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Chair

Ms. Bonnie Brown

Standing Committee on Health

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● (1110)

[*English*]

The Chair (Ms. Bonnie Brown (Oakville, Lib.)): Good morning, ladies and gentlemen. It's my pleasure to welcome you to the 43rd meeting of the Standing Committee on Health.

We're moving to some conclusion on Bill C-420, but before we go to clause-by-clause, we are going to hear some witnesses. Then we'll hear the proponents of the bill and then we'll move in camera.

We'll begin with the Health Canada officials. We welcome, again, Ms. Diane Gorman and Mr. Philip Waddington from Health Canada, who are going to brief us just prior to our review of the clause-by-clause of Bill C-420.

Ms. Gorman.

Ms. Diane Gorman (Assistant Deputy Minister, Health Products and Food Branch, Department of Health): Thank you, Madam Chair, and thank you, members of the committee, for providing us an opportunity to appear before you once again to discuss the appropriate regulation of natural health products and the future of section 3 and schedule A of the Food and Drugs Act.

As you know, I had the privilege of appearing before your committee on the first day of these hearings. My colleague, the director general of the natural health products directorate, Dr. Phil Waddington, had the opportunity to provide some remarks to you and to respond to some questions about 10 days ago. He is with me again today to respond to questions.

[*Translation*]

A number of documents have also been provided to you in response to your requests on May 2 and to address some misconceptions raised subsequently.

We are pleased to be back before the committee to discuss the issues raised over the last two weeks and answer any questions that you may have.

[*English*]

I would like to address the two fundamental questions that are associated with Bill C-420; first, whether the current regulatory framework is more appropriate than the food regulatory framework under which Bill C-420 would bring natural health products; and secondly, whether section 3 and schedule A respond to the needs of Canadians today.

Many witnesses have indicated that bringing natural health products under the food framework would not serve the interests of consumers. Doing so would limit access and would not ensure the appropriate level of safety, quality, and efficacy that is currently provided for this class of products.

I fully agree with this assessment. There is no compelling reason for treating these products as foods. Indeed, it is clear that the support of some stakeholders for a food-style regime is based in large part on misconceptions.

[*Translation*]

Some witnesses have recommended the creation of a third, distinct category under the Food and Drugs Act. Natural health products are not treated the same as pharmaceutical drugs and, in fact, the requirements are in most cases significantly less stringent.

Natural health products are not treated as foods either. NHPs are permitted to make a full range of health claims, have appropriate dosing information, indicate cautions or warnings, and ensure the efficacy of the product. As such, I believe that the current regulations are appropriate for natural health products.

Furthermore, creating a third category would provide no additional benefits over what currently exists in the regulations.

[*English*]

We have also heard comments on our performance, on the numbers of licences issued to date, and on May 5 Dr. Waddington addressed these valid concerns. I can assure you that we are fully committed to improving our performance in this regard.

Now I would like to turn my attention to the issues of section 3 and schedule A. We have heard and you have heard that Canadians are demanding changes in this regard. These provisions of the Food and Drugs Act must be modernized to meet the needs of Canadians. Health Canada intends to do so through two concrete actions this year.

First, we are reviewing and modernizing the list of diseases that are contained in schedule A to assure Canadians that only appropriate conditions appear on this schedule. This work will be undertaken through a scientific advisory panel, which is meeting in June of this year. This panel will define clear criteria to ensure that schedule A can keep pace with evolving scientific knowledge and to ensure that there's greater transparency and consistency in making additions and deletions to the list.

Second, Health Canada intends to permit evidence-based risk reduction and symptomatic treatment claims for schedule A diseases and conditions through an amendment to the food and drugs regulations. This will assure consumers access to information regarding preventing or reducing the risk of developing certain diseases, but it would still lead consumers to seek professional advice for treating serious diseases. Canadians will be consulted on this proposal in the fall.

I would like to point out that schedule A not only deals with natural health products, but also looks at drugs and devices. I think it's important as well to make that distinction, and whether or not section 3 and schedule A need apply to natural health products.

I wish to conclude by iterating that the natural health products regulations are the appropriate framework for the regulation of these products. They were developed through extensive consultations with Canadians. All views were considered in the development of the regulations, and the end result is a regime that all Canadians can be proud of and have confidence in. These regulations are nationally and internationally recognized as an excellent example of how natural health products can be regulated in a manner that ensures increased access to safe, effective, and high-quality products.

● (1115)

[*Translation*]

I also believe that Health Canada's proposal on section 3 and Schedule A is one that will address the concerns raised by stakeholders while ensuring the health and safety of Canadians.

Together, these two actions respond to the concerns raised by Parliament and by stakeholders regarding section 3 and Schedule A, and represent concrete steps to modernize their provisions and ensure consistency with current scientific knowledge.

In the longer term, Parliament will be able to determine how best to address the public health protection intent of section 3 and Schedule A through the renewal of Canada's health protection legislation.

Thank you for inviting us, my colleague and me.

[*English*]

We are available, Madam Chair, to answer any questions your committee might have.

The Chair: Thank you very much. I'm sure there are questions.

Who is going to begin for the Conservatives?

Mr. Merrifield.

Mr. Rob Merrifield (Yellowhead, CPC): Thank you for coming in again and answering some questions. We've had a few conflicting testimonies. We've gone through this. So I want to clear a few things up.

First of all, nutraceuticals. What does that fall under? Is there a definition for nutraceuticals?

Mr. Philip Waddington (Director General, Natural Health Products Directorate, Health Products and Food Branch, Department of Health): A nutraceutical would be an extract from a food product that is being used for medicinal purposes. So if you take—

Mr. Rob Merrifield: So would it be under foods, then?

Mr. Philip Waddington: No, it's extracted from a food but it is being used for medicinal purposes. It would be a natural health product. Nutraceuticals would fall within the definition of a natural health product.

Mr. Rob Merrifield: Okay. Is it in the act as a definition, or is it—

Mr. Philip Waddington: No, it's just a working definition that's used in the industry, but there is not a legislated definition.

Mr. Rob Merrifield: Okay, I was just a little unclear on that, because if you go looking for nutraceuticals, they're not there. So that clears that up.

As for subsection 3(1) and subsection 3(2), schedule A, it seems a little unclear whether that actually applies to natural food products under the act. Can you tell me if it does and where it does in the act?

Mr. Philip Waddington: Yes. Subsection 3(1), subsection 3(2), and schedule A apply to all of the products under there. They apply to foods, drugs, natural health products, cosmetics, and medical devices.

Mr. Rob Merrifield: It doesn't mention natural health products, does it?

Mr. Philip Waddington: No, it's because the regulatory-making authority of the drug side created the natural health product regulations, and under that, natural health products are captured.

Ms. Diane Gorman: For greater clarity, until such time as the legislation is reopened and the definitions are changed, we have to affix regulations to one of those definitions, and so it was affixed to drugs, but it applies equally to the products that Phil described.

● (1120)

Mr. Philip Waddington: I'm going off the top of my head a bit, but the wording says something like, the product may not be sold or represented for use in, etc., and it talks about prevention, treatment, or cure of, and all of the products that would be doing that are captured within this.

Mr. Rob Merrifield: That's part of the problem, because testimony from almost all perspectives has said that subsections 3 (1) and 3(2) and schedule A perhaps should not apply to natural food products, and so when you start looking at the act, it's very unclear whether it does or it doesn't.

I'm still a little unclear about your definitions, because it's not named as a definition. I want to ask you—and this is more of a technical question—if we were to go with some of the testimony, and actually even the transition team, and have section 3 and schedule A not apply to natural food products, because I understand medical devices and cosmetics are also under that, how would we do this?

Ms. Diane Gorman: Hopefully this will be helpful to the committee.

When you look at what is listed in section 3, in addition to the types of products you've mentioned—food, drug, cosmetic or devices—you see that it also talks about treatment, prevention, and cure. In my remarks I talked about how we would want to address those three different words, “treatment”, “prevention”, and “cure”, and when you think about what natural health products are intended to do, the claims may not be around cure. So some of the purposes for which section 3 was written may not in fact apply to natural health products.

Mr. Rob Merrifield: That should be another reason to get rid of them and have them not apply.

Ms. Diane Gorman: But it might still be important for drugs and some of the other products that are there.

Mr. Rob Merrifield: Mine is more of a technical question. We've fought the battle of whether it should or shouldn't be. Let's just say we've done that. Now how do we put into the right form a recommendation from this committee so that section 3 and schedule A do not apply to the natural food products?

Mr. Philip Waddington: It's natural health products.

Mr. Rob Merrifield: Or natural health products, I'm sorry, yes.

Thank you.

Mr. Philip Waddington: You could either exempt it in regulation and say the act does not apply to this, or I believe you could take it at the level of the act. About the actually drafting I'm not sure, but just as with the food side, there are certain claims that are allowed for certain foods. There are five claims there, some of which touch on schedule A, and they've made regulatory change to exempt them. You could do that.

The question you want to ask yourself is, to what end, what is the purpose? And what you would want to do is say, what we want is for Canadians to have access to information that allows them to make informed choices, and if that's the correct outcome we seek, we should apply it to all products. So while you could remove it from natural health products specifically, if you do so and you believe it's the right thing to do, you should also remove it from the other categories to which it would apply.

So if you're going to say there's a food, a drug, a medical device, a cosmetic, or a natural health product that should be able to make a claim to reduce the risk of developing a disease or to produce a likelihood that's going to progress—all of those kinds of pre-disease types of claims—then you should apply it to all of the products. If you have concern around the treatment of a severe or communicable disease such as SARS, or AIDS, or things you may want to have listed on there, saying this isn't something people should self-treat, you would want to apply that consistently to all of the products as well. So while you could remove it just for natural health products, I would say you might want to consider it, at your discretion obviously, to apply equally to all.

What Diane has been proposing is to say there are changes we're looking at and we should do it in such a way that we're looking at all of the products, so that people, in whichever route of treatment or prevention they pursue, are able to have access to the information that will allow them to make an informed choice around that.

Ms. Diane Gorman: At the end of the day, what you want to accomplish is to have it that Canadians can improve their health by using the various products that are available to them from food right through the whole spectrum. So if you need scientific evidence in order for the products to make those claims, you want to be sure there are incentives to create that evidence. Similarly, if somebody needs to be treated by a practitioner, you want to ensure that they seek this help.

What we are looking at in terms of amendments is meeting those various objectives—

Mr. Rob Merrifield: Yes, I understand the objectives. Our problem is we don't want a repeat of what we saw in testimony yesterday, with what went on with Truehope and Empowerplus. We believe that if you used the power of this act—or actually, it was before the implementation of this—to a degree that I think was prohibitive for products coming into Canada—

● (1125)

Ms. Diane Gorman: We did read the transcript yesterday. I wasn't in the room myself, but we did read the transcript, and it might be helpful if we could take a minute just to say exactly what the department did and did not do.

Mr. Philip Waddington: Yes.

With Truehope—and I know that we're speaking about somebody who's not in the room, so I'd better think about how I'm wording this—just to be clear, we have approved a product with an NPN that they've submitted to us, and it's now able to be sold on the market. The product that was taken action against—if you read the Health Canada website, there's a paragraph in there, and the bottom line says that this product was being promoted to treat severe psychological disorders, and it hadn't been proven to do such. The product that we have approved doesn't say it treats severe psychological disorders; it's more general in its claim. It's an appropriate claim, and I think the company is happy to have the product on the market, and it's fine.

This is where we have to consider how we want to move forward. Do we want to say things like schizophrenia should be self-treated, or would we want to have somebody having oversight on that condition?

Mr. Rob Merrifield: We don't have time here to go through that again, and I don't think it's productive. Health Canada shut down research—pretty valid research, I believe—on this to try to make that happen. There's a long history that goes back on this product.

Ms. Diane Gorman: The product that has been approved is a different product and does not make the claims that the product was making at the time. In addition, we had always said if there should be a clinical trial, if there is valid evidence, then Canadians should know that, and they should have access to the product.

Mr. Rob Merrifield: Okay, let's not get into that.

At any rate, I think that helps me a little bit, but not an awful lot, on the subsections 3(1) and 3(2) and schedule A. It tells me your perspective on it, at any rate.

Thank you, Madam Chair.

I don't know how much time I have left.

The Chair: Mr. Bigras, do you have questions?

[*Translation*]

Mr. Bernard Bigras (Rosemont—La Petite-Patrie, BQ): Yes, Madam Chair. I thought we were following the usual speaking order and that you therefore didn't have to ask me if I had a question. This is a normal committee meeting.

I'm very disappointed with your presentation, and I won't hide it from you. I read it and carefully listened to it. I thought the department was showing some definite openness to the creation of a third category. Today you're taking a fairly firm position by saying, among other things, what appears on page 5, and which reads:

> As such, I believe that the current NHP regulations are appropriate for these products.
>
> Furthermore, creating a third category would provide no additional benefits over what currently exists in the regulations.

I thought your department would take advantage of the fact that we're studying the Food and Drugs Act today to make that proposal. I'm concerned.

Mr. Waddington, you'll agree with me that between the regulations and the act, it's always the act that takes precedence. In principle, it's the act that applies. The danger lies in the fact that the regulations apply under the definitions provided for in the act, that is to say with regard to food and drugs. I would like you to explain to me to what this lack of openness you're displaying this morning with regard to the creation of a third category is due.

Furthermore, I believe there's a provision in the act stating that the natural health products regulations would apply with respect to what is called a “new drug”. Can you explain to us what that expression means for your department?

[*English*]

Mr. Philip Waddington: There are a few comments that we have to make on that. One is that the regulations are separate from the food and drug regulations. So it is under the same act, but there are separate regulations. They have separate requirements for submitting a claim, and they have separate requirements for the GMPs that are in place. All of those things are separate. So if we create a third category at the level of the act, again, you're going to ask, what are we trying to achieve? What would be the outcome? If you're going to have the same regulations, then it would be to no effect.

So I would say that what we've done is the right thing to do. The reason we pursued it wasn't to achieve a goal other than what it is that Canadians are asking us to do. Canadians are asking us to have appropriate standards of evidence, require appropriate submissions for what a claim would be, to be able to allow structure function, risk reduction, and treatment cure claims. All of these things have been achieved through the regulations. If we go to changing the act, what we're going to end up doing is having to consider all of the ramifications with other acts, with other regulations, how they apply. Complications will come into place, with no net benefit—no added facility for bringing products to market, no added claims that are being allowed, no added GMPs or safety requirements.

So that's why we pursued this.

● (1130)

[*Translation*]

Ms. Diane Gorman: I just want to add something.

I apologize if my remarks weren't clear enough and if there was a misunderstanding. If we had the words “natural health products” in the act, we would still have regulations to support those words in the act. If we revise the act — and we intend to do so; we've undertaken to do so — we're going to introduce that concept in it.

As regards the regulations, however, we decided there was a demand by citizens and that, to meet it, it was necessary to do something temporary, before addressing the issue in the context of a review of the act. That wouldn't necessarily change the regulations, if we had the words in the act.

Mr. Bernard Bigras: Under what provision of the act do the regulations apply? Regulations always apply pursuant to certain provisions of a framework law. Regulations apply under certain provisions. Under what section of the Food and Drugs Act do the natural health products regulations apply?

Ms. Diane Gorman: They're related to the word “drugs”. Even if we had the words “natural health products”, we would have had to develop the regulations for that class of products. We think we've done it. In fact, we have done it, even though the words are not included in the act.

The Health Products and Food Branch is separate from the Therapeutic Products Directorate. Dr. Waddington is at the same level as the person responsible for therapeutic products. The standards are different. We're conducting different clinical trials. We have regulations that are different from the others.

Mr. Bernard Bigras: I'd also like to have your opinion...

[*English*]

The Chair: I'm sorry, Mr. Bigras. You're over your time.

Mr. Thibault.

[*Translation*]

Hon. Robert Thibault (West Nova, Lib.): Thank you very much for being here.

[*English*]

The vast majority of witnesses who came told us it should be under drugs; it shouldn't be under food. A lot said it should be under a third category; some recognized it was a third category but under the umbrella of drugs. The one element that remained was that it seemed that a lot of people were concerned about subsections 3(1) and 3(2) and schedule A.

If I understand what you said this morning, it was that you're working towards modifying it and making it acceptable or making it work it better; you're concerned about the cure side, not so much about treatment and prevention. If you change it now—if I understand what you said—you have to split it and have one schedule A and one subsection 3(1) and one 3(2) that apply to drugs and another set that applies to natural health products; it would have to be different. Does that mean a rewrite of the act?

● (1135)

Ms. Diane Gorman: I think what you're describing could be a possibility, but as it is now, it has treatment, prevention, and cure. You have to have evidence behind those things, and that applies to a whole range of products, including drugs. I think we have to be careful, if we're talking about repealing something, about what might also be the consequences outside of natural health products.

What we are looking at is that a product for which claims about prevention or disease can validly be made may not find itself there. When you're talking about treatment and cure, it may be important to have the intervention of a practitioner. You may well find, as I said, that the types of products that are going to be described as natural health products are likely intended for risk reduction or prevention as opposed to some of these others.

Hon. Robert Thibault: The other question I wanted you to answer is this. Natural health product producers now can make direct-to-consumer appeal or marketing for their claims—claims that are permitted. For drugs they can't. Under subsections 3(1) and 3(2), schedule A, and other dispositions, they can't make that appeal. If you remove those schedules and subsections 3(1) and 3(2), does it change that aspect for drugs?

Mr. Philip Waddington: If I can, I'll clarify. I think there might be a misconception there. When you say you cannot make those claims, it is that claims cannot be made for schedule F drugs or prescription drugs that are advertised to the public. For OTC drugs like Aspirin, they can make claims in advertising, so I think the requirement you're talking about is just with respect to prescription drugs. I want to be clear on that. If schedule A and section 3 were removed, claims could still not be made for those products that are on schedule F.

Hon. Robert Thibault: Schedule A applies now to over-the-counter drugs and to natural health products?

Mr. Philip Waddington: I apologize, Madam Chair, if I'm going in a circle on this.

For schedule A, the outright prohibition applies to all of the products for any advertising around treatment, prevention, and cure for any of the diseases. Schedule F and the advertising restrictions there apply to those products that are being sold under prescription as to what they're allowed to advertise to the public, and that's vastly reduced.

Hon. Robert Thibault: So if we removed schedule A, we'd be changing the regulations or conditions that now apply to over-the-counter medications as to what claims could be made.

Mr. Philip Waddington: Correct. You would be changing it across the board, but because schedule F products, which require a prescription, have a further restriction on them, it would not practically change that in the marketplace; the impact would be on the OTC or over-the-counter side.

The Chair: Thank you, Mr. Thibault.

Mrs. Crowder.

Ms. Jean Crowder (Nanaimo—Cowichan, NDP): Thank you, Madam Chair.

Thank you for your presentation today.

I too want to talk about schedule A and subsections 3(1) and 3(2). I'm concerned that for all of the witnesses, really, it was almost incidental that we were talking about schedule A and subsections 3 (1) and 3(2); it wasn't the focus of the hearing. What I did was go to a report of the Standing Committee on Health entitled "Opening The Medicine Cabinet: First Report on Health Aspects of Prescription Drugs". Although I'm specifically speaking about prescription drugs and not natural health products, my understanding is that schedule A and subsections 3(1) and 3(2) apply to both.

I want to go back to the report that was made and some of the recommendations. There are two pieces. One was that witnesses cited research indicating that public exposure to direct-to-consumer advertising resulted in an increase in the use of prescription drugs and a greater tendency for doctors to prescribe what the patients requested. They went on to say that the committee agreed with the original rationale for the prohibition against direct-to-consumer advertising of prescription drugs as protection against injury to health. "It is of the opinion that drug advertisements could endanger rather than empower consumers by minimizing risk information and exaggerating benefits".

My point in raising this at this time is, if the committee came out and recommended repealing schedule A and subsections 3(1) and 3 (2) without more extensive hearings from witnesses, we could inadvertently create something the committee directly recommended we not do. Heather Boon, who appeared before the committee in opposition to Bill C-420, wrote: "Repealing Schedule A without also enacting guidelines or regulations for what, and how, manufacturers may be able to advertise products for conditions currently listed on Schedule A"—for example, asthma and cancer—"would be irresponsible and may lead to misrepresentation and/or misuse of products resulting in harm to Canadians".

My feeling is that if you're going to talk about repealing schedule A and subsections 3(1) and 3(2), we really need to defer that and have more extensive hearings. I'm wondering if you could comment on that specifically.

● (1140)

Ms. Diane Gorman: Because the focus of this bill was on natural health products, you may have had a more focused view with regard to its application to those products. As Phil and I were saying, if you look at what the goal of section 3 and schedule A originally was, you'll see there may still be merit in that goal.

Clearly, it hasn't kept pace with science. If we have more information about prevention, we should allow Canadians to have that information. I think it's more the treatment and cure—

Ms. Jean Crowder: If I could interrupt, though, I understand that there is currently a process within Health Canada to review schedule A. We are looking at doing that.

Ms. Diane Gorman: We have a panel that will be meeting in June, a scientific panel. It will be looking at the criteria that one would use to list on schedule A.

Ms. Jean Crowder: Would it also look at making recommendations around subsections 3(1) and 3(2) as well?

Ms. Diane Gorman: There are actually two elements to this. One is what schedule A would look like if section 3 is retained. If you retain section 3, how does it need to be amended? The panel will be looking at the list, but a separate piece is how it should be amended. We have had an expert working group looking at this. We had majority and minority reports from them. We're developing actions resulting from that, and our intention was to consult Canadians in the fall.

Ms. Jean Crowder: Would that information come back to the health committee at some point, then?

Ms. Diane Gorman: It certainly could.

Ms. Jean Crowder: So the health committee would have to ask for that information to come back.

The Chair: Ms. Dhalla.

Ms. Ruby Dhalla (Brampton—Springdale, Lib.): I just have one question, Diane. You were speaking about the panel that's convening in June in regard to looking at schedule A. What are the possible timelines? I know that last time you came before us you weren't really sure. Has any other timeline been decided?

Ms. Diane Gorman: I'm sorry. I know they are meeting in June. I've just checked with Phil, and he doesn't know when they are to report, but we'll find out and provide that to the committee.

Ms. Ruby Dhalla: How long would it take in an ideal process? Would it take Health Canada six months or a year or two years to revisit and redesign schedule A, or would it be shorter than that?

Ms. Diane Gorman: The question that's been put to the panel is, what are the criteria one would need in order to include something on schedule A? Also, we need some agility in terms of not wanting to constantly have to amend the schedule, and that's the kind of advice we're looking for from them. I would expect that once they have met they would provide a report to us, and then we would have a better sense of how long it would take to act on that.

Mr. Philip Waddington: I would agree with that completely.

I was fortunate enough to be involved with the panel that we had looking at schedule A for the minority and majority reports that were discussed. The turnaround on that with a focused effort is in terms of months, not years. It can occur more rapidly and needn't take a long time.

It's an onerous task. The group we had looked at it, and there were some criteria that they thought should go forward, but they also thought that people who were more well versed in treating and dealing with diseases should have a look at it as well. That's why they didn't conclude on it specifically.

But we're not looking at a timeframe in terms of years; we're looking at a timeframe in terms of months.

Ms. Ruby Dhalla: I know you've already elaborated on this issue in your answer to a question asked by a previous colleague, but as was said before, many of the witnesses commented on the fact that they want or have expressed interest in a third category, the creation of that. Could you elaborate for me, please, on why you, in your capacity as representing Health Canada, are opposed to the creation of a third category?

Ms. Diane Gorman: Actually, we're not opposed to the creation of a third category. We're opposed to the technicalities and the time that might be required if it is a question of reopening the act.

In our view, by creating the natural health products directorate, de facto we have a third category. I think we're having some difficulty understanding the importance of what is meant by "category" for us to help to respond to the question of the committee.

Mr. Philip Waddington: If I could build on what Diane has said, under legislative renewal, where they're looking at a number of acts and how they interrelate to one another and provisions that can apply to them all, having natural health products as a separate category in there is being considered.

It's not that we're against it as a goal, but if you take it as a short-term goal right now, you would be moving it offside with the other work that's already under way, so you wouldn't be able to have the general provisions and the things that apply across the board to other categories; and at the same time, there would be work under way because you have to create the act—to draft it and consult on it and all the rest of it.

At the end of the day, what would be the net benefit of that?

● (1145)

Ms. Diane Gorman: What we're having difficulty with—and it's not because we want to be defensive—is understanding the committee's need in this regard. What would be different if a third category was defined at the level of the act? What is not now accomplished by the regulations that would be accomplished by having it in the act? That's what we're having difficulty with.

Ms. Ruby Dhalla: Many witnesses have expressed frustration from a variety of different levels. I think of the stakeholders, from the manufacturers' side to the average Canadian who's just taking the product; and from all ends of the spectrum, a tremendous number of witnesses have expressed frustration with the process and with the fact of the tremendous amount of regulation involved under the drug category. Perhaps having a third category would provide the opportunity to increase accessibility but, at the same time, also ensure safety of the product.

Mr. Philip Waddington: With all due respect, I'm not sure how that would occur. Again, they were created in the act under the drug category. If there were a third category, you would still have to create some level of regulation. We have the opportunity now, under the current regulations or under the third category, to raise or lower things through amendment as you go forward, so if the regulations are too onerous, you can amend the current regulations or you could create a third category. If they're not strict enough, you could amend the current—

Ms. Ruby Dhalla: On putting it into the food category, I think many of us share the concern that there's going to be no regulation, but we still—I still—think an important factor is ensuring safety and efficacy of a particular product so the average Canadian is educated when they are buying the product. Having something from overregulation to no regulation—that's why we're looking at the option of a—-

Ms. Diane Gorman: Right, and it's our view that the natural health product regulations accomplish that. They are not as stringent as the drug regulations. They do not have the limitations the food regulations do, as you described.

The Chair: Thank you, Ms. Dhalla.

Mr. Lunney is next.

Mr. James Lunney (Nanaimo—Alberni, CPC): Thank you very much, Madam Chair.

It's interesting, Ms. Gorman, that on behalf of the department you expressed difficulty understanding why the committee is interested in a third category, or moving this. Frankly, what we're having trouble with is how the kind of thing that happened to the Truehope people and Empowerplus could happen in the first place—that you would send in the RCMP to raid this little company in Raymond, Alberta, for a vitamin and mineral compound that's been helping so many people, something that could actually revolutionize the way we treat mental illness, and then obstruct the delivery of the product to people, putting their lives at risk. We're wondering how this could happen.

Frankly, I'm personally not satisfied, and a lot of people are concerned that as long as this remains as a subclass of drugs and subsections 3(1) and 3(2) and schedule A remain intact, the same kind of thing could happen again in the future because some official takes a dislike to something on a theoretical objection, without any evidence of harm. No one has produced any evidence of harm with Empowerplus, in spite of abundant evidence of help, including those peer-reviewed articles.

That is part of the concern of this committee. The secrecy in Health Canada and what's been going on to allow this to happen in the first place are very big concerns to members of this committee.

Mr. Philip Waddington: Empowerplus is a great example, and I'm glad you bring it up. The actions taken under the Food and Drugs Act and regulations were appropriate for what was going on. I'm not going to get into the debate around the legal aspects of it, but what has now occurred with the Empowerplus is that they've gone through the natural health product regulations. There's work under way with respect to the clinical trial, the product has gone through, and the NPN has been issued. It's an excellent demonstration that these are appropriate regulations.

There was a question earlier about how we define a new drug. You can say that under the food and drug regulations there were a number of products—L-lysine, glucosamine sulphate, chondroitin sulphate—all listed as new drugs under the food and drug regulations. These now have NPNs and are on the market undergoing appropriate GMPs and appropriate standards of evidence.

What you're doing is citing the very outcomes we're trying achieve with these regulations. They're actually the positive things that we should be looking to, to demonstrate that what we're trying to achieve is actually what we have achieved.

● (1150)

Mr. James Lunney: Thank you.

Now let's just go on to something else here, because I heard two different stories come out.

Mr. Waddington, a minute ago you said the regulations for natural health products are separate from regulations for food or drugs. A few minutes earlier, Ms. Gorman said that if we went under a food category, we would lose dosing information, labelling, good manufacturing practices, and so on, but those practices are all here in the regulations, which are separate from the food and drugs regulations per se. This is the *Canada Gazette* , part II, with the natural health products regulations, which include product licences, site licences, good manufacturing practices, clinical trials, and a whole range of other issues.

Why could this regulation, with appropriate modification, not exist under a food-type umbrella or a third category umbrella with appropriate regulation?

Mr. Philip Waddington: I'll give you the same answer I gave last time when you asked that question. It could; you could move the products under the food side. It would be inappropriate to do so, but you could. It would create work; it would create uncertainty in the marketplace. It would mean they would have to end up with the same regulations—it would be the best outcome—but in a place where they don't fit.

The capacity to do so doesn't mean it's the route you should take. What you want to do is ask what the right way to move forward is. What would best serve Canadians? What would best serve the industry? What would best serve the consumer? How do all of these come together? Then decide what we're going to do. That's the way we go forward—

Mr. James Lunney: Okay, thank you. You're saying that in fact the regulations could be moved under a third category or under a food-style umbrella. You think it's inappropriate, but it could be done.

Ms. Diane Gorman: I guess we would ask what would be accomplished by doing that. If valid regulations now exist, what would be accomplished?

Mr. Philip Waddington: To add to that, if I may, because I am passionate about this one, you also have to read what you're proposing, not what you hope you're proposing, and what you're proposing is that the products become foods. You don't have anything in there about what regulations are going to apply to them. If you want to say what you want to put into it, then put it in and we can discuss it, but what you've put in so far is that these products become foods—and that won't achieve what you've got on the desk.

Mr. James Lunney: When you created a category under drugs, you started without regulations as well, and you came up with a package.

Mr. Philip Waddington: The right one.

Mr. James Lunney: Well, you're saying it's the right one. That's a subject of discussion.

You're saying that the new regulations increase access. But we now have about 350 products on the market that are legal, that you've approved, whereas we have some 50,000 or 60,000 products, depending on who you listen to, that are out there currently. So I don't see how 350, or maybe by next year 500, or if you do achieve your 5,000 increase in production in order to achieve your outcomes.... I don't see why we have to have pre-market approval for things that are already there when there's no risk of harm.

Mr. Philip Waddington: So using again the example that we used last time of ephedra, it was on the market. You would say that should go on the market at any dose, without any pre-market approval?

Mr. James Lunney: We already have the means to provide restrictions where there's evidence of harm.

Mr. Philip Waddington: Yes, the appropriate regulations.

Mr. James Lunney: So that would exist under a food style as well.

Mr. Philip Waddington: It doesn't now.

Mr. James Lunney: You could create it. You have regulations here right now. They're not going to evaporate.

Mr. Philip Waddington: We're getting into a banter here. I don't know—

Mr. James Lunney: The point is that you said it would be inappropriate, but you haven't really said why; it's just your opinion.

Mr. Philip Waddington: Because they're not foods.

You can do the wrong thing for the wrong reasons. It doesn't mean you're going to go forward. They're not foods; they're not taken as foods. You may have the capacity to create regulations, but they're not going to be the right ones, nor are they going to be implemented.

Mr. James Lunney: Well, they're not drugs either.

Mr. Philip Waddington: They're natural health products.

● (1155)

Mr. James Lunney: Exactly.

In the United States they are regulated as foods under DSHEA, the Dietary Supplement Health and Education Act. They are regulated. So there is disagreement around the world as to how these things should be regulated. I think most of us recognize, and the committee recognizes, that they are low-risk products, as opposed to drugs, which are certainly not low risk.

Frankly, Health Canada has a lot of concerns—or should have, and certainly a lot of Canadians do—with the way drugs are being regulated, in terms of the risk, the inappropriate deaths that are happening with drugs. They're not happening with natural health products. There are no body bags or long lists of counts that you can provide showing the dangers of the natural products.

Mr. Philip Waddington: As I've mentioned a number of times, the regulations are about risk, as you're indicating, and about benefit. What we need to be able to do with these products, the products that you and I believe in and use, is be able to explain to Canadians appropriately how these products can be used in ways that are going to be beneficial to their health.

Under the food regulations, that's not achieved. Under the natural health product regulations, it is. It's not only about reducing risk. It's partially about that, but it's also about ensuring that Canadians can make informed and educated choices.

Mr. James Lunney: What would be wrong with Health Canada...?

It's just a short one.

The Chair: You're at six minutes.

Ms. Chamberlain.

Hon. Brenda Chamberlain (Guelph, Lib.): You're into my time.

You asked, Mr. Waddington, why we would have a third category, what would be achieved. I think because of the testimony we've heard here, most of us feel there are a few things really flawed in this.

We don't see these as foods, but we also think they perhaps aren't as powerful as drugs, and that's where I think a lot of us are coming to the conclusion that maybe a third category is needed in order to allow these, in some safe way.... Really, the key thing here, as you've stressed—you're absolutely right—is that safety is absolutely important to know.

A number of members have talked about the proper ingredients having to be listed. There are a number of things like this that people want to know and have a right to know. That's what your job is, and you're really trying to fulfill that in every way you can—and from what I understand, you're doing a darn fine job of it. However, having said that, I think there are some serious problems in the way it exists right now.

There are products that just are not getting to the market, and not necessarily because they're not good products. They're just not being approved fast enough. I know there's a fine balance there, where you could say, all right, Mrs. Chamberlain, we'll simply put them out there, whether they're safe or not.... I don't agree with my colleague Mr. Lunney that just because we don't have a whole list of people dying this is absolutely no problem. These are not foods, there's no doubt about it. These are not foods. We have to be more careful than that.

But I think some serious things have been brought up. The ability to get product to market is a serious thing, because as we've heard, some of these things really do help people. They really do. Just to tell you, there's some real concern around this table. So when you ask why a third category, I think it's because people are hoping that somehow, magically, out of a third category we might get the ability to move these things through in a good fashion, in a safe fashion, faster, because there is a problem.

There is a problem there, and I think you have to acknowledge that.

Mr. Philip Waddington: Without a doubt, I acknowledge that. Performance is the issue, I believe, on the table. I'm not trying to back down from that one at all; I clearly and fully agree with you on it. That's what we're working on right now. It's a year in, and some people have said we should be faster, and some have given us some credit, but without a doubt that's where we should be going.

With respect to access, what we've also done is put in place a compliance policy. We recognize there are products on the market.... When we receive a product, we enter it into our system and say we're going to start working on it, and as long as this company has made a submission to us.... It's not a licence, but when we're targeting our enforcement actions against products, we say if a product has been submitted to us, we're not going to target them according to whether or not they have a licence, because they're already into the process. If you talk to industry on that one, they're happy with how that's unfolding, as are consumers, because they have access.

All of the actions we're taking, whether they're regulatory or whether they're on the procedures and policies within the directorate itself and what we're doing, are aimed at exactly the outcome you're trying to achieve. If there is a faster or a better way we can do this, please let me know, and we will pursue it, because I have no vested interest in this other than ensuring that Canadians have access to the right products. I know they work, you know they work, lots of people know they work, and that's why we use them.

Hon. Brenda Chamberlain: It's just that right after the meeting in which you addressed this in some depth, a number of witnesses came up to me to say, yes, but we still have a list like this, and it just isn't going through—and maybe with good reason; I'm not saying that. But I think what we've heard around the table, Madam Chair, with due respect, is that somehow we want to be able to ensure that there is a way this could be improved. I don't know if it's done through having Mr. Waddington come back again to keep reporting to this committee; we don't know the configuration or how this will all be made up in the long run. But I think if we lose track.... Once we go through these hearings, when we see there's a problem with things—and it may not be this bill, which I don't think will address it, quite frankly—if we let it get out of our grasp, just as with the FA facet stuff, then we're really not doing the right thing. We have to keep coming back at it, if necessary, and if we have to keep a short leash on people...with due respect, because I've said I think you're doing a great job. But I think somehow we have to get this better.

Thank you.

The Chair: Thank you, Ms. Chamberlain.

Madame Demers.

[*Translation*]

Ms. Nicole Demers (Laval, BQ): Thank you, Madam Chair.

Mr. Waddington and Ms. Gorman, thank you for being here. You said you were looking for a more appropriate way to respond to the needs we've expressed. Those needs have also been raised in recent weeks by all but a few of the witnesses who have appeared.

I am one of those people who admit to taking natural health products. I don't take prescription medications because I don't believe in them. However, I want to make sure that the natural health products I use are high-quality products and that they are well regulated. However, as long as they remain under the “drugs” designation, I'm afraid I won't be able to get them when I need them. As we've seen, you're having problems establishing an adequate pace to approve products quickly enough.

Mr. Waddington, roughly 10 days ago, you told us you had approved nearly 200 products in a few days. Am I wrong? Have you maintained that pace, or did you simply adopt it before meeting with us?

● (1200)

[*English*]

Mr. Philip Waddington: We didn't approve 200 in a few days. In this quarter, we've approved a few hundred, and I apologize—

[*Translation*]

Ms. Nicole Demers: Two years ago, you had only approved about 500. So you've stepped up your pace significantly. Has that pace been maintained?

[*English*]

Mr. Philip Waddington: Yes to both of those aspects. It is increasing and it continues to increase. If you look at a curve for how the products have been approved, it goes in and it starts to move up and it continues to move up in an accelerated fashion. So the answer to that is yes.

However, people would point out, rightfully so, that even following that curve, that progression will probably not get us to the goal in time. We have to have, in addition to that, step-wise approval of some categories of products, and homeopathics are the ones I described last time.

I've actually been in discussion with them since I was here to do that, so we can take a large chunk and put it on top of that accelerated curve. It's through the combination of increasing our performance and taking large amounts and putting them through at a time that we're going to be able to achieve the goal.

If I can just add one other point, we use the term “drug”, and it's almost as if it's the semantic of the word that is getting us. In many countries they use the term “medicinal”. Under our regulations, they don't say “medicinal product”, they say “drug”, but it's a semantic difference; it's just the wording. If we ask, regarding the products, “Are these 'medicinal herbs'; are they used in a medicinal way?”, many people would say yes. It's the word “drug” that seems to throw them off. The actual letters and the word shouldn't be what we look at. It's how the products are used, and they're used medicinally.

[*Translation*]

Ms. Nicole Demers: I believe the category makes it much more restrictive than if it was only herbs.

Mr. Waddington, you also said at the last meeting that you were open to excluding cosmetics and personal care products from the act's designation. Is that still your view?

I'm going to ask you my other question immediately because I won't have any more time. I know Madam Chair.

Is the expert panel that's going to sit in June made up of independent experts, and where do they come from?

[*English*]

Mr. Philip Waddington: I'll answer the first part of that.

With respect to cosmetics, under the natural health product regulations there are cosmetics that are captured under our definition. As I've mentioned and will repeat to be clear, I have no vested interest in those products per se. It's not like I have a reason to pursue them. If appropriate regulations could be developed under HECS, the healthy environments and consumer safety branch, that dealt with cosmetics appropriately, I would be happy if they were to be regulated in that category.

We have to be clear that it is done appropriately, so you then say that cosmetics and the products we're trying to capture can be moved over, and not just all topical drugs. Again you get down to the line between a what is a cosmetic and what is a drug that is being applied to the skin. You want to make sure you differentiate between those.

Ms. Diane Gorman: On the expert scientific community, yes, they are individuals from outside. I don't have their names with me, unless you can recall, but we could get that to the committee—maybe not their names, because we'd have to check with them, but certainly the areas of expertise they represent.

[*Translation*]

Ms. Nicole Demers: My concern is more about the fact that a secret panel recently met to reintroduce breast implants. Some experts on that committee were paid by businesses that want to reintroduce those implants. I want to know whether any of those experts come from pharmaceutical companies or companies that might have an interest.

● (1205)

Ms. Diane Gorman: Yes. I agree there should be transparency.

Ms. Nicole Demers: Yes.

Thank you, Madam Chair.

[*English*]

The Chair: Thank you, Madame.

Ms. Gorman, you said a lot of the sort of tidying up will happen when you open the act. But it's been my experience since I've been here that departments resist opening any act, because it's like opening a can of worms. This is only a small section of it.

Is there a commitment in the department to open the act within, say, the next year, or is it just something that's sort of bandied about for some time in the future?

Ms. Diane Gorman: There is certainly a commitment to open the act. Without being too lengthy in my answer, one of the challenges is to determine what parts of the act are more immediate. This committee looked at the Quarantine Act, which had been a part of the previous legislation of the department. The question is what are those pieces that are most important to move forward on quickly.

For example, I think the maximum fine that can be levied is something like $500, which we all recognize is not appropriate at this time. So without opening a huge can of worms, the department is looking at the most effective way of ensuring that the act meets the needs of Canadians.

The Chair: Do you feel you have had time to explain to us what you consider to be all the negative or inadvertent consequences of Bill C-420? I know that officials from departments don't like to attack private members' bills, and rightly so. But I am worried. I think Mrs. Crowder did a very good job of showing us one inadvertent result of passing this bill, which is the effects on advertising, etc. But we didn't really even think about that before she raised it today.

I'm just wondering if you feel satisfied that you have been able to explain to us what you see as inadvertent results. Do you think we're moving too fast here?

Ms. Gorman.

Ms. Diane Gorman: With regard to section 3 and schedule A, I agree it requires more study. It cannot be looked at only as it applies to natural health products; it needs to be looked at in terms of the intent, what we want to accomplish.

There have been a number of statements made here by members that we develop these regulations based on opinion. That's not true. They were developed based on evidence. They were developed based on broad consultation with Canadians.

On your question of whether we have been able to advance what we think are the important arguments for the committee, we have, through our various remarks. As for whether or not others have brought forward other evidence that still needs to be debated, I would leave that to the committee.

Phil.

Mr. Philip Waddington: With respect to the natural health products side, I agree with Diane completely on this. It would require much more thought before it could go ahead. We can't read into the amendment what we wish was there; we have to read it as it's written. As it's written, the natural health product regulations would become null and void. The products that are currently compliant on the market would be non-compliant. All the ten thousand natural health products that have DINs would become non-compliant, and until there is something in place with respect to the food regulations, they would be open to action that would be appropriate for them.

With respect to the amount of review required, I'll use an example that we ran across, which is the special access program. When we put our regulations in place, there was broad consultation. We put them through the gazetting process, so that means it went through *Canada Gazette*, parts I and II. There was review on many fronts by many professionals. The regulations came into place. There was a program under the therapeutic products directorate allowing emergency access to products used in a lifesaving manner that aren't currently approved on the market. But some of those products were captured by our regulations, and so it was a small miss. We went to a regulatory amendment to reverse that, and people maintained access to the products.

But you have to read it with such detail and consider the implications far beyond your current regulations before you take on something like this. It cannot be done in a cavalier manner; it really has to be considered in stringent detail.

● (1210)

The Chair: Thank you.

Mr. Carrie.

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

I think we have to look at seven years ago. This arose because Canadians didn't want their natural health products regulated as drugs. But it seems that at that time, even with the report, Health Canada did what it wanted anyway. Seven years ago, it was recommended that we open the act, as Monsieur Bigras was saying, to some type of third category. Nothing was done. The transition team stated seven years ago that subsections 3(1) and 3(2) and schedule A should be repealed.

Dr. Waddington, you were on a committee that looked at this very matter. Last year it was completed and you were a signatory to that report. One of the options was to repeal the act. Do you stand by that recommendation?

Mr. Philip Waddington: I need to make two points in response.

You said that these regulations came about because people didn't want the products regulated as drugs. They came about because people didn't want them regulated as drugs or as foods. One thing that hasn't been brought to the table is that there is what's commonly referred to as schedule 705. There was a proposal, when these products were being considered as foods, that certain products would not be acceptable as foods because they didn't have a food purpose, because they were risk-associated, because of the claims, and so on. People said that this wouldn't be appropriate. They also said it wouldn't be appropriate to regulate them under the drug side of the food and drug regulations.

So we didn't just go ahead and do what we wanted. I'll tell you, this was my introduction to government. I didn't know how regulations like this would be written. I figured the way to do it would be to go out and ask the people what they wanted. That's how these were developed. It wasn't a case of us doing what we wanted, unless you assume what we wanted to do was to meet the will of Canadians, which is what we did.

With respect to schedule A, I believe a significant change has to occur. One of the possibilities is to completely remove it, and then we would have to have some means by which we could ensure that safe and effective products were being handled in an appropriate way and that the claims were appropriate. I think this could be achieved. So I stand by that.

Another possibility contained in the reports regarding how we should go forward is to ask whether there are some diseases that should be listed. It's clear that the list needs to be updated. The examples I would use, SARS and AIDS, are not on schedule A, so without hesitation, I think we need to update the list. But there may be certain diseases that, to avoid self-treatment and not having them followed by somebody who would understand if they are progressing, to have people not communicating a communicable disease to somebody else, should be maintained in a stricter fashion.

Mr. Colin Carrie: But if we did repeal them, certainly with just a few further regulations we could have anything that's required. It wouldn't be much of a problem.

Mr. Philip Waddington: Correct.

Mr. Colin Carrie: So we could still do that. We could repeal it and then add those certain things that you might want, like SARS or cancer, or whatever. We could put that in as a new regulation, right?

Mr. Philip Waddington: Yes, there are two approaches. One is that. You wouldn't repeal it then; you would just modify it down. You would say, notwithstanding the list that's there now, we're going to include SARS, AIDS, cancer, and so forth. It's the job of the panel of experts, which Diane was talking about, to ask what criteria we should look at, whether the disease is communicable, and those kinds of things.

If the conclusion of this committee is to completely remove schedule A, then we would have to apply the regulations and say that if a claim is approved and it has gone through the correct scrutiny, it would only be able to advertise up to the level of the claim. So there are means by which we could look at it. It's just that then we'd only have one tool instead of two.

Mr. Colin Carrie: I had another question about the regulations, because I think your point was well taken. If you take the regulations as they are now and move them into a third category, what effect are you going to have? Is it going to be any better? Listening to some of the companies out there, we know they're extremely frustrated, as you said, at the process. It's very slow. It's very onerous.

I was wondering whether you had looked at anything such as grandfather clauses. Seven years ago, the committee recommended a small bureaucracy with a team of experts, and as long as there was a history of safety there, you could require more or less the proof of harm instead of the proof of safety. The companies are seriously concerned that right now...they've even said they're breaking the law, really. They shouldn't be putting these products out; they're breaking the law. And with the history of Health Canada, the way they came down on Empowerplus and Strauss, they're concerned about having the heavy hand of Health Canada come down on them.

So do you have a solution to maybe alleviate some of the concerns of the manufacturers?

Mr. Philip Waddington: Again, I have two points to answer that. One is that it's not that—and I'm being completely honest with you—the drugs have a heavy hand and the food has a light hand, or that the drugs weren't appropriate and foods would be more appropriate. You can't take the personalities into it. If I have a bad day, I can't go around taking products off because I'm having a bad day. You have to stick by the rules that are in the books. The rules that are there are there to protect people from my having a bad day and not allowing a product through because I don't like it, or having a good day and allowing a product through because I do.

You can't do that. You have to obey the rules, and so you have to say what the outcome will be for that.

And now I've lost my second point.

● (1215)

Mr. Colin Carrie: It was just about the companies. They are concerned right now that it's such a slow process. They say they're concerned they're breaking the law. They're concerned that Health Canada may use schedule A and sections 3(1) and 3(2) to come down and say they're going to shut them down or something.

Mr. Philip Waddington: Schedule A applies to foods too, so whatever move you take on that, you should apply it across the board.

With respect to the frustration of the companies, I understand that, and that's where the performance comes in as something that we, without a doubt, need to address.

With respect to grandfathering, we looked at, for example, those products that have DINs, drug identification numbers. They're on the market right now. If we go to them and say we'll just grandfather you across.... We actually did a better one. We said they could have six years where they could meet either set of regulations. So even if they haven't complied, they can continue to market the product for six years while we work out if there are any differences. We're only one year into that, but that's still under way.

We've looked with those companies and asked if we could—I don't want to say rubber-stamp—use some accelerated process to move those products in, because some of the products are exactly as they were when they achieved their DIN, and they should move across very quickly. Some of the products have had approvals, and then changes have been submitted through the appropriate processes, so that either the claims are now different or the product ingredients are now different from what was originally approved. So we'd have to look at some of them.

Even with cosmetics, there was one example—I don't want to give the company name—where we asked if we could fast-track any of these. The company inserted a drug, not even a natural health product, as a non-medicinal ingredient.

So while I completely concur that we have to have the appropriate amount of regulation, I don't want to take it to a point where we're not reviewing them. That's what we're trying to say: we want to know the minimum effective amount of work we can do, not because we don't want to do work, but because we don't want to apply excess regulation where it's not required.

Mr. Colin Carrie: Have you ever thought of putting a government seal of approval on certain drugs?

Mr. Philip Waddington: It's an NPN.

Mr. Colin Carrie: Thanks very much, Mr. Chair.

The Vice-Chair (Mr. Rob Merrifield): Our time is gone, and actually we will now ask our witnesses to leave the table.

We'll have five minutes from each of the movers. It's a small group. Why don't you do it right from where you are, and that will be fine, and we'll give you each five minutes, and then we will move on to clause-by-clause.

Mr. Colin Carrie: First I wanted to take the opportunity to thank all my colleagues for all their input in regard to Bill C-420.

It's become quite obvious, I think, to everybody that the situation we have now is an inappropriate situation, and we do have to do something to move forward.

Modernizing the way natural health products are regulated is an issue that many Canadians have advocated over the past decade. Those who support change feel betrayed by Health Canada's empty promise to ensure “that Canadians have access to natural health products (NHPs) that are safe, effective and of high quality, while respecting freedom of choice and philosophical and cultural diversity”, as stated by the department in 2001.

The existing excess of government control, licensing, and regulation of such products needs to be modernized and simplified. This is a common sense regulation. In my opinion, we should be looking at the DSHEA system in the States as an example of modernization and as a guide to appropriate regulation of natural health products.

When the report originally came out seven years ago, we didn't have the experience of DSHEA. Overall, the United States is our greatest trading partner, and they do regulate these products more or less as foods. It seems to be working quite well for them without the excessive regulation we have up here.

I sincerely hope this committee gives careful consideration to the bill and to the many health benefits that will result from it should it successfully pass.

Canadians deserve freedom of choice in personal health care, something that the natural health products directorate fails to provide. In compliance with the 1998 recommendations of the health committee, Bill C-420 would provide natural health products with a desperately needed modernization regulatory regime that recognizes their long history of safe use.

Thank you for your time, and your consideration of Bill C-420.

The Vice-Chair (Mr. Rob Merrifield): Okay.

Mr. Lunney.

Mr. James Lunney: I would also express my appreciation to my colleagues for thrashing through this.

I think it's been an interesting exercise. We've heard from a wide range of witnesses. We've been hearing different aspects of where we've been going with this. I think it's clear that some concerns, coming out of the good work of the health committee in a 1998 transition team report, that where we've landed with a drug-style regulation is certainly not what people expected in the beginning.

In spite of the protests of the health department, I think there is room to consider an alternative way to regulate natural products so that Canada could perhaps be a leader in the world in making information available about low-risk, low-cost products that could greatly enhance the health of Canadians.

I would like to correct one thing. I think maybe there was some misconception. The chair mentioned Ms. Crowder raising the direct-to-consumer advertising for schedule F for prescription drugs. It was clear in Mr. Waddington's testimony that schedule F for prescription drugs would not be affecting their ability to advertise directly to consumers...by removing schedule A.

I think the big concern that I have personally was best illustrated yesterday by the Truehope people. This is not ancient history, folks; it's in our watch. It's been while most of us were here as members of Parliament. Health Canada moved in a Gestapo-like way to obstruct the delivery of a product with no evidence of harm, a product that in fact could ameliorate the suffering of thousands and thousands of Canadians with bipolar disease who are locked in the situation. We've heard a few of them here. Ms. Oxby was here yesterday talking about her son and about the dramatic impact on that boy.

I think that is the concern we want to address here. I don't see why personally we could not go to a lot of the good regulations that are existing in this act, for good manufacturing practices, for office inspection, for site inspection, for site licences—that can grind on—where people get an NPN and approval for their product. However, there's no evidence of harm from the products. I don't see why we have to impose pre-market approval on products where there's low risk and low cost. Let them achieve an NPN.

If we were to adopt a different style of regulation, whether it was a third category or under a food style, with appropriate advice to Canadians by a team of experts on what these—perhaps on a website. I know there are people who would just love to have a Health Canada website that talks about the various natural products and about what information is known, from tradition, from science, and from whatever sources are available, about what benefit we might expect from natural health products.

If we were to come up with a formula like that, we could do a tremendous service in this country and perhaps set a model, without taking anything off the market now, unless there's evidence of harm or misleading advertising. We already have the tools to do that under other sections of the act, for example, section 5, which prohibits misleading advertising for food or harmful food.

So it's been an interesting discussion. Thank you for wading through this with us. I'm not sure how far we'll get with this. If we do nothing other than see the repeal of subsections 3(1) and 3.(2) and schedule A, I think we'll have accomplished something significant, regardless of where these products remain.

I don't know how far this is going to go. We all know, with the events swirling around us, this could be the last week the committee is meeting. It could be that if events go another way, we'll be having a lot more meetings in this House. Whatever happens, I hope that if we're on the health committee in the future, we will find a way to address these issues so that low-risk, low-cost products are available to Canadians, as well as the information that advises Canadians appropriately, and that they're not obstructed by being treated as drugs.

Thank you very much.

● (1220)

The Chair: Thank you.

Before we go in camera, Mr. Thibault would like to present a motion. I don't know if he needs to read it, or if there are copies for everybody.

Hon. Robert Thibault: There are copies for everybody, so in the interest of time, I'll just read two elements of it:

> Health Canada is taking action to modernize Section 3 and Schedule A of the Food and Drugs Act to reflect scientific and medical advances and to ensure that Canadians have access to reliable product information to make informed decisions about their health. Specifically:
>
> > Health Canada is convening a Scientific Advisory Panel in June 2005 to review and update the diseases and conditions listed in Schedule A in order to reflect current scientific understanding. The panel will ensure that Schedule A can keep pace with evolving scientific knowledge by defining criteria for making additions and deletions to the list with greater transparency and consistency.
> >
> > Health Canada intends to permit evidence-based risk reduction and symptomatic treatment claims for Schedule A diseases and conditions through an amendment to the Food and Drug Regulations. This will ensure consumers' access to information regarding preventing or reducing the risk of developing certain diseases, but would still lead consumers to seek professional advice for treating serious diseases. Canadians will be consulted on this proposed amendment by November 2005.
>
> Therefore, be it resolved that this Committee, pursuant to Standing Order 97.1, recommends that the House of Commons do not proceed further with Bill C-420, An Act to amend the Food and Drugs Act...

Madam Chair, I would point out that I'm not suggesting anybody here believes we shouldn't take note and take some specific actions in regard to the testimony of the witnesses we've heard. I would prefer to discuss that in camera with the rest of the group.

● (1225)

The Chair: The motion is now legitimately on the table, because it refers to the matter for which we are gathered. However, I would like to delay debate on that motion until we make sure everyone's concerns have been heard.

Mr. Steven Fletcher (Charleswood—St. James—Assiniboia, CPC): I have a point of order, Madam Chair. Does there not need to be 48 hours' notice of motion?

The Chair: Not really, not when you're doing....The matter before us is the review of Bill C-420. We are convened to do clause-by-clause . While we're still not in camera, Mr. Thibault wanted to get the motion on the table that we would debate at the end, should we decide to do that.

Mr. Steven Fletcher: So you want us to go through all of the clause-by-clause and then vote on it at the end?

Hon. Robert Thibault: It would be clause-by-clause in general.

Mr. Rob Merrifield: I have a point of order. I find this motion is redundant. If you don't like the bill, kill the bill. That's really what you're saying. If you want to do that, you can do that during the clause-by-clause. This seems a little ridiculous.

The Chair: The reason is that Standing Order 97.1, the regulation about processing a private member's bill, states that the committee can "...either report the bill to the House with or without amendment or present to the House a report containing a recommendation not to proceed further with the bill and giving the reasons therefor...".

Based upon that standing order, the parliamentary secretary has tried to compose something that is his conclusion about the bill, but that includes the reasons. Do you see?

Mr. Rob Merrifield: I understand what you're doing. I'm just saying we could have done that without a motion. If we want to add a report to explain the reasons why we want to kill the bill, we can do that. I just don't understand why we need this.

The Chair: We can look at it as Mr. Thibault's motion, or we can look upon it as a piece of paper that we might agree with in the end, and just thank him for thinking up some reasons.

Hon. Robert Thibault: On point of order, Madam Chair, just to explain—

[*Translation*]

Mr. Bernard Bigras: Can you allow a turn around the table?

[*English*]

Hon. Robert Thibault: No. I'm answering on that point of order.

The Chair: If this is a point of order, I don't want to debate the actual substance of this motion right now, Mr. Bigras. I don't think people are quite ready to move forward with that. I'm thinking we'll probably go through the clause-by-clause first.

[*Translation*]

Mr. Bernard Bigras: It's the Chair who controls the debate. I'd like to raise a point for clarification.

I want us to be well aware of the subject of our discussion. So I'd like you to clarify the current situation for me. If we vote for this motion, that means we won't consider the amendments the members have introduced. Can you confirm what I'm saying?

I think we have to know what we're preparing to vote on and be aware of the consequences that will have for the amendments that have been introduced. I think this is a dangerous precedent. It's already been done, of course, but that's not how we usually proceed. I'd like you to confirm for me that, if this motion carries, we won't be conducting the clause-by-clause consideration of Bill C-420.

[*English*]

An hon. member: Point of order.

The Chair: Excuse me, I need to answer Mr. Bigras.

This motion is a surprise to me as well. I've never seen it before today. I'm having to sort of figure out how to handle it. I'm trying to put it in a cooperative context by suggesting to you that we are going to go through clause-by-clause, and depending on the conclusion of that clause-by-clause, Mr. Thibault's motion would come to the fore, because it gives us a format that's already thought out, for which I thank him.

● (1230)

Hon. Robert Thibault: On a point of order, perhaps I could explain.

The Chair: I think Madam Chamberlain is next.

Hon. Brenda Chamberlain: Thank you.

I just want to say, Madam Chair, I don't think this is in order, and I'll tell you why. When we did the FAS strategy—

The Chair: What's that, FAS?

Hon. Brenda Chamberlain: Fetal alcohol syndrome.

When I wanted to have the bill stopped and killed, I had to submit it two days ahead. I think if you're going to do something like this, it has to be submitted two days ahead for us to have a look at. You can't just spring this on the committee like this. I haven't had a chance to look through it. I may or may not agree with it. I totally disagree with this strategy. It's not that I think this bill should go through; I don't. But I don't think the strategy here is correct. I think we have to come back and have a look at it.

You want to talk in general terms, but this cannot be accepted as a motion, in my opinion. That's a very dangerous strategy to start in a committee, because we need to have the opportunity to look at these things. I don't know what's in here.

I'm opposed to it.

The Chair: That's why I'm saying he wanted to present it while we were not in camera. I think he could have waited until the end, myself. I don't know who dreamed this up.

Hon. Robert Thibault: On a point of order, perhaps I could explain.

The Chair: Okay, Mr. Thibault.

Hon. Robert Thibault: As I understand it, it is in order. I'd like to make my point, and perhaps the clerk can clarify the question.

I think the chair misunderstood that we suggested we would go to clause-by-clause before we dealt with it. The motion is presented, so it would be debatable and votable now. What I suggested was that perhaps it would be in the committee's interest that I just get the motion on the floor now, and we go in camera and have our discussions, and when we resume the public meeting, perhaps I will decide to withdraw it, or we will debate and vote on it prior to going to clause-by-clause.

But that motion would be dealt with before going to clause-by-clause, because if the motion is adopted by the committee, clause-by-clause becomes redundant.

The Chair: Okay. I guess we should clarify.

Mrs. Chamberlain has raised the point of order that she thinks it's out of order to present this motion now. Mr. Thibault thinks it is in order. So I'm going to ask the legislative clerk to tell me whether or not a motion without notice that deals with a bill that we're considering today is at this point in order.

Mr. Wayne Cole (Procedural Clerk): In my opinion, it would be treated the same as an amendment to the bill. Although the committee has requested 48 hours' notice, ordinarily amendments to bills can be presented from the floor, and it's acceptable to move the motion.

Mr. Rob Merrifield: As we're going through clause-by-clause?

Mr. Wayne Cole: Yes.

Mr. Rob Merrifield: But not now.

Hon. Robert Thibault: Do it at any time?

The Chair: Yes. That's why I'm saying that he presented it now, but we should do clause-by-clause before we consider it.

Hon. Robert Thibault: That's not what the legislative clerk is telling us, Madam Chair.

The Chair: He said it's like another amendment, in which case it's the last one presented, so we would deal with it last.

Hon. Robert Thibault: Could we ask him whether it's receivable at present?

The Chair: Just a minute, we have the clerk answering. I think he's already answered the question; he said he sees it as an amendment.

Mr. Wayne Cole: The motion is in order. How the committee deals with it is up to the committee. It's been presented before any of the other amendments have been moved.

The Chair: Yes.

Mr. Raymond Bonin (Nickel Belt, Lib.): Madam Chair, I'll speak to the point of order.

We've had incidents like this in other committees at other times. There's one way to kill a bill, and it's to vote against every clause. You can't say to the House that we're passing a motion telling them that we're not doing the work they assigned to us. The committee has been assigned a responsibility. It's the committee's duty to go through the motions, and the only way to kill a bill is to vote against every clause.

That was the ruling of other clerks, but it depends on what committee you're on.

The Chair: My own clerk is telling me that this being a private member's bill makes it different, that the rules apply differently when it's private member.

Let me just put it this way. Instead of getting all caught up on what the actual rules are, would you be satisfied just to go through the process that we laid out collectively for ourselves, and then we'll see what happens? In that case, that will tell us what we're going to do with this motion, etc.

Right now, we're supposed to move in camera because some people—

Mr. Rob Merrifield: So it's not on the table?

The Chair: It's been introduced.

● (1235)

Hon. Brenda Chamberlain: It's just sitting there.

The Chair: It's just sitting there.

Hon. Brenda Chamberlain: We can decide as we go along what we want to do as a committee.

Mr. James Lunney: Table the motion.

The Chair: I said we're not going to debate it now anyway. It's just been moved.

Mr. Rob Merrifield: So it's a notice of motion.

The Chair: Could somebody please remind me why we wanted to go in camera? I can't remember. What was it? Somebody....

Mr. Merrifield.

Mr. Rob Merrifield: Whether we want to go in camera or not is almost immaterial at this stage. I thought there would be a productive opportunity for the committee to sit around to discuss how we wanted to deal with particularly section 3 and schedule A in this piece of legislation. From discussion with some of our counsel, I thought there might have been some good reasons and information we could have brought forward here to debate in a more non-partisan way in camera. But if the committee doesn't want to do that, it's not a problem with me.

Hon. Brenda Chamberlain: Don't you have to adhere to certain tests in order to take it in camera, or is this not like other things? Can you just do it on a whim? I don't know. I'm asking the question.

Mr. Rob Merrifield: It's not a whim. It was a request of the chair to do it.

Hon. Brenda Chamberlain: But usually there are criteria for going in camera, isn't that right?

Mr. Rob Merrifield: Well, that's the criterion that I was laying out.

The Chair: That's more at the municipal level, I think.

Hon. Brenda Chamberlain: It doesn't apply here?

The Chair: I think we can go in camera any time we want.

If people have questions around subsections 3(1) and 3(2) or schedule A, which seem to be the contentious issues, we could go in camera now, and the Library of Parliament staff will try to give the best answer they can on those issues.

Mr. Rob Merrifield: Agreed.

The Chair: We'll have to pause, but before we do, we have to decide who is going to be allowed to remain in the room, because our motion about this for our committee is that it's members of Parliament only and committee staff; everyone else has to leave. Is that okay? Is it agreed?

Okay. We'll pause for a minute while people clear the room.

[*Proceedings continue in camera*]

● (1255)

The Chair: We're back in session, and we're not in camera.

Mr. Thibault.

Hon. Robert Thibault: Madam Chair, first, I wish to withdraw my motion that I presented prior to going in camera. Second, I would like to move deferral of clause-by-clause for 30 sitting days.

The Chair: And request an extension. We have a deadline. We have to request an extension of 30 days beyond the deadline.

Mr. James Lunney: But not 30 sitting days.

Hon. Robert Thibault: Thirty sitting days is what was agreed.

Hon. Brenda Chamberlain: You're not talking about the end of July.

The Chair: No.

Hon. Robert Thibault: No, but it can go into September.

The Chair: If it's sitting days.

Does everybody agree to 30 sitting days?

Hon. Brenda Chamberlain: Why don't you say September 30? That gives them the summer, because we're not going to deal with it before then, right?

The Chair: I think 30 sitting days beyond the deadline is the way to handle it. Would you make that motion, Mr. Thibault?

Hon. Robert Thibault: Yes.

(Motion agreed to)

Hon. Robert Thibault: The members of the committee should thank Mr. Bonin for his suggestion.

The Chair: I have one more proposition for you. Mr. Ménard has a motion on the agenda that was presented yesterday and we referred it to Thursday's meeting. With all that's on the agenda on Thursday, he wanted me to get your permission to go beyond the usual hour if in fact we have not yet dealt with his motion. We could order lunch, because then we'd be prepared for this fact.

Mr. James Lunney: What are we dealing with on Thursday besides the motions?

The Chair: On Thursday we have two subjects already, and we have Mr. Ménard's motion also. So his experience tells him that we won't get to his motion.

Hon. Robert Thibault: I think we should finish at 1 o'clock.

The Chair: We have the fired scientists of Health Canada first—

Hon. Robert Thibault: He wanted them.

The Chair: —we have Mr. Alan Bernstein coming, who will be questioned; and then we have a motion.

Hon. Robert Thibault: I think we can finish at 1 o'clock.

The Chair: You have to plan ahead, really, unless you're staying for another two or three hours.

Hon. Brenda Chamberlain: I would stay.

Mr. Steven Fletcher: Madam Chair, if we're able to accommodate Mr. Ménard, I think we should within the time allotted.

The Chair: I really don't have a picture in my head of whether or not people would be willing to stay if we provided lunch.

Some hon. members: No.

The Chair: I have a picture.

The meeting is adjourned.

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