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Chair

Mr. Art Hanger

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• (1100)

[English]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I would like to call the Standing Committee on Justice and Human Rights to order.

Being Thursday, December 13, 2007, we will, as a committee, continue our evaluation of Bill C-428, An Act to amend the Controlled Drugs and Substances Act, methamphetamine.

Before us are a number of witnesses. I'm going to ask that all witnesses come forward and sit at the table, including the Department of Health, from which we have Carole Bouchard.

A voice: She's not here.

The Chair: Professor Jean Fallu from the University of Montreal is not here either.

We have before us at present, from the Royal Canadian Mounted Police, Michel Aubin, acting director general, drugs and organized crime; and Sergeant Doug Culver, chemical diversion unit. As well, we have Rebecca Jesseman, policy analyst, from the Canadian Centre on Substance Abuse; and David Podruzny, vice-president of business and economics for the Canadian Chemical Producers' Association.

Welcome all.

I will turn the floor over to Michel Aubin from the Royal Canadian Mounted Police.

Inspector Michel Aubin (Acting Director General, Drugs and Organized Crime, Royal Canadian Mounted Police): Good morning.

Allow me a few moments for an opening comment.

The clandestine labs today are a world apart from the historic stereotype of the 1960s, or that of their resurgence in the 1990s. There is a concerted effort in the world of organized crime to capitalize on this new-found opportunity and turn synthetic drug production into an illicit economic-based enterprise of unprecedented size.

Clandestine labs producing methamphetamine, as well as numerous other amphetamine-type stimulants, have become entrenched in many countries worldwide, including Canada. The impact these illicit drug labs have on our communities is devastating.

The production of illegal synthetic drugs fuels organized crime groups that profit from their sale in Canada and abroad. These illicit

drug-producing operations use hazardous chemicals that frequently explode, catch fire, and generate large amounts of toxic waste. Fires, explosions, and environmental toxins threaten everyone living in close proximity to a clandestine lab, and all too often, law enforcement personnel encounter these "chemical time bombs" in densely populated areas, even in high-rise apartment buildings.

These labs are growing in number, complexity, and size. Organized crime groups are funding these operations through the purchase of vast quantities of precursor chemicals and industrial-grade equipment.

The precursor control regulations that were enacted in January of 2003 provide law enforcement and other regulatory bodies the opportunity to monitor and control the movement of chemicals destined for illicit drug production. Over the past five years, these regulations have provided law enforcement with increased measures to prevent the diversion of numerous tons of precursor chemicals destined for clandestine labs in Canada and elsewhere.

The legislation has been effective in—

The Chair: Excuse me, Mr. Aubin. Could you please slow down a little for the interpreters? They're having a hard time keeping up.

Insp Michel Aubin: I shall, sir. I apologize.

The legislation has been effective in allowing for the seizure of vast quantities of precursor chemicals destined for these labs. It has been successful in mitigating the diversion of the domestic supply of precursor chemicals. Despite our efforts, we have seen an increase in the availability of synthetic drugs on our streets and an increase in economic-based laboratories, those being capable of producing five kilograms or more of product. Many of these laboratories that are found by law enforcement exceed by far this threshold, and their purpose is not only for domestic supply but also for exportation.

It's our opinion that the creation of any legislation that would further inhibit the ability of organized crime to produce these dangerous drugs and damaging substances would be well received by law enforcement. Methamphetamine is a highly addictive drug capable of ruining lives, families, and communities. However, I would like to respectfully emphasize to this committee that it is only one of many illicit drugs and controlled substances being illegally produced and sold in our country.

All of these operations require materials and equipment to produce. Most of the materials and equipment found at these sites have been diverted from a legitimate use to their present function, the manufacture of illicit drugs. While it is important to focus on the process—abusing the equipment and precursor chemicals to make illicit substances—additional focus must be directed to the issue of public safety in these labs. They are extremely dangerous when in operation and provide contamination to areas surrounding the location and to individuals who are present. Any measures that can be taken prior to a lab's becoming operational would be seen as a very positive step.

Legislation that prohibits the sale, diversion, and use of materials and equipment used to produce any controlled drug or substance would provide law enforcement with another tool in its effort to locate and dismantle these labs and to disrupt organized crime groups responsible for their existence in our country.

The law enforcement community is mindful of the legitimate use of these chemicals and the equipment, and our focus is not in that area. However, any framework that would also prevent the diversion of these substances, equipment, or material used in the production of the substances that are scheduled under the CDSA would allow law enforcement an opportunity to prevent the clandestine labs from ever reaching a stage whereby they would become functional. By being able to prevent the set-up of a functioning lab, we would be able to drastically reduce the negative impact these operations currently have on our communities and environment, and also negate the supply of these drugs and their exportation from Canada. Law enforcement would also be able to disrupt and dismantle organized crime groups involved in this type of illicit activity at the onset.

I welcome the opportunity to answer your questions.

I have with me Sergeant Doug Culver, who is our national coordinator on synthetic drug operations. He has over 10 years' experience in this field and has been recognized by the criminal courts as an expert witness in this.

Thank you, sir.

• (1105)

The Chair: Thank you, Mr. Aubin.

Mr. Culver, I believe we ran into one another in Florida at a methamphetamine conference.

Voices: Oh, oh!

The Chair: Yes, follow the money.

From the Canadian Centre on Substance Abuse, Ms. Jesseman, please.

Mrs. Rebecca Jesseman (Policy Analyst, Canadian Centre on Substance Abuse): Mr. Chairman and committee members, the Canadian Centre on Substance Abuse appreciates the opportunity to meet with you today to share information on methamphetamine as you consider Bill C-428.

As you may know, CCSA is Canada's national non-governmental organization formed in 1988 by an act of Parliament to provide national leadership and evidence-informed analysis and advice on substance abuse and use in Canada. CCSA recognizes the harms

associated with the use and production of methamphetamine and therefore supports efforts to reduce levels of use, production, and availability in Canada.

I thank my colleagues from the RCMP for speaking to the practical enforcement concerns related to the ease with which methamphetamine can be produced using legally available materials in Canada. In light of CCSA's mandate and expertise, my presentation will focus on providing the committee with a summary of evidence on the use of methamphetamine in Canada in order to inform your discussion and provide a context for these very real and practical enforcement-related concerns.

I would like to begin by emphasizing the need to ensure that any response to substance use is evidence-informed. In order to respond effectively to methamphetamine use in a community, we need an accurate picture of the problem, including the extent of use, characteristics of users, social context, and sources of distribution. As an example, the Alberta Alcohol and Drug Abuse Commission, supported by CCSA, is currently piloting a rapid assessment methodology that brings together a range of community resources to assess and act on developing substance use issues.

Maintaining current information on substance use at both national and community levels also facilitates the identification of problems in the early stages. This early identification allows communities to gather the health, enforcement, and other social resources needed for a proactive, comprehensive approach to the problem.

Overall, available prevalence data indicates that only a small proportion of Canadians currently use or have ever used methamphetamine. There is also evidence that rates of use in many locations have stabilized or are declining. I would, however, like to emphasize that I do not present these statistics to minimize the potential impact of meth on users, on their families, and on communities, but to provide you with what we know about the scope of the problem in order to inform your discussion.

At the national level, we currently have limited data specific to methamphetamine use. The 2004 Canadian addiction survey categorized methamphetamine under the general category of "speed and other amphetamines", therefore breaking out what proportion of the 0.8% who reported past-year use of speed and amphetamines—

The Chair: Let me interrupt for one moment to ask that you slow down a bit; the interpreters are having a difficult time keeping up to you. Our committee members would like to hear.

Mrs. Rebecca Jesseman: Breaking out what proportion of the 0.8% reporting past-year use of speed and other amphetamines in the Canadian population is therefore not possible.

More specific information is available through provincial student drug use surveys. According to the Centre for Addiction and Mental Health's 2007 Ontario student drug use and health survey, for example, the rate of methamphetamine use among Ontario students in grades 7 to 12 in 2007 was 1.4%. The rate in Atlantic Canada was slightly higher at 1.9%.

These surveys also demonstrate one of the characteristics of the meth issue in Canada: wide variation according to geographic regions and population. Within the Ontario student drug use and health survey, the rate of use varied from 0.5% in the Toronto area to 3.6% in the northern region. Within the Atlantic provinces, the rate varied from 1.2% in Prince Edward Island to 2.4% in Newfoundland.

At the local level this variation is often attributed to the presence of a supply source, but variation can also be associated with overall population drug use trends, as well as shifts in specific drug use preferences.

Use of methamphetamine varies not only by region but also by population. In general, males are more likely to use than females, and those in the age group of 15 to 24 are more likely to use than older populations. Evidence indicates that street-involved youth are at particularly high risk for use. Due to the transitory and marginalized nature of this population, accurate figures on use among street youth are difficult to obtain; however, available data indicates that anywhere from 14% to 38% of street-involved youth in some urban centres use methamphetamine on a monthly or more frequent basis.

In this case, methamphetamine may be playing a functional role associated with lifestyle. Meth helps users to stay awake for long periods of time, therefore preventing theft of their personal belongings or other victimization that may occur while they sleep. Meth also reduces appetite, therefore reducing the discomfort associated with hunger. It increases feelings of power and euphoria, therefore combatting fear and isolation.

Concern regarding methamphetamine is also related to other high-risk behaviours that are associated with use. Methamphetamine is frequently injected, presenting risks of soft tissue and vein damage, infection, and blood-borne disease transmission. Methamphetamine use has also been associated with risky sexual behaviour, particularly with those involved in the sex trade, and among gay men involved in the underground club scene.

Those who use methamphetamine are commonly multiple substance users, creating risks of overdose or substance interaction effects. Methamphetamine may also be used by workers performing repetitive tasks or tasks requiring extended periods of concentration, such as construction or long-haul truck drivers. Performing these tasks while under the influence may compromise the safety of the individual and those around him or her.

I would also like to briefly address the question of addiction raised during previous witness testimony on this bill. The theory that experimental use of methamphetamine inevitably leads to dependence has not been supported. Most Canadians who try methamphetamine do not continue use, and there is evidence that many of those who do continue do not use frequently.

This information is extremely useful, since understanding the factors that differentiate those who become problematic users from those who do not can help us identify potential risk and, perhaps more importantly, potential protective factors that can inform prevention and treatment efforts.

Ensuring that enforcement has the tools necessary to charge and prosecute those involved in the production of methamphetamine is an important part of reducing its availability. But as you consider this legislation, it is also important to recognize that enforcement is only one component in an overall strategy to reduce the use and production of methamphetamine.

As illustrated in previous testimony on this bill by the mayor of Drayton Valley, an effective approach to the abuse of any drug requires a comprehensive and collaborative prevention, education, treatment, and enforcement effort. Community drug coalitions provide a means of bringing multi-sectoral partners together to leverage local resources toward the common goal of addressing or preventing the use of substances such as methamphetamine.

Campaigns targeting methamphetamine use have been initiated at the grassroots, municipal, and provincial levels and provide access to a wealth of information for patients, parents, educators, youth, the general public, and those seeking treatment.

● (1110)

I would also like to note that CCSA's drug prevention strategy for Canada's youth, a five-year plan that complements the Government of Canada's new national anti-drug strategy, will include partnerships with provincial organizations, such as the Alberta Alcohol and Drug Abuse Commission, youth organizations, communications professionals, and educators. In addition, the strategy will establish a working group on special populations to advise on interventions best suited to high-risk youth, therefore targeting marginalized populations, such as street-involved youth with the highest risks and rates of methamphetamine use.

Treatment also plays an important role in a comprehensive approach to methamphetamine use. In general, treatment for substance abuse problems in Canada needs to be developed in a way that provides users with access to a cross-sectoral continuum of care that meets individual needs through a range of services and supports. Even within an ideal framework of treatment availability, there are challenges specific to the treatment of methamphetamine, including physical withdrawal, cognitive disruption, unpredictable behaviour that may include violence, and poor overall health.

On a positive note, there is evidence for the efficacy of treatment that addresses these issues within a comprehensive approach, involving, for example, cognitive behavioural therapy, social support and family education, individual counselling, and urine testing. The Alberta Alcohol and Drug Abuse Commission has recently released guidelines for the treatment of methamphetamine users that are freely available through the commission website.

In closing, I would like to express CCSA's appreciation for the opportunity to present evidence on the use of methamphetamine in Canada. Thank you for your interest. I will be happy to address any questions.

• (1115)

The Chair: Thank you, Ms. Jesseman.

Now, Mr. Podruzny.

Mr. David Podruzny (Vice-President, Business and Economics, Canadian Chemical Producers' Association): Thank you.

Let me start by saying that the members of the Canadian Chemical Producers' Association produce and market a wide variety of chemicals.

I'd like to restrict my comments to the chemical precursors, in particular the multi-use aspects of a number of the chemical precursors. I'll also restrict my comments to industrial chemicals, not the pharmaceutical active ingredients, which are outside of our membership's purview.

For the most part, our members produce and market to other companies, who in turn produce the products for public consumption. Very little of our production goes directly to the public.

The global trade in chemicals is second only to motor vehicles. Canadian exports to the United States are over 80%. Roughly 80% of our total production in this country is exported. There are estimated to be somewhere between 80,000 and 100,000 chemicals of commerce worldwide. In Canada, there are over 20,000 chemicals that are marketed commercially, and many times that are available in lab quantities.

While we produce only a small number of different industrial chemicals within our membership, the Canadian economy uses as diverse a range of chemicals as in any other developed country. I think the chemical sector needs to present to this group that many of the chemicals we produce are inherently hazardous. All of them deserve respect, in both production and handling. Many chemicals have multiple uses, and many chemicals are precursors for the production of other chemicals. I want to come back to that with a couple of examples.

Our members are working within an advisory working group on precursor control regulations. We have been working with Health Canada on how to put necessary controls in place that would allow normal business practice to proceed and yet give the regulators and law enforcement adequate tools to manage the illicit handling of our products.

I'd like to briefly mention a couple of things for the record—and I apologize if I'm speaking to the converted—on the class A and class B precursors.

For class A, at this point you have to be licensed as a manufacturer or shipper. You can only sell to licensed purchasers. You must keep records of what is produced, and those records must be available to enforcement officials.

For class B chemicals, you must be registered, maintain business records, and be audited. As a condition of membership in our association, our members are required to deal only with reputable buyers. They're committed to refusing any suspicious sales where the purchaser does not have a line of business that directly requires the chemicals being purchased.

I want to mention a few specific examples. There is an increasing diversity of chemical imports, with enormous growth in container shipment traffic, particularly through the west coast. Carriers into remote areas of this country might need to come under increasing scrutiny. A number of key carriers, including railways, and a number of trucking companies are associate members of our association, and we spend a lot of time working with them on recognizing when products might be diverted.

Our association also works with Foreign Affairs and International Trade in the chemical weapons area. We work with Natural Resources Canada on explosives precursors, and, as I mentioned, we're part of this group with Health Canada.

There are many areas where chemicals can be diverted for illicit use. Let me give you a couple of examples of class A and class B multiple uses.

• (1120)

Acetic anhydride, which is one of the class A listed chemicals, is also used in water treatment and water purification and air purification as a disinfectant. In the class B area, first of all, all of the chemicals there are multiple use, but let me pick up on acetone, whether it's being used as nail polish remover or being used in the manufacture of paints or varnishes. There's a whole series of applications.

But there are a couple others I'd like to mention specifically. One is sulphuric acid. It's by far the most widely used industrial chemical worldwide. In the United States alone, over 40 million tonnes a year are shipped around the country and outside of the country. Canada is somewhere in the neighbourhood of 10 million to 15 million tonnes a year. In the case of hydrochloric acid, about five million tonnes a year are shipped. These products have multiple uses. They are used in fertilizer production. They have a wide variety of uses.

Our message is that many of the class A and all of the class B precursor chemicals are multiple-use in commerce. Doing something further or eliminating these products would have a considerable impact on the Canadian economy, restricting the ability to produce a wide variety of important and required goods of commerce. For the most part, banning the use or restricting the use further of these dual-use chemicals would only result in using alternate chemicals to make the same product. Chemistry can find a way.

We don't think that product deselection is going to solve the problem. We do think there needs to be effective monitoring of the products that we produce and where they go, and we believe we're doing that. We're also working very closely with the Health Canada officials on the list and keeping it up to date. We believe your existing legislation has provisions for adding to and subtracting from that list as the technologies evolve.

I'll stop there and offer to take questions.

Thank you.

The Chair: Thank you, Mr. Podruzny.

You mentioned something about chemical imports. I know that in that conference in Florida—and, Mr. Culver, you were very much aware too—there was indication that huge containerloads of some of the precursors would hit the shores. How is that controlled at our shores, whether in Canada or the U.S.? Is there some control on that?

Mr. David Podruzny: My understanding is that post-9/11 there has been a significant increase in the review and monitoring of all container traffic coming into Canada. In addition to the paper trail that's associated, there is inspection. I believe we're moving towards inspecting all container traffic. At this point, we're not there yet.

You're probably talking to the wrong person, but my understanding is that purchasers bringing product in from abroad must go through certain kinds of paper identification of what's in the container. I think the administration and the burden of inspection would probably be very onerous.

I didn't mention this, but when you look at the chemical-producing world, Canada produces about 1.6% of the world's chemicals. The largest producer obviously is just south of us: the United States, at about 24%. China is number two in the world, and it's growing. Developed countries are growing in chemical production at the rate of about 2% a year. Last year China grew at 14% for the year, and they've been growing in the 14%- to 16%-a-year range for the last generation. If you want to point to where the chemical production is going in the future, I don't want to make that self-fulfilling, but we are competing with that part of the world.

We are also actively trying to get our responsible care ethic spread around the world. We now have 52 countries that have adopted that ethic, and we're working actively in China to get the Chinese chemical industry to adopt that ethic, which includes things like managing where they sell their product. I'm not pretending that we will overcome illicit behaviour, but I'm suggesting that there is a paper trail of what we produce and where it goes. China is emerging as a huge source for new chemicals.

• (1125)

The Chair: Thank you very much, sir.

Mr. Culver, you had something to add?

Sergeant Doug Culver (Sergeant, Chemical Diversion Unit, Royal Canadian Mounted Police): I completely agree with the statement from the gentleman. There's a large amount of container traffic, naturally, coming into the ports in Vancouver and into our ports right across Canada.

The problem we have is that a lot of the chemicals that are being smuggled into our country are either being secreted and labelled as other loads or coming into the country as chemicals that are mislabelled, which makes it very difficult for us to determine exactly what the contents of each and every container are. Not that I would presume to speak for our CBSA partners, but I realize there's an overwhelming amount of commerce that takes place in our ports right now.

The Chair: And it's difficult to control, obviously.

Thank you.

I'm going to invite the Department of Health's Carole Bouchard, director of the office of controlled substances, to make her presentation. Then we'll get into further questions.

Ms. Bouchard.

Ms. Carole Bouchard (Director, Office of Controlled Substances, Drug Strategy and Controlled Substances Programme, Healthy Environments and Consumer Safety Branch, Department of Health): Thank you.

Good day, honourable members of the standing committee, and thank you for inviting Health Canada to participate in your discussions today.

My name is Carole Bouchard. I'm the director of the office of controlled substances at Health Canada. The office of controlled substances is the organizational unit within the drug strategy and controlled substances program that is responsible for the administration of the legislative framework for controlled substances and precursor chemicals in Canada.

In this regard, I thought I would take this opportunity to provide you with some background on the legislative framework and specifically the precursor control regulations, so as to inform your discussions on this particular legislative proposal about methamphetamine that is before you today.

As you may know, Canada's federal legislative framework for drug control includes the Controlled Drugs and Substances Act, or the CDSA, along with its associated regulations. CDSA and its regulations provide the parameters for the legitimate medical, scientific, or industrial use of controlled substances and precursor chemicals, and it also lays out the offences and penalties that apply when persons are found to have carried out unauthorized activities.

The act includes eight schedules. The schedules identify the controlled substances and precursor chemicals covered by the act. They are generally grouped with consideration of chemical structure, pharmacology, and abuse liability and dependence potential, and are mainly organized in such a way that lower-numbered schedules are associated with higher penalties for offences. For example, morphine is included in schedule I, and the maximum penalty for offences involving the import, export, production, and trafficking of morphine is life imprisonment, while a simple possession offence carries a penalty of seven years.

By consequence, the maximum penalty for offences involving the import or export of substances included in schedule IV, diazepam, for example—where diazepam is a drug used for the treatment of anxiety—is three years, and it's not illegal to possess substances in schedule IV unless one is found to be in possession for the purpose of trafficking or exporting. These schedules, of course, can be modified by regulation when necessary.

In addition, the CDSA allows Canada to fulfill its obligations under three United Nations treaties, namely: the Single Convention on Narcotic Drugs; the Convention on Psychotropic Substances; and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Canada respects many of the specific obligations laid out in the UN drug control conventions through a diverse network of regulations made under the CDSA, perhaps the most important ones in terms of your discussions today being the precursor control regulations, which outline the rules governing the production, distribution, import, export, possession, and sales of precursor chemicals in Canada.

Precursor chemicals, in this context, are substances that may be used in the illicit production of synthetic drugs such as methamphetamine. Given that the bill in front of you relates specifically to methamphetamine, perhaps I will now turn to how this substance is currently regulated under the CDSA and how the precursor control regulations, or the PCRs, which came into force in 2003 and 2004, work to prevent the illegal import, export, production, distribution, and sale of substances used in its production.

Currently, methamphetamine, including its salts, derivatives, isomers, analogues, and salts of derivatives, isomers, and analogues, is listed in schedule I of the CDSA. This was not always the case, in that prior to 2005, methamphetamine was listed in schedule III to the CDSA. The movement of methamphetamine from schedule III to schedule I has increased the maximum penalty associated with its illegal importation, exportation, possession for the purpose of exportation, production, as well as trafficking, from 10 years to life imprisonment. Similarly, the maximum penalty for illegal possession has increased from three years to seven.

• (1130)

As many of you will be aware, methamphetamine is produced domestically in clandestine laboratories using ephedrine and pseudoephedrine, and other chemicals commonly used in industrial applications, for example, red phosphorus, which is widely used in the production of matches.

The fact that methamphetamine can be made so easily using ingredients that are relatively cheap and easy to obtain, and that it can be administered using a variety of routes, for instance, intravenously or orally, have made methamphetamine an attractive drug of abuse that is readily accessible in comparison to other illicit drugs.

In a sense, therefore, the PCRs were established in order to respond to domestic concerns, primarily from law enforcement agencies, regarding the ease with which chemicals frequently used in the illicit manufacturing of drugs such as methamphetamine and ecstasy were able to be imported into, exported out of, and moved

across Canada. They also enabled Canada to fulfill its international obligations under the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

That said, because the chemicals that would be regulated under the PCRs were currently being used legitimately, either in households or in a variety of other industries—for example, in cold medication and in paint products—the regulations had to balance those needs with the desire to curb the use of the same chemicals in the illegal production of synthetic drugs. Inherently, this principle of balancing the needs of legitimate users and the need to reduce abuse and diversion is one that applies in scheduling decisions.

For those of you who may not be familiar with the PCRs, these regulations contain provisions authorizing the importation, exportation, production, packaging, distribution, and sale of precursor chemicals through a pre-export notification, licensing, and permit scheme. The regulations also impose security, record keeping, and reporting requirements on companies conducting activities with precursor chemicals. Health Canada inspectors are authorized to monitor and investigate compliance with the regulations. And where an inspection or investigation yields evidence suggestive of diversion for illicit purposes or criminal activity, this is referred to and investigated by law enforcement.

The implementation of the PCRs has been reported to have had a positive impact in helping to decrease the cross-border trafficking of the chemicals regulated by them and has contributed to greater collaboration between U.S. and Canadian law enforcement agencies. Both the U.S.–Canada cross-border threat assessment reports, produced jointly by the U.S. and Canadian governments, as well as the International Narcotics Control Board annual reports have also spoken favourably about the PCRs.

That said, we are always looking at ways to improve the effectiveness of the regulatory framework for precursor chemicals. In this regard, I would be remiss if I did not mention that our ability to administer the PCRs has just received a boost with the allocation of new funds to Health Canada under the enforcement action plan of the national anti-drug strategy. These funds, which are part of a \$22 million envelope aimed at assisting law enforcement agencies in tackling illegal drug production and distribution operations, with a focus on gangs and the clandestine production of methamphetamine, will be specifically targeted at increasing the compliance and enforcement capacity of the office of controlled substances and increasing the drug analytical service's ability to support law enforcement agencies via the analysis of seized substances.

As you may know, Health Canada is a key partner in the national anti-drug strategy, which aims to address a wide range of issues associated with illicit drug production, use, and abuse.

In conclusion, our department, with our federal partners, continues to work diligently at administering the CDSA and the PCRs in order to ensure that controls are applied where warranted but that legitimate trade is not compromised. As the proposal that you are debating today will capture a wide range of substances and materials that are found or used in the production of a large number of industrial and consumer products—for example, cold medications, fabric dyes, jugs, pails, and other examples—I trust that the information I have provided will be helpful as you continue your deliberation.

• (1135)

Thank you. I would be pleased to answer any questions.

The Chair: Thank you, Madam Bouchard.

We'll go to questions.

Mr. Lee.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): Thank you, Mr. Chairman.

I found this a very informative and thorough panel. It was so good that it wiped out some of my questions, but I will go right to the big one.

I want to ask the RCMP representatives if there is in existence now any legislation that would allow the seizure/forfeiture of lab equipment used in the production of methamphetamine or, really, any other illegal drugs—either in the Criminal Code or in the CDSA.

Insp Michel Aubin: The CDSA does provide.... It's more a matter of practicality. The situation right now is that we're able to seize and prosecute only at a certain stage. Allow me a moment to explain.

If an individual goes out and purchases all the essential chemicals and equipment and stashes them, for lack of a better expression, in various areas, at that point in time we cannot, by law, proceed against the individual.

To address the issue we have to wait until the process is well engaged. In fact, over the last 30 years the process has always been to await the final stage in the production, whether it's LSD, PCP, ecstasy, or methamphetamine—once you reach that level.

There's been some recent case law that has allowed us to be able to seize a little earlier in the process, but it had to be well engaged. And that's the difficulty, because the individuals can possess the equipment and the chemicals that are essential.

Organized crime has become alerted to our ways. Especially with the legislation as it is right now, they find ways to circumvent it.

• (1140)

Mr. Derek Lee: Sure. I could possess an empty bottle, which would become a receptacle for illegal whiskey at some point, and I may keep the bottle waiting for the whiskey, but you're not going to arrest me till I put some illegal whiskey in it. Is that right?

Insp Michel Aubin: Basically.

Mr. Derek Lee: The CDSA has a potential life sentence attached to the possession of this drug. This bill talks about 10 years or something. It seems to me the existing legislation is heavy, it's sophisticated. It has been changed as recently as 2002 to 2005; it

responds to the current street threats. This bill looks to me like just posturing.

I'm trying to figure out—and I'll put this to any witness—what this bill would add. If organized crime is out there putting together the components of meth production or any other drug production, or importing—this bill doesn't even touch on importing—and there are life sentences attached to it already, what would this bill add to the mix?

That's my question. I think this bill is just posturing.

Lastly, I would ask the department whether or not there is any intention to propose legislation in the near future that would address the kind of issue focused on by this bill.

Ms. Carole Bouchard: Thank you.

As a point of clarification with regard to the penalties associated with the offences currently in the Controlled Drugs and Substances Act, with regard to the example I gave, which was life imprisonment, that was for schedule I drugs. As an example, we currently do find methamphetamine in the schedule. However, currently in the CDSA, the substances that are used or may be used frequently in the illegal production of methamphetamine are found in schedule VI, for which are attached only certain types of penalties and not to the extent of the one we see associated with schedule I.

For instance, we have offences related to the illegal importation, exportation, and possession for the purpose of exportation, and those are associated with a possible maximum of 10 years. Again, this does not include at the statute level—meaning at the act level—offences with regard to illegal production or with the intent of producing controlled substances. There are, however, penalties associated with offences to the precursor control regulation, meaning that if someone is violating a regulation, there are provisions at the statute level for the types of penalties associated with those offences, but they are much lower.

Mr. Derek Lee: Including seizure and forfeiture?

Ms. Carole Bouchard: Again, this is not for seizure.

Mr. Derek Lee: It doesn't include seizure?

Ms. Carole Bouchard: Yes, it would be seizure with regard to activities that are in violation of the precursor, meaning illegal production and illegal possession, but they will have or will carry a lower penalty. The lower penalties will be three years and—

Mr. Derek Lee: Sure, but it includes seizure.

Doesn't it include seizure as a remedy?

Ms. Carole Bouchard: If there is an illegal activity, law enforcement agencies or enforcement can seize in those instances.

• (1145)

Mr. Derek Lee: Good. That's a yes.

Now, going back to the Mounties on deterrence....

Insp Michel Aubin: This may be in furtherance to the answer.

My understanding right now is that the precursor chemical regulations address precursors. They do not address material or equipment. Our position here vis-à-vis this proposed legislation is that the intent is there. Our reality is that because of the legislative framework that's in place right now, there has been a displacement of the supply of precursor chemicals from the domestic area to the international.

I think personally, or on behalf of the RCMP, there may be a gap there. We're seeing seizures of very large quantities of precursor chemicals that are essential to production of methamphetamines and other synthetic drugs that are being seized offshore, but they're destined. We know that our streets have a sufficient supply of synthetic drugs; in fact, we're exporting.

So with the legislative framework that's in place now, I don't know if the answer per se is provision for law enforcement bodies or maybe a comprehensive approach including industry to look at how we can prevent the accessibility of precursor chemicals as well as the equipment that's necessary.

Mr. Derek Lee: Why wouldn't we—

The Chair: Mr. Lee, I know this is a very valid argument and probably will answer the questions of many others—

Mr. Derek Lee: Am I out of time, Mr. Chair?

The Chair: You are, indeed.

I'm going to go to Mr. Ménard.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): I feel a bit like Mr. Lee. I tend to give a favourable hearing to private members' bills, given the power wielded by government. I know that it is important for members themselves to be able to carry out their role as legislators.

However, I have to admit that it has been difficult, since the beginning of our consideration, to understand what new element this bill brings and how it will give you any additional tools. One of the ways this might become clear would be for you to explain the difference to us. What is the exact definition of “precursors”, “chemical” and “substances”?

If we could make that distinction, we might be able to understand what this will change for you. We have the impression that the bill is broader than the regulations. That maybe useful to you.

Explain the difference for me between precursors, chemical and substances. I do not know whether my question is for the RCMP or Health Canada, but I would like you to explain the difference to me.

Ms. Carole Bouchard: Regarding chemical precursors, I will go exactly by the definition given in the Controlled Drugs and Substances Act. Precursors are the substances listed in schedule 6 of the act. The definition of “chemical precursor” refers to that schedule.

The term is used not only in Canada but internationally to include substances that will or can be used frequently in the illegal production of controlled substances. So it is used not only in the case of methamphetamine. Other controlled drugs or synthetic drugs can be used or produced with the chemical precursors. The terms “precursors” and “chemicals” can be used interchangeably because

people often alternate between using one or the other or combining them.

As for the word “substances”, it depends once again on the context. A definition in the Controlled Drugs and Substances Act talks about controlled substances. There is a reference to another definition, which includes all substances indicated in schedules 1 to 5 of the Act. The schedules list the drugs and pharmaceutical products that are often found on the market. Morphine and methamphetamine are examples that often come up in a legal context.

Mr. Réal Ménard: Thank you.

I am intrigued by something you said, which was that in order for you to be able to lay charges as things stand now, the production process—and I understood that you meant the methamphetamine production process—had to be engaged. So in the case where possession does not lead to assembling or producing all the substances, you cannot lay charges.

Would that loophole be closed if we were to pass this bill and clause 7.1 as set out in the bill? If an individual was in possession of substances used to make metamphetamine but had not begun the process or produced the substances, could you lay charges under the proposed section 7.1?

Insp Michel Aubin: Absolutely, but we need to be sure that individual possesses them for illegal purposes. The burden of proof then lies on the police and the crown to demonstrate the individual's intention. If there is no evidence to corroborate that intention, we would have a problem.

● (1150)

Mr. Réal Ménard: But that applies to all offences and not specifically to this one. We know that there has to be both *mens rea* and *actus rea*.

One possible justification for this bill would be if it allowed you to bring charges more easily against people who, without having started the production process, had some previous history and against whom you had evidence that they were associated with methamphetamine trafficking and distribution rings. Is that right?

Insp Michel Aubin: Yes, in the situation that you have described, Mr. Ménard. However, I think that it would be very difficult to produce that corroborating evidence without wiretaps.

Mr. Réal Ménard: That is another story. We are talking here about getting a warrant from a justice of the peace and so on.

In fact, I would like you to give me one reason why we should vote in favour of this bill. You have explained that you could only lay charges once the production process was well engaged. We certainly understand the terrible repercussions of methamphetamine use, and we would like nothing more than to support these provisions. However, I would like to know what they would change for an organization like yours if we were to vote in favour of this proposed amendment.

Insp Michel Aubin: We do not necessarily support the clause as it stands right now. We are suggesting that your committee should debate other considerations. The scope should not necessarily be limited to methamphetamine. We need to focus on the intention. In its current form, the provision does not seem to me that it would be very useful in a criminal court. We might need a better definition.

Mr. Réal Ménard: If I understand correctly, you are not urging us to vote in favour of this provision, given that it would change little if anything for you in terms of the administration of evidence in a court of justice.

Insp Michel Aubin: My role, Mr. Ménard, is to provide you with information to help you deliberate on the matter.

Mr. Réal Ménard: Yes, and that makes you absolutely indispensable to us. The information that you are giving us would have been useful in your testimony. But it is still useful now. You say that the wording is too broad, too general, and that it would not change much regarding enforcement of the act.

Please do not feel shy; you can speak your mind.

Insp Michel Aubin: I am not shy, but I am not a legal expert either.

Mr. Réal Ménard: That endears us to you even more.

Insp Michel Aubin: In my opinion, some amendments might be justified. We understand the intent of the bill. We agree that amendments are needed in order to close the gap.

Mr. Réal Ménard: Would you go so far as to recommend that the committee postpone passing this bill so that you, along with your advisors, could bring us some amendments after the holidays?

The government has a large presence on the legislative agenda. Every member of Parliament has the right to one item every four years. I would like to help our colleague. The day when it will be my bill, I will want it to be studied. It will be an excellent bill that shall please everyone. Mr. Petit will not be able to turn it down. But we must be able to understand, as Mr. Lee was saying, how it will be useful. We also find that it is rather general. We share your concerns.

Perhaps our colleagues from the Canadian Centre on Substance Abuse, who are so active on the drug committee, could give us...

Do you wish to see this legislation passed, Ms. Rebecca?

[English]

Mrs. Rebecca Jesseman: The Canadian Centre on Substance Abuse is here to inform the discussion more than to offer a yea or nay on this proposed amendment. We're deferring to the expertise of our colleagues in the enforcement realm, who will be applying and working more directly with this legislation.

The Chair: Thank you, Mr. Ménard.

I sense there is not some clear statement made in defence of the amendment before the committee. We've been wandering off on another path. I believe the individual who put the amendment forward has something to say—at least, Mr. Dykstra would have something to say—supporting the amendment, and I think answering some of the questions that have been put to the members here about what the intent of this particular amendment is and what it will do to the legislation overall. Then I believe the police could certainly be questioned.

I'm going to go to Ms. Davies, then I'm going to go to Mr. Dykstra, and we'll see what comes of it from there.

Ms. Davies.

• (1155)

Ms. Libby Davies (Vancouver East, NDP): Thank you to the witnesses for appearing today.

The Chair: Excuse me, Ms. Davies.

We have one other witness who will be sitting at the table, and that is Mr. Fallu, assistant professor, *École de psychoéducation, Université de Montréal*.

Ms. Davies, would you just sit down until Mr. Fallu offers his presentation? Or maybe we'll put you through and give Mr. Fallu a chance to collect his thoughts.

Go ahead, Ms. Davies.

Ms. Libby Davies: It's fine.

The Chair: You're going to wait.

Mr. Fallu, you may go ahead.

Mr. Jean-Sébastien Fallu (Assistant Professor, École de psychoéducation, Université de Montréal): Okay. I'll speak in French. Unfortunately, I couldn't translate. I don't have a copy, but I'll read my statement.

[Translation]

I have two statements to make. Here is the first.

Whereas the use of psychoactive substances has always been part of the habits of both human beings and animals;

Whereas international conventions and Canadian laws are based on assessments of the dangerousness of substances, and that these are extremely complex and do not correspond or at least very little to what objective and scientific assessments have produced;

Whereas the banning and the...

[English]

The Chair: Could you slow down your presentation for the interpreters?

Mr. Jean-Sébastien Fallu: Yes.

The Chair: Thank you.

Ms. Libby Davies: Is there a copy we can give them?

Mr. Jean-Sébastien Fallu: No, sorry.

[Translation]

Whereas the banning and repression resulting from it cause more harm to individuals and to society than the use of psychoactive substances themselves;

Whereas widespread behaviour can only be eradicated through legislation with difficulty, without causing other problems such as corruption;

Whereas scientific studies show that at best, there is no difference in current user profiles as far as countries with different drug policies are concerned, and that at worst, prohibition strategies engender more serious consequences than do harm reduction strategies;

Whereas there is an important distinction to be made between use and abuse, and that the majority of users are functional and have adapted, in a way that is all together comparable with those who abstain;

Whereas abuse and addiction are often the consequence of problems of psychosocial functioning and not their cause;

Whereas people grappling with abuse and addiction problems are primarily in need of assistance and not punishment, and punishment often aggravates the situation;

Whereas abstinence is not always possible for everyone, at least not in the short term;

Whereas in Canada, the principle of fair justice is not respected from one region to another as far as the possession of narcotics is concerned;

Whereas the devastating effects of metamphetamaine primarily result from the inhalation or injection methods of use and the lifestyle of the user;

And finally, whereas the effects of substances and drug addiction are not punely the result of the pharmacological effects of substances, but of the interaction between them, the individual and the context, it is recommended to the committee and to the government to not criminalize the possession of metamphetamaine, nor any other drug.

It is also recommended to the government to implement measures other than reducing supply by also taking action with respect to people and their social context with a view to reducing demand and harm. That is the first proposal.

The second, which more specifically concerns the two subsections under 7.1 put forward in the bill, read as follows:

Whereas a number of people, particularly young people, who for the most part are well adapted, contributing members of our future society, possess and use speed in pill form that could contain metamphetamines or their precursors, for example amphetamines;

Whereas a number of people possess and use medications or natural products made up in whole or in part of potential metamphetamaine precursors;

Whereas certain substances used in the synthesis of metamphetamines can also be used to produce other consumer goods, for example perfume, in the case of lithium hydride;

And finally, whereas well-intentioned people wishing to manufacture natural products, for example, buy used equipment to enable them to produce pills, but that such equipment is sometimes contaminated by a previous owner, it is recommended to the committee and to the government to amend Bill C-428, An Act to amend the Controlled Drugs and Other Substances Act (methamphetamaine), in order to specify which substances are targeted by section 7.1—speed pills sold as amphetamaine, amphetamaine,

pseudo-ephedrine, ephedrine, ephedra, natural products containing ephedra, decongestant medications containing pseudo-ephedrine or ephedrine, mahwong, lithium hydride, aluminum hydride, etc.—and in what form.

Finally, it is recommended to the committee and to the government to clarify the word “intended” so as to avoid anyone being unfairly incriminated by having material in his or her possession that could potentially be used for production or trafficking, but in fact is not.

• (1200)

To conclude, I believe that it is both possible and preferable to control the precursors to metamphetamaine production, and that all the other aspects of this bill could do more harm than good.

Thank you.

[*English*]

The Chair: Thank you, Mr. Fallu.

Ms. Davies, please.

Ms. Libby Davies: Thank you very much.

Thank you to the witnesses for coming. I'm very happy that I let Professor Fallu go before me because I think he made some excellent points.

I think there are really two issues before us on this bill. The primary issue is whether we actually need a legislative change or whether the provisions that we have in the Controlled Drugs and Substances Act are sufficient. I would certainly follow up the comments made by Professor Fallu that this heavy reliance on enforcement as the primary tool to deal with substance use issues is certainly very politically driven by the Conservative government. I think the evidence shows us that reliance on enforcement is not only a wrong approach, but it can actually be counterproductive and harmful in and of itself.

I think there is a question as to whether or not an additional legislative approach is necessary. If we agree that it is, then I think the second question is whether this bill, with the wording we have, is the approach we should take. I've heard from all of the witnesses, to different degrees, with slightly different perspectives, that with the bill that's before us it seems to be very unclear what its impact, if any, will be. I really am left with a sense that this bill is really neither here nor there.

You may have some issues about how the enforcement is done, but whether or not this bill is going to change anything from a legislative point of view is I think one question. But just overall, with this reliance on enforcement...

I do have a question for Madam Bouchard.

In terms of the controlled drugs and substances unit that you're part of, does either your unit or somebody else collect information on what the charges and sentences are? We'll be dealing with this issue overall in the House of Commons, and I'm just curious to know whether or not you actually track the charges and the convictions that we have now.

•(1205)

Ms. Carole Bouchard: Within our program, which is within Health Canada, we're tracking only the information with regard to the seized exhibits, meaning the drugs that have been seized as part of the activities of the law enforcement agency. So we do have information on this. But we're not tracking within my own unit, or even within our program, the information regarding those statistics. I believe that other organizations within the Government of Canada are collecting this information, so we could probably get back to you on that.

Ms. Libby Davies: Professor Fallu, just based on the comments you made today, it seems to me that if we were to use additional public resources we'd be better off to provide realistic education to young people about substance use.

I wonder if you could comment on where these resources should be directed.

Mr. Jean-Sébastien Fallu: Yes.

If we are to use more resources...because drug addiction is not the same thing as drug use. Principally, drug users are not addicted. For those who are addicted, as I just mentioned, it's often just a symptom, a consequence of having had a bad education, a bad family, or a bad context for life. So we have to tap into and act on these very causes of addiction, which are rarely the drugs per se.

A prominent scientist at UBC said if we eradicated every drug on the planet earth tomorrow morning, every drug addict would find another object of addiction, whether it would be gambling, sex, or whatever. So we should act on the causes.

Ms. Libby Davies: Is that Bruce Alexander?

Mr. Jean-Sébastien Fallu: Yes, that's Bruce Alexander.

The money should be put into the early years of life when we can do whatever we can to undermine the causes of drug addiction.

The Chair: Thank you, Ms. Davies.

We'll go to Mr. Dykstra.

Mr. Rick Dykstra (St. Catharines, CPC): I think some clarification is necessary, Mr. Chair. The government is proposing an amendment to the bill, which I think will address a number of the issues that have been raised, in particular by Mr. Lee. Actually, the couple of questions I have will be in line with his questions.

The reason this amendment is being made is to clarify the *mens rea* and to make clear that to be found guilty of the offence, the offender must not only commit the illegal activity but must know of the future illegal use of the substance, equipment, or material.

To take that a little bit further, Mr. Lee's reference to life imprisonment for those involved with the drug itself, in whatever context that may be, is post-production. That life imprisonment has nothing to do with what happens during the purchase of equipment or the purchase of the ingredients necessary, if you will, to make the drug. It has everything to do with what happens, I suppose, on the street versus behind the scenes, as noted in Ms. Bouchard's presentation, where it is produced domestically in clandestine laboratories. That's what this bill gets at, and I think it's very important to note that we are talking about and are trying to be

specific about giving them, whether it be law enforcement or in terms of criminal charges, the ability to charge those issues.

So if we want to have a discussion of post-production, that's fine, but that has nothing to do with this bill. There is ample legislation in place, as Mr. Lee has pointed out very correctly, to deal with post-production—sale on the street, those using it, and those selling it. There is no legislation to deal with the component of *mens rea*—pre-production—and that's what all these folks, or at least most of the folks, are here today to present on.

I'd like to ask Mr. Aubin about that and get his perspective, because I think the amendment really addresses some of the concerns some have brought forward. I'd like to get your thoughts and your feelings on the direction of this bill and the strength it gives you to do work you are not able to do presently.

•(1210)

Insp Michel Aubin: Thank you for the opportunity, sir. As I mentioned in French, I'm not a lawyer, so I'll be careful not to say that I can give any interpretation. I don't want to interpret a proposed bill.

However, from the law enforcement perspective, as I mentioned in the opening statement and afterwards, one of the difficulties we encounter is having to investigate and having to wait for the opportune moment to ensure that we have sufficient evidence for a successful prosecution. Be mindful that what we're dealing with, in many instances, is organized crime. They have economic-based labs. They're mega-sized labs that are producing a lot of product, and they're aware of our challenges. The gap right now is that when those who are in possession of the equipment and the essential chemicals haven't engaged in production to a significant degree, we cannot proceed against them unless we have corroborative evidence, by way of intercepted communications, or unless the individual admits to it, which we don't see too often. That is a significant shortcoming, and it is an issue for law enforcement.

Mr. Rick Dykstra: Thank you.

I noted, I think it was in one of your responses to a question, the difficulty you face in being able to put together a pretty solid case. I'm using the example here of when you can actually put the whole scenario together, from purchase of the materials before it's actually put together to the equipment necessary. The difficulty is that even though you can, and even though you can prove it, there's nothing you can do in terms of being able to lay charges.

Insp Michel Aubin: Not unless we reach a certain point where the production is significantly engaged, where a judge can say there's no doubt that this is what's being produced. But if it's at the stage where the individuals have acquired all the equipment and essential chemicals and materials and they're dispersed in various locales, at that point in time we cannot proceed under the current legislation.

Mr. Rick Dykstra: I apologize to Mr. Calkins, because I am taking a bit of his time as well, but I just want to be clear that what you're here to do today is to talk about specifically the pre-production, not the post-production issues that have been alluded to today.

Insp Michel Aubin: That would be my understanding.

Mr. Rick Dykstra: Thank you very much.

Mr. Blaine Calkins (Wetaskiwin, CPC): Mr. Chair, how much time is remaining?

The Chair: You have time for approximately two questions.

Mr. Blaine Calkins: Thank you.

I certainly appreciate the testimony I've heard here today.

If this bill were to go forward—and there will be some amendments that are coming up later on. If we take a look at schedule VI, which is the list of precursor items in the production, and we look at schedule III, which is basically all the amphetamines less methamphetamine, which is in schedule I due to the problems or the seriousness of methamphetamine, from a defence perspective...if a charge were to be laid based on this proposed legislation becoming the law of the land, would the defence be able to say that any of the compounds that are being used to create methamphetamine could be used to create something that's not methamphetamine—that is, something that's in schedule III or a different schedule—thereby defeating the charge?

• (1215)

Sgt Doug Culver: There certainly is that possibility.

One of the things the bill in front of us doesn't take into account, as Ms. Bouchard brought forward, was talking about salts, derivatives, analogues, isomers, and so forth. It addresses only methamphetamine, and not even into its salt form, which we normally find on the street as methamphetamine hydrochloride.

What we do find, though, is that there are usually very specific lists of chemicals that make up a recipe for the different drugs and their different analogues. So, generally, when we take down a lab and look at all the exhibits, we can quite often, before we actually start looking for a final product, have an idea of what is being manufactured in the lab, based on the types of chemicals that are there, because the recipes for all the different chemicals do vary in certain amounts.

Mr. Blaine Calkins: So if an amendment was proposed that would include methamphetamine, its salts, derivatives, isomers, analogues, salts of derivatives, and so on, that would be a more comprehensive approach than the current wording. Would it satisfy the needs of law enforcement insofar as procuring a charge and a successful conviction is concerned?

Insp Michel Aubin: It does take into account a portion of our reality, but in terms of whether it will be sufficient, I'm not in a position to answer as to the writing of proposed legislation, as to whether it will meet the full need. I'm sorry.

Mr. Blaine Calkins: Thank you, Mr. Chair.

The Chair: Thank you, Mr. Calkins.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: I have a point of order, Mr. Chairman, unless you have other committee members on the list for questions. I can wait.

Do you have a question, Mr. Bagnell?

I will raise my point of order when Mr. Bagnell is through.

[*English*]

The Chair: Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): Thank you.

I think we can assume from the hearing so far that meth is very dangerous, it's a big problem, and we'd like to reduce it. We'd like it if this law reduced it. However, there are many other things that would actually reduce it more. The police had suggested that if this type of process works, it should actually be expanded to cover other drugs, because this isn't the only one that has this type of problem. And the section on intent needs to be improved, both to help the police and also to make sure that innocent people aren't caught by it.

In that respect, I would definitely vote for that amendment, because that actually improves that particular section. But based on those assumptions, I have the same concerns as Mr. Lee, Mr. Ménard, and Ms. Davies.

Carole, do you believe this bill does anything more than what you already have in place related to the precursor substances and the drug itself?

Ms. Carole Bouchard: I spoke about the precursor control regulation. One element you have in front of you in the bill is the equipment and other material, and this is not covered in the precursor control regulation. The precursor control regulation includes a list of specific substances that may be used in the illicit production of controlled substances, which may also include methamphetamines.

The bill in front of you includes all substances, so it's broader than what we have in the precursor control regulation list of substances. It's also broader than what we find in schedule VI of the CDSA.

Hon. Larry Bagnell: In the legislation you just talked about, the police could not proceed at the earlier stage of finding these elements, as they explained. There's no authority under the law or those regulations where the police could proceed earlier.

Ms. Carole Bouchard: You're correct. The only authority they currently have with regard to types of offences are the ones that include—and again I'm only speaking about the list of precursor chemicals that we find in schedule VI that are currently at the CDSA level—illegal importation, exportation, and possession for the purpose of exportation.

We have certain other offences related to violation of the regulation per se. They include only activities not authorized for the production, and possession for the purpose of production of controlled substances. So they need to have a purpose for the production and not only have them in many places, as my colleagues described.

• (1220)

Hon. Larry Bagnell: If they were in many places and intended for production, would they not be illegal?

Ms. Carole Bouchard: I'm not a lawyer, but to the best of my knowledge, this is not currently included in the Controlled Drugs and Substances Act as an offence.

The Chair: Thank you.

Those were good questions there, Mr. Bagnell.

Ms. Bouchard, thank you very much.

Monsieur Ménard is next on a point of order.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, after a brief discussion with my Liberal and New Democratic colleagues, and we will see whether I have understood correctly, I am not sure if it would be wise for the committee, out of respect for the sponsor of this bill—

[*English*]

The Chair: We're not getting any translation here. I don't know what the problem is.

Thank you.

Monsieur Ménard, go ahead.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, let me reassure you that I am sober and in full possession of my faculties, whatever the government may think.

Mr. Chairman, all I mean by this is that after a brief discussion with our NDP colleagues and those from the other party, out of respect for the sponsor of the bill, I am not sure whether it would be wise for us to move to clause-by-clause consideration at this time. I think that if we did that now, a majority, if not all, of the opposition members would not support the bill. I strongly believe that the sponsor should have every possible opportunity.

There are two problems. I would like you to clarify whether it would be better to call back the sponsor of the bill, who did not do his job because he did not explain how this bill would be useful for law enforcement organizations.

Mr. Fallu had already appeared before the Special Committee on the Non-Medical Use of Drugs. Given the fact that this testimony proposes to specify the substances at issue, I wonder whether we should not give the sponsor of the bill another opportunity. Perhaps he could continue collaborating with Mr. Fallu and get in touch with the RCMP. This morning, we realized that he is not a legal expert, and we were not expecting that.

However, I am inclined to ask you to verify whether we can defer clause-by-clause consideration, invite the sponsor and give him another opportunity. Otherwise, I fear that this bill will be defeated.

Let me note that the government has a great influence on the legislative process. MPs only get one item every four years. Of course, when we have a minority government, it is even less than that. I want to help the sponsor, but we need more information.

[*English*]

Hon. Larry Bagnell: I second that.

The Chair: I trust that's a motion, Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard: Yes, you could put it that way.

[*English*]

The Chair: Is there further discussion?

(Motion agreed to)

The Chair: I want to thank the witnesses for their attendance today. Unfortunately, there's some additional information we seek

yet. There will be further discussion, so we may call you forward again.

Mr. Calkins is next on a point of order.

Mr. Blaine Calkins: Given the fact we're not going to do clause-by-clause now and that we have all of these witnesses gathered before us, if there were some further questions, I think it would be prudent for us to use the time we were going to allot for clause-by-clause to get further input from and questioning of the witnesses, if it suits the rest of my committee colleagues and if the witnesses are available to stay.

The Chair: If there are further questions from the members, that's certainly.... There seems to be a consensus here that we continue with some questions. If there's a need for clarification, we do have here the RCMP and of course their expert from the drugs and chemical diversion units.

Is that the consensus? Do you agree?

Some hon. members: Agreed.

The Chair: There is agreement to continue the line of questioning, and I will do so.

Mr. Bagnell is still on the list.

Mr. Bagnell, go ahead, and then I'll turn to Mr. Calkins.

•(1225)

Hon. Larry Bagnell: Thank you.

I just wanted to finish my previous theme.

I understand from the RCMP that—

The Chair: Mr. Bagnell, I'm going to interrupt you.

I'm going to break for about two or three minutes for the lunch that is served at the back, and we'll come back to the table for a working lunch.

Thank you.

The meeting is suspended.

•(1225)

_____ (Pause) _____

•(1235)

The Chair: I'd like to call the committee back to order.

It has become evident that the very legitimate questions being asked of these witnesses are, in a sense, putting them at a disadvantage. We are looking at an amendment to the bill. None of the witnesses had this amendment in their possession, nor did they have the opportunity to seek legal advice—specifically the RCMP, or even some of the other departments. None has had an opportunity to seek advice, outside of looking at the original bill.

I managed to give one copy to the RCMP. There will be other copies coming to the other witnesses for them to examine.

So please keep this in mind when we are asking questions, because we have an advantage over them in our deliberations here.

With that in mind, Mr. Calkins, would you like to begin?

Mr. Derek Lee: Just on a point of order, and it's a picky point, you have said that we're looking at an amendment. Technically we're not looking at an amendment; we're looking at the bill, because the amendment has not yet been moved. I realize there's been an amendment drafted and circulated, and I have no objection to the discussion of the amendment.

The Chair: Your point is well taken, Mr. Lee. It's unfortunate it took this route, but there will be further time to review everything, and maybe some witnesses might be called forward again. I appreciate Monsieur Ménard's motion that he's not shutting the bill down; it's just that we will delay its review.

Mr. Bagnell, please go ahead.

Hon. Larry Bagnell: Thank you.

I just want to finish my line of questioning for the RCMP and Ms. Bouchard.

My understanding of this from how the RCMP explained this concept might help is that if someone had a big order—a truck full of ephedrine or hydrochloric acid or acetone—and it was about to be delivered, and the independent trucker had a manifest for a place that you had proven was a crystal meth lab, you could at that point, under this bill, arrest those people because they knew where it was going, dah, dah, dah, that it was going to be used in a crystal meth lab. So under this bill you could arrest them, whereas under the provisions of existing acts and regulations you could not arrest them.

I'd like to ask the RCMP and Ms. Bouchard if that is true.

Sgt Doug Culver: Essentially, that's correct.

In the precursor control regulations, there's no offence for simple possession of specific chemicals, regardless of the quantity. So in your scenario of the truckload of chemical A going somewhere, there would be no offence in the current legislation. With the legislation we've seen in front of us today, if we could prove in a court of law beyond a reasonable doubt that the driver of that vehicle knew he was taking that chemical to a lab or to someone else with the intent of using it to make methamphetamine, then we would have grounds to stop that vehicle, arrest that person, and seize that quantity of chemicals.

• (1240)

Hon. Larry Bagnell: Ms. Bouchard.

Ms. Carole Bouchard: Maybe I can clarify what we can do. In the precursor control regulations, with regard to the possession of quantities of precursors, as we just described... I think you have used some examples found in schedule VI of the legislation, such as ephedrine and pseudoephedrine. If we were to find a person in possession of those substances, and that person were not authorized to possess them, meaning they did not have a licence allowing their possession of those substances, it would not be an offence at the level of the act or statute but a violation of a regulation requiring that the person be in possession of a licence. However, the penalties associated with those offences are not very high. They're related to section 46 of the CDSA act and are for a maximum of up to two years. So they are very low penalties, but they are violations of a regulation.

Hon. Larry Bagnell: And it wouldn't include some of the common everyday substances—acetone, turpentine, or whatever—that can be used.

Ms. Carole Bouchard: This one will be in relation to only the substances we find in class A and class B of the regulations.

Again, it's a limited list. In total, there are 30 substances that we find currently in our schedules to the precursor control regulations. It's a limited number of substances.

The Chair: Thank you, Mr. Bagnell.

Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thanks, Mr. Chair.

Thank you to the witnesses.

As it was just raised here, we should be looking at this bill in the context of how it could be amended. I want to put on record a couple of things. Obviously the precursor chemicals that are available are widely used in other legal activities. We all recognize that. Therefore, the amendment that the government is going to put forward—some of you have seen it by now—would simply clarify that a person must have the requisite *mens rea*. They must have criminal intent such that they know that what they're in possession of is going to be used to commit illegal activity.

The crown is going to have to prove that someone engaged in possessing these items knows that they would be used for illegal activity. Only then would they be found guilty of the offence. They know there will be future illegal use of the substance, the equipment, or the material.

So I think that addresses some of the questions. And when we're asking these questions, I would like us to consider them in the context that there has been an amendment moved.

It was also raised that the amendment is going to refer to not only methamphetamine now but also methamphetamine and its salts, derivatives, isomers, salts of derivatives, and so on—a more comprehensive scope rather than just simply methamphetamine.

That's the crux of the government amendment, which I think addresses most of the issues I've heard.

Now, we could go down the road of some discussion on whether any drugs, or all drugs, should be illegal. That's not a discussion or debate that I think we should have here.

I'd like to know a bit about this: what is the problem, and does this bill allow our police or our system to address the problem in a way that it cannot be addressed now? That's narrowly how I'd like to look at it. Is this a tool that's going to be used by the police to do something positive that they cannot do now?

In light of that, could the representatives from the RCMP take us through this a bit? We heard about some of the clandestine labs and super labs that are being used, where they're taking in this material in bulk and efficiently producing methamphetamine. Can you take us through the stage where you now—and you alluded to this in your answers—are able to act and put a stop to it, versus where you'd like to be able to act and put a stop to the illegal activity?

I think our goal as legislators should be to stop illegal activity and dangerous activity early on rather than when someone has been able to go further down that road later on.

So could you comment a bit on that? Maybe you could tell us what's typical in terms of what you see, day in and day out, and how this bill would allow you to act earlier.

• (1245)

Insp Michel Aubin: To an extent, we have to have the chance to go back and have our legal services review this amendment so that we're properly informed on this. But to the extent that you explained it, the bill would address our situation and our difficulty right now.

As you mentioned, we have to wait for a certain stage in the production, and it's extremely difficult—

Mr. Rob Moore: I'm sorry to interrupt, but I don't want you to give a legal opinion. I know you can't, and you've only seen the amendment now.

Assuming that the amendment is going to do what I've said it's going to do—you can make that assumption for the purposes of your answer—what is that stage you mentioned where you can step in? What is that stage typically?

Insp Michel Aubin: That stage is rather difficult to explain, because it goes case by case. Allow me to say that traditionally when we've investigated, we've had to step in at the stage where the final product was being produced. If it's a 17-step process, we would find out how we could step in at stage 17.

There has been case law that has allowed us, once the production is well engaged.... The courts have come to the opinion that there are no two ways about it, that it may not be at the final stage but that it is well engaged, and has accepted that this was the intention.

These products can be used for many things other than methamphetamines or other drugs, and a combination of these products could be used for many things. We have to be careful, under present legislation, not to engage too quickly. That's our reality.

The Chair: Thank you, Mr. Moore and Mr. Aubin.

Mr. Lee.

Mr. Derek Lee: Thank you.

In order to address the possible inference that the current law does not provide any enforcement capability at all for equipment that might be used, I want to refer the panel to and ask for your reaction to the existence in the Criminal Code of the conspiracy provisions, section 465, and the attempt provisions: attempt to possess, attempt to traffic, conspiracy to possess, conspiracy to traffic.

With all the offences, it could take place before the actual creation of the meth, and that's what this statute tries to do. But even with this statute, there's an assumption that we're going to have to have an amendment to it, because the current wording, in my view, wouldn't get by one half-hour in the first court prosecution that took place under it. It's simply so deficient legally that it won't fly. This dog won't hunt, so to speak.

If we amend it, then it might be viable. But even under the amended provisions, you have to have knowledge and you have to

have intention. To be more practical, it's not just the existence theoretically of the knowledge and intention. There has to be police evidence, evidence of the intention. The police aren't going to arrest just anybody, whether it be under this statute or under the conspiracy statute or under the attempt provisions, unless they have good evidence of intention.

I'm suggesting to you that there is plenty of law available, if the police have evidence of intention or evidence of conspiracy, to preempt a conspiracy to produce methamphetamine or any other drug. Those provisions exist under the existing Criminal Code and the existing CDSA.

I'll follow that with another question. If you can't find all the functioning crystal meth labs that exist now, how are you going to find one that hasn't even come into existence yet?

I'll put it to the RCMP to respond on the conspiracy and attempt provisions and how they could be used now, if we had the evidence and had the money to invest in the investigation.

• (1250)

The Chair: Mr. Aubin.

Insp Michel Aubin: That's a good question, sir. Thank you.

You're absolutely right when you say that nowadays we do have legislation at our disposal that allows us to address the issue of conspiracy. As you probably know, in order to establish a conspiracy, or when we bring it to the courts once we have established a conspiracy or have established intent, we're always looking for the overt act in reference to the conspiracy. We need not bring it to the very end as long as we have an overt act that clearly defines it.

The difficulty in terms of obtaining evidence is always establishing that intent, that conspiracy. That's where the challenge lies.

In the reality of police investigations, all police investigations cannot lead to interception of private communications. That's just an impossible task and an impossible feat. In my opinion, law enforcement should be able to accomplish successful investigations without having to resort in every case to the interception of private communications.

In the absence of intercepts from private communications, or of individuals who are part of the conspiracy and assist law enforcement as what is commonly referred to as source agents, it's very difficult for law enforcement to establish that very fact of intent under present circumstances.

Mr. Derek Lee: And that same challenge of establishing intent would exist with this bill as well, wouldn't it? The only overt fact you're going to have, if you're seizing equipment for something that might be intended for use in a meth lab, is the intention. You have to find the intention and have evidence of it. The police are not going to seize anything unless they have evidence. You have to have part of the lab turning on the confreres and providing evidence, or you're going to have an intercepted communication. Wouldn't that be correct?

In other words, this new law isn't going to enhance your ability to get that evidence, is it?

Insp Michel Aubin: Not necessarily in terms of obtaining the evidence of intent, or something to that effect; I'm not necessarily disagreeing with you. I say that, but I also say that I have to go back and speak to legal services to make sure I'm well founded. I am not a lawyer.

Mr. Derek Lee: I'll accept your replies in that spirit. Thank you.

The Chair: Thank you, Mr. Lee.

It would be like any other investigation: you have to start somewhere. The step that I understand this amendment to offer is that instead of looking half-way through the total production of methamphetamine, you can begin by looking at those who have collected all the precursors and material for it.

Mr. Calkins.

Mr. Blaine Calkins: Thank you, Mr. Chair.

I'll finish up the line of questioning I was on earlier. I believe this is Mr. Lee's argument: that it would be virtually impossible for an investigation to prove intent until you got to the point of production.

My question to you, without getting into specifics, is whether this legislation would, under the proposed intent of the amendments we've discussed here, give you as investigators an opportunity at some point in time to broaden the window to the point, when you had in your mind as investigators and as a prosecution determined that there is sufficient evidence to proceed and to prove intent, that you would be able to more assertively or more preventatively provide protection to the public.

Insp Michel Aubin: What we're looking for is the opportunity to demonstrate intent by virtue of the individuals who for no other apparent purpose are in possession of the essential chemicals, equipment, and materials; where, without their being at the stage of final production, but by virtue of their being in possession of all the equipment, the intent is demonstrated.

•(1255)

Mr. Blaine Calkins: Can you confirm to this committee that through the investigative process, whether it's following organized crime or whether it just leads from another investigation, or some tips, or whatever information you happen to receive, there have been cases where the RCMP has been forced to wait, knowing full well that people were in possession of these materials, until the activity actually began?

For example, they may have moved into a neighbourhood, occupied a home or a building for the purposes of production, then disappeared again, putting everybody in the area at risk. How often has it happened that you have known full well that the players involved or some of the players involved were in possession of either the equipment or the precursor materials and have actually had to wait? Has that happened?

This law would address your ability, if you were able to prove intent, to stop that activity from happening and the risk to the people in the proximity of that lab from increasing.

Sgt Doug Culver: I can address that today.

Here in Ottawa, in December 2002 and January 2003, the RCMP worked with the Ottawa city police department and eventually

dismantled a clandestine drug laboratory that was producing ecstasy in the east end of Ottawa. The Ottawa city police executed several general warrants under the provision of the Criminal Code in an effort to wait until there was final product available in the lab. When the clandestine lab was first entered by the Ottawa city police department, this gentleman had amassed over 400 kilos of precursor chemicals, glassware, equipment, and literature on producing drugs. But to stop the process.... At that point in time there had been no offence committed, other than possibly poor or illegal storage of hazardous chemicals.

Mr. Blaine Calkins: As just a final question, then, I think it's very clear what this law will enable police to do. Does this law in any way expand—and I believe Mr. Lee's line of questioning went here as well—the ability of the police to seek a warrant or to be able to go before a justice, to further enhance your abilities as investigators to collect or gather evidence? Will this broaden that in any way?

Insp Michel Aubin: I'd like to answer that question, but unfortunately you'll have to speak to legal services. But allow me to expand on Mr. Culver's answer as well.

In terms of organized crime, and specific to your question, it's a known fact that organized crime is well aware of our techniques. Do they move labs during the course of production? The answer is yes. I think that was somewhat of a question in your question.

That's normal; it's a normal *modus operandi* of organized crime to do that. So, for us, the difficulty lies in that area.

Mr. Blaine Calkins: Thank you.

The Chair: Thank you, Mr. Calkins.

Madame Freeman, I would assume that the bells will be ringing for a vote shortly, but the floor is yours.

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Mr. Fallu, you said earlier on that you would make two amendments to this bill: one on substances and the other on equipment.

Could you explain those two amendments in more detail?

Mr. Jean-Sébastien Fallu: In fact, I had not—

Mrs. Carole Freeman: We are trying to improve it.

Mr. Jean-Sébastien Fallu: I had not really thought out specific amendments. I was primarily making recommendations for changes.

I was recommending that the fact be taken into account—and this was just stated—that certain substances or combinations can be used to make methamphetamine, to make other drugs or to make products that are perfectly legal, such as perfume.

As originally drafted, the bill does not specify those elements; nor does it add the element of intention or knowledge of the substances, so it could completely unfairly incriminate people who are making perfume or taking decongestants.

The other recommendation dealt with equipment.

We are aware of the fact that equipment to make pills is very expensive. Such a piece of equipment could be bought second hand by people wanting to make pills of natural products that are completely legal. They could therefore have in their position equipment that was contaminated by people who were producing illegal drugs. They would be a risk of being incriminated simply because they are in position of a piece of equipment that was used illegally by others, without being aware of it and without having any intention of producing drugs.

I would therefore recommend an amendment that adds the ideas of knowledge and intention. That would deal in part with what I was just saying.

I do not have knowledge of the other laws that are in effect, but this knowledge and intention must be proven, which is not necessarily easy.

• (1300)

[*English*]

The Chair: Thank you.

Mr. Podruzny, I know you want to make some comment in reference to Ms. Freeman's statement, and then we will conclude.

Mr. David Podruzny: I just want to try to draw a distinction between the active ingredients that are being used to produce illicit products, or are known to be used to produce illicit products, and the

very broadly used products of commerce that might be in the possession of very, very large numbers of the public, as well as in considerable quantity in the manufacturing industry.

This doesn't seem to make that distinction. This basically says anything that knowingly will be used to produce or traffic. So it goes much further than the current class A and class B. I'm not a lawyer, but it seems to me that for all those other areas of chemicals or products that are not directly a precursor or a derivative or an active ingredient, it would be virtually impossible to prove intent for multiple-use products.

Perhaps it would be easy in the situation of an active ingredient whose known next step is an illicit product on the street. I just want to draw that distinction between everything and something specific.

The Chair: Thank you very much, sir.

I again want to thank the witnesses for appearing. I apologize for the confusion here in reference to that bill. But we do have some amendments and we look forward to your further testimony, in some areas, at least, regarding how this amendment may affect policing as well as the legislative side.

So thank you again for your appearance, and have a good day.

The meeting is adjourned.

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