jane, because I'm sure I'm going to lose connection momentarily.

The Chair: Answer in 30 seconds, please.

Dr. Jane E. McArthur: I'm sorry to hear that, Melissa.

I think this problem of cumulative effects is extremely important for us to consider, and it is something that's illustrated in the concept of vulnerable populations, because what we see is these combinations of effects and combinations of exposures, and these differ for different populations. When we're thinking about the myriad of exposures that we have, some of them are not in our control. Some of them are, but for many people, they are not things that are in their control.

When we are looking at assessments of substances, whether they're toxic and whether we need to be reassessing or substituting, this concept of cumulative is really important, because these combinations have an impact on human health.

The Chair: Thank you.

We'll go to Mr. McLean for four minutes.

Mr. Greg McLean: I'm going to ask a question here.

Ms. MacDonald, you and I haven't been able to discuss the right to a healthy environment yet today. I'm going to read this:

> Bill S-5 seeks to amend CEPA to recognize the right of every individual in Canada to a healthy environment. The bill requires the Minister of the Environment and the Minister of Health to develop an implementation framework within two years that would set out how this right will be considered in the administration of the Act. The ministers would be required to include in the framework more information on how the right would be balanced with social, economic, health, scientific and other relevant factors.

All of these things come into one definition. One thing we always lack when we do this is the precision around what these definitions are in the right to a healthy environment. We talk about the importance of health in Canada and the importance of health outcomes—mortality and morbidity being the most prevalent measurements we have on this—that continue to improve in Canada.

If we're going to leave this open for some kind of interpretation that isn't in Parliament—it is our job here, in my opinion, to get precision on this—and it's going to be left open to the courts, are we opening up a 10-year process in the courts to try to find out the definitions of such things as "healthy environment" and how those balance against social, economic, science and other relevant factors?

Is that something that we need to consider in the next year as far as getting it nailed down ahead of time is concerned?

Dr. Elaine MacDonald: We would prefer the right to be stated as “a right to a healthy environment” without the inclusion or consideration of those factors. We understand the government wants to leave that in. I think it is exactly because of your concern about potential litigation, so that they can balance out the right against other things, but we are concerned that by including factors and so on, you can undermine the right.

In terms of defining the right, we've looked at legislation throughout Canada. There's legislation in Quebec, Ontario, Yukon and the Northwest Territories that recognizes different forms of the right to a healthy environment, and none of them have defined the right, so we don't see there's a need to—

Mr. Greg McLean: Yes, if nobody has defined the right and it's in front of the courts repeatedly, are we not leaving it open to somebody's interpretation of what this means?

Let me give you what I think is an example, although I'm making it up on the fly.

When people live in cities, they forgo certain health benefits of living in the country because they actually have other benefits that contribute to their lives as well. Everybody makes these trade-offs on a daily basis. Everything we do is a choice that we make to do what we think makes our life better when we have those choices.

Given that some of these choices are going to require progress on so many issues, some of that progress is going to require new chemicals that actually will lead to a more fulfilling life for 99.9% of Canadians, for instance. Does that necessarily put the 0.1% of Canadians in a position in a court where they can say that this leads to a worse outcome for society because a small percentage of us are affected badly by this?

Dr. Elaine MacDonald: When CEPA regulates chemicals, it doesn't do it writ large for all the uses of the chemicals across the country. It focuses in on the risks. That's why it's a risk-driven piece of legislation. If it's going to regulate a new chemical because of a risk, it might only be one aspect of how that chemical is used.

● (1750)

Mr. Greg McLean: We're not talking about CEPA here. We're talking about the definition of a healthy environment and how it applies in a legal perspective for people—

Dr. Elaine MacDonald: Well, you were giving me the example of a chemical, so I was trying to respond in terms of how it works.

I will point you to the language in the bill. It actually does say “subject to any reasonable limits”, which is really how a court would interpret the right anyway, so that is written into the legislation. It does recognize that there are limits to any right, including the right to a healthy environment, and that is right in the duty section of Bill S-5.

The Chair: Thank you. That's a very interesting philosophical discussion. Seriously, it's a very interesting debate.

Mr. Longfield, go ahead.

Mr. Lloyd Longfield: Thanks, Mr. Chair.

I think I'll bridge from your comment that it is a very interesting discussion. What I'm listening to throughout today is looking at what this bill can achieve potentially. I'm also thinking that there are other acts where other things are done better than they could be done under this act.

Labelling has come up, and I was thinking about Health Canada and all the work Health Canada does on labelling around food, for example.

Dr. MacDonald, could you maybe talk a little bit about the best act for some of these things to happen under and whether that's a consideration we should be keeping in our minds as we look at CEPA?

Dr. Elaine MacDonald: There actually is a concept in CEPA called “the best place to act”, which recognizes that sometimes CEPA is not the best place to take the regulatory action. It might be better under the Food and Drugs Act, the cosmetic regulations, the Canada Consumer Product Safety Act or somewhere else.

CEPA might be the piece of legislation that will assess the substance to determine what risk management might need to happen, but that risk management could well happen elsewhere. I think that is what you're speaking about: that it's not always CEPA that needs to be the piece of legislation that's regulating.

Mr. Lloyd Longfield: Thank you.

I think some of the perspective I was looking for.... This is not to excuse the work that we're doing—because we have a lot of work to do, and we have to roll up our sleeves on it—but, Mr. Thurlow, in listening carefully to your answers, I appreciate that you're giving credit where credit is due while also saying that there's room for improvement.

When we're looking at the implementation framework, at regulatory processes or at the role of provincial governments in these discussions, I worry that we could get too prescriptive with this legislation. Could you maybe comment on the need to have the right principles stated in this legislation without going into other jurisdictions?

Mr. W. Scott Thurlow: That's an incredibly important point, and I'd love to discuss it further with you at Manhattans pizzeria on Gordon Street, one of my favourite places.

You're exactly right. We have officials at Environment Canada and Health Canada who are experts in this space. If we are prescriptive and tell those officials what the definitions of things are, we will tie their hands on both new assessment methodologies and understanding different perspectives on what is or is not a health or environmental risk. That is why the breadth of the statute that we have here in front of us will afford that discretion in the future.

It's interesting. I believe it was my friends at Ecojustice who talked about how the last time this bill was amended, Blockbuster Video was a going concern. Toxicology has changed. The way people are exposed has changed. That is why we need the flexibility built into the act so that the assessors can adopt the new science and accordingly deal with all these new concepts.

It's interesting. All of the aspects of chemistry and chemicals management that have been discussed here today have found their way into existing Health Canada risk assessments, whether it's cumulative effects or vulnerable populations. These are the things that the departments themselves have adopted into their risk assessment models.

Mr. Lloyd Longfield: Very good.

Manhattans pizza was there 20 years ago too, I think, so some of the good things still survive. We have to maintain that in this study as well.

Thank you.

The Chair: Thank you.

This has been a fascinating discussion. I want to thank the panellists, both here and onscreen, and all the members for their very good questions.

We will end there and continue on Friday with our witness testimony as part of this study. Thank you.

The meeting is adjourned.