



Episode Title: Canada Proposes Exclusion of Fluoropolymers from PFAS -- A Conversation with W. Scott Thurlow

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Lynn L. Bergeson (LLB): Hello, and welcome to *All Things Chemical*, a podcast produced by Bergeson & Campbell, P.C. (B&C[®]), a Washington, D.C., law firm focusing on chemical law, business, and litigation matters. I'm Lynn Bergeson.

This week, I had the pleasure of speaking with Scott Thurlow, with Thurlow Law & Public Affairs, headquartered in Ottawa, Ontario, about Canada's most recent updated draft report on the state of per- and polyfluoroalkyl substances (PFAS). The updated draft report defines PFAS to exclude fluoropolymers, an issue in which Scott and his firm are deeply engaged. We discuss the draft report, Canada's approach to the regulation of PFAS, and Scott's practice as a Canadian lawyer and public affairs specialist. Now, here is my conversation with Scott Thurlow.

Scott, I want to welcome you to the podcast, and I'm just thrilled that you're available and look forward to our conversation.

W. Scott Thurlow (WST): I'm happy to be here with you and your listeners.

LLB: You founded Thurlow Law & Public Affairs in Ottawa, Ontario, about a decade ago. I know from our relationship, and reading some of your materials, and knowing the extensive advocacy arena in which you practice, that you are engaged in a lot of fascinating chemical law and policy issues, north of our border here. Maybe you could tell our listeners a little bit about yourself and how you found your way into this very niche area of the law.

WST: I tell my friends that almost all of my stories start with the phrase "I was minding my own business," and in this case, I really was. Ironically, at the time, I was involved in a different subset of the business of chemistry in that I was creating solutions on order from either distilled C₂H₅OH or fermented wheat-based products, and so being a bartender was a great job for a grad student, but I didn't think it was really in my field -- and little did I know. I mean --

LLB: But it was fun.

WST: Ironically, I still see my grade 11 chemistry teacher from time to time, and when he first heard about the industry that I was in, he was surprised, to say the least.

LLB: Really? Deep eyeroll? You, Scott?

WST: I may have been kicked out of his class, but I can't confirm that on the record. Anyway, suffice it to say, when I was 25 years old, I barely knew what a chemical reaction was, and through a mutual connection, I was put in touch with the president of the Chemistry Industry Association in 1997, and I was lucky enough to secure a summer job in his office following the parliamentary debates on what was to become the Canadian Environmental Protection Act (CEPA, 1999). That turned into my master's thesis on the perils of parliamentarians getting involved in technical matters, which is riveting reading, I can assure you. Honestly, Lynn, I've had a connection to the Canadian chemical industry ever since, whether it's through direct engagement with the Association and its members, or working with aligned industries, and that's both in the practice of law and as a registered lobbyist on their behalf. So now, I'm 50, and I still barely know what a chemical reaction is, but I am super --

LLB: -- Despite your many successes.

WST: I am super lucky to work with hundreds of experts in the chemical sector who provide me with the evidence-based materials to achieve the best outcomes for the industry.

LLB: Another case study in how these very fortuitous, entirely serendipitous summer internships define your career, right?

WST: Yes. No, I've never looked back.

LLB: You are a member of the Law Society of Canada and have been practicing now for about 21 years. You are also, as best as I can tell, Scott -- but correct me if I'm wrong -- a registered lobbyist. Is your time spent roughly 50/50 on advocacy and lobbying, or how would you define your normal work schedule?

WST: That really does depend on the week. I would say it's probably 3 to 1 lobbying to practicing law, but there are some weeks where it's 99% law because of a court deadline or whatever, right?

LLB: Sure.

WST: But for your listeners, my axiom is that I am part translator and part janitor. I translate government speak to business and vice versa. And then in the unfortunate situation when there's a mess created by either one, I help to make it better for both sides. But I think what's also really important for your listeners to know is that I do all of my advocacy through the Responsible Care[®] ethic prism. I'm bordering on an acolyte of Responsible Care. I think I can safely assure your listeners that when I'm speaking to government, the longevity and accountability of the ethic makes the chemical industry positions much more credible than others that are in our space.

LLB: No, I completely agree.

WST: It's just refreshing. It's almost like it's refreshing when they speak to us because of the position that we start with. And that's from the CEO level all the way down.

LLB: Do you have a preference for the lobbying, government advocacy versus the law part? A lot of my colleagues in this space kind of prefer one or the other. What's your take?

WST: I think my accountant would have an evidence-based answer for that, but I would say the advocacy work is much more interesting for me. I can honestly say that in the 25 years I've been in this space, there have been very few days where the challenges are the same. I'm not going to pretend that I have the most patience in the world, so having a new file to work on every day is super, super fun.

LLB: Yes, I can relate to that for sure. No two days are the same. You noted a minute ago CEPA. Not all of our listeners are perhaps familiar with the Canadian Environmental Protection Act, commonly referred to as CEPA. Can you give us a little background on CEPA and the work you do in connection with it?

WST: Sure. CEPA is the first quote, unquote "risk-based statute" that was ever developed around the world. For those of you who don't know that TSCA [the U.S. Toxic Substances Control Act] is kind of based on the same foundations as our CEPA was, it was. For that, I apologize because it wasn't implemented the same way down south, so we can work on that together over the next couple of years.

But the Canadian Chemicals Management Plan was initiated upon the passage of CEPA, 1999. There was an immediate swath of priority chemicals that were identified and assessed under what was known as the Priority Substance List (PSL), Part 1 (PSL1) and 2 (PSL2). Then over the next seven years, Canada categorized another 23,000 chemicals and identified 200 for immediate risk assessment and possible risk management. Those 200 came out of a class of 4,300-ish that Health Canada (HC) and Environment and Climate Change Canada (ECCC) decided needed a closer look. So 18 years later, we're rounding third base on that first tranche of chemistries, and we are about to embark on the prioritization exercise for the next eight years of chemicals management in Canada. That's a really big swath of work. I think TSCA is now eight years old, or seven years old, or something like that?

LLB: It's eight as of June this year.

WST: Got it. You're still dealing with a young child, whereas we are now dealing with a rambunctious teenager, so our challenges are a little bit different.

But in the meantime, the government -- and then some environmental groups and industry -- saw the need for certain tweaks to CEPA. In addition to doing the risk assessment, risk management side of the park, I got my hands dirty, and I did a lot of work in Parliament in what was known as Bill S-5. There were a lot of significant tweaks that were made to the Act. The last few years have been a lot of hard work and a lot of fun as CEPA was reviewed by Parliament. We are most proud of the work that we did with [environmental non-governmental organization] ENGOs to find common ground and enact risk-based amendments to the statute. Did we agree on everything? Absolutely not.

LLB: That's improbable.

WST: Yes, but there was a condition precedent for our involvement. And that condition precedent was understanding that Canadians had to have faith in the system that protected their health

and the environment. And in turn, Canadians had to have faith in the products that were available to them. Honestly, I think we're doing really well in that regard, and despite some of the more alarmist things that we still hear from certain constituencies, faith in the products on shelves, for Canadians, is very high.

LLB: Good. That's wonderful, and a credit to all of you stakeholders that have been working collaboratively together with the ENGO community, the government, and of course, private industry.

I know, as far as my practice is concerned, Scott, not a day goes by where PFAS is not kind of front and center, either because of reporting obligations, or phaseout, or alternative selection, or risk evaluation with respect to particular moieties. It's been just all-consuming. We know that Canada has been pretty active in this space as well. Maybe as background, can you share with our listeners how Canada, presumably through the offices of ECCC and HC, have approached PFAS as a class of chemicals? And then talk about PFAS exposure and risk management scenarios.

WST: Sure. Canada was the first jurisdiction -- or one of the first jurisdictions -- to ban PFOA [perfluorooctanoic acid], PFOS [perfluorooctane sulfonate], and long-chain [LC] PFCAs [in the United States, we call these long-chain perfluoroalkyl carboxylates (LCPFAC)]. That started well over a decade ago. We are way out in front on that. In those bans, there were very targeted exemptions and licenses that were granted for very narrow and specific uses. As part of what's happening with PFAS today, we're looking at some of those exemptions and seeing if 15 years later they're still appropriate. That is absolutely a reasonable position for the government to take.

In Canada, we have approximately 330 PFAS substances which are quote, unquote "approved for use." I say that because they're either on what's known as the Domestic Substances List, which was the condition precedent I spoke to earlier at CEPA 1999, or they were very specifically approved with conditions through our New Substance Notification (NSN). For your listeners, that's our version of SNURs [the U.S. Environmental Protection Agency's (EPA) significant new use rule].

LLB: Right, exactly.

WST: I want to remind your listeners that obviously there are some other PFAS materials that come through finished goods from the United States or other jurisdictions -- like in cars, or in airplanes, or in cell phones -- that may not necessarily be on the DSL, but through Canadian Chemicals Management, if you're using a substance which is not on the DSL or is not approved for use through an NSN, you are breaking the law.

LLB: Okay. Interestingly, PFAS are defined in Canada under CEPA to align with the more fulsome OECD [Organisation for Economic Co-operation and Development] definition, so it does not align with the U.S. working definition of PFAS. I suspect many of your clients work in the United States, Europe, and Canada, and all over the world, as do our clients. Does this lack of alignment with this growing definitional, I think, incoherence with respect to PFAS cause problems? How do you approach it for your client base?

WST: I have yet to see two definitions of PFAS anywhere in the world that are the same. There's a little bit of a Ross and Rachel phenomenon from *Friends* here, where they don't know what is or is not a break, right? So obviously, one definition can be exclusive or inclusive of another. I can assure you we are working really hard to get the best definition possible.

Where we see regulatory alignment, we want to take advantage of that, but I'm not going to photocopy somebody else's stupid definition -- or at least I hope not.

LLB: Someone else's definition -- I'm sure no government agency or authoritative body believes their definition is, you know, ill-advised, but I know -- no, there are strong views across the board on how each of the governments that our products are regulated by are defining and going about PFAS concerns. It is frustrating, because of the global lack of jurisdictional and definitional alignment, but that might be said of any number of chemical matters. Can you just say very, very generally, what is the regulation of PFAS in Canada like now? Is it top of mind, or is it a growing issue? It's very top of mind here, Scott. What can you share with our listeners?

WST: I would say it is at the absolute apex of everyone's mind. There's certainly a lot of political pressure from ENGOs to "do something," and I again use the air quotes, "do something" about PFAS exposure. The reality is that in Canada, our issues are very different. We do not have large-scale manufacturing of fluorinated substances here in Canada. That is going to change the routes of exposure as a condition precedent. Our biggest concern, I think -- and I'm winging this a little bit -- is the protracted use of "A triple F" (aqueous film-forming foam, or AFFF) foams in environments where they were able to accumulate in water tables. That's not industry, by the way. That's military bases, that's airports, that's hospitals, that's university campuses. It's the use of these substances for a long time that is going to lead to the bioaccumulation, or the accumulation of these substances in the water table that could lead to some concerns.

Now, let me be as honest as possible. If you deploy an AFFF foam at Pearson Airport in Toronto, you're not going to have a problem, because as soon as you deploy it, there's going to be another little robot that comes up and sucks it up in a vacuum cleaner and then takes it to Sarnia for a high-heat disposal of the substance. That's not the problem. The problem is those remote bases where there is not that same technology, and as a result, you're going to see the repeated deployment of that substance starting very early.

I think that is a thing that the government should be looking at, but by the same token, unless there's a proven alternative to these AFFF foams, let's not be too quick to take them off the market, because in certain communities, we need these AFFF foams to ensure -- particularly in a high-hazard environment, whether that's a fuel refinery or a certain chemical facility -- we need to make sure that we have the materials available to ensure that seminal events don't occur.

LLB: It sounds like the concept of "currently unavoidable uses" is very much embedded in the regulatory approach in Canada.

WST: Yes. No, I think -- again, I'm speculating a little bit here -- I would imagine that any future AFFF regulation will have some kind of a licensing requirement where those "essential uses" are protected until there is a proven alternative.

LLB: Let's drill down a little bit into the report that came out fairly recently and going a little bit back in time -- about a year ago in May of last year. ECCC and HC jointly published the Draft State of PFAS Report and the Risk Management Scope. The draft report includes a wide range of adverse human health and environmental effects attributed to exposure to PFAS. One of the recommendations in the draft is that the class of PFAS -- unsurprisingly -- meeting one or more of the criteria set out in CEPA Section 64(b) added to the list of toxic substances under Schedule 1 CEPA. What would the effect of this recommendation be, and

what was the kind of take when the draft report came out? It probably surprised no one, I'm presuming.

WST: It surprised me a little bit, and the reason it surprised me a little bit was based on the breadth of the proposal. If you look at Canada's Schedule 1, Part 2, you can see chemistries on it that are defined right down to how many hydrogen molecules are involved. You get that, but you also get really broad listings, like carbon dioxide. What we thought at the time was that there was a lot of breadth to the definition that was in there, and quite frankly, I asked the point blank questions like, "Okay, you want to put a class of PFAS on a Schedule 1, Part 2, but what are you actually going to write down and put onto Schedule 1, Part 2?" Today, we don't even -- we still don't even have that.

What happens in Canada is kind of a three-legged stool. We collect information about the uses of a substance in Canada, we compare that to the known hazards associated with those chemistries. And then we do a risk assessment. It's called a screening level risk assessment. We apply the hazard to the uses, and we determine whether or not there's an exposure of concern. When you see that exposure of concern, that's when you get a Schedule 1 designation, and that is the legal authority to take the next step and have a risk management action.

The proposed order, if finalized, adds a substance to Schedule 1, Part 2, would provide the government with the statutory authority to risk manage the class of substances. It's an enabling power. It's the act of putting something on Schedule 1, Part 2. But that act does not in and of itself lead to any specific legal outcome. It's the next regulatory step: We are going to have an AFFF ban, except for airports and military bases and refineries, for example. I just made that up off the cuff. I have no knowledge about what's actually coming, but it could very well be that we'll see a very invasive limitation on AFFF foams to start. There may be other subsequent actions that will follow after that. But that's something that even the Prime Minister has identified as something that's a concern.

LLB: That really goes to dispersive applications of PFAS, not unlike the airport example you gave. Despite their functionality and essentiality in controlling really, really difficult electrical or chemical fires. At the end of the day, we're still looking for -- at a paucity of efficacious alternatives to some of these PFAS. So derogations are probably in order, as they have been in other parts of the world. Embedded within that new authority, might there be some sort of prioritization scheme and additional data collection activities?

As you know, we're undergoing a data collection effort here in the United States under TSCA Section 8(a)(7). That's commanding a lot of attention, a lot of time for companies to go back years into their records to see if there are any PFAS in articles that are imported and any PFAS substances as defined by EPA manufactured in the United States. Are there similar efforts either underway or expected in Canada?

WST: There's a lot in that question. I think the first thing is that there is a published information-gathering initiative for 330-ish PFAS substances. Those are based on the known, approved uses in Canada. We also have an ongoing supply chain challenge, and -- not that it's different from the one in the United States -- but in Canada, we really are policy takers in many regards, because we don't necessarily manufacture all the aspects of any particular chattel that is used in the manufacturing process here in Canada. We have heard you've been -- well before COVID, there were supply chain issues, because once we get into a jurisdiction that does not have the Responsible Care transparency associated with it, it gets really hard to identify what those substances are. But I think the one thing that we can say

with confidence is that in many cases, these materials, they're locked into the process. It would take Harry Potter to get some of these chemistries out of the state that they're in. And even high-temperature combustion isn't going to break down some of these chemical bonds, so the risk of exposure just isn't the same. I think I alluded to that earlier. It's different. It's based on waste management. Quite frankly, many of these uses, for example, in the automotive sector, these are not a concern because my car, when I'm done with it, I'm not leaving it on the side of the road. We're putting it into a very robust recovery and recycling program; the parts of the car are cannibalized and reused again--

LLB: Right, salvaged.

WST: I just don't see the same exposure concerns, but I've been wrong before, Lynn, and I just hope that we can get the best outcome for industry in Canada.

LLB: I certainly share that goal. Well, circling back to that Draft State of PFAS, more recently, just about a month ago, an updated Draft State of PFAS Report was issued. There's a really important provision in the updated draft that I really wanted to hone in on, because I know you've been incredibly active in this space. You and your colleagues at the firm, Scott, are kind of the go-to lobbying shop in this regard, but can you tell us about the revised draft, and importantly, the exclusion of fluoropolymers from Section 64 of CEPA? Number one, I want you to confirm my reading of the draft, because that's a very big deal. And perhaps if it *is* accurate, you can give us a little background on how that came to be.

WST: Well, I can confirm that it is accurate. I also hope that my mum listens to this podcast. It's very nice of you to say, and I don't think it's true, but this decision is, to the best of my knowledge, the first time in the OECD where you've seen a government agency exempt the class of fluoropolymers from a determination, or a *proposed* determination -- sorry.

Now, that came with a catch. And the catch is that sometime in the future, HC, ECCC are going to do their own risk assessment on the fluoropolymers. We welcome that. Absolutely. That is something that the industry would welcome to have, because the scientific reality is that not all PFAS are the same. I think this is a clarion call that everyone in industry -- and even some academics -- were willing to advance, and say, "Look, they don't all react the same way. Some truly are inert, and some of them are really important to other sectors." The vaccine industry was quick to step up and say, "Without fluorinated chemistries, we wouldn't have the COVID vaccine." The electric vehicle industry is quick to say "Without PFAS, we're not going to have the recharging infrastructure that we're going to need to reduce GHGs [greenhouse gases]. There certainly was a lot of interplay about the ubiquitous nature of fluorinated chemistries in our economy.

Now, is the fluoropolymer exemption perfect? No. I would tell you that the very sound logic that they used to exempt fluoropolymers might apply to some of the other polymer-based PFAS substances as well. There's still work left to do. Let's not pretend that there isn't, but I think this is the first really good statement from HC or EC that there is no such thing as a homogenous PFAS substance category.

We've split it into two, so fluoropolymers and the rest. We had actually proposed the five families of PFAS, that's not a reference to *The Sopranos*. That's just the way that we thought it would break down. There are two other polymer-based groups that possibly could be excluded based on the available science that's out there. If your readers look to the updated State of the Science report, they will see hundreds of academic references, and business references, that are used to substantiate the conclusions that were made. There was

another reference -- and I can't recall the name of the agency -- but where all the U.S. states came together and actually built a chart of how certain PFAS substances break down. When that interstate document -- which included our friends in California, I'd like to point out -- was shared with HC and EC, I think that really opened up some eyes. Like I said, they made a scientific-based decision, and it's one that we will support, but we would like them to apply that to the other polymeric groups as well.

LLB: Just out of curiosity, Scott, did the regulatory entities with whom you were working -- was it a hard sell? Or was it, "Look, this is a science-based approach for really deep prioritizing fluoropolymers. We're not saying never. We're saying not now." Right?

WST: Well, we didn't actually say that. We said we didn't think that they were similar to the non-polymers, but you know what? We'll take it. To do a risk assessment of the fluoropolymers, I think, is an appropriate reaction from the authorities. I think the other thing is, going back to that point that I made about confidence in chemistry and products that are used, I think our friends in the ENGO community are so busy talking about thousands and thousands of PFAS substances that you and your family are being exposed to on a daily basis. I think having a robust, science-based risk assessment of fluoropolymers will actually help Canadians understand the way that these substances are regulated, as well as the important uses that they have.

We don't do this in an academic vacuum. We say, "Look, yes, in high-hazard scenarios, certain substances have been proven to have deleterious effects," but we balance that against the benefits. We have a cost-benefit analysis that's built into our Cabinet Directive on Regulatory Management [replaced in 2018 by the Cabinet Directive on Regulation] that's incredibly important for balancing risks, and the, I'll say the benefits and the opportunities that these chemistries provide.

LLB: Mm-hmm. I wanted to ask you if the concern with PFAS has made its way into more consumer products. Here in the States, as I'm sure you are aware, not a day goes by that some brand name product from a big brand company is either boycotted or the subject of a lawsuit based on tort or fraud claims, breach of contract, you name it. Is that the flavor of the day in Canada as well?

WST: I have an amulet on my desk that's proven to keep tigers away, and I have yet to see a tiger, so it must be true. No, I mean, in seriousness, there are two lawsuits that have been launched, one in Quebec, one in British Columbia, about PFOA, PFOS, and LC-PFCA, and they have links to a broader PFAS class. I am pretty sure that my grandchildren will take over my practice before that's resolved. There are so many legal issues, you could just call those lawsuits first-year constitutional law.

It's fascinating reading. I'm not going to pretend that I, as someone who's been in this area for 25 years, don't find the legal arguments interesting. But they're also both based on provincial statutes, and so the tests are different in British Columbia and Quebec, and they make the flavor a little bit more interesting. In Quebec, they adhere to the Napoleonic code, but that is one of the holdovers from being a dominion of France some 250 years ago, so the tests are different. And again, it's going to make for fascinating legal education at some point in the future. But no, I would not tell you that the quote, unquote "Forever Chemicals" have taken on the same aspects in Canada. I think that's because Canadians have a high level of confidence in the Chemicals Management Plan, or put another way, in HC to safeguard them against products that are not acceptable or have unacceptable risks of exposure. I can remember at the height of the BPA [bisphenol A] discussions how

everything was being released with a “BPA-free” axiom on it, and I laugh and say, “Those never had BPA in them in the first place.” I really do hope that it doesn’t turn into one of those marketing scenarios where industry are trying to use that fear to advance a commercial interest. But you know what? I’ve been surprised many times in my life, so I haven’t seen it yet, but that doesn’t mean it’s not coming.

LLB: Well, my only response is “Oh, to dream,” because that is definitely not the reality here in the States.

WST: To be clear, still no tigers, right? I look around --

LLB: Ha ha. Circling back to the updated draft report, I know comments are due by September 11, an important date here in American history. What do you -- What are you suggesting your clients and other stakeholders do? Comment, or is this a done deal, or what advice can you give to our listeners?

WST: It absolutely is not a done deal, so make a submission. A year ago, we had a draft State of the Science report that had the OECD definition of PFAS. Today we have at least one important exemption. There are other possible exemptions that could be sought. I think with a science-based position, everything can still be on the table. There are some people in the world that think once the government write things down, they never change. That is not the case. If there is evidence that can be adduced into the record, absolutely make a submission.

Even after the deadline date, there are ample opportunities to meet with EC and HC. They are seized with this issue, and they also don’t want to do something that really puts Canadian manufacturers at a disadvantage. They want to make sure that what they are doing is going to protect Canadians and the environment in which they live from an unacceptable exposure to the class of PFAS substances that can, or could be, seen as a concern.

I’ll highlight something that’s kind of unique to CEPA that may be new for your listeners. We embed the precautionary approach directly into our statute, and so it’s not whether or not something *is* toxic. It’s whether or not it may become toxic in the future. The updated CEPA also speaks to the cumulative effects of chemistries and the impact that that has, so it’s not just is this substance hazardous, yes or no? It’s like, does it have the potential in the future to demand regulation today to prevent that future malady from coming to fruition?

LLB: Got it. Before I let you go, Scott, your practice is much more extensive than PFAS. What other blockbuster initiatives are you working on, or what’s on your radar that you may wish to share with our listeners?

WST: We have the implementation of the updated S-5 CEPA legislation. There are -- I think there’s a dozen consultations that will happen over the next 18 months. The one that’s the biggest is what is a substance of highest risk? And of course, I just -- with tongue firmly planted in cheek -- I would say it’s PFAS, of course.

No, but seriously, by operation of law, anything that goes onto Schedule 1, Part 1 has to be banned in Canada, so that would include things that are persistent, bioaccumulative, and inherently toxic. But the amendments to the Act are going to get into CMRs [carcinogenic, mutagenic, or reprotoxic substances] and also the possibility of endocrine-disrupting substances. You can imagine the ENGOs are going to come with a long list of all the things that they think are bad, including things that are painted dark purple. It’ll be up to industry to push back, firmly but politely, about what are those definitions of what should be a

substance of highest risk. It's a big job, and there's going to be a real diverse range of views on the application of that legal structure to what *we* call the risk-based approach.

There are some critics today that are already saying, "If it's an automatic ban, it can't be the risk-based approach." But what the Minister said at Parliament, and what his staff said at Parliament as well, is that they still are going to do a risk assessment. So if there is a substance that doesn't have exposure in Canada, it can't qualify to go on Schedule 1 Part 1 because it can't -- it's not toxic. Before it can get onto Schedule 1, Part 1, there has to be a demonstrated exposure.

Now, what might happen is that substance might get thrown onto this newly created Watch List. Again, it sounds very sinister, but it's really what I call the defamation list. What the Minister said under oath at Parliament was, if a substance is put on the Watch List, it's because it's gone through a risk assessment and it has a particular hazard profile, where, if the uses in Canada change, it could very well lead to an exposure of concern. So we're going to put it on the Watch List, and we're going to tell industry to stay away from using it. But --.

LLB: Really, the government would say -- even in advance of a risk assessment -- ?

WST: No, after a risk assessment.

LLB: Okay, because that -- brings new meaning to your defamation list, to be urging people to avoid a substance that exhibits properties, as from a hazard perspective, that may or may not pose a risk following an exhaustive risk assessment.

WST: Again, what I would tell you is they would say that the substance goes through a risk assessment, and there is no exposures of concern to that substance. That might include an inside-the-fence use at an industrial facility.

LLB: Exactly.

WST: It could refer to something prior to a chemical transformation. If I use it as a precursor and the chemistry is destroyed, or it changes from this very dangerous chemistry to the equivalent of chocolate chip cookie dough, these things happen in industrial facilities. Like I said before, we don't want to create a situation where we're punishing Canadian industries when there's no actual route of exposure to the general population. Another thing that's interesting about the Canadian situation, which doesn't apply in the United States, as best as I can tell, is that we do not factor employment exposures into our risk assessments.

LLB: That is very definitely different.

WST: We have a constitutional delineation of authority which says that the provinces are responsible for that. Let me tell you, it is the global gold standard in terms of exposure in occupational settings in Canada. We have all of the requirements that you could imagine for personal protective equipment, as well as air exposure scenarios. In six of ten jurisdictions, we just photocopy the ACGIH [American Conference of Governmental Industrial Hygienists] outcomes and say, "Thou shalt not have an air exposure limit that's different than what the ACGIH says." So not exactly risk-based there either, but it's only in those really extreme cases of bans where you'll see an application that's taken out of an employment context. The overwhelming majority of the work that we've seen from the risk

management context deals with very specific products, or some type of an exposure through the combustion of fossil fuels, for example.

LLB: Right. Wow. That is very, very different than what we are experiencing here. Very interesting.

WST: And yet, I can't get pink Gatorade, so I'm square with that.

LLB: Well, is life worth living, Scott?

WST: But you guys don't get ketchup chips, I was told. Like, what? How is that even possible?

LLB: Well, any closing thoughts for our stakeholders generally? You keep your finger on the pulse of things going on here, south of your border, and we keep an eye on things north of our border. But any words of wisdom you can share?

WST: When your chemistries are up, be engaged. Right?

LLB: Yes.

WST: HC and EC have very good global reputations, and in most respects have already done much more work than everyone else, every other jurisdiction. The decisions of HC and EC are very well respected and often replicated around the world, so if you think you're going to have a problem in the United States, or Australia, or Korea, look to what HC and EC have already done, and if they've already done a risk assessment, you should mine that for the outcomes, provided that you like the outcome.

The other thing you can do is if HC and EC have not made a final conclusion on these substances, and you know they're going to be up for debate in other jurisdictions, lobby Canada, because the Canadian assessments are good for export. Again, there's a very high level of respect throughout the chemicals management community for what HC and EC have been doing since 1999, so Bill Clinton was President when we started our Chemicals Management Plan.

LLB: You are the man to know in Ottawa, Scott. Is there a link, or a website, or a LinkedIn address that you can share with our listeners on how they can find more about you, and your firm, and all the interesting areas in which you engage?

WST: I have a website. It's Thurlow.law. Always happy to have new friends and new followers, but I think it's kind of like Six Degrees of Kevin Bacon. It's pretty easy to find me if you ask someone, like yourself, who's as connected in the United States sector as you are. Again, I would welcome a conversation if any of your friends and clients are having issues, or think that they might have issues in Canada. I really just love to have new challenges. I will say this: It is rare indeed that HC or EC won't take a hard look at something that is evidence-based. I can maybe count on one of my hands situations where you've seen a true breakdown in the process.

Ultimately, I will tell your friends one more thing about Canada. Being added to Schedule 1 just means that they have the authority to risk manage. It doesn't mean the end of days. I remember in 2006, 2007, something was added to what was then known as the Toxic Substances List. We changed that name. That was the first thing we did in Bill S-5. It's not toxic, because CO₂ is not toxic. I'm emitting it right now. It's only in certain circumstances,

and the cumulative effects of that CO₂ that make it toxic. Understanding that if you reverse-engineer the process and say, “Okay, we can live with specific outcomes, provided that these essential uses -- or these very high value uses -- are protected and there’s no exposures of concern through those high-value uses.

I would almost call it your grandfather’s utilitarian Chemicals Management Plan. It’s *very* practical.

LLB: That’s super high praise.

WST: Yes. There are aberrations from it, for sure, but the best way to get an aberration is to not engage. If you engage in a thoughtful and sound way, there will be a very clear record of that engagement.

LLB: Scott, thank you for sharing your insights, sharing your humor. You always make me laugh. You have such a wonderful sense of humor presenting information in a way that’s so entirely relatable. I am really, really pleased that you were able to share some time with us today. Thank you for being here.

WST: It is absolutely my pleasure, and I look forward to our next chance to chat.

LLB: Very good.

I hope you have enjoyed my conversation with Scott Thurlow on Canada’s updated Draft Report on the State of PFAS and his engagement in this initiative and many other Canadian law and public affairs matters.

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