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Chair

Mrs. Deborah Schulte

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• (1100)

[English]

The Chair (Mrs. Deborah Schulte (King—Vaughan, Lib.)): It's so nice to see everybody in such a good mood. We are now going to start this meeting.

Thank you very much and welcome, everyone.

We are continuing with our CEPA review. We have several witnesses with us today and I'd like to introduce them. Linda Duncan, the MP for Edmonton Strathcona is here.

Welcome.

Hon. Ed Fast (Abbotsford, CPC): You have one fan.

She's a constituent.

Mr. Jim Eglinski (Yellowhead, CPC): That's right.

The Chair: Good, so there are connections all over.

We have Dayna Nadine Scott, an associate professor from Osgoode Hall Law School and the Faculty of Environmental Studies at York University.

By video conference we have Nalaine Morin, a principal with the ArrowBlade Consulting Services.

Welcome.

Ms. Nalaine Morin (Principal, ArrowBlade Consulting Services): Thank you.

The Chair: We'll start with you, Nalaine.

Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP): Can I make a small point of order before we get started?

The Chair: Yes.

Mr. Nathan Cullen: I think it might be nice if the committee extended its best wishes to Mr. Gerretsen and his family, as we've heard they're in a family way today. I think a message from you, Chair, on behalf of the committee would be more than well received. We miss him today, but his priority is there.

The Chair: I wasn't sure if he wanted it on the record anywhere.

Mr. Nathan Cullen: Well apparently it is now.

Some hon. members: Oh, oh!

Mr. Nathan Cullen: I now move that that be stricken from the record.

Some hon. members: Oh, oh!

The Chair: It is now, so obviously we are going to miss him today, but he is with the most important person in his life, his wife, who is presently in labour and we wish them all well and good health to all.

Mr. Jim Eglinski: I don't think we have to vote on that.

Some hon. members: Oh, oh!

The Chair: No, I don't think we do. That's unanimous.

Mr. Nathan Cullen: Is there a minority report on that?

The Chair: While our minds are with CEPA, our thoughts are with him and his family.

Thank you.

Nalaine, you have 10 minutes and I'll let you know when you have a minute left in case you're getting close to the end.

Welcome and please get started.

Ms. Nalaine Morin: Good morning, Madam Chair and members of Parliament.

My name is Nalaine Morin. I am a member of the Tahltan nation and principal of ArrowBlade Consulting Services. I am pleased to make this presentation to you today summarizing my views relating to the review of the Canadian Environmental Protection Act, 1999. The views I present here today are on my own behalf, based on my experience as an indigenous person who believes strongly in the natural laws of environmental stewardship and protection of the land for future generations.

The Tahltan traditional territory is in northwest British Columbia and southern Yukon Territory in Canada. Our territory includes the headwaters of three major salmon-bearing rivers, the Stikine, Nass and Skeena, and supports an abundance of wild game. The lands, waters, and resources of our territory have nourished our people culturally, economically, and spiritually for countless generations. According to Tahltan laws and traditions, we are responsible for taking care of the land, water, and resources so that our territory will continue to support our people for generations to come.

ArrowBlade Consulting Services has been providing professional services to our clients in the areas of natural resource management, industrial project development, regulatory review, and consultation. We hold in high regard the value of traditional knowledge, as well as western science and science-based tools such as risk assessment and risk management. I myself come from a background of both working for mining companies, with experience in the NPRI, and working directly for government, like the Canadian Environmental Assessment Agency, participating in panel reviews of mining projects.

The Canadian Environmental Protection Act is a significant piece of legislation for Canadians as it is directed at pollution prevention and protecting the environmental and human health. Within those general principles, I certainly see some synergies in the interests of first nations in continuing sustainable development as well as protecting mother earth.

Another important aspect of this act is meant to contribute to sustainable development through identifying and managing pollution sources that may have a negative impact on the environment and human health. There are a number of areas within the act that speak specifically to the inclusion and consideration of public interests, including the interests of the indigenous people in Canada. With my review I spent my time focusing specifically on those aspects.

When asked to participate in the review, I spent a great deal of time contemplating the purpose of CEPA and the importance of pollution prevention as it relates to the protection of the environment and human health. In the last 10 years, the Tahltan traditional territory has been opened up by resource development activities, including new mine developments and hydro projects—run of river, hydro lines—which have had a significant effect on the traditional landscape. I have also witnessed in that time period increases in significant health issues, including rates of cancer and rates of dementia, within our the communities in the Tahltan nation. I have to ask myself whether we are doing a good job implementing our laws, like CEPA, that are meant to manage pollution and wastes, understanding and controlling toxic substances, and ensuring the long-term health and viability of our lands and our people, if we are seeing these kinds of adverse effects.

As part of my review, I also reviewed a number of submissions that were provided to you, and I can relate to some of the specific matters like whether we are effectively implementing these regulations, which is one of the reasons why I raise that in my submission today.

My concerns are not unique. One just has to pick up a paper or turn on the news to understand that many other areas and remote regions in Canada are experiencing similar increases in health risks.

•(1105)

If we have legislation that is designed to identify, isolate, and manage potential contaminants in the interests of protecting human health and the environment, why are we continuing to see increases in human health issues? Are we, as government and members of Canada, understanding our abilities under CEPA and implementing the tools developed to manage the risks? I think there are opportunities to further explore and address these points, and my recommendations include the following.

We need to improve the awareness of and understanding of CEPA within indigenous communities and with indigenous governments. The definition of aboriginal government seems somewhat restricted to a smaller number of types of indigenous government organizations, so we are really limiting our ability to fully implement CEPA and the objectives outlined under it.

We should adopt the recommendations issued in the discussion paper of May 2016 regarding the identification and inclusion of

vulnerable populations in risk assessment to ensure increased awareness and consideration of these populations.

Furthermore, we should also adopt the recommendations identified in the Canadian Environmental Project Act toolkit published by the Assembly of First Nations recommending the development of specific objectives, guidelines, and codes of practice on aboriginal lands.

We need to increase the participation of indigenous peoples represented on the national advisory council by changing the definition of aboriginal governments as published by the Assembly of First Nations.

Further to that, we should provide further definition and clarification regarding consultation to ensure that processes are meaningful. I would say the same for the definition of traditional knowledge. Within CEPA there is recognition and inclusion of the term, but it requires further definition to fully realize the potential and the fact that traditional knowledge is different depending on the region and the nation you're speaking to.

Most recently, Canada has become a signatory to the UN Declaration of the Rights of Indigenous Peoples, which includes some of the following: recognizing the rights of indigenous peoples to maintain and strengthen their spiritual relationship with their territories; to own, use, develop, and control their traditional territories; and to provide free, prior, and informed consent regarding developments affecting their traditional territories.

I recommend that consideration be given to these rights and to how they may further strengthen the abilities of Canadians to fully realize CEPA's potential as well as improve the rights of indigenous peoples.

Overall, I am in support of recommendations identified in the AFN submission as well as the discussion paper of May 2016.

Thank you.

•(1110)

The Chair: Excellent.

We're going to hear from all of the witnesses and we'll go to questions after that.

If Dayna Nadine Scott could start, that would be great.

Welcome.

Dr. Dayna Scott (Associate Professor, Osgoode Hall Law School and the Faculty of Environmental Studies, York University, As an Individual): Good morning and thank you very much for the opportunity to be here.

My name is Dayna Scott. I am an associate professor at Osgoode Hall Law School and the Faculty of Environmental Studies at York University.

I have been conducting legal research into chemicals management regimes for well over a decade. My expertise is related primarily to part 5 of the act dealing with toxic substances, to the principles of environmental justice, and to the design of regulatory regimes to protect vulnerable populations.

I believe there are a number of simple, feasible reforms to the act that can be made that would strengthen its operation, prevent pollution, and better protect all Canadians from the risks posed by toxic substances.

To be clear, these are significant risks encountered every day through ambient pollution from releases to air and water from industrial sources, but also increasingly from exposures as a result of our everyday use of consumer products containing toxic substances added to plastics, furniture, carpets, electronics, and more.

The amendments I recommend in my brief derive from four basic principles.

First, CEPA should better protect vulnerable populations and communities. In other words, the act should advance environmental justice. Canadians now expect that environmental laws will be not only effective but equitable. For CEPA, this requires concrete changes to address the disproportionate pollution burdens on vulnerable people and marginalized populations.

Second, regarding the precautionary principle, this means that, in the face of scientific uncertainty, we should err on the side of protecting public health and the environment.

Third, the assessment and regulation of toxic substances should be evidence-based. A precautionary approach embraces the emerging and the best scientific evidence.

Finally, relating to the safe substitution principle, this holds that regulators should be required to consider alternatives to the use of toxic substances in designing their control measures and to require the use of a safer substitute where one is available.

Currently, part 5 fails to prevent regrettable substitutions, creating what we often call the game of regulatory whack-a-mole. The government is forced to continually react, as industry changes its formulations, by replacing listed substances with other similar but under-examined chemicals. In this respect, I agree with the previous witnesses who have called for alternatives assessment or a safe substitution principle.

Overall, my submission is that CEPA part 5 is outdated and ineffective compared to chemical regulation in other jurisdictions, specifically the European Union. In order to achieve environmental justice, it requires significant amendment.

The most critical shortcoming of CEPA that I would like to draw to the committee's attention is one that, frankly, surprises ordinary Canadians and my students once it's explained to them. It is that a finding, through a rigorous risk assessment, that a substance is toxic under the act does not lead automatically to an obligation on the part of the government to actually ensure that exposures are reduced over time. The most obvious example of this failing is in relation to a class of flame-retardant chemicals known as the PBDEs.

Specifically, I'm going to speak about decaBDE. This substance is linked to thyroid, liver, and neurological problems. A full decade after this substance was found to be CEPA-toxic, it is still all around us. It is in this room. It's in your home. It's in your children's computers.

The law we have now appears to allow the government to select a meaningless regulatory option, such as prohibiting something that never happened in Canada in the first place, namely the manufacture of PBDEs, instead of a meaningful regulatory response that would protect Canadians from the exposures that actually threaten us, i.e., the import of consumer products that contain decaBDE. Indeed, the current law not only allows the government's regulatory response to be meaningless with respect to PBDEs, it also expressly allows the government to do nothing, to take no regulatory action at all in response to listing this substance as toxic.

Thus, I submit that the committee should seriously consider amending CEPA to implement a requirement for mandatory precautionary action, so that Canadians do not continue to be regularly exposed to substances that have been deemed toxic under the act, like the flame retardant decaBDE.

● (1115)

Next, I urge the committee to consider making changes to the definition of toxic under the act. In CEPA 1999, toxic is defined as a substance that's entering or may enter the environment in a quantity or concentration, or under conditions, that may cause harm to the environment or human health.

This definition relies on risk assessment practices that systematically underestimate real world exposures. This is for a number of reasons. First, the risk assessments proceed one substance at a time, even though in reality we're exposed to a complex toxic soup. Second, many of the chemicals in that toxic soup act cumulatively or synergistically in the body in ways that we don't fully understand. Third, some sources of exposures are not being routinely included in the risk assessments, such as occupational exposures.

Further, the exposure assessment built into section 64 relies on the idea of a threshold. It assumes that there will be some level of exposure to toxic substances, below which people will not experience adverse health effects. This toxicological paradigm, known as the "dose makes the poison", is outdated and has for several years been breaking down under the weight of emerging science. This is most obvious in relation to endocrine disruption.

For these hormone-mimicking chemicals, it's now clear that low dose exposures are extremely significant and can cause a wide variety of health harms related to growth, metabolism, and reproduction, and a number of chronic diseases like diabetes and obesity. The extent of the harm depends more on the person's sex and the timing of exposure than it does on the so-called dose. Scientists have identified several windows of vulnerability in which people are susceptible to being impacted by exposures at very low levels. In utero exposures are a particular concern.

Our current definition of CEPA-toxic is unable to prevent these modern, low-dose pollution harms from endocrine disruption.

I'd like to offer another quick example of how the act is failing.

I published an op-ed in *The Globe and Mail* in 2012, shortly after the endocrine disrupting substance BPA was listed as toxic and the government took action to prohibit its use in baby bottles. In it, I pointed out that even though environmentalists had applauded this action, fetuses and infants were still being exposed to BPA because pregnant and breast-feeding women were still being exposed to it from the lining of tin cans, and at work, etc. I indicated that young children drinking from water bottles that were labelled BPA-free were still being exposed through their alphagetti and their tomato soup.

This incensed mothers. I received more mail after publishing this piece than I ever could have imagined. People told me they had gone out and spent their good money and valuable time getting the right bottles because their government had led them to believe that be doing so they could keep their family safe from this chemical, and they felt betrayed.

The current reality is that four years after BPA was listed as toxic, most of us continue to be exposed to it everyday from a variety of sources.

Finally, the committee has expressed interest in learning how we can make the act more equitable.

One way to do this is to consider the people disproportionately affected by toxic exposures. They include women working long hours as cashiers handling receipts containing BPA; single parents shopping at the discount store for kids' lunch containers; infants in neo-natal ICUs where toxic plasticizers have been found in medical equipment; people living in communities on bus routes or near cement plants; indigenous teenagers growing up on-reserve in Aamjiwnaang, downstream of Sarnia's petrochemical cluster, or in Akwesasne; auto workers in plastics manufacturing plants; recent immigrant women working at nail salons; and all of us, any of us, who happen to encounter an exposure during a biological window of vulnerability.

From an environmental justice perspective, I submit that it's unacceptable to have a regulatory approach that relies on Canadians reducing their own exposures to under-regulated substances via their consumption choices. This approach cannot account for the varied abilities and capacities of differently situated people. In reality, all of us would choose not to be exposed to toxic substances if we had full control, and equal political power and purchasing power.

An equitable approach is to require precautionary regulatory action that works toward reducing toxic exposures across the board, so that disparities of geography, income, gender, education, race, and indigenous status are not further entrenched by our environmental laws.

To conclude, my recommendations seek to achieve a more equitable and precautionary outcome. I urge the committee to consider these recommendations carefully.

I thank you very much for your time today.

●(1120)

The Chair: Thank you very much.

Next up, we have Linda Duncan, who has 10 minutes.

Ms. Linda Duncan (Edmonton Strathcona, NDP): Thank you very much.

I'm delighted to be here. I'm a little surprised that I'm invited. I see a lot of expertise at the table already. I'm presuming that I've been invited because I was the first person to table an environmental bill of rights at the federal level. I also have a copy of my Bill C-202 here, which could be distributed later. It is in both official languages. I apologize that my brief was not already translated, but I think that will be provided to you.

I was also a member of the first team of citizens who worked with the Minister of Environment in the early 1980s in the drafting of the original CEPA. I want to share a little about how it came about that some environmental rights were included in that bill and why it's important to continue to strengthen those rights and opportunities in that legislation.

What do we mean by environmental rights? First, these rights involve the enshrining of the rights of Canadians to a healthy and ecologically balanced environment through amendments to federal laws and the Canadian Bill of Rights. Many have proposed that Canada mirror the precedent set by many other nations who have entrenched these rights in their constitutions.

Second, these rights are considered important in order to enshrine the Government of Canada's public trust duty to protect the environment to the extent of its jurisdiction, including legislating and enforcing environmental protection laws.

Third, specific environmental rights are generally considered to include the right of Canadians to hold their governments accountable by accessing environmental information to become better informed on the potential environment or health impacts of projects, activities, or decisions; having the right to participate in decisions impacting their health and environment; and gaining standing before courts and tribunals to seek intervention where those rights are denied, including requiring effective enforcement of environmental protection laws.

Why is it important to enshrine environmental rights? Directly informing and engaging the public eases suspicions and builds trust in the decisions by regulators. It's important that the process be constructive, and I'll speak to that a bit later and give some examples of some processes that have been more constructive.

Canada committed in 1993, under the North American Agreement on Environmental Cooperation, to the importance of public participation in conserving, protecting, and enhancing the environment; to promote transparency and participation in the development of environmental laws, regulations, and policies; to publish in advance any proposed measures and provide interested persons reasonable opportunity to comment; to extend the right to demand investigation of environmental violations; to provide access to administrative, quasi-judicial, or judicial proceedings for the enforcement of environmental laws, or to file suit for damages or injunctions; and to ensure that all administrative, quasi-judicial, and judicial proceedings are fair, equitable, and open to the public. Canada has already committed since 1993 that it will extend those rights in federal law.

What are the alternative means available to extend environmental rights?

One way is through constitutional reform, which would override all federal environmental laws, but many believe it's also important to extend those rights more specifically in statutes.

A number of jurisdictions have already incorporated or have issued stand-alone environmental bills of rights. The Government of Ontario did, and I think Manitoba was in the process, at least before the last election. Nova Scotia is proceeding. On my part, I have tabled a proposed federal environmental bill of rights several times.

The rights could be incorporated in individual statutes. The statute you're reviewing now is one of the first to incorporate some of those rights. The Canadian Environmental Assessment Act also has, or had, a good number of rights, which were emasculated by the former government. That is why there's been a lot of opposition to resource projects. Alberta, Northwest Territories, and Yukon all have included a variety of environmental rights in their environmental laws.

• (1125)

Rights can also be extended to citizens by petitions to stand-alone bodies. The commissioner for environment and sustainable development already has that power, and citizens are extended the right to petition the commissioner. The North American Commission for Environmental Cooperation has, within its agreement, the provision that anyone in North America can petition when they are concerned that the environmental law is not being enforced. As I mentioned previously, Canada has committed to put in place very many specific environmental rights.

When CEPA was first enacted in 1984, Environment Canada led an intensive public consultation process, including with industry and non-government organizations. An important addition to this consolidation statute was the entrenching of environmental rights and related obligations, now contained in part 2, including the registry of decisions, the right to request the addition of a substance on a priority substance list, the right to make voluntary, confidential reports of violations, the right to seek an investigation of an offence and the duty of the government to respond, the right to bring an environmental protection action, and the right to seek an injunction where a person suffers loss or damage due to contraventions.

An equally important parallel action taken by the then environment minister when CEPA was first enacted was to table an

enforcement and compliance policy, thereby disclosing publicly what the responses would be when there is a violation under CEPA. This, again, was a public confidence-building gesture to the public. In doing so, the minister said, "A good law, however, is not enough. It must be enforced—ruthlessly if need be."

This was a very important aspect of the original tabling of CEPA, and I think it should be given careful consideration by this committee. The public is concerned not only about what is in the law, but also about the law being effectively enforced.

As for constructive public engagement processes, it is not sufficient merely to enact these rights. It is incumbent upon the government to put in place constructive processes to engage the public in implementing the law, which is all the more important where there are concerns about toxic substances entering the environment, as you have heard from other witnesses.

Several good models exist that I encourage the committee to consider and recommend to the department. One is under the Canadian Environmental Assessment Act. My understanding is that the Liberal government is going to re-enact the Regulatory Advisory Committee, wherein all concerned parties—industry, public, and so forth—will have a say in federal environmental assessment legislation and regulations.

Another really good model is the Clean Air Strategic Alliance in Alberta. That was initiated way back under the government of Ralph Klein. It is a tripartite committee, with somebody from the environmental community, somebody from industry, and senior people from government. They can come up with their own reviews, or the government can refer to them matters on air emissions that it wants them to review. As a result of this committee, Alberta now, I think, has the lowest flaring emissions in Canada. As a result of this committee, Alberta is the only jurisdiction in Canada that requires the capture of mercury from coal-fired power. Through that committee, they have issued standards on NO_x, sulphur dioxide in particular. I think it is a really good model for the federal government to look at.

Third, the government could consider re-funding the Canadian Environmental Network, which was very effective in bringing together citizens from across the country to effectively and constructively provide comments on everything from pesticides and the Fisheries Act to toxins. There was a very active toxic substances caucus, which regularly met and provided constructive, informed advice to the government. There was also an aboriginal caucus, which provided advice to the government specifically in these matters.

Another one was MERS, the Mercury Emissions Regulatory.... I can't remember what it stood for, but it was a federal body that was looking at the control of mercury. I'm sad to say that it was not effective. It simply issued what was called a Canada-wide standard. I strongly recommend that the committee say that we no longer do a Canada-wide standard. When is a standard not a standard? It's when it is a Canada-wide standard and simply a guideline. It doesn't mean anything. The federal government has never issued any standard for mercury from coal-fired.

A final one is COSEWIC—the SARA advisory committee and the independent aboriginal advisory body.

● (1130)

The Chair: You have one minute left.

Ms. Linda Duncan: I think those are particularly important for part 9. As the woman from the Tahltan first nation mentioned, it is very important to ensure that the responsibilities under UN DRIP are also observed.

Thank you.

The Chair: We appreciate all that important information. We are now going to get into questioning.

I want to welcome Wayne Long, who is joining us today. Thank you for being here.

We will start with Mr. Amos.

Mr. William Amos (Pontiac, Lib.): To each of our witnesses, thank you for your great preparation. It's really clear that you are ready for this, and you're giving us amazing information. It's much appreciated.

I almost don't even know where to start because there's so much in here. It's such a rich set of testimonies. I'll try to be brief, and you could help me by being brief in your responses.

Ms. Morin, regarding the AFN code of practice around CEPA, was AFN involved in this process back in 1999 at the time of the earlier review? I'm just trying to get a sense of what recommendations have been made in the past by the AFN, since you refer to it extensively, that have been incorporated successfully, and what aspects are lacking. I've heard your message on traditional knowledge, but is there, in particular, a piece around vulnerable populations that Ms. Scott focuses on? I wonder if that's an area of focus.

Ms. Nalaine Morin: From my read, the review occurred in the early 2000s, and one of the things that was interesting about that review was their engagement and how they went about undertaking the review and summarizing the questions and concerns that they heard.

An important aspect of being involved in a review such as this one is to ensure that you are certainly reaching out to your constituents. That was one of the reasons why I made a point of stating that this is my individual interpretation for your consideration. But in the future, I think it's really quite important that, when making the efforts to consider indigenous views, a specific consultation process be undertaken for that.

From the review that I noted—especially with respect to one of the other witnesses' comments regarding the need to understand the effects not only on local populations but also those who are somewhat removed—when thinking about risk assessment and those sorts of things, we need to make sure that the factors involved are very specific to the populations that require the risk assessment to be done. That was one of the things that came up in the information I've noted to date.

● (1135)

Mr. William Amos: Would you recommend that CEPA be modified so that free, prior, and informed consent be incorporated into the act, particularly around protection of vulnerable populations, ecosystems, or individuals? Or is that legal principle sufficiently incorporated into the Declaration on the Rights of Indigenous Peoples that it need not be embedded here?

Ms. Nalaine Morin: I would certainly take it into consideration, and yes, I do recommend that it be considered. I say that because, when you're implementing tools like risk assessment and risk management, quite often factors that are local and site specific or important to local indigenous populations are not taken into consideration in the study. That's where principles like free, prior, and informed consent can help not only the local population but also the consideration and the effect of the study.

Mr. William Amos: My next question goes to Ms. Scott.

The crux of your submission concerns the application of CEPA to vulnerable populations and individuals at vulnerable moments. In the previous review process, between 2005 and 2007, there were recommendations from both the House and Senate sides. I want to reference in particular recommendations 17 and 18 from the House. There's a document that we can forward to you that outlines each of the specific recommendations, but recommendation 17 spoke to protecting the most vulnerable in society, particularly children, by including language similar to the Pest Control Products Act, directing that consideration of vulnerable groups take place in the risk assessment process, including a 10-times safety factor.

The Chair: You have one minute left.

Mr. William Amos: The amendment was not made by the previous government, but Health Canada notes that specific vulnerabilities of certain populations are taken into account in the risk assessments. How would you respond to that assertion by the government?

Dr. Dayna Scott: To a certain extent, during the risk assessment processes, the government has tried to build in these safety factors to take into account vulnerable populations and people within these windows of vulnerability. The trouble, I think, is that for endocrine-disrupting substances, the whole structure of section 64 is not conducive to being able to do that. Really, within section 64, you need less emphasis on exposure. We can say that we, in the act, generally want to consider vulnerable populations, but unless we actually change the operative provisions in the act that are not now serving those populations, we won't actually have that effect.

The Chair: Sorry, but I'm going to have to cut you off.

Mr. Eglinski, you're up.

●(1140)

Mr. Jim Eglinski: I'm going to direct my first question to Ms. Morin.

I've been very involved with aboriginal groups throughout British Columbia and especially in your region and central Alberta. My three local bands, the Alexis First Nation, the O'Chiese, and the Sunchild, are all very progressive bands. They have their own environment departments, and their own economic development agencies, and they are working very well at progressing and modernizing.

I noticed in some of the research I did on you that you worked quite a bit with the mining association in the past. In fact, I think you were appointed as the first nations environment and engineering specialist to the mining industry regarding tailing ponds in the past. I know that the bands are trying to promote new industry in their areas and that they are very concerned about the environmental impact. With regard to aboriginal communities that are looking at resource development while protecting the environment, can you give me some ideas on how you see those things working together or how they are working together?

Ms. Nalaine Morin: There are a number of good examples across Canada that demonstrate positive working relationships between industry and indigenous groups. One tool that's quite often used to help support or facilitate those is something like an impact-benefit type of agreement. As someone with a technical background who also practises or represents indigenous law, I look at the impact assessment to make sure that these projects are not having an adverse effect on our indigenous values. Through those types of processes, we are able to influence the planning for how these projects come about.

Mr. Jim Eglinski: All three of you have mentioned a lack of communication. Throughout my working career as a police officer, I policed many small rural aboriginal communities. I dealt a lot with seniors. With all the chemicals and so on that are available to buy off the shelf, how do we educate them? How are we going to get that message or how should government and industry get that message out to those people? I think you know, and I know, that most of them don't realize what they're handling or dealing with, so how do we educate them?

I'd like each one of you to answer.

Ms. Nalaine Morin: You don't hear a lot of information about or awareness of CEPA, or the importance of that piece of legislation. Issuing warnings and holding workshops and those sorts of things will help us to start creating or bridging that awareness gap.

Mr. Jim Eglinski: Ms. Scott.

Dr. Dayna Scott: I have difficulty recommending something like a labelling or an information-based approach to this.

As you know, I'm worrying a lot about the disparities and the different capacities people have to spend more to buy the bottle that's labelled BPA-free or the sofa that doesn't have flame retardants in it.

The better approach is for us to decide which substances we think are toxic and to take mandatory regulatory action that's going to reduce exposures for everyone over time, rather than to take this information-based approach.

●(1145)

Ms. Linda Duncan: I have a different perspective. I don't think it's a case of government or industry educating the public. It's the reverse. It's time to educate the regulators on the need to finally take action on these toxins and to expedite the banning of the ones we already know about, for example, the fire retardant.

There are more constructive ways to do that. I don't think we can expect the soccer mum, the soccer dad, or the general public to have the time or the expertise.

It's incumbent upon the government to establish advisory committees where people, in the long term, are providing advice, are informed, and are helping constructively to recommend which priority substance to tackle. Give them a voice in regulatory hearings on big industrial projects that are going to emit toxins. There are lots of ways we can do it to give a voice to the community.

The Chair: You have about 15 seconds.

Mr. Jim Eglinski: As a quick note, I see that some cards from high school students were passed around earlier. In this regard, I remember that when I was a police officer, the way we educated the public about seat belts was through the kids. Do you think it could work this way, with more education in the schools? Does anybody want to give a quick answer?

Dr. Dayna Scott: Sure, I have a quick answer.

More and more, my students are saying that we need these laws to be fair, not only environmentally effective.

Mr. Jim Eglinski: Thank you.

The Chair: Next up is Mr. Cullen.

Mr. Nathan Cullen: I was looking through some of these cards that were sent to us from high school students, I believe. One of them has informed us that high school students do care and want to protect our earth. They go on. I think it's an interesting frame. I'll keep passing them down.

Mr. Jim Eglinski: While you're talking, can I take a look at them?

Mr. Nathan Cullen: You bet. I'll keep them moving.

I share Mr. Amos's challenge. There's lots to go on and not enough time.

Ms. Morin, I want to start with you. First of all. It's nice to see you, and thank you for all your leadership on behalf of the Tahltan Nation.

From your perspective, what credibility does the environmental review process hold within the first nations communities you work with and advise, and not just within the Tahltan community but also within other nations you work with. How important is that credibility in the process and the acceptance of any industrial project like mining that takes place on territory?

Ms. Nalaine Morin: The credibility is limited—

Mr. William Amos: Madam Chair, on a point of order...

Mr. Nathan Cullen: Is this—

The Chair: I'd like to hear the point of order.

Mr. William Amos: Sorry to interrupt you, Ms. Morin, but on a point of order I'm wondering if this is relevant to CEPA? You're talking about environmental reviews. What aspect of CEPA are you dealing with here?

Mr. Nathan Cullen: With the way toxins are managed when dealing...as Ms. Morin is sitting on the...

I assume this is out of our time right now, Madam Chair—

The Chair: Yes, I'll stop the clock.

Mr. Nathan Cullen: One of the things Ms. Morin is involved in is sitting on the board of the Mount Polley tailings disaster and the toxins located there, and how we managed those toxins and effluents.

If the management and review of those toxins hasn't been talked about, how much confidence is there within the first nations communities that the review of the toxins now present in their rivers and environment, either through a disaster or the normal activity of, say, a mining project...? How important is it to connect back to the communities that are facing that risk?

I wasn't as explicit in my question as I could have been, as Mr. Amos has helpfully pointed out.

Mr. William Amos: Thank you. I appreciate that.

The Chair: That's great.

Please continue.

Thank you very much.

Ms. Nalaine Morin: The reason there is limited credibility is that the information being presented by the first nations gets limited consideration. When thinking about doing an effects assessment, the understanding of what the potential effects will be for first nations' values can only be determined by the first nations. We're finding, through a number of these reviews, that people don't understand when a first nation says they cannot fish there anymore and the implications of that.

Mr. Nathan Cullen: Thank you very much for that.

Ms. Duncan, what's the current state, from your perspective, of the quality of data available to the public and to the communities being impacted by or exposed to any of these toxins? We've talked a bit about BPA and some of the others, about that education versus whose responsibility... Is the data for interested groups of a sufficient quality right now such that people can actually make an assessment as to what their exposure is?

• (1150)

Ms. Linda Duncan: That's a big question.

Mr. Nathan Cullen: If that one is too onerous, I have another one.

Ms. Linda Duncan: I could go back to a specific example. I was involved with a local community group dealing with the emissions from coal-fired power plants.

Mr. Nathan Cullen: Okay.

Ms. Linda Duncan: I decided that I would focus on mercury, because that's a neurotoxin. It's the most serious chemical out there, which the federal government has failed to regulate.

It's very difficult unless you give up your career and paid work and take the time to inform yourself. The only way to.... Frankly, as the lawyer from Tahltan has said, these issues come up when a disaster occurs in your community, or when a project is proposed near your community or on a river or lake you care about. Then you get engaged. Then you start hearing about what the potential chemicals are that might impact you.

Just generally, in the federal government's regulating of chemicals under CEPA, it's very hard to garner people's interest. That's why I'm saying there needs to be a specific advisory body of NGOs that are willing to give their time to this on behalf of their communities across the country.

Mr. Nathan Cullen: It's almost like translation or interpretation of sometimes very thick data.

Ms. Linda Duncan: Yes.

Mr. Nathan Cullen: Dr. Scott, I'll go over to you. In my second year here, I moved a bill through Parliament to ban a certain endocrine disrupter called "phthalates".

I can remember sitting at this environment committee and having industry at the table saying that if we banned these things in soothers and baby bottles that were also in plastic tubing for surgery, Canadians would in fact die on the operating table, because there were no substitutes, and it was irresponsible for us to do this. I looked up what endocrine disruptors do while we were talking. These are hormone disruptors linked to cancer and linked to disabilities and all sorts of brain activity.

My question is this. In your research, you've pointed out that Canada has the lowest standards regarding bioaccumulation, the ability of these chemicals to concentrate in mammals and humans, in the industrialized world. You've also mentioned that the EU has a "no data, no market" policy. Can you explain what that means?

Dr. Dayna Scott: On the first point about the phthalates, I think there is quite a bit of research now into alternatives, into "green" plasticizers, as they call them, and those are the kinds of things that would come out if we had a safe substitution principle in place, right? You would do the risk assessment on the phthalates, and when you moved into the risk management phase you would have this safe substitution principle in place, and the industry would really have to show that there was no other green plasticizer that could do the same job without creating these devastating risks that you talk about.

On the last—

Mr. Nathan Cullen: Yes, the no data, no market policy.

Dr. Dayna Scott: Again, the REACH regulation says “no data, no market”. As I say in my brief, our approach really is “no data, no problem”. I think that's wrong. People have talked about the integration of these markets for these products. They're worldwide. If the producers of the products are producing that data for the REACH regulators, I don't see why Canadian regulators shouldn't also have access to it.

The Chair: Thank you very much.

Mr. Aldag.

Mr. John Aldag (Cloverdale—Langley City, Lib.): I will be sharing some of my time with Mr. Amos, who is going to invite a written submission from our witnesses on a couple of documents.

Very quickly to start with on my part, this is for you, Nalaine. In your comments, you talked about adopting recommendations identified in the CEPA 1999 tool kit published by the AFN. I had a question on that piece.

Simply, could you give us a bit of information on how that was created and if the findings from 1999 still apply to today? Or is there a further round of consultation that needs to be done to gather comments from the Assembly of First Nations as we continue moving forward? Could you give us some thoughts on how that initial piece was developed and the relevance of it for today and moving forward?

Ms. Nalaine Morin: The initial piece was developed through a round of consultation. They did acquire information from a number of different sources to develop the summary that they put together.

I believe that what was put together in that submission is still relevant today. From what they've identified, there are a number of restrictions on things like how you consult, the full scope of what constitutes aboriginal traditional knowledge or traditional knowledge, as well as definitions around aboriginal government that really restrict involvement of aboriginal people of Canada in CEPA.

Do I feel there is further consultation that could be done? Yes, I do, because in the time period that I've had to be able to put together my submission, I was unable to reach out to a number of my own constituents to incorporate that into the discussion we're having today.

• (1155)

Mr. John Aldag: Okay, great, thanks. That's useful and will help us decide who else we may want to talk to as we consult on this.

With that I'll move it over to Mr. Amos for his further comments.

Mr. William Amos: Thank you; I appreciate that.

There have been two documents circulated to committee members in the past several weeks. One document is from the minister, a discussion paper outlining a series of options to consider in relation to CEPA reform, and the second document I believe is from the Department of the Environment, speaking to the committee recommendations from previous reviews that have been implemented. I just want to put on the public record that I invite all participants in this review to analyze these two documents and to provide public input on these. I recognize that's inviting a huge burden on groups, but it's an invitation more than anything else, and I know there will be experts in the field including colleagues of Ms. Scott, who are

quite capable of getting really deep into the weeds. That is effectively what these documents do. They are very deep into the weeds, and really that is what our committee is being called to do.

Is it possible for the committee to make these available to each of the witnesses? Is that something...?

The Chair: I think it's public, but let's just make sure.

Are the documents that were presented to us as background just for us?

The Clerk of the Committee (Ms. Cynara Corbin): They're not public documents.

The Chair: The answer is no.

An hon. member: Not the briefing notes.

The Clerk: The ones from the department are available. They are online. They are on our website.

The Chair: That's okay. I understand that they're public, so they're available. They're posted on the website, so you can direct them to our website.

You're nodding, down there. I think you know. You've already looked.

Dr. Dayna Scott: I saw the link yesterday to the discussion paper, but I haven't had a chance to look at it.

The Chair: Maybe it's already on Twitter.

Ms. Linda Duncan: Chair, in responding to Mr. Amos' question, which was really good, here is my question. In addition to referring this matter to this committee, is the department also conferring another committee to engage the views of concerned Canadians?

Mr. William Amos: I'm not sure I understand the question.

Hon. Ed Fast: On a point of order, it's up to witnesses to answer questions.

Ms. Linda Duncan: He wanted me to review it, so I'm just wanting to find out if there are additional...

The Chair: No, what I think he asked was, if there are groups out there that are in the weeds, as we will need to be, who would like to bring forward some information and comments, whether we would be open to those and welcome them. I think that is what—

Mr. William Amos: Yes, I'm hoping that this committee can be a bit more proactive in ensuring that the public is made aware of this document. I'm not sure that the department is going to do that, but we have a series of witnesses identified as experts, and I know that not all of them will take the time to go through every single document this committee has posted.

The Chair: All right, we are kind of off schedule. We all have our connections throughout the whole country, and we can use those to make sure we get that message out, and tell them where to look. We, as a committee, are obviously asking to get all the input we can on this topic, and if somebody would like to come forward, we have been open to receiving recommendations from different groups about who they would like to have come in front of us. We're still open to that, and anything written, obviously, we'll make available. We'll take it as a committee and post it on our witness statements.

Mr. Jim Eglinski: Madam Chair, I am somewhat concerned, or maybe I'm misunderstanding you a little bit. I have no problem with this committee's receiving information via a witness coming to us and giving us that information, but I don't think that, as a committee, or as committee members, we should be feeding information out to people. I don't believe that's appropriate.

• (1200)

The Chair: The intent is just to make them aware of information that's already posted, all right? There's information posted, such as a document from the department, which they might want to look at and comment on. If they would like to come back or give us some more information on that, we will consider it.

Mr. Mike Bossio (Hastings—Lennox and Addington, Lib.): For clarification, Jim, this is being given to the witnesses. We're not firing it out there to the general public.

The Chair: But, Mike, it's a public document and it's out there. If we want to make anyone aware of it, that's our role as parliamentarians.

I think the point is that we are just saying that we are still open to hearing back from people on this subject. If they have dealt with it and looked at the report that's gone out, or that information, and they want to come back to give us some comments on it, I think we are open to that. We're not telling anybody to do anything. We're just leaving the opportunity there.

Mr. Jim Eglinski: I agree, Madam Chair, as long as all of us are aware of what we're putting out, rather than someone independently sending that information forward. If we're going to send it from the committee, we should be in agreement on what we're sending out.

The Chair: We are not sending anything out from the committee.

The Chair: We are just, as individual parliamentarians, making people aware that there is something there.

Hon. Ed Fast: We're entitled to do that.

The Chair: We're entitled to do that, and I think it would be good if we did. There's some good information there.

Is that fair?

Mr. William Amos: It's not what I was seeking. I was seeking a proactive sending by the committee to previous witnesses, but I'm gathering that there's not a lot of consensus around that.

The Chair: We could discuss that in our subcommittee meeting and see if we can get some consensus on what we might want to do.

Mr. William Amos: In any event, I guess the point has been made to the witnesses who were here, and to any who are following the transcript, that it would be very valuable to receive submissions on those two documents provided by the department, which are already in the public domain.

The Chair: Yes. Thank you.

Mr. William Amos: Do I have any time left? I'm not really sure.

The Chair: You were almost at six minutes. You have 30 seconds left.

Mr. William Amos: I would invite Ms. Duncan to comment on the environmental rights provisions in CEPA, in particular the environmental protection action provision. Has there been litigation pursuant to that provision? Oftentimes, the floodgates argument is

floated as being an issue. Has there been a flood of litigation pursuant to the environmental protection action provision?

Ms. Linda Duncan: As I've been elected for the last eight years, and not always in the environment portfolio, I have to say that honestly, I haven't followed it closely. My understanding is that previously, it definitely was not a floodgate.

The vast majority of actions by the environmental community or the public are generally against a government agency, demanding the right to be heard. They're more to do with standing, procedure, judicial review, and so forth. I think the floodgates argument initially put forward has been shown not to be true for that, but I think it's also very important to revisit those sections to make sure that they are updated also, to make sure that they are compliant with the North American Agreement on Environmental Cooperation.

The Chair: Thank you very much, Linda. I appreciate it.

We now go to Mr. Shields.

Mr. Martin Shields (Bow River, CPC): Thank you, Madam Chair. Thank you to the witnesses today, and to our neighbour to the north from the former city of champions.

Voices: Oh, oh!

Mr. Martin Shields: Oh, you did have a champion last year. We'll see how your draft picks do this year. Maybe Toronto will figure out how that works.

Ah, sorry, I digress. Never mind—point of order.

Dr. Scott, I found your third principle interesting, the assessment and regulation of toxic substances. Could you just enlarge that a little bit more on that, or go back through it for me, please?

Dr. Dayna Scott: The third principle that I mentioned.

Mr. Martin Shields: Yes. I found that interesting.

Dr. Dayna Scott: It should be evidence-based.

I indicate this because sometimes we hear that we have to choose either a precautionary approach or an evidence-based approach. I am really trying to emphasize that we can have a precautionary approach to risk management that is based on sound scientific evidence. In fact, the emerging science, particularly around endocrine disruption, is the kind of evidence that's not adequately being taken into our decisions to date. It would be wrong to suggest that CEPA is now evidence-based and that we'd be moving to something else.

I think we need to move to a more precautionary regime that is also, in fact, even more evidence-based.

• (1205)

Mr. Martin Shields: When you say that, I remember lead in paint. Kids chewing on lead in paint was an issue, then the lead in toys, and then you get to our sports world or our police, where they're now going back and looking at evidence because they have a new technology to identify things that they didn't used to be able to identify.

How do we get that science? You say "precautionary", but we don't have the science that says it isn't. If you don't have that technology, how do you justify that in the science world so that you get to that precautionary stage?

Dr. Dayna Scott: I think you need to have a regulatory regime that periodically comes back to these reviews of substances, particularly where we have found them to be non-toxic on the basis of not very good evidence or not enough evidence. It's something you might have with respect to the pesticides management regime, where there's a periodic review that happens every few years so that we can get the benefit of the emerging knowledge.

Mr. Martin Shields: The science would have changed in that time.

Dr. Dayna Scott: Yes.

Mr. Martin Shields: Where is this responsibility in the sense of the science that we talk about? When I think of the sports world or the police world, the science comes from some other source that they then apply. Where do you envision this science in our country coming from to do this? Who's going to do it? You review it in five years. I know where it comes from in the sports and criminology world, but where do you view it coming from?

Dr. Dayna Scott: I think the science is hopefully going to be done in university labs, within the public sector itself, and some of it will come from industry, from their own research and development that they're doing in trying to develop new products, new substitutes, and those kinds of things. Ideally, we would have a way of incorporating new science from all of those places.

Ms. Linda Duncan: Can I give a brief response to your question?

The Chair: We have time. If you want to give up your time, it's up to you.

Mr. Martin Shields: Be brief.

Ms. Linda Duncan: I just wanted to give you a suggestion from what they've done in Alberta. In Alberta, in the CASA process, we had a whole framework for emissions from the electricity sector. A provision in that overriding framework is that when any new scientific information comes to light about any of the substances being regulated, the government is obligated to open up that process to anybody who wants to participate. It's not so much that the government has the obligation to do all that new work, but they have an obligation—and the industry or whoever's using the chemical—to watch for any new information and to bring that to the attention of the government.

Mr. Martin Shields: Okay. Thank you.

The Chair: You have two minutes.

Mr. Martin Shields: I'll go back to windows of vulnerability and the research that you've done there. Tell me about it, because that's an interesting topic.

Dr. Dayna Scott: It's pointing out that the approach that toxicology has taken conventionally refers to the average Canadian. What would their exposures be, and at what exposure would we start to see health effects? This research really is pointing out that each of us at different developmental stages in life goes through these windows of vulnerability at which the threshold for health effects for the average person is really irrelevant, because really low doses might affect us. In utero is such a time, as are puberty, pregnancy, and menopause, where there would be these different windows of vulnerability at which a very low dose might have a much bigger effect, either later in that person's life or more immediately.

Mr. Martin Shields: One drink of alcohol at a certain stage of pregnancy can result in drastic results. Is that the kind of what you're saying?

Dr. Dayna Scott: That's right. It's that kind of thing. There's a whole body of research now called FOAD, which is the fetal origins of adult disease, talking about these in utero exposures that might be at extremely low doses, but could be producing diabetes or some other chronic disease much later in life.

Mr. Martin Shields: Okay.

The Chair: Thank you. That was good questioning.

Mr. Bossio.

Mr. Mike Bossio: This has been a fantastic discussion so far. Like everyone else, I'm thinking, where do I start?

Once again, CEPA was set up for pollution prevention, the virtual elimination of toxic chemicals, and the precautionary principle. In light of that, please respond to the notion of hazard-based versus risk-based assessment.

● (1210)

Dr. Dayna Scott: I think it might not be the most helpful distinction. My own assessment is that CEPA as it stands now is more of a risk-based regime, and that we should be moving closer to a hazard-based regime. I don't think there's a stark bright line there that we need to pay attention to. I think we can work towards amendments to provisions in CEPA that will move us closer to a hazard-based regime. It falls short, for example, with respect to low doses that are implicated in endocrine disruption. We want to pay attention to the hazard of endocrine disruptors because we know that very low doses are critical. This more risk-based approach says that there's a threshold below which health effects won't occur and that people can make choices as consumers on whether or not they accept the risk. This is not the right way to go.

Mr. Mike Bossio: Once again, we're talking precautionary, not post-cautionary.

Dr. Dayna Scott: That's right, yes.

Mr. Mike Bossio: Also, with respect to new evidence of toxicity in a product, would you agree that any OECD evidence of an intention to outlaw a toxic chemical should create an automatic re-evaluation of that chemical?

Dr. Dayna Scott: Yes.

Ms. Linda Duncan: Can I respond to that as well?

Mr. Mike Bossio: Yes, please.

Ms. Linda Duncan: It should be clear in the law that there is a duty to watch for that new information. There is a provision in CEPA already that people tend to ignore, a section that imposes a mandatory duty on the health minister. It says that where any information comes to her attention of a toxin that might impact health and the environment, she is obligated to initiate a review. You might want to review and supplement that section. It's also important to keep in mind that we're not just talking about chemicals in products. This law that also regulates emissions from energy sources. These are quite different kinds of processes.

Mr. Mike Bossio: I agree. CELA came with a very good description of the levels of pollution that Canada is generating compared with the U.S. It just blew me away when I saw the levels.

How do we incentivize industry to create alternatives, because they keep coming back right now and saying there's no alternative? They keep doing that because they already have a very good chemical and they're making high margins or good profits from it. How do we create a regulatory regime that forces compliance? That question is for either of you, but please make it short because I have a further question.

Dr. Dayna Scott: I think you make it mandatory in the risk-management phase. The safe substitution principle would say that if the substance is toxic, the burden would be on industry to demonstrate that they've investigated the alternatives and that there is nothing that they could use that would achieve the same social purpose.

Mr. Mike Bossio: Is there a time frame right now on that?

Dr. Dayna Scott: There isn't that duty right now.

Mr. Mike Bossio: So that is another aspect that could be added to incentivize industry, such that after a given period of time, that's it. Would you agree that that would be another great addition to have? Okay.

Nalaine, I'm concerned to make sure that indigenous people are consulted on CEPA moving forward. One of the biggest and most difficult aspects of that is the collection and use of the traditional knowledge in indigenous communities. Can you give us a recommendation on how you think we could create and utilize a database for that?

Ms. Nalaine Morin: That process would be very much site-specific or region-specific. One of the things we've been working with is looking at current standards for the collection of western science, and looking for opportunities to develop something similar for the collection of traditional knowledge. These options would help to ensure that we have similar backgrounds with regard to these different bodies of knowledge.

•(1215)

Mr. Mike Bossio: How much time do I have?

The Chair: You have 30 seconds.

Mr. Mike Bossio: Can you expand once again, from a traditional knowledge standpoint, on how that can be incorporated into CEPA and add value to the legislation?

Ms. Nalaine Morin: I would expand the definition of traditional knowledge within CEPA to include the development of a specific framework that provides some general principles on how to collect what you're collecting and some further definition.

Mr. Mike Bossio: Okay, thank you very much.

Could you please add any written submission that you think would help to expand upon that? That would be very much appreciated.

The Chair: Thanks, Mike.

I should recognize Mr. McDonald, who's joined us at the table for the questions as well. Mr. Long had to go, so Mr. McDonald's here. He's heard what a great committee we have and here he is.

All right, Mr. Fast, you're up.

Hon. Ed Fast: Thank you very much, and how much time do I have?

The Chair: You have six minutes.

Hon. Ed Fast: Wonderful.

I'm going to spend most of my time directing questions to Ms. Morin.

Thank you for being part of this discussion. I appreciate the fact that you emphasized both science and traditional knowledge as being critical to making informed decisions. I took note of your comments as you were discussing the environmental review process, and I think I have your quote right, "the information that is being presented by the first nations gets limited consideration".

You didn't get a chance to expand on that too much, and I invite you to do that.

What is that a function of? Is it the fact that due consideration isn't being given to first nations' input? Is it related to an unwillingness or an inability by the regulator to receive that information? Is it a function of traditional knowledge not being properly defined within the act itself? When I say the act, I mean CEPA. Could you expand a little on what you meant?

Ms. Nalaine Morin: I think it's a combination of a number of those factors that you've defined, things like not having an understanding of what the full breadth and depth of traditional knowledge is compared to what we have established with western science in terms of some of the science-based decision-making tools, as well as how western science information is collected and how it's interpreted.

A number of those things are not available or don't exist for traditional knowledge. Traditional knowledge in itself is also very much site specific and region specific, so the interpretation of those values can be different for these regions.

Let me take a step back. When we think about things like fish contamination or water quality issues, there may be regions where people don't eat as much fish or those types of fish are not available. Some of the general values that we apply through regulation may not work in certain situations.

Hon. Ed Fast: Just to follow up on another comment you made, you mentioned that projects like run-of-the river hydro and, of course, mining on traditional lands have adversely impacted those lands and the first nations who live there.

Do you have examples of projects that you personally have been involved in as an engineer and as a consultant where the collaboration and consultation process was one that could be held up as a model that should be followed?

Ms. Nalaine Morin: I'm seeking a point of clarification on that. The examples of projects that I have spoken about in Tahltan territory changed the landscape, but one of the things we're also seeing is increases in health matters like instances of cancer and dementia.

There are a number of good project examples like the run-of-the-river hydro project in Tahltan territory with the company known as AltaGas in the northwest projects. I believe that, in itself, is a good example of a working relationship between a first nation and a company.

• (1220)

Hon. Ed Fast: I'll direct a question to Ms. Scott.

You suggested that the distinction between risk-based assessments and hazard-based assessments wasn't necessarily helpful. I think you were suggesting, and I want you to clarify this, that in fact what is more important are the salient pieces of the act, as it may be amended in the future, that drive actions that achieve the desired results.

Did I get that right?

Dr. Dayna Scott: Exactly right.

Hon. Ed Fast: Do you want to expand on that a bit more?

I will tell you, quite frankly, that there's been a fair bit of debate here at the committee. We have parties that have come forward and said the risk-based process is sufficient and is serving Canada well, and there are those who will say it's been a disaster and that we need to have a hazard-based approach. I'm trying to get my brain around the difference between the two.

Dr. Dayna Scott: Sure.

Hon. Ed Fast: It would be helpful for you to flesh out exactly how you see this committee and government moving forward as we address some of the recommendations that may flow out of this committee.

Dr. Dayna Scott: I would say that the approach we have now, whether you want to call it a risk-based approach or not, is not working. It's not effective.

To give you an example, we can look at the CMP, the chemicals management plan, which identified 200 of the highest priority substances in Canada. These were substances already in use that raise the biggest flags with respect to persistence, bioaccumulation, and toxicity.

Out of those highest 200 from a list of 4,300 high priority substances, you would expect that a fairly high proportion of them would be designated toxic. When they launched the CMP, the government stated there was a predisposition toward finding toxicity for those 200. Over the course of the past decade, about a quarter of those have been found to be toxic, and of those, as I mentioned, a number of the most dangerous ones aren't even subject to regulatory actions to decrease their presence in our environment and our bodies.

In looking at that, I think we have to say there's something broken with the way we're doing assessments of toxicity and the way we're acting in response to those.

The Chair: I let that run over because that question is probably one that's in all of our minds, and it's the one we're most trying to get our heads wrapped around, namely how we're going to tackle that. Thank you very much for that answer. There's a lot more under all of that, I think, that we probably need to address, too.

Over to Mr. Fisher, and we'll see where you're going with your questions.

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): As Mr. Amos said, there's a lot of stuff coming at us here.

Nalaine, you mentioned that remote regions in Canada are suffering. We hear in the news all the time about mercury in the north and mercury in remote areas. We know that mercury is listed as toxic under CEPA, and yet it's showing up in larger amounts in the north and in remote areas. Maybe it's because we're disposing of it incorrectly and it's being transported long range, maybe it's because CEPA is failing.

First nations' traditional knowledge is an amazing history of record. How do you feel we can better work with first nations groups and communities to strengthen CEPA?

That's why we're here to try and make this an act with more teeth.

Ms. Nalaine Morin: One good example of that would be to understand from local indigenous groups if there are changes to things like wildlife migrations, or wildlife health, and what that means.

One of the things I often hear from a number of traditional hunters is that they're seeing changes or effects within the deer, the elk, and the moose they're hunting. All of this information can only come from the people who are living on the land and doing the activity.

Mr. Darren Fisher: You spoke of the implementation of CEPA and kind of inferred that maybe there would be an enforcement issue. Ms. Duncan also mentioned enforcement, I believe. Maybe what I'll do is go to you, Dayna, and ask for your thoughts on the implementation of CEPA.

• (1225)

Dr. Dayna Scott: I address that in my brief in places where I think both the act as it stands is inadequate to achieve precautionary outcomes and in places where the implementation of the act has fallen short. I also acknowledge places where I think the departmental officials doing the screening assessments right now are going above and beyond what's required in CEPA to try to account for, as an example, endocrine disrupting effects in a couple of the assessments.

I think it's both. We need new and stronger provisions that will give precautionary outcomes, and we have to make sure that the implementation follows those provisions more tightly than it has in the past.

Mr. Darren Fisher: I'll just ask one final question. If I have any time left, I'll pass it on to Mr. Amos after this.

The Chair: You have time.

Mr. Darren Fisher: Mr. Bossio asked my exact question, so he's obviously been peeking over my shoulder. If industry is approving the risk-based approach, how is it truly benefiting from maintaining the status quo? How big a kick would it be or how big a hit would it be to industry if we were to move to hazard-based approach?

Dr. Dayna Scott: I can't answer that part of it, but I think what they benefit from is the toxic substances staying on the market longer than they should be.

Mr. Darren Fisher: Okay. That's all I have, Madam Chair. I'll pass it over to Mr. Amos.

The Chair: Sure.

Mr. William Amos: Thank you. I'll move quickly.

Ms. Scott, to what degree do you think budgetary limitations have impacted the effective implementation? Setting aside the legal problems that you see with the structure and focusing on implementation, to what degree do you think the challenges are budgetary?

Dr. Dayna Scott: I don't know. I think certainly in 2006, when the chemicals management plan was launched, it did seem that quite a lot of resources were put towards getting those screening assessments done in a much more timely way than such things had been done prior to that. I think, in many cases the shortcomings are with the act.

Mr. William Amos: Okay.

In your recommendations 3, 6, and 7, you speak about "mandatory duty to assess alternatives", "mandatory preventative or control actions", and "mandatory substitution test". The picture is fairly clear here: you're saying we need to shift away from a discretion-oriented statute. Can you speak more broadly to that theme of the necessity to give government, the executive, fewer options in terms of the implementation of the act?

Dr. Dayna Scott: As I explained, one of the options available in the act is to go through the very rigorous screening assessment process, find a substance toxic, list it on schedule 1, and then take a regulatory option that includes "taking no further action". I think that's completely opposite to what Canadians expect. If this many resources are going to be put towards screening assessments and the answer comes out that a substance is toxic, people want to see mandatory action. That means that our exposures to this substance are going to decrease over time. I think they want government to be accountable to that as well. That might mean changes to monitoring systems and biomonitoring systems.

With the discretion that's built into it, CEPA is far enough removed from ordinary people's lives. All of you have said that, really. People don't follow this, right? They don't know that once BPA was found to be toxic, and that made headlines, that a couple of years down the road they had to check to see whether it was in their kids' lunch containers or not. That's why I think we need to lean towards these mandatory precautionary actions.

Mr. William Amos: I'm done? Okay.

The Chair: I'm sorry about that.

Mr. Cullen, you have three minutes.

Mr. Nathan Cullen: I think Mr. Fisher put it well, because what we're asking here is whether CEPA is working, whether it is succeeding, where it is succeeding, and whether it is failing us.

Dr. Scott, the scenario I follow is this. A single mom goes down the grocery aisle, shells out the extra bucks for the PBA-free bottle, and in the same aisle grabs a couple of cans of soup for the kids. Is CEPA working in that instance? We all celebrate and we seek the better options for consumers, and consumer education, and all the rest, yet if something's listed as toxic, and "do nothing" is an option,

then I'm confused by that. Something goes through that whole rigorous process and is found to be toxic to humans, and the company or the government has the option to do nothing? Who makes that—

• (1230)

Dr. Dayna Scott: The government does.

Mr. Nathan Cullen: The government does? The government can say it has found this to be toxic; this is bad for anybody; we wouldn't want to expose any of our kids to it, and our recommendation is to do nothing?

Dr. Dayna Scott: Yes, that option is available in the act.

Mr. Nathan Cullen: The option to do nothing is available in the act. Okay.

Our average voter would say, "Well, why did we go through this whole process of doing something like banning BPA in water bottles if it's available in all the rest of...?" I was just looking at the American Medical Association's recommendation, which says that consumers should avoid things in cans like soup, meat, vegetables, meals, juice, fish, beans, non-meal replacement drinks, and fruit. They recognize that this encompasses almost all canned foods.

One of the frustrations we often have is that the pretense of consumer protection can sometimes be worse if it's not followed all the way through. I guess my question is how consistent the application of CEPA is in terms of the way the government has interpreted it.

Dr. Dayna Scott: That's a good question. You can tie this exact shortcoming that you identify with respect to the regulation of BPA to the fact that there is an exposure requirement in section 64. Basically what happened on the BPA assessment is that the evidence was good, quite strong, that at very low doses—and we're exposed to BPA at very low doses—those would be significant in the context of an infant because of the lower body weight, but those low doses wouldn't be significant in the context of a grown person. That was the finding from the risk assessment. What that allowed the government to do was to craft a risk management measure that focused only on baby bottles even though that fell short, as we mentioned, because those same infants are going to still be exposed to BPA if they are breastfeeding.

Mr. Nathan Cullen: Right. Mr. Shields talked about this vulnerable population. If Mum is consuming BPA, we know what BPA can do. It will bioaccumulate. It will transition through to the fetus.

Dr. Dayna Scott: Yes.

Mr. Nathan Cullen: Okay.

Ms. Duncan, you mentioned in passing that we have no mercury regulations. That seems like a big—

Ms. Linda Duncan: What I wanted to say was that the biggest lack is of political will, and I'll tell you where the origins are.

First, I'm concerned that you don't just talk about consumer products, because this act is the only federal tool for regulating trans-boundary pollution and major toxins like mercury, lead, PAHs, and on and on, dioxins. These are important. These are huge sources of public health risk.

It used to be that, when major projects were proposed, the federal government would intervene. Then slowly it pulled out, and so now when major projects are reviewed in Canada, there is no federal presence. There is just an across-the-board lack of political will for the federal government to exercise its responsibilities under CEPA.

The Chair: Obviously there is still a lot of interest in doing some questioning, and we do have some time. Would people like to extend the session? I'm looking at the time. We could do three minutes each.

I would like 15 minutes of your time to discuss a couple of things that have come up for committee business after the questioning, if you are all accepting of that. Are you guys all okay with 15 minutes?

Mr. Nathan Cullen: I'm open to that.

Hon. Ed Fast: That's fine as long as it's within the next half hour.

The Chair: I have to go to another meeting, so I'll take 15 minutes. If we do three minutes each, we'll get to that time, so let's do three minutes each. I don't mind if you would like to continue that thought there, and then we'll go back around to everybody.

Mr. Nathan Cullen: Ms. Morin, we touched a little bit earlier on UNDRIP. This notion of free prior and informed consent has often been used on the environmental assessment side of things, but I'm wondering if there's an application on the way CEPA is applied. There's a bill sitting in Parliament under Mr. Saganash's name to not just sign UNDRIP in New York but to actually bake it into Canadian law as a screen through which we make these decisions.

Would something like the FPIC, the free prior and informed consent, help with some of the challenges we have found in CEPA? This has been a first nations rights and title question to this point under international law now coming home domestically, but that free prior and informed consent seems to me to speak to a much broader question about how we expose Canadians to toxins, for an example. From your perspective in AFN as well—I know you have some connection—do you believe that the actual implementation of UNDRIP into law, not just as a signature, could be helpful in this conversation?

• (1235)

Ms. Nalaine Morin: Yes, I believe so. It provides some certainty in some of the tools that are being used to apply CEPA, for things like determining toxic substances and gathering information with regard to these substances. There is a number of things where there are opportunities to apply tools, especially in first nations areas, that UNDRIP would help to further define.

Mr. Nathan Cullen: Ms. Scott, I want to get to this mandatory substitution piece. The reason I'm curious is that, through my small experience on the phthalates issue, when trying to get a certain chemical out of products—it was a softener—I found that industries stood at the table and said that doing so would kill Canadians because there would be no surgical tubing available in Canada. They said it would ruin the industry because the substitutions were so outrageously expensive that it would kill the chemicals industry. I'm paraphrasing. Thankfully we also had a nurse in from California where they had banned phthalates 10 years prior, and apparently you can still get surgery in California—quite a bit.

On the mandatory substitution side, we've heard from industry. We're going to hear it say again that it's too onerous. Industry would say that what we've just suggested is very anti-competitive and bad

for the economy, if we're running around looking for substitutes, some of which may be worse than the thing we're trying to ban. How do we fix that and address that cry?

Dr. Dayna Scott: Again, what I am proposing is that we have a mandatory precautionary regulatory control in place for toxic substances, a requirement to consider the safe alternative. The requirement is that they come forward with evidence that they've looked into what the alternatives are, and we know something about the safety of them.

Government can't choose safer alternatives unless we know what those are.

I'm getting the red card, I'm sorry.

Mr. Nathan Cullen: Are you? I've been on that way.

The Chair: I'm bad. I'm sorry. I'm just watching the clock. We could spend a day on this, with great ease, so let's move on.

Mr. Fast, you guys fight it out. You have three minutes.

Hon. Ed Fast: Which one do you want?

Mr. Jim Eglinski: You go first. We'll have the rest.

Hon. Ed Fast: I have another question for Ms. Scott. I certainly took note of your comments on vulnerable populations, and I just want to continue on that for a second.

I don't think you'll find any disagreement here at the table on the need to fully take into account the special circumstances of the vulnerable populations to make sure that the act allows us to address that.

You mentioned, though, that even today government already, to a certain degree, takes into account the vulnerable populations. In fact you said it's actually the operative provisions of the act that will specifically allow government to have the clear direction it needs to make sure a much broader range of vulnerable populations actually benefit from the act.

Can you highlight one or two of those operative provisions that would feed into this study and hopefully allow us to come up with well-informed recommendations?

Dr. Dayna Scott: One example would be the basic recommendation I make to take the exposure assessments out of section 64. That would have the result of going across the board and allow us not to have these assumptions about safe levels of exposure built into our decision-making.

Another option to consider, if the committee didn't like that one, would be to include explicit reference to cumulative exposures, to do aggregate exposure assessments for substances that have what they call a similar "mode of action". So for phthalates, for example, instead of taking the phthalates one by one, and for each risk assessment only including those exposures to that particular one, we would do what they call an aggregate exposure assessment because we know they're all acting together on our bodies.

You could try to parse all of that out for how to do better exposure assessments, but again my recommendation is not to do that, but to take the requirement for exposure out of section 64.

Hon. Ed Fast: I have one more question. I'm going to put on my economic hat and follow up on what Mr. Cullen was raising about business. In order to have a vibrant economy, we need to have a competitive playing field with our American neighbours and the EU. I hate to mention the Chinese. I don't think we see them necessarily as part of the playing field.

● (1240)

Mr. Nathan Cullen: So do they.

Voices: Oh, oh!

Hon. Ed Fast: But the reality is that we want to make sure that industries remain healthy in Canada, continue to create jobs, provide employment, and drive prosperity.

What strategy would you employ to get buy-in from industry for the changes you're suggesting to CEPA?

Dr. Dayna Scott: The strategy I would employ would be to make the requirements mandatory under the act. REACH, the EU chemicals law, is much more precautionary than what we have here in Canada. The EU is a huge market that many these same companies produce products for.

Hon. Ed Fast: Let me just jump in.

It's not just the market that I'm talking about. We have manufacturers in Canada, and their biggest competitor is actually the United States, by far.

Dr. Dayna Scott: Right.

Hon. Ed Fast: So we want to make sure that to the greatest degree possible we provide the kind of environment where companies can still be successful, but still move forward in protecting Canadians against toxins.

Dr. Dayna Scott: I guess I don't have a perfect answer for that. I think it's this committee's job to put the priority on protecting public health and the environment.

Hon. Ed Fast: But as parliamentarians, our job is to provide a balance, right? So you understand the challenge we have—

The Chair: Mr. Fast, I hate to do this, but I have to cut you off.

Over on this side, who is up?

Mr. Amos.

Mr. William Amos: You mentioned that the act should advance environmental justice. Can you be more specific on how it should or should not integrate a principle of environmental justice or, as Ms. Duncan would potentially refer to it, "environmental rights"? Other witnesses in other contexts have talked about principles of

environmental rights or environmental justice. Where do you sit on that specifically in relation to CEPA and the legislative amendments?

Dr. Dayna Scott: I don't have any particular expertise on environmental rights, so I will let Linda Duncan speak to that.

The kinds of recommendations I've made for reforming CEPA would take out the possibility of there being disparate impacts on particular vulnerable communities. This means, as I said before, changing the operative provisions of the act to eliminate those disparate burdens or disproportionate burdens on marginalized communities.

Also, I take Linda's point that in trying to push for some focus on consumer products, we can't forget about the fact that there are industrial emissions that are very important. They are the ones that create what they call "pollution hot spots" that really create environmental justice problems in Canada.

In particular, I believe my recommendation 8, dealing with virtual elimination, is one in which we could try to start to address some substances like dioxins and furans that Canada has made commitments on with respect to the Stockholm Convention, yet still does not take action on to prevent the unintentional release of those substances during industrial processes. That would be another place in implementing those changes to virtual elimination where we could advance environmental justice.

Mr. William Amos: Okay, so we need to be much more practical in the implementation in the operative procedures.

The Chair: You have one minute.

Mr. William Amos: Ms. Scott, I wonder if you could comment briefly on the best lessons that Canada should learn from Europe, particularly in light of the latter's approach using REACH.

Dr. Dayna Scott: I think the strengths of REACH lie in the alternatives assessment and safe substitution in the data-gathering provisions, the fact that there is a reduced emphasis on exposure until much later in the decision-making process relative to the Canadian system.

Again, the whole idea of REACH, how it's organized around registration before access to market, is a way in which you're inherently undertaking a more precautionary type of decision-making than we currently have in CEPA.

Mr. William Amos: Thank you.

The Chair: Thank you very much. It's been a great session, and I appreciate all of your sharing your wisdom with us.

We are going to take 15 minutes, and I hate to do this to you because you've all been so generous with your time, but we're going to have to ask you to exit fairly quickly out of the room.

Before we do that, there's an announcement.

Mr. Fisher.

● (1245)

Mr. Darren Fisher: Thank you very much.

We have a baby. Vanessa and Mark Gerretsen had a baby boy, Francesco Gerretsen, and get this: he's 10 pounds, 15 ounces.

Some hon. members: Oh, oh!

I'm going to suspend for just a few seconds. Thank you.

The Chair: Oh, my word. That's amazing. Our congratulations;
that's fantastic.

Thank you for that announcement.

[Proceedings continue in camera]

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