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Mercredi 4 août 2004

**Standing committee on
justice policy**

Emergency Management
Statutes Review

**Comité permanent
de la justice**

Examen des lois ontariennes
sur les mesures d'urgence

Chair: David Oraziotti
Clerk: Katch Koch

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 4 August 2004

Mercredi 4 août 2004

The committee met at 1005 in room 151.

EMERGENCY MANAGEMENT STATUTES REVIEW

The Acting Chair (Mr Mike Colle): Ladies and gentlemen, the standing committee on justice policy, dealing with emergency preparedness, will begin our second session here this morning.

Just to let members of the committee know, we hope to convene a subcommittee meeting later on this afternoon. We are also putting together panel round tables based on different sector interests, and we'll let you know about the clusters. I will be doing that with the clerk this afternoon. We're going to do something very impressive with these panels that we'll be setting up whereby we'll have expertise from emergency services maybe on one panel, like police, fire, the EMS; we may have health providers on another panel. They'll be participating at the same time with members of the committee. So that will start next week, I think, Mr Clerk?

The Clerk of the Committee (Mr Katch Koch): The 16th.

The Acting Chair: The 16th, because the committee's not meeting next week.

MINISTRY OF AGRICULTURE AND FOOD

The Acting Chair: The first deputants today in helping us to review emergency management statutes in Ontario are from the Ministry of Agriculture and Food: Don Taylor, assistant deputy minister, research and corporate services division; and Dr Maurice Bitran, director, innovation and risk management branch. Thanks for being here.

For the members of the committee, we are noted here as having 20 minutes. What I'd like to do is probably extend that to at least a half-hour, because we have some time here. Mr Taylor and Dr Bitran, we can go with your lead. In other words, if you'd like to leave 10 or 15 minutes at the end for questions, it's up to you; there's a bit of flexibility there. I'm sure a lot of interested committee members will ask you questions, so I hope you leave some time at the end.

1010

Mr Don Taylor: Thank you, Mr Chairman. It's our pleasure to be here to provide you with some information

as it relates to our area of responsibility in emergency management, and that's the food and agriculture sectors.

I understand Dr Young was with the committee yesterday and spoke about the issue. I know he would have made some comments on the four pillars of emergency management: mitigation, preparedness, response and recovery. I guess it's our assumption in trying to put together comments for the committee today that you would be particularly interested in response, but I'm sure you recognize that the other phases are also important. I think Dr Young would also have referred to the fact that in the case of some emergencies there are cross-jurisdictional issues, federal-provincial issues and so on. That's particularly relevant in our area, so we'll be referring to that on a few occasions.

I've got some slides here and hopefully you've got a copy of the slide deck in front of you, but I'll try to move through these fairly quickly and, as the Chairman has suggested, try to leave a few minutes for questions at the end.

The purpose of this first slide is just to give you some idea of the size of the agri-food sector in Ontario. I know Dr Young had a few slides on "Did you know that...?" Well, I guess this is a "Did you know that...?" slide as well that, besides being a sort of centre of population and industrial capacity for Canada, Ontario is also a major agri-food contributor, particularly on the food side, where we represent some 40% to 45% of the Canadian total in terms of food processing and food production capability.

The second slide here just gives you some idea of the diversity of Ontario's agriculture. This is primary agriculture, this slide. One item that I'd like you to take away from that slide is that just about 50% of our total agricultural receipts come from the livestock and poultry sector. Another important issue is that the livestock and poultry sector, although it is spread across the province, is particularly concentrated, as is much of our agriculture, in the southern part of the province, and particularly in the southwestern part, where much of the population is as well. So some of the issues we face in terms of issues management and emergency management are not the same as they would face in, say, western Canada, where the population is a lot more sparse in the major agricultural production areas.

We have had experience in dealing with incidents and emergencies that had agri-food impacts in the past. Probably the most important two, and the ones that there

was the most activity around, are the first two there: the 1989 Hagersville tire fire—a lot of concerns about contamination of the agricultural production area around that—and then of course the large ice storm in eastern Ontario and western Quebec back in 1998, and a significant effort there. But there have been a number of other issues, including the SARS issue. We were, I suppose, somewhat on alert because of the potential animal reservoir issues relating to SARS. It had concerns both in the agriculture sector as well as in the greater human health sector.

I've just identified two recent out-of-province emergencies relating to, in this case, animal or livestock disease. Just to let you know, in the case of both of those we were in the early stages of emergency response. One doesn't really know how widespread they are when they're first reported. I suppose our major activities relating particularly to the BSE finding in Alberta relate to recovery, of the four areas of emergency management.

I think it's also fair to say that there have been several significant incidents where we have to learn lessons from incidents beyond our borders, and you can see a list of them there. The list could be longer than that. I guess the key issue here is that there were significant economic impacts in all of those areas and considerable human health impacts, particularly in the BSE incident in Great Britain, and then it spread throughout Europe. Also, although they were incidents beyond our borders, they certainly have heightened public concerns in Ontario relating to agricultural emergencies, and particularly livestock and poultry diseases.

What are the types of agri-food emergencies we have seen or could see? Here is a list on this slide: certainly natural emergencies—ice storms and floods—and we had two examples of that; I suppose what we could call man-made, or accidents—nuclear or chemical issues; foreign animal disease outbreaks is obviously a fairly large one. The type of activity that would be involved here and which organizations would be engaged probably depend on whether this is a disease that's specific to livestock or poultry or whether in fact it's what we call a zoonosis, a disease that potentially can be spread to humans and has human health impacts. Certainly BSE, or mad cow disease, and avian influenza are two examples of that. In the case of foreign animal disease outbreaks, once again there's an immediate national impact, and basically a federal lead in those issues, with provincial support, would be our role.

The comments on foreign animal disease also relate to plant diseases and pest infestations. There could be issues around food contamination, whether that's microbiological or chemical. Once again, I think that because of the concentration of the food processing industry—we don't have as many small plants; they tend to be larger mega-plants now—the potential impact of an issue is considerably greater. In the case of food contamination and food recalls, seldom does this get to a full emergency response, but there is significant mitigation recall activity taking place all the time.

Other issues include environmental impacts—potentially pesticide or manure spills—and I guess added to our list in recent years are the concerns that some of these issues on this slide also could be caused deliberately, so potential bioterrorism or other terrorist-type activities.

If we look at risk—and we try to take a risk-based approach to our emergency management planning—it is generally defined as sort of the likelihood times the impact of the event, if it happened. I think we could probably say that in the case of a number of these issues, both are increasing. Particularly the impact I think is increasing; the likelihood perhaps not in all cases, but if we add the sort of deliberate activities to that, certainly we could see the likelihood also potentially increasing over the last few years. These emergencies could have an impact on human health, particularly if it's a zoonosis, on the economy, both provincially and nationally, and on our trade status worldwide, which is important to our agri-food economy, and also on animal welfare, and environmental damage.

We mentioned that the impact is increasing. I think there are a number of contributors to that: the heightened public concern or expectations relating to human health and safety, again brought to light by some of the incidents around the world, but certainly we feel there's a much greater concern relating to zoonotic diseases and food safety issues. Diseases with potential animal reservoirs, such as West Nile virus, have also raised public concern.

The international trade environment is, I think, much more sensitive in the past few years. Foreign animal diseases have had huge trade impacts, and we only need to look at the finding of a single BSE cow in Alberta as an example of that. In fact, these impacts aren't always related to the true human or animal health impact; they sometimes are much greater than that.

The cross-jurisdictional aspects—there are certainly significant cross-jurisdictional requirements with respect to preparedness response and recovery, and that is at the federal, provincial and municipal levels.

I think we also see, because of the increased impact, that industry expects to be involved, really at all stages: in the mitigation, the preparedness, the response—obviously they would need to be—and in the recovery phases, and I think it has expectations around potential compensation as it relates to recovery.

The bottom line here: What can we learn out of all of this? I think we see that although there have been incidents in the past, because of this increased impact, more of these incidents are becoming what we would classify as emergencies and I think requiring more attention.

In the case of ourselves, the Ministry of Agriculture and Food, a relatively small ministry, historically I guess we've been primarily involved with the mitigation stage of emergency management, to some extent on recovery, but primarily on trying to prevent the issues from ever happening. I think we are now challenged to move more to emphasis on the formal preparedness and response phases.

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I'd like to deal now with some of our activities as they relate to preparedness and response. This slide contains some of the activities that we are engaged in. We've been assigned through the Emergency Management Act a special responsibility area, that of agriculture and food emergencies. We have an all-hazards-based plan, the food and agricultural emergency response plan. We have a ministry emergency management coordinator, a ministry operations centre at our headquarters at One Stone Road in Guelph, a ministry action group response system and a situation response team that for many years now has been on a 24/7 basis.

We participate in emergency simulation exercises, not only those held centrally by EMO such as the annual nuclear exercises—and there is one, I think, this October; that will be another exercise—but also a number with industry within our own area, so a foot-and-mouth disease simulation back in 2000, a poultry disease simulation last year, and another large poultry disease, this time specifically on avian influenza, that's being planned for this November.

A lot of our activity in terms of preparedness relates to plans, so, as I mentioned, we have this all-hazards food and agricultural emergency response plan with preparation of a few annexes to that. We have a business continuity plan that is in the process of being further developed, a nuclear plan. We also have in draft stages a few other plans: an Ontario critical pest introduction plan; a joint Canada-Ontario foreign animal disease response plan, and that one is basically, any day now, I'd like to say, going to be signed by the three main signatories, including the provincial government in the form of ourselves and Dr Young, and the CFIA, the Canadian Food Inspection Agency. We also have a food-borne hazard and illness outbreak investigation memorandum of understanding at the draft stage with CFIA, the Ministry of Health and Long-Term Care, Health Canada and a number of other participating organizations.

Other activity relating to preparedness: We have a considerable amount of work taking place around geographic information system mapping, improving our capability in that area, originally using data that we obtained from the farm business registry process that we're responsible for, but also some data from other ministries, including the Ministry of Natural Resources. We're working fairly closely with the various commodity groups—Dairy Farmers of Ontario, Chicken Farmers of Ontario and so on—to attain better data. Certainly I think they have better data sets in terms of their producers: who they are, their size of operation, where they are and so on. We're attempting to create a general agri-food emergency management database to capture this information for potential use in emergency response. We also have, in terms of preparedness, laboratory services available through our lab in Guelph for emergency testing.

In terms of response, again I would just highlight that in some of these issues we have a lead role and in some

issues we have a support role, particularly as it relates to our role with the federal government and the Canadian Food Inspection Agency. We have a very close working relationship with the CFIA and with the agri-food industry. In terms of some specific types of emergencies, food contamination or food recalls, the CFIA is the lead authority. We work with them closely around that and in some cases would be identifying issues for them to look into. The Food Safety and Quality Act has the authority provisions to trace products, if we feel that's necessary, based upon the authority that already exists within the CFIA and also the Ministry of Health and Long-Term Care relating to food recalls. As I mentioned before, we have a draft multi-agency protocol developed with the CFIA, health and long-term care, environment, natural resources and, federally, Agriculture and Agri-food Canada and Health Canada.

In terms of foreign animal diseases, I've mentioned this I guess in a few previous slides, but this triggers an immediate national response if it's a reportable foreign animal disease identified by federal legislation. CFIA is the lead authority on the response to these diseases and, once again, as I said earlier, the response varies depending on the status of this, whether it's a zoonosis or a disease that's specific to livestock or poultry. It may involve participants at many different levels—municipally, provincially and federally and various ministries—particularly if it had human health impacts. If in fact a foreign animal disease is located, then there's a very high likelihood that the borders would be closed to trade, as you saw in the BSE situation.

In terms of industry coordination, we also work very closely with industry to develop emergency plans. The industry is very much involved in all of our simulation exercises, and certainly we need to continue to carry out that coordination with respect to a number of issues: biosecurity, disposal, movement control and communications.

In the last two slides I'd just like to focus on what we see as some of the challenges as we move forward with our planning and preparation. I don't think I can identify for you today that any additional authority is required in all of these. I think we're still working on that with a number of different organizations, and I don't think it would be our intention to suggest that more authority is needed if the authority already exists within other federal or provincial legislation and agencies. But as we prepare our plans, certainly there are some issues that we've identified that we're continuing to work on.

I'd like to focus on the livestock health issues, but a number of these issues we're identifying here could also relate to plant health or natural and other emergencies, but we'll just focus on some of the key livestock health issues.

The first one is the cross-jurisdictional coordination for foreign animal diseases with CFIA relating to the national Health of Animals Act. Once again, if this foreign animal disease were a zoonosis, it would be much broader, with many more agencies and organizations

involved. There are diseases that are classified as reportable or foreign animal diseases, but there are also some diseases of significant economic impact, particularly regional economic impact, that are not reportable and that the federal government does not have mandatory authority relating to. So I think an issue for us is authority relating to some of those non-federally reportable diseases. An example of such a disease would be bovine virus diarrhea, which affects dairy and beef operations. We have had outbreaks of that in the past and need to move quickly to bring them under control if we're to stop significant economic impact.

Another issue that I just identify is the early warning protocols and controls and, I suppose, authority. In a number of these incidents we would like to be able to move quickly, take decisive action quickly so they don't become full-blown emergencies. The authority for various agencies to do that, I think, is something that is being examined.

A number of issues relating to restriction of animal movement: We don't currently have authority to do this animal movement; perhaps zoning the province into different zones to try and keep a disease outbreak isolated to a particular area. Potentially, one might also consider the authority to close off our provincial borders if there were a disease identified in Quebec or Manitoba that we wanted to try and avoid getting into Ontario.

Compensation is an issue and a particularly important issue if we're going to have adequate response and reporting relating to animal diseases, and compensation as it relates potentially to those non-federally reportable diseases in particular, because there is a federal process and plan that the CFIA administers relating to their reportable diseases.

1030

Emergency humane slaughter could be an issue, the authority and compensation aspects of that; particularly disposal of animals or animal products in emergency situations. Certainly there are established protocols for normal times, but there could be issues relating to emergency situations.

Another issue is access to information in an emergency. Both our own Freedom of Information and Protection of Privacy Act as well as the federal PIPEDA restrict use of information based on the reason for collecting the information and an expectation of confidentiality, but in the case of emergency, some of this information—for example, laboratory results—may be needed to help react quickly to potential emergencies.

I'd identify two other issues. I mentioned that we have some laboratory capacity, but whether that capacity would be adequate would depend on the size of the emergency. Certainly in a number of cases, it probably wouldn't be adequate.

Disease surveillance: Currently, we operate a primarily passive system based upon samples submitted, but we can see, as concern rises, that this needs to become more active.

The final point I'd make is that on all of these challenges there are issues around coordination, authority and, although I know it's not this committee's responsibility, issues around resources for those potentially new responsibilities.

Those are my comments, Mr Chair. I hope I haven't gone too long. I probably have, but I'll turn it back to you.

The Acting Chair: Thank you very much. We have about five minutes per caucus. We'll start with the government side.

Mr John Wilkinson (Perth-Middlesex): Thank you, Don. Specifically, I'm going to talk about the simulations. I know of one that's been going on with pork, where the poultry industry and pork have gone together. I know, as the member for Perth-Middlesex, some of the things we've learned in the poultry industry are very important to my constituents.

I was at the Ontario Pork Industry Council. They had a presentation and they talked about the last simulation—there's another one coming up—and just specifically about where we have some trouble with jurisdiction and about being able to jump on these things early enough. I've been reading about the response in British Columbia to avian influenza, that if the government people there had a chance to do it over, they would have jumped on that situation a lot quicker.

It goes back to the situation I see coming out of the last simulation, and perhaps this one that we're having this fall. One of the specific suggestions I was made aware of as a member was the idea that we don't have a chief veterinarian in Ontario, someone with the authority to come in and say, "No, no, I'm the chief." We have our chief medical officer of health. Everybody knows that if push came to shove, it would be Dr Basrur, and she would deal with it. She'd be at the top of the list. But we don't have that for foreign animal disease. So we get into this whole thing of, is it the CFIA, is it the federal people or is it us? I was wondering if you might comment about whether or not we might be able to break that log-jam by having somebody who's clearly identified as the person when there's a foreign animal disease that's been identified and we need to get restriction on movement. We need to be able to come in there and contain this just as quickly as possible. I would be interested in your comments.

Mr Taylor: In fact, we do have a provincial veterinarian that is named. I think, to your question, though, it's the authority of that provincial veterinarian to take action, and certainly they're not comparable authorities to what Dr Basrur would have as chief medical officer of health.

A number of these issues that I had identified in terms of challenges are also issues that the industry has identified. I know the poultry industry has taken a real lead here and worked with a number of the other organizations, Ontario Pork included. I think it is becoming their position that we need to look at the potential for stronger authority. They've identified the need for an

animal health act specifically to provide a provincial veterinarian or chief veterinary officer with considerably more authority to take action. I think your identification of early action—early action is what's required here if you're going to avoid the significant impacts.

This is the type of thing we are looking closely at. We are working with Dr Basur and the Ministry of Health, as well as with Dr Young and other ministries and with the federal government. Again, I think our concern is we don't want to have significant unnecessary overlap of authority, but at the same time we take seriously the concerns of the industry. They've become much more concerned recently as a result of some of these other activities that we identified.

Ms Laurel C. Broten (Etobicoke-Lakeshore): One of the things that we heard yesterday and even before that is that the province can only do as good a job as the information they receive from the front lines, whether we're talking about EMS services or otherwise. I'm wondering if you can help the committee identify whether or not your ministry is able to receive the information you need to be able to undertake emergency management in the agri-food area and, secondly, whether or not as a provincial ministry you have the tools necessary to be able to do the job you need to do. I suspect that over the last number of years, if you look at the emergencies we've had, there has been some debriefing after those emergencies. Have we examined how we could have done better, and is there information you can share with us as we look at legislation that's not been looked at for many years and try to figure out the tools we need in this province to do a better job dealing with emergencies?

Mr Taylor: In terms of receiving the information early, as I mentioned, I think we have a pretty strong working relationship with the industry, with both the production sector and the processing tech sector, and those really are the front lines of the industry, as well as our field staff presence and our working relationship with health units, the federal government and so on. So I think we have access to early information, but as I've identified here, there are some issues with how that information could be used, how it could be shared and what we could do with it that certainly will take some more work. I don't know if I have a short answer to your question other than to say I think there are issues that we're identifying here that need to be further examined and a determination made whether more authority is required to take action on them.

Ms Broten: We can sit back—and there's always a desire to have more authority, more information. The challenge we face is balancing authority against people's privacy, as you've indicated yourself. Is there a specific example of a circumstance in this province where agri-food was not able to do their job because they didn't have access to information?

Mr Taylor: I don't think we could identify any specifically at this time. As it relates to foreign animal diseases, we've been fairly fortunate in the province not to

have had some of the situations that have occurred in other provinces and other countries. Certainly we can identify potential situations around, let's say, disease outbreaks, particularly non-reportable disease outbreaks, where currently there are significant questions around whether we could share the information we receive through our provincial lab; if we were to get back a positive for a particular disease, let's say, whether we could share that information with the federal authorities that we needed to share it with in order to put the plans in place. I don't have any specific examples from the past but certainly as we look forward and look at potential situations, I think there are issues, yes.

The other comment that Maurice just reminded me of is that the information set is not complete yet. I mentioned that we're working with producer organizations and industry organizations to try and get a more complete data set, but not all of those producer organizations have complete data sets themselves, so that's another issue as it relates to developing that GIS information base.

1040

Mr David Zimmer (Willowdale): Two questions: It seems to me that this whole issue revolves around two points; that is, how quickly you can identify a crisis situation, a situation that needs intervention, and, once having identified it, how quickly you can marshal the tools or resources that you need to deal with the crisis. So on those two issues of how quickly you can identify it and how quickly you can marshal your resources—and that's everything from labs to staff, all of those things—what do you say the three biggest challenges are, in order of priority, in those two things: identifying and marshaling the resources? The three biggest challenges, the nuts-and-bolts challenges.

Mr Taylor: In terms of identification, I think it would be the ability to share the information. I think we do have a reasonably good system of early identification, but sharing the information in order to start that response is an issue.

I don't know if I could identify two additional ones with respect to the response. I think we have identified a number here, depending on what the situation is: if it's a livestock disease, whether it's reportable or not; the authority to potentially restrict movement and try to isolate that, because that certainly is an important issue that we would need to move on quickly. And then I guess I would probably also identify—since the co-operation of private sector industry would be based upon their assurance that there would be some compensation there for them if they proactively work on this, I think that's also an important issue. But there are a number of others, depending on the particular situation.

Once again, I think we've been focusing a lot on livestock diseases. There are other emergencies here as well.

Mr Zimmer: My second and last question is, in terms of identifying, which is the first step to these things, it seems to me that the whole issue of compliance by your

stakeholders or the producers and so on is a big issue; that is, the self-reporting. There's an inherent conflict of interest whether to identify a problem that you're having if you're a meat producer. What challenges do you face in encouraging or getting full compliance from those folks on whom you essentially rely to identify a problem?

Mr Taylor: Perhaps I alluded to that in my earlier answer. I think they need the confidence that, by being proactive and identifying something, they're not going to be sacrificed for the benefit of the greater industry. Certainly I think our producer group in Ontario is very proactive in that we've seen significant proactivity in the poultry and other industries lately. But the issue of BSE in Alberta certainly raises questions with a lot of producers. If one found a case of suspected BSE—we see the impacts that the one has had—what's your best decision? We know theoretically what their best decision is, but there are a lot of questions among all producers based upon the length of time that the borders remain closed.

Mr Tim Hudak (Erie-Lincoln): Thank you, gentlemen, for the presentation. I apologize if I missed this, but I wanted to make sure I understood it fully. With BSE in Alberta or avian influenza in British Columbia, did either of those provinces trigger their emergency measures legislation in dealing with those crises?

Dr Maurice Bitran: Yes, they did. The case in British Columbia, though, was that the provincial emergency resources were triggered not at the beginning of the incident, and I think one of the lessons learned was that early intervention by the provincial emergency organization in bringing all those resources to bear in dealing with an emergency is something that is desirable. That's very much the approach that we're taking in Ontario, and that's why we have those working relationships with emergency management.

Mr Taylor: I should just mention that together with the industry and CFIA we are working on a lessons-learned-from-BC session, which is going to be held at the end of August, where a number of the key authorities from BC will be coming to Ontario to present information to the poultry industry and the other livestock industries to help them with their planning.

Mr Hudak: Does the British Columbia legislation have any advantages that helped them to deal with the avian influenza which we may want to bring in to the legislation of the province of Ontario, or if they had done it even earlier, to deal with it more directly or promptly?

Dr Bitran: I don't have details on the legislation. I would say, though, that if you compare the response in British Columbia with the response we had in Niagara-on-the-Lake recently, if you set legislation aside, I think what happened on the ground was a much quicker and more proactive action in Ontario. Luckily it wasn't avian influenza, but if it had been, we would have been on it much faster than was the case in British Columbia.

Mr Hudak: The point I'm getting at is that Dr Young made a very powerful presentation yesterday about the need for additional measures in Ontario's Emergency

Measures Act to try to update it, and some advice was to look at what other jurisdictions have done. Some of the things are powerful tools that wouldn't be taken lightly but may be important in particular situations, like the power to evacuate, to regulate and prohibit travel, mandatory recruitment, fixing prices and that sort of thing. From the agriculture and food point of view, and given what has happened in Canada, unfortunately, in the last couple of years, do you see a need for some of these powers in the Emergency Measures Act?

Mr Taylor: Yes. I'd comment on each of them specifically, but certainly there is the need to ensure that the authority is there and that we know how and when it would be used. In the case of British Columbia, we're looking forward to learning more about what they feel they did right and what they did wrong. Certainly it's our understanding that they did in fact have a plan in place and they did have some significant authority, but perhaps they didn't activate it as quickly as they should have. So there's the authority and the plan and there's also the implementation—how quickly one implements it—that's extremely important.

Mr Hudak: The timing on that is a bit unfortunate for this committee. Maybe through the clerk I could formally request that if there is information which comes—the end of August, I think, was your date—

Mr Taylor: August 31.

Mr Hudak:—that this committee could consider, it would probably be useful for all of us to gather that information.

I appreciate your general support for Dr Young's position in terms of additional powers. Are there any specifics, though, that you can think of from an agriculture and food point of view where particular powers could come in handy in addressing these issues?

Mr Taylor: As I mentioned, I think we've identified some specific ones here. In fact, there are a number of the issues that the industry has identified: restriction of animal movement, potential zoning, emergency humane slaughter, looking at disposal options and so on. I think there are a number that we could identify, but I do want to say that some of the work on specifically what's required is really just taking place—again, looking at some of the lessons from other jurisdictions. So we haven't got this to the stage yet where it's a completed policy. Certainly we have identified a number of potential areas where much more work has to be done, and that's what we're in the process of doing.

Mr Hudak: To be clear, those things that you mentioned, like emergency slaughter, restriction of animal movement and such, don't currently exist in statute under the ministry or any other ministry?

Mr Taylor: No, not with this ministry, and depending on the disease, perhaps not with others as well.

The Acting Chair: I just have a couple of questions. First of all, for the clarification of the committee and the public watching, could you explain zoonotic diseases?

Mr Taylor: I'm not a veterinarian or a doctor, but zoonotic disease generally is a disease of animals that

also has the potential to infect humans and have human health impacts. There are a number of diseases that livestock could get which have no human health danger and which are strictly an animal health danger, but there are some diseases that could have human health implications.

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The Acting Chair: So the reference to the cats in China catching that disease and it being transferred to humans was probably an example of that?

Mr Taylor: Yes, as would certain strains of avian influenza, as we saw early this year in Asia.

The Acting Chair: The next question I have is, can the Ministry of Agriculture or the Ontario government restrict animal movement from one province to another? In other words, if there are animals—livestock or something—in Quebec that might pose a hazard to livestock in Ontario, can we as a provincial government restrict the cross-border movement interprovincially?

Mr Taylor: No, we couldn't.

The Acting Chair: What would we have to do?

Mr Taylor: I think that would require working with the national authorities to try to develop a plan around zoning and putting the restrictions in place that would be necessary to make that work.

The Acting Chair: Do you think it would be a good idea for a provincial government to have those powers—as you call it, zoning—to restrict the interprovincial movement of animals?

Mr Taylor: It could be important that the authority be there. Whether it's something that the provincial government needs to have or whether it's something that could be done in conjunction with the federal authorities, I think it would certainly be important. Again, that depends on what the emergency is and what the disease is. So zoning is much more important and restriction of animal movement is much more important in highly contagious diseases than it is in some other diseases such as BSE.

The Acting Chair: So you're saying that right now that's being worked on, that kind of protocol?

Mr Taylor: Certainly that's part of what we're examining as we move forward on developing our plans.

The Acting Chair: The last question I have, Mr Taylor, is in terms of the reference Mr Wilkinson mentioned about the need for a provincial veterinarian with some teeth. Right now we have a provincial veterinarian. Who is that provincial veterinarian?

Mr Taylor: Dr David Alves.

The Acting Chair: Would you think it would be advisable for this committee to look at the potential of enhancing the powers of Dr David Alves? Should we perhaps begin a scrutiny of that, just to see if it potentially might be of value to have more powers or certainly the ability to direct certain activities within the animal community?

Mr Taylor: What we've identified here is—

The Acting Chair: I'm not asking whether you're in favour of giving more powers or not, but whether we should perhaps look at that area.

Mr Taylor: Certainly it's something that needs to be looked at. Whether that's the appropriate vehicle or not—but that certainly is one way of putting those powers into place.

The other comment I would make is that part of the recommendations of the recent Haines report relating to meat safety also talks about a similar issue. So it's certainly being looked at now and is something that the committee may want to consider, yes.

The Acting Chair: That's very helpful. In fact, I'm just wondering whether we should request that some member of the committee—or we could do it informally rather than asking the researchers—on meat safety either meet with the committee or make a presentation. That might be helpful because I think it deals with some of these areas and it's right up to date. It might be interesting. Justice Haines might not be available but certainly one of his researchers might be made available to the committee. I think it might be of value to us.

Ms Broten: I just have one additional question that follows up on the report from Justice Haines. Did any of the 113 recommendations made by Justice Haines touch on aspects that would be helpful in terms of emergency preparedness? It sort of goes to your active versus passive disease surveillance. In some ways what Justice Haines was critical of was the fact that perhaps even in the field we weren't as active as we should be getting out there, examining, having folks on the front lines. I'm wondering whether that is an additional hurdle that is faced in this whole area of emergency management and that there's simply not the capacity on the front lines to do sufficient active surveillance.

Mr Taylor: To your question, there were a number of recommendations Justice Haines made that would relate to emergency management as well. He talked about capacity for things like biosecurity traceability, registration of producers. He referred to the disposal of dead animals and animal products and materials. He referred to the need to have a foreign animal disease plan signed between the province and the federal government. So there are a number of recommendations made in the context of meat safety that are also applicable to looking at emergency management, yes.

The Acting Chair: If I could just clarify that, if we could ask Justice Haines to make himself or his designate available to the committee, I think that would be helpful for our information on meat safety. I think it would be transferred right across—

Interjection.

The Acting Chair: No, as an individual presentation, I think it might be helpful.

Thank you very much to both of you for the excellent presentation—very helpful.

MINISTRY OF THE ENVIRONMENT

The Acting Chair: The next presentation is the Ministry of the Environment: Gary Zikovitz, the emergency management coordinator; and Michael Williams, assistant deputy minister, operations division, Ministry of the Environment. You have about a half-hour. If you'd like to leave some time at the end for questions, we'd appreciate it. Could you identify yourself for Hansard?

Mr Michael Williams: Thank you very much, Mr Chair. My name is Michael Williams and I'm the assistant deputy minister of the Ministry of the Environment's operations division. Gary Zikovitz, who's our emergency management coordinator, has passed out overheads. We prepared them for you and the members of your committee, sir. It may spark an opportunity to twig questions for later. I'm mindful of your time. I think we can get through this probably in about 15 minutes and then we'll have some time for questions.

The Acting Chair: That's great.

Mr Williams: Basically what we'd like to do this morning is to tell you how the Ministry of the Environment discharges its mandate with respect to spills and emergency preparedness around spills. We're going to give you a little bit of a discussion around the legislation that we currently have in Ontario relating to our responsibilities for spills.

We'd all like there not to be spills. In this province we get reported anywhere between 3,000 and 4,000 spills on an annual basis, and they vary in significance and severity. We do have provisions, though, to ensure that dischargers of those spills are accountable for them. There are many roles and shared responsibilities across different levels of government and agencies. We have roles, for example, of the local municipality and the local authorities, we have provincial government roles and we have roles with the federal government. Specifically to the Ministry of the Environment, we have an order in council that assigns responsibilities for us to deal with emergencies that are relative to spills that adversely impact the natural environment.

The spills legislation we have in Ontario has been around for a little while and we've had a fair amount of experience with it since 1985. It's basically what's known as part X of the Environmental Protection Act. There are several key provisions to that legislation that I think are important for us to be cognizant of.

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First of all, what constitutes a spill? That is defined in legislation. Also defined is the requirement or the duty, as it's known, to report if a spill situation should occur in the province, as well as the duty to restore and clean up the adverse effects that may occur as a result of that. In the legislation are specific provisions dealing with rights of compensation. There is also some provision in the legislation for the varied roles and responsibilities, but particularly some empowering authorities for municipalities in terms of their response. The Minister of the Environment has some very clear powers and authorities

to issue what are known as directions and orders. I'm going to go through them more specifically for the committee in a moment.

In terms of what constitutes a spill, basically one can think of it as being a discharge occurring to the natural environment where something escapes or is discharged out of an approved containment facility. It's really as simple as that. A spill would also occur where there is a discharge that is abnormal in either the quality or the quantity of the material. If you flip over, we've included some photographs in your slide deck to show you the wide range of spills we have.

On slide 7, for example, a spill to air is shown. Some members of the committee may be familiar with the Plastimet fire in Hamilton many years ago. That's an aerial view of that one.

As we go over to slide 8, most people think of spills as basically to water, or to air if they see smoke, but there are also spills to land. It can be things such as this, where there's a truck or vehicular accident and maybe there are diesel fuel tanks leaking on to the ground. That's a spill to land.

The last slide shows a cleanup in progress with respect to a spill to water.

I want to turn now to some of the specific provisions that exist in the legislation. The first one we want to talk about is the duty to report. This is under section 92 of the legislation. Basically, it says that the person who has control of the pollutant or the person who causes or spills or permits things to happen is accountable and has a legal obligation to forthwith report to the ministry if the spill as it occurs causes or is likely to cause an adverse impact to the natural environment. So there's a very clear, strong onus on the reporting of spills to the ministry. The ministry's ability to receive these reports is through our Spills Action Centre. We have a 1-800 number in place.

There is also a requirement in legislation that the spill be reported to the area municipality or the local municipality, so that they're aware of what's going on. In some situations the owner isn't the person who is involved in the spill or who causes it or vice-versa. So there is an onus on the owner and the person having control to also report the spill.

It's not enough simply to deal with reporting, though; there are duties and responsibilities for cleanup and restoration. They accrue both to the owner of the pollutant and to the person who has control. They have to clean up and restore what has harmed the environment as a result of their actions.

On the matter of compensation—that's on slide 13—persons are entitled to compensation for losses or damages that are sustained as a direct result of being impacted by the spill, and they're eligible for their costs and expenses not just from the owner but from the person who actually has control. So there are compensation provisions in the legislation.

On the next slide I want to deal briefly with the municipal response provision, because municipalities are empowered to respond to spills in their area of juris-

diction and they have the legal ability to do so. They have things like right of entry on to property. They have a provision in the legislation that protects them; they have an immunity provision, so that they can go in and take action but cannot be prosecuted for those actions.

There is also an onus or a requirement on the municipalities to co-operate with others. Many times when we see significant spills, we will find the municipality organizing the local response to that. Our ministry will be called in to assist and will be part of the team, and there may be other provincial agencies or authorities, as well as the federal government. Of course the municipality also has the right to request compensation for the costs of their actions in managing and controlling the spill—and, if involved, in the cleanup of it—from the owner or the person who is in control of the spill.

I'd like to turn for a moment and direct your attention to the specific powers our minister has as Minister of the Environment. They are significant and have been exercised from time to time in dealing with spill events. Our minister, first of all, has powers known as minister's direction, in that she can direct specific actions to occur. She has an ability to direct her staff in MOE to undertake appropriate action. She also has an ability to direct individuals or companies who might function as agents of the ministry; for example, to bring in pollution control equipment or cleanup equipment. She can issue that direction.

In the case of responding to spills, if there's a responsible party who we can identify but they may be bankrupt or may be in default, perhaps we can't identify them immediately and they're not known, or perhaps they find themselves in a situation where they need to request our assistance because of the magnitude of the issue before them, the minister also has the power to direct response in those areas.

On the next page, there's another portion of the minister's powers that we'd like to make you aware of, and that is the minister's order provisions. This gives the minister the ability to issue an order to those who have a responsibility in the situation. The minister could issue an order to owners of affected properties. The minister could issue an order to municipalities, if it was deemed appropriate to do so, other public authorities who might be involved in this or any person who may be either affected or has an ability to assist in the spill. These are very broad powers. They are sweeping powers, and they are exercised judicially as need be, depending on the severity and magnitude of the event before the ministry.

On slide 17, I'll take a moment to talk a little bit about the Spills Action Centre—that's the reference to that 1-800 number you saw earlier. We operate 24/7 in the province. We have a provincial service at the action centre that allows us to take all the information we're getting and coordinate responses to various events. Basically, we deal with spills, but we also deal with some other environmental matters. We have been involved in events such as what occurred last year with the power

outage. Our Spills Action Centre is fully operational around the clock.

We also have a number of responsibilities, by agreement, for other agencies or authorities that don't necessarily have our capability of a 24/7 presence. As you can see on the slide, we do it for an agency—the Technical Standards and Safety Authority has an agreement with us. We have an agreement with the Ministries of Labour and Health provincially, and the federal government—Environment Canada—enlists our services. These are principally for after hours, when access to their offices is closed down.

On slide 18, one of the unique attributes of the Spills Action Centre is not just in receiving reports, but the staff there are trained for action. There are protocols in place at our facility that clearly give staff an ability to evaluate the incident. This is very important up front in the first few minutes or hours of responding to a spill. You have to know exactly what you're dealing with and be prepared to act appropriately. Our staff are trained to both initiate and coordinate responses, as required, to get action happening out there.

They play a very strong liaison role with other agencies. Frequently, if you were to see them in action, they have a call-down list of whom they go to first, second, third or fourth as they go through to make sure the appropriate authorities are informed of and aware of the event that's happening and have the correct action underway.

They play a role of providing information to key parties with respect to the event and, in some cases, they can do an early alert system. We can actually provide some warnings, as we did in the power outage. When we got into failed power situations, we were actually having some discussions with facilities such as water treatment plants around the province that were experiencing problems. So that's the role and responsibility of the staff there.

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Your next slide, slide 19, is simply a photo that shows you this is geared very much as a response centre. It kind of fits the mental image that most people have of staff, with all of the access there, the computer panels. We do have emergency power in the building, and it was fully operational, as I said, last August.

In terms of the field response—and I use the word "field" in relation to our ministry; I think perhaps some members of the committee are aware that we have regional and district offices, like many field ministries—our first response is what's known as a level 1 response. This is where the district is able to handle the thing. A typical example would be a truck that spills diesel fuel. We can get somebody out there quite quickly locally. They can manage it during business hours. But I also want to assure the committee that our field staff are set up on schedules so that we can respond 24/7. So if it's an after-hours spill, at the district level we have what we call an environmental response person, and it's part of our

environmental response program that's run after hours and on weekends.

A level 2 response would be a response that would be put into play if the spill was more significant. Perhaps a spill to water where there might be some impacts to downstream users would be an example of where we'd broaden the network on that spill. We have what's called a regional response then. In our regional offices we have scientific, professional and technical expertise. We can do things like air and water modelling; we can provide backup support; we can get involved in the taking of samples.

My purpose for showing the different levels to the committee is to demonstrate that as the significance of the spill or the event ratchets up, we have a defined process in place where we can ratchet up our resources accordingly.

The last level is a level 3. This would be a very significant event such as a fire, a large industrial fire, a large industrial spill. This is when we would bring in assistance from other branches in the division. We would also look across the ministry, and if necessary we would go wider. Typically, what the level 3 response involves is getting environmental monitoring and reporting, especially for air monitoring and reporting when there are a lot of concerns about a spill to air. We would bring in a unit that is called the trace atmospheric gas analyzer. If you flip the page, you can see sort of the bus. That's the unit. We have two of those units, which we deploy across the province, and they're state of the art. They can go in and they can monitor very quickly what is going on in the atmosphere around the particular incident.

You can see on slide 22 that a little bit more recent event, in 2000, was the Scarborough Hickson fire that occurred, and we sent the TAGA unit in there very quickly to monitor.

In conclusion—I'm mindful of the time and allowing some time for questions here—we would like to provide you with the knowledge and assurance that we have a wide range of responsibilities. Although we're quite focused on spills, and that's our purpose here, we do other things. We provided a lot of support during last summer's power outage. Principally, the things we were involved in were failing power at water treatment plants, loss of pressure. That becomes a concern for fire protection in the communities as well as the safety of drinking water. We were involved as sewage treatment plants also experienced loss of power and failed and had to discharge. Industries—large industrial facilities—can't simply turn a switch on and off, so there were some incidents at large industrial facilities where there were spills to air, such as flaring, and we were deeply involved in those. We also had staff at the provincial operations centre.

I guess I would say to you that we are very fortunate in having experience over a large number of years with what I would classify as environmental response, and in some cases I would go as far as to say environmental emergency response. We're very well equipped to do that. We do undertake debriefs, which we have done,

particularly after last summer's event, and we make continuous changes and improvements to make sure that the staff and resources are there to be able to deliver what we need to deliver, because as much as we'd like the number to be zero, it's not realistic that it will be zero. Accidents will happen out there, and we want to be prepared to effectively respond to them.

So I would say to the committee, we do have the processes in place. We have the legislative framework that is very helpful to us. We do have powers, right to the ministerial level, for dealing with these kinds of events, and we're prepared to discharge these duties as we have in the past.

The Acting Chair: Thank you for the presentation. It's time for questions.

Mr Hudak: Thank you, gentlemen, for the presentation. Just a quick question on the resource level, and congratulations on the great work you guys do at the spills centre: Are you satisfied currently with the level of resources that is dedicated to the spills centre, or are there areas for improvement?

Mr Williams: I think I would characterize that by saying that as a result of the events we had last summer and with our responsibilities under our order in council, as well as looking at the new responsibilities that have accrued to the ministry in the area of drinking water, my comment would be that we have an appropriate level of resources to be able to maintain our 24/7 response capability. The centre is well set up for that and we believe we're well enough staffed to be able to carry that on. I guess anybody at any point in time would want to say, "Sure, we could use one more of these or one more of those," but basically, given the duties we have to discharge—and we have a fair track record of doing that over the last little while; it's not something that's just come upon us very quickly—I would say we're in good shape, sir.

Mr Hudak: Good stuff. With respect to the minister's powers under sections 94 and 97 of the act—I think you said the act was 1985. The act has been around for some time without substantial change, right?

Mr Williams: Yes, it has.

Mr Hudak: You described them as rather robust powers. I know you can't give an exact number, but how frequently would the minister use her powers of direction? Is it a rare occurrence or is it relatively common?

Mr Williams: The short answer is, we have used it. It's relatively infrequent.

Let me give you an example without naming any names. We had a situation where someone who was renting a cottage on a lake had their oil tank filled up and sitting outside on some cement blocks—the kind of thing I think folks can picture as a cottage environment. The line or something broke and it was reported that we had an oil spill of home heating oil. This particular cottage was situated very close to a watercourse and the stuff was getting into the watercourse. It was winter; ice frozen etc. We show up, we try and deal with that situation and we find that the accommodation is owned by someone out of

province, in fact out of country, and there are folks who are renting this establishment who are very sorry for this but may not have the financial means to deal with it. Our principal motive in operating on that basis is, "Let's get a direction out here that stops this right now, that authorizes the staff to go in, and we can get it pumped and cleaned before it hits the lake."

It's that kind of situation. It's not often we go in where people knowingly shirk their duty or don't have the means and ability to be able to deal with it. That's the kind of direction power.

In terms of order powers, they are very infrequently used. I think there have been a couple of recent examples that come to mind: a train derailment a couple of years ago up near the Parry Sound area and, previous to that, a situation out in eastern Ontario, where it was a very significant, large accident incident. Sometimes they get exercised also if there's a view that perhaps people aren't moving as expeditiously as could be.

I would answer your question by saying the legislative authority is there and we have found it to be helpful when it has been used in the past, but it is not used on a large number of occasions.

Mr Hudak: Dr Young made a strong presentation yesterday recommending additional powers in the emergency measures legislation. Some of the powers he listed that other provinces have exist to an extent, I guess, in the EPA. Do you see a reason to strengthen those or to put them in the umbrella legislation? How satisfied are you that the legislative tools exist today to deal with environmental crises or, to Dr Young's point, do we need to strengthen them?

Mr Williams: I'm sorry, I can't speak to Dr Young's point. I'm aware of his presentation and what he was speaking about. Gary actually sits on the committee of ministry emergency response coordinators that Dr Young chairs. But I guess my response to that would be that we feel the powers we have at the present time are adequate. I suggest the reason for that is because of our track record and experience with spills. We've done some fine tuning of policy, of process, that sort of thing.

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I should also say what's not in here; we've been focusing on the minister's powers. There are powers of what are known as directors in the ministry and staff in the ministry. Our environmental officers can go out and issue orders; our directors can issue orders. We're a very strong regulatory ministry with respect to spills and we've had a lot of experience with them. It's not like we're jumping into an arena of some of the other things I heard mentioned by a previous speaker, the new stuff in terms of animal disease and that. Spills are something we have a lot of experience with.

To answer your question directly, the powers—they're powerful. We use them when we need them, and I'm not sure we would suggest to you that they need amending.

Mr Hudak: Just a last question on that. Have you faced any charter challenges or court restrictions of significance on the use of those powers? That was a very

general question, but what kind of limits currently exist on the minister's ability or the regional director's ability to use the powers under the EPA?

Mr Williams: I'm reflecting on that, and I have one of my colleagues from legal services in the front row to help me on that. I don't think there are specific situations that come to mind around dealing with this. Perhaps I'll defer to my colleague, if you wouldn't mind, to better help answer it. I don't have one that comes to mind in terms of a director being challenged.

The Acting Chair: OK, who will respond? Could you identify yourself for Hansard, please?

Mr Gary Zikovitz: My name is Gary Zikovitz. I am the Ministry of the Environment's emergency management coordinator. We have used minister's directions sparingly, perhaps once a year, since the legislation came into force, and we've only used a minister's order about twice. I don't recall any significant challenges when we've used them. Basically, we use the direction or order, and if the party that is directed or ordered fails to do what needs to be done, we do it and then we recover our costs later on. There is no appeal process from a minister's order.

The Acting Chair: Mr Zimmer?

Mr Zimmer: There are a lot of shared responsibilities. You've referred to that in your presentation. I guess they're shared responsibilities between the federal, provincial, municipal and even the private sector on who should do what and when, and particularly who should report what. Do you have many jurisdictional conflicts over who should report what and how timely and so on? If you do have those sorts of jurisdictional conflicts, who has the hammer to sort them out? Who has the final word in a situation between the city and the province or the private sector?

The Acting Chair: Mr Zimmer, could you please put the mike to your face? Thank you.

Mr Zikovitz: Let me just point out that right now the Spills Action Centre receives reports for both the provincial and federal governments. We take calls for Environment Canada on a 24-hour basis, so if there is a dual reporting requirement, one call to the Spills Action Centre suffices for both. We both get the information at the same time.

Historically, where we have some jurisdictional debates—for example, where there's a First Nation involved and there is some federal jurisdiction—we work together to resolve the issue. When there is a municipal government involved, we always allow the local authorities to do their thing and then help where needed.

Mr Zimmer: In a crisis situation, where something needs to be done right now and a jurisdictional dispute arises, how is that resolved on an immediate basis to stem the damage?

Mr Zikovitz: I don't recall any specific situation where we've had a crisis where there was debate over who should do what. I think we tend to work together. It's a fairly co-operative approach.

Mr Zimmer: What would you do if that jurisdictional conflict developed? How would that get sorted out?

Mr Zikovitz: We have a number of committees that our partners jointly sit on with us. We discuss these things. We have regional emergency teams that are set up across the province where we bring in—

Mr Zimmer: With respect, what I'm contemplating is a situation that develops at 2 o'clock this afternoon, it's reported, there's some sort of jurisdictional question of who's responsible but everybody knows that it's got to be fixed by 2:30. So you haven't got time to do the committee piece and so on. Who's got the hammer in a crisis where there's a jurisdictional issue?

Mr Williams: I won't get into specific details on this, but I will tell you how we acted in one of those situations. The Spills Action Centre is 24/7, but so is my phone number, and as assistant deputy minister of the division I am frequently called in the wee hours of the morning or on weekends where there are significant events happening and we might want a broader response or there are multiple agencies involved. There have been situations where there's been a question of who should be in there now and doing what.

The set-up that we have results in that decision coming before me, and what would happen is that, by 2:30 in the morning or whatever day that needs to happen, I or my delegate would be reached and I would be rendering a decision on behalf of our responsibilities for this.

In the case of a couple of examples that have happened, I have directed such things as, "I want individual X on the phone now," whether it's at the federal government level or the municipal level. Bear in mind that when we're into a crisis situation like this, there usually are pretty good communications and abilities. People get woken up and in there, so you have a chance, even if it's from my home, that I could reach someone at the federal government.

I guess what I'd say to you is there is an escalating protocol for decision-making authority and, while I can't exercise the powers and authorities of our minister that I've described, I can exercise directional power and authority that will decide how to respond by 2:30. That's what would happen. Then the other thing that would happen from that is that Monday morning there would be a conversation about what we do to make sure it doesn't happen again, if it does happen.

Mr Zimmer: So there is a stop-gap measure in a jurisdictional dispute to get some action, and then you'll do a "lessons learned."

Mr Williams: Absolutely. We would not stand by and see an environmental impact because we were trying to worry about who would do what, but we would follow up on that.

Mr Zimmer: One last question. On the reporting mechanism, so much depends on the timeliness of the information and the quality of the information. I'm thinking more in terms of those areas where there's a duty on the private sector to report, but also on the gov-

ernment sector. What sort of training initiatives or education programs do you have for the folks, especially out in the private sector, who have a reporting duty?

Mr Zikovitz: Both ourselves and Environment Canada do a number of what we call spill prevention workshops across the province each year. Just recently we were in Thunder Bay. Before that we were in Sarnia. We collectively go out there and remind the industries of what their responsibilities are, including their reporting requirements etc, cleanup responsibilities, and how to prevent spills.

Ms Broten: I have two questions. I want to ask some specifics about the sweeping powers and the powers that the minister has as to what exactly she can order. I'm just going to run through some of the ideas that Dr Young gave us. For example, can the minister order evacuation in a spill jurisdiction? Can she order people to allow MOE staff on to the property? Could she order that businesses be closed if they're in that jurisdiction that is contaminated, for example?

Mr Zikovitz: I'll take a shot at that answer. Basically, our minister can order cleanup and restoration. She cannot order evacuation. So our focus is on cleaning up and restoring the environment, and that's where her powers are.

Ms Broten: So, for example, to conduct a cleanup and restoration, if you needed to enter a private property and no one can consent to that entry, do you just enter the property?

Mr Zikovitz: Yes. If you're acting under a minister's direction or order, you do have access to private property.

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Ms Broten: OK. I want to touch on the Peterborough flood and the involvement of MOE in that incident. Certainly we've talked about spills, but it's my understanding that your group is called upon in other circumstances to be part of emergency management in the province. I'm wondering if you can just touch on that aspect, because we haven't really heard much about your other roles in terms of emergency management.

Mr Zikovitz: Yes, we do have other roles in emergency management. When the Peterborough flood occurred, we were asked to report to the provincial operations centre. In fact, I went down there. We were part of the provincial team that responded to that emergency. Obviously, our issues were drinking water and sewage treatment bypasses as well as some fuel oil spills when home heating fuel tanks tipped over and things like that. We're part of the overall provincial team. I'm sure Dr Young outlined the process for activating the provincial operations centre during emergencies so that all provincial parties come and work together.

Ms Broten: Certainly during that incident, we all listened to the news. There were issues with respect to sewage in the city of Peterborough. Was that something MOE was specifically involved with?

Mr Zikovitz: Absolutely. MOE was extensively involved with that.

Ms Broten: In that realm of your responsibilities, do you have the tools you need to do the job in emergency circumstances in the province?

Mr Zikovitz: Yes. We believe our tools for dealing with spill-related emergencies, and that's what those were, are appropriate.

The Acting Chair: I just have a question. If there is a suspected airborne spill happening in a plant, do ministry officials have authority to enter that plant without a warrant?

Mr Williams: Yes. An environmental officer of the Ministry of the Environment could enter a facility.

The Acting Chair: Is that based on the act of 1985 under a minister's directive? What is that based on? Where would he get that power?

Mr Williams: Our environmental officers have powers of inspection and abilities that are conferred under legislation such as the Environmental Protection Act. A part of the Environmental Protection Act speaks to the minister's power to direct or to order. There is other legislation, such as the Ontario Water Resources Act, the Environmental Protection Act and other provisions in there, that allows our field staff, who are known as environmental officers, to go on to properties in the discharge of their duties.

The Acting Chair: Could they enter a home without a warrant? This is what came up yesterday. Dr Young felt that they had no power to enter private property. They would be charged with trespassing. Yet the Ministry of the Environment has already solved the problem.

Mr Williams: I would undertake to get back to the committee on that. I don't wish to speculate. I think your earlier question relative to an industrial facility with a spill is quite clear, but I think a matter of a private residence is a whole different story. I'd be happy to get back to you.

The Acting Chair: The question I want clarified is that this is essentially private property, whether it be a plant, a place of business or a residence. I think this is very crucial for our committee, given Dr Young's presentation yesterday. He felt one of the encumbrances to dealing with an emergency was that they really had no power to trespass or to enter a person's home. Therefore the operations of the Ministry of the Environment in this area might give us a better idea of what sort of protocols are used there and let us see whether they can be transferable to other emergency measures providers.

Mr Williams: I'd be happy to undertake to report back to you. The residence is an issue that we clearly don't have, and the other powers of entry for an environmental officer are quite narrowly scoped in legislation. It is going into a facility or on to private property for a very specific discharge of duties and responsibilities relative to a spill. They couldn't exercise those powers for things that are not contemplated by the legislation. An environmental officer can't go in there to check something out that isn't clearly defined under the scope of the environmental legislation that he or she is authorized to discharge.

The Acting Chair: Anyway, if you can make that available to us in writing. The committee might wish to talk to legal counsel about it just to see what the parameters really are here and where they're applicable in other areas.

Ms Broten, a question?

Ms Broten: Yes, just to follow up on that: One of the examples Dr Young gave us yesterday was a request to enter private farmland, for example, to build a dike knowing that there had been a spill or a flood and that was a good place to stop the water or pollution from flowing. Is that something you are able to do under your current legislation?

Mr Williams: Yes, because that would be taking direct action to prevent further environmental impairment or to restore on the basis of that spill.

Mr Zimmer: Just quickly, you made it quite clear in your remarks that you felt you didn't need any increased powers. Are there any areas you feel you don't need increased powers but rather an increased or more focused clarity of your responsibility and authority? So not powers, but clarity of powers that you've already got.

Mr Williams: I would answer your question this way: I noted in the previous speaker's slide that one of the bullets was dealing with—I believe the wording he used was environmental restrictions and disposal of animal carcasses and things like that. I would inform the committee that we are having discussions with our Ministry of Agriculture and Food and we're working with Dr Young and his team on making sure we're well prepared should there be an incidence of things that we're not normally experienced at dealing with, such as avian flu or some kind of foreign animal disease type of thing. It may well be that at the end of those discussions between ministries we might need some minor regulatory amendments to deal with either the definition of agricultural waste, for example, or to confirm that there are powers and abilities that would withstand any potential challenge for directing where those materials might go at the end of the day. So, yes, I would see that we might have some changes there.

Mr Zimmer: Mr Chair, would it be appropriate to ask this witness to give us a list of those areas where he thinks there might need to be further clarity rather than further power?

The Acting Chair: I think that's a reasonable request.

One final question: Mr Arthurs.

Mr Wayne Arthurs (Pickering-Ajax-Uxbridge): Are there other environmental incidents that the ministry would have a lead role on in addition to spills that the minister, through an order or directive, would be able to act on? For example, a tornado presumably has natural consequences involved. Are there other functions the ministry has, in addition to spills, in which there would be those types of powers and authorities?

Mr Williams: I believe the short answer to your question is yes. It is a ministry responsibility. It is one of my colleagues on the senior management team who is known as the province's chief drinking water inspector.

There are powers and authorities—I'm sorry, I'm not totally familiar with the sections of the legislation—conferred upon the province's chief drinking water inspector and obligations on the minister for the provision of safe drinking water under recent legislation.

Mr Arthurs: At the very least, we may want to explore those parts of the environmental legislation in which the minister, through to that level, may have powers through orders or directives that may not be found in other pieces of legislation.

Mr Williams: If it would be helpful to the committee, when I respond on the other two action items, I'd be pleased to include a description of the powers and authorities for drinking water.

The Acting Chair: Yes, if you could file those three pieces of information with the clerk, that would be most appreciated.

Thank you very much. The committee stands recessed until 1 pm of the clock.

The committee recessed from 1140 to 1305.

MINISTRY OF MUNICIPAL AFFAIRS AND HOUSING

The Acting Chair: Ladies and gentlemen, we'll call the committee to order. The standing committee on justice policy will continue our review of emergency management statutes.

Our first deputant this afternoon is from the Ministry of Municipal Affairs, Diana Jardine, director of the municipal programs and education branch. If you could come forward.

Yes, Ms Broten?

Ms Broten: Before we start with our next deputant, I would like to make a motion for unanimous consent.

The Acting Chair: If I could suggest, it might be useful to have the rest of the committee here. I think they're going to be here momentarily.

Ms Broten: All right.

The Acting Chair: Ms Jardine, could you please begin. I'll just let you know that you have approximately a half-hour. If you'd like to leave some time for the committee to ask questions, I think that would be preferable.

Ms Diana Jardine: I'm happy to do that. I think my presentation will take about 10 minutes. Then I'm quite happy to answer whatever questions the committee has.

The Acting Chair: OK, thank you very much. You may begin. Just identify yourself for Hansard, please.

Ms Jardine: My name is Diana Jardine. I'm the director of the municipal programs and education branch in the Ministry of Municipal Affairs and Housing. I have with me Rebecca Luk, who is a senior policy adviser in our ministry as well.

I'm here to talk about municipal affairs' role in emergency management. Essentially, it's a role in disaster recovery, disaster relief. The order in council—I'm sure you're familiar now with the Emergency Management Act—assigns municipal affairs the responsibility to coordinate extraordinary costs related to emergencies.

These are municipal and provincial costs, individual and property damage costs, as well as emergency assistance costs. We have had a lot of experience in doing that over the last few years.

The purpose of the assistance is to speed up community recovery, to alleviate hardship on behalf of residents and to restore essential furnishings and property to pre-disaster condition. That's one of the keys in terms of our role. It's not to enhance what is in the community, but to bring people back to a basic level of support.

In order to determine the nature of assistance we provide, we've created four categories of disaster assistance that really permit us with flexibility to deal with natural and non-natural or technological or health-related disasters. The main vehicle we use in response to disasters for disaster relief is the Ontario disaster relief assistance program, commonly known as ODRAP, and then we create ad hoc programs depending on the need at hand.

If you look at the chart in the slide deck—it's called "Categories of Disaster Assistance" and it's in about five pages—we have the four categories of assistance. The first type is where it's a pretty localized situation, one municipality, a natural disaster. We use ODRAP, which is the program for natural disasters, responding to a natural disaster. In type 1, we usually forgo fundraising, which the program normally requires, because there is really little or no ability at the municipal level to generate funds from the community.

I can just elaborate a little on the northwest. It was unusual. It was a flood that covered an area approximately the size of France. It was a huge area, affecting a population of about 120,000 people, spread across northwestern Ontario. The damage was significant, but because they were rural-based, very small communities, there was very little they could do in the way of raising funds. So that was forgiven in their particular situation.

The other point I might add was that there was no ability up there to actually raise funds that normally you might be able to generate interest in provincially. You may not have heard of the northwest floods; very few people did at that time. Manitoba was flooding at the same time. It got the coverage in Toronto, not northwestern Ontario. That's definitely a factor in successful fundraising.

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The Acting Chair: Excuse me. What year was that?

Ms Jardine: That was in 2002.

Type 2 is one or more municipalities. Right at the moment, the Peterborough flood is a very good example. Again, it's a natural disaster. As I'm sure you've heard, floods are our most common disaster in Ontario at this point. With less than \$36 million damage, they use our ODRAP program and there is local fundraising. Peterborough's a very successful example of how they've been able to capitalize on a lot of press coverage about the situation to undertake province-wide fundraising and even national fundraising via the Red Cross.

Type 3 is related to something significantly larger, and that would be the ice storm in 1998. In this situation, it is also a natural disaster greater than \$36 million in damage. In this particular case, the province would go for federal assistance. That's the disaster financial assistance arrangements, and I'll explain that in a little bit more detail later. Usually there would be a national fundraising program that would go with this. That was certainly the case in the ice storm.

Type 4 is where it's an emergency but not a natural disaster. In this particular case, municipal affairs will design a custom-tailored program. We did in Walkerton. I'm referring to the emergency assistance program that we operated for a year in Walkerton until the official compensation program came into force.

Last year, we designed a program to support the SARS emergency. We have that flexibility, although we don't have a ready-made program. We do have to go to cabinet for approval in those cases.

The next page gives you a bit more of an outline in terms of ODRAP. Again, it's focused on property damage. We cover homeowners, small business, farmers and nonprofit organizations as well as municipalities which don't have insurance coverage. It doesn't provide full cost recovery, as I said. It helps eligible recipients restore their essential furnishings and property. The extra fridge and the billiard table in the basement are not eligible for assistance under the program.

The local community is required to undertake fundraising, and in the program the province outlines that it will respond and match that fundraising, if it's needed, up to \$2 for every dollar raised locally.

If municipalities have experienced extraordinary damage to public infrastructure, the province will also come in to cover the extraordinary costs. So beyond the normal costs of the municipality, it covers the costs of cleanup and repair of infrastructure to pre-disaster condition. In the last five years or so, that has usually been covered at 100%.

The next table gives you an idea of the range of disasters we've experienced over the last 35 years or so. There have been a total of 54 disasters where the province has been involved in providing disaster assistance. In the middle column, where it says "provincial private costs," we outline the assistance to private households and small business. In the next column, "provincial public costs," that would primarily be to municipalities to cover their costs. Then we outline the average cost per disaster. As you can see, the costs are rising. That's clearly the case.

Then what I pulled out to highlight for you at the bottom were the costs related to two disasters: the ice storm and SARS. The ice storm is relevant particularly because we were able to apply for disaster financial assistance arrangements under the federal program. You can see there how beneficial it can be to the province to actually obtain federal funding. The sliding scale formula, once you get up over \$64 million, provides that costs over \$64 million are matched 90 to 1 by the federal gov-

ernment, but costs have to get up pretty high before that will happen.

In the SARS case, you may be familiar with the provincial request last year for federal funding. The federal government refused to provide the province with funding under the disaster financial assistance arrangements. Although we did believe there was flexibility in that program to define SARS as a disaster eligible under that program, they chose to do a side arrangement, and obviously the funding was not quite as handsome, in terms of a formula for the provincial government. Nevertheless, substantial federal dollars were paid out.

I'd like to explain disaster financial assistance arrangements and how we approach them. Normally what happens is, a letter goes from the Minister of Municipal Affairs to, in this case, the federal Minister of Public Safety and Emergency Preparedness, Minister Anne McLellan, signalling that the province is going to be coming to the federal government for funding. We usually put an envelope amount on the table at that time. In the case of Peterborough, we have already signalled to the federal government that we will be coming to them with an amount of at least \$20 million.

In order to access disaster financial assistance arrangements, the province has to have experienced eligible damage at \$1 per capita. That means we have to have spent about \$12.2 million before we even qualify for the program. After that, the next \$24 million is shared 50-50, federal-province. That takes us up to about \$36 million. The next \$24 million is shared 75-25. After that, it's 90-10. It's a sliding-scale formula.

As a rule of thumb, the advice we've been providing is that you have to get around \$30 million to \$36 million before it's worthwhile provincially to go forward, because there are stipulations. The province has to spend the money. They are some differences in eligibility between our program and the federal program. Our spending is audited quite severely by the federal government before funds are released. Just to give you an example, we still have not finished the audit from the ice storm. We're still in the audit process. It has taken a very long time.

We have only accessed this program once before. The Peterborough flood is the second time. It looks like we've had signals that we may have some success with applying for federal assistance, but we don't have any formal response yet.

I thought I'd spend two pages on the Peterborough floods—the July 15 severe floods—because they're a very current example of disaster assistance programs we've put in place. Although the number is bounced around a lot, our best guess is that at least 2,000 households were impacted by the flooding, and a number of small business, somewhere around 100. It could be 70 to 120. Again, the number is still fluid. There was significant damage to municipal infrastructure, at least \$5 million that we have estimated to roads and culverts, in addition to other damage that's now being captured by the municipality.

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Our minister, in order to kick off the program, must receive a request from the municipality for the minister to declare the area a disaster area. In this case, the government moved very quickly. When Peterborough council, on the 21st, was passing its resolution to request, the Minister of Municipal Affairs, Minister Gerretsen, was there to say, "We've declared you a disaster area, and here's our initial advance of \$5 million for you."

The area itself is defined to include the three adjacent municipalities that were impacted by the flooding. To deal with private claims, the municipality then appoints a disaster relief committee. It's called the Peterborough flood relief committee. In this case, this committee represents all four municipalities: the city and the three townships. It has representation from all.

That committee is responsible for managing the claims and for fundraising. They have embarked, as I'm sure you're aware, on a very strenuous fundraising campaign. It looks like it's going to be extremely successful. They have also worked very closely with the city to use the initial advance of the province to pay out early claims of \$500 per household and \$2,500 for small business to help in the cleanup of properties. Claimants will be submitting more detailed claims once their insurance coverage is known. In some cases they won't have insurance, but where it is known, that will go in to the committee to be finally settled.

How the program works is that funds have to be raised. The committee has set a target of \$1.5 million and a deadline of the second week in September. All the claims have to be received, so that all the damages are known, and the claims deadline is August 31. Those two are then tallied, and the province would match the shortfall, in terms of eligible damages and fundraised dollars, at a rate of 2 to 1. That is the way the program works. Final claims will be paid out, in the case of Peterborough, toward the latter part of September.

The committee itself will bring on adjusters to go out and assess the damages. They are required to provide information on their claim form as to whether or not they have insurance and what their insurance has or has not covered, and this will be audited.

It's a fairly strenuous process. The disaster relief committee in this case, because we anticipate there will be on the order of 2,000 to 2,500 claims, will set up a small team of staff who will be focused solely on the claims management process. They usually are contract staff who are brought in; in some cases, former government staff, former municipal staff who have experience with this type of program. The municipally claimed damages will be settled by municipal affairs once the municipality submits their estimates and final costs. The final note: As I mentioned before, there has been a request to the federal government for assistance.

To sum up: In the future, there are obviously lots of improvements that can be made to programs. Every time we go through a disaster—each one is different and unique—we do a lessons-learned exercise and turn that

around to improve our response the next time. As a result of our experience in the ice storm, for example, we have instituted two processes. We have what we call the provincial disaster assessment team. It's a team led by our regional director at municipal affairs locally with the appropriate ministry colleagues—a fellow from our buildings branch who is either an engineer or an architect, again depending on the damage. They are out on the site of the disaster within 24 hours. So you've got your first responders out there, but on the disaster assistance side, we're out there as well trying to get a grip on the nature of the damage and the type of assistance that's needed.

We brought that in so we could turn around our assistance to the community much faster, and it certainly paid off in the case of Peterborough.

The second thing is that we have set up an inter-ministry committee called the disaster assistance review committee. The team in the field reports in to this inter-ministry committee, which then looks at the nature of the assistance that might be necessary in the community at hand: whether there is some form of economic recovery or tourism recovery, whether there are any special emergency social needs out there, whether that's something that can be supported locally—in the case of Peterborough, their social services department fulfilled that function very adequately—or whether we need to bring in a group of people to provide that kind of upfront assistance right away to people who are in need.

There are always improvements that can be made, and we do that. Certainly stronger links to other government programs is an area that, from a policy perspective, we are beginning to explore, and that is how to essentially double up our programs; for example, how to use and spread the word that it's appropriate to use emergency provisions under Ontario Works to support people in need in that two-week emergency period right after a flood; how to use tourism dollars, for example, in the case of Peterborough. We've done that. The Premier announced yesterday tourism recovery dollars to Peterborough. So that's a good example of how we can utilize existing programs for the communities in need. It may mean loosening up some of the criteria for the programs, for eligibility in an emergency situation. That is something we think would be very valuable.

The other area that's critical is the area of federal assistance for non-natural disasters. I think probably Dr Young yesterday talked about the avian flu work we had been doing. There is a provincial committee looking at how to respond if avian flu hit Ontario. It's quite clear that there is not a direct route for federal funding. If an emergency like that hit the province, we would have difficulty in knowing which agency we should be going to federally for assistance. Clearly there are some programs in agriculture, but there's nothing to assist the municipalities. They would be impacted by the kind of quarantine that would be put in place, perhaps supporting roadblocks, perhaps utilizing their facilities for various purposes. They would not be eligible for compensation

under the agricultural programs, so we need to work that out.

We can't be spinning our wheels as we did in SARS last year. That was a public health emergency and obviously the province was way up here in terms of costs. We needed to get assistance and we needed to know which minister we were talking to federally. There is a signal that the federal government is interested in talking about this, at the staff level at any rate.

Questions?

The Acting Chair: We have questions, and we'll start with Mr Hudak.

Mr Hudak: Thank you very much for the presentation. If I missed this at the beginning, I apologize. Is there funding set aside dedicated to the program on an annual basis, or do you go for a request to Management Board on a case-by-case basis?

Ms Jardine: We go to Management Board on a case-by-case basis.

Mr Hudak: It's not a line item that's in the budget every year?

Ms Jardine: We have a line but we don't have any money in it—well, \$1,000.

Mr Hudak: So a small disaster as can be treated for \$1,000.

Ms Jardine: Very small, yes.

Mr Hudak: Would people who have dealt with the program describe the disaster relief program as generous or not generous?

Ms Jardine: If you're talking about recipients, individuals, I don't think they would describe it as generous. I think it's a very cautious program. For example, in the adjusters' manual we use costs out of the Sears catalogue. So if you've spent \$1,200 on a fridge, you're not going to get \$1,200 for a fridge. I think it's a very judicious expenditure of public funds.

Mr Hudak: Do you usually have a public relations issue when this occurs, that it's lacking as opposed to being helpful?

Ms Jardine: There are always issues in terms of responding to disasters. There are always people who are quite satisfied and people who are not satisfied with what they're going to get. I can give you one example: insurance deductibles. We don't cover insurance deductibles, so there are people who are dissatisfied. But I can't say that we've ever had any major negative publicity. I think generally people accept the program as a reasonable government response.

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Mr Hudak: How do we compare with other provinces?

Ms Jardine: Virtually all the provinces have something similar. Ontario is the one place where it's delivered by a separate ministry. In the other provinces they are usually under emergency management. Virtually all the other provinces, with the exception of Quebec, also access disaster financial assistance arrangements on a regular basis. They are eligible for that assistance usually because of their much lower population.

I won't get the numbers right in terms of Manitoba, but I think the population is three million. Disaster damages have to hit \$3 million and, you can imagine, in a farm flooding situation that's going to be approached pretty readily. So they're eligible on a regular basis. The other provincial programs readily mirror federal requirements, whereas Ontario's are slightly different and slightly more generous than the federal program.

Mr Hudak: In terms of an operations point of view, does the program function relatively smoothly? Do you get any information you need in making your calculations, enabling the minister to declare the disaster area and set up the committee, or are there significant areas for improvement on the operations side?

Ms Jardine: We learn something new in every disaster, but I think we've got a pretty smooth-functioning team now. We're training our regional staff on a regular basis. We do some simulations, so people who are new in our regional offices are aware of the program and the process. I think it's pretty smooth. We could always use more resources, though.

Mr Hudak: Resources, for sure, but in terms of powers—a lot of the committee's time has been devoted to whether additional powers are necessary in any of these programs and the ministry responses.

Ms Jardine: Yes, that's right. Well, ours is a program, so we don't rest on legislation per se other than the OIC. From that perspective, I don't think there's anything in particular that municipal affairs would need in addition.

Mr Hudak: So things like information-gathering, making sure that you have accurate assessments of public or private damage, disbursement of funds, that all flows smoothly and you have enough information?

Ms Jardine: Yes. I would say in virtually all cases the municipalities are more than willing to provide us with estimates of their costs and then ultimately all their backed-up receipts and so on. We haven't had any problem at all in that area and I don't think there's anything further that we would need to support that role.

Mr Hudak: This is the last question. I'd ask for a general comment, if you could. I think we're all very frustrated, as you had indicated too, with respect to the federal reaction to Ontario's situation in the SARS crisis. Do you have any suggestions on how we could improve that? Was that a one-off circumstance that had more to do with politics than it did with a good relationship between the administrative side? What's your comment on improving that situation?

Ms Jardine: What we need, provincially, at the federal level is one window into the federal government. We need to know that the emergency management ministry—PSEP, Public Safety and Emergency Preparedness Canada, is the office that we deal with—and I think this would be the ideal, is in fact the one window and could pull together their colleagues in other ministries to determine what the appropriate programmatic response is in terms of a particular disaster. That hasn't happened. I think they have, since SARS, been working with their

colleagues to try to put something like that together. They've been dependent on Treasury Board to have the central clout to pull that together, but if we had that process ironed out, that would make life a lot simpler and would speed up decision-making. We need the federal government to acknowledge that they are prepared to respond in non-natural, technological health disasters.

Mr Hudak: Is it simply a program? Is it legislative?

Ms Jardine: It's a program.

Mr Hudak: I remember their interpretation of the program was very strict. You just made the point that we should look at broadening what qualifies for the federal program. So it is a program, but it would simply be the responsibility of the federal minister changing the definitions?

Ms Jardine: It's a program and I think the way they're looking at it now is that they would leave this program, which is disaster financial assistance arrangements, intact and they would create another umbrella, another set of arrangements that could be put in place for the non-natural emergencies or disasters. That's their preference, at any rate, making improvements or changes to the disaster financial assistance arrangements along the way to improve some of the workings of the program.

Mr Hudak: One last question with respect to the minister's ability to deal with extraordinary circumstances, like the remote north, First Nations, the unorganized areas: Is the minister's power sufficient under the current program to deal with solutions in those areas outside of municipal jurisdictions?

Ms Jardine: We haven't had a lot of time to look at that and perhaps we could come back to the committee. I wouldn't mind having a further look at that in discussion with our legal people. We could provide you with some advice on that later.

Mr Hudak: I think we'd appreciate that.

The Acting Chair: It's noted for the clerk.

Mr Hudak: Thank you.

Ms Broten: Thank you for your comments. One of the things that we've certainly been learning about over the last couple of days is that one of the difficulties we face as a province is dealing with ever-changing disasters and disasters that historically we haven't had to deal with, situations like the blackout, terrorism, whether bio-terrorism or otherwise. I'm wondering whether you can give us some comment from the perspective of municipal affairs. In the Kenny report that was put together by the Senate there was a lot of comment about the need to better assist municipalities, both large and small, to deal with these disasters, whatever type of disaster, on the front lines, from a prepare-prevent mitigation perspective. From the municipal affairs perspective, do you have any comments on the role of our provincial municipal affairs?

Ms Jardine: Of course, there is the program that municipalities are now responding to in terms of the essential to enhanced levels of preparedness. I would have to say that most municipalities are moving and many in fact have moved a very long way to respond to that.

Looking at it from the disaster relief perspective, again, it's looking at the nature of the hazards and the range of impacts on your population. I think that is one of the areas that we look at broadly; not just the immediate impact of the disaster, but you need to look at the longer-term effects and the broader effects in the community. I think municipalities, as they move through the levels of their emergency plans and programs, will be doing that, as we will at municipal affairs. It is potentially costly to begin to look at that, but I think that's a fundamental way. You need to look at what the impacts are and how you're going to accommodate those.

To explain this better, looking at a public health disaster, if you have to quarantine a lot of people, you've got to look at what the reverberations of that are in the community and how you're going to respond. So it's the level of sophistication in your plans and programs. I think we're all in the situation that we're moving through those levels and each go-around we're understanding more and more how effectively we can deal with a range of different types of disasters.

Ms Broten: One of the things that appears to have been a conclusion by Senator Kenny is that the province has a role to play in terms of R&D, technology, training, equipment, especially for smaller municipalities that will just simply not have a whole emergency team available. They will in many instances be turning to the province for that type of assistance. Can you comment about that?

Ms Jardine: That's probably something that Emergency Management Ontario could comment on better than I. They have their community folks out there and have a better handle on the situation on the ground. I think certainly our experience at municipal affairs has been that once we get into the north or into remote communities, we do play a role. In the northwest floods we set up the disaster relief office in Fort Frances and we had that office staff up there for six months, handling the relief claims and assistance in the community.

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Ms Broten: Just one last question in terms of compensation and the disaster assistance program: During the blackout was there ever contemplation of claims being advanced through this program as a result of losses that were faced that may or may not be natural, but certainly there's always an argument to be made whether there was sewage that needed to be dumped into a river? Does that qualify as natural? And looking at whether or not this program needs to be replicated in terms of a different type of format for non-natural disasters or whether it's pushed to its limits.

Ms Jardine: You may remember that the previous government did announce a program for municipalities and indicated that their costs in relation to the blackout would be covered. We never did get Management Board approval for the funds. Time wasn't available for that to happen before the election. When the new government came on board, then, the decision was made that, given the financial situation and the expenditures that

municipalities had, which were not overly large, we would not proceed with the program.

Certainly, you could foresee a situation where there was a blackout where there really were some extraordinary costs that individuals or municipalities experienced where the province may choose to, in an ad hoc way, respond and cover those costs. That's what we put in our other category, 4.

Mr Zimmer: I see in the document on ODRAP, "ODRAP provides assistance when damages are so extensive that they exceed the financial resources of the affected individuals, the municipality and community at large," and then they've got to make that assessment within 14 days. What I'm interested in is, it seems to me there must be a lot of ad hocery and a lot of subjective judgments brought to bear in whether an area, however it's defined, meets that standard that damages are so extensive that they affect the community at large. How do they go about making that judgment in 14 days under all the pressures of the disaster? We all have a sense of the disaster, but a lot of it is just the journalists' impression, the reporters, newscasts. There may be a lot of facts mixed up in it. There may be a lot of fear mixed up in it. How do you sort out the subjective from the objective when you come to an assessment that a disaster has occurred that is beyond the scope of individuals and municipalities and the community at large to cope with?

Ms Jardine: You're quite right. It can be pretty chaotic, especially in the first couple of weeks. That's why we put into place the provincial disaster assessment team, which is an interdisciplinary team that is not from the community. That team will come in and liaise with public works staff. Often we'll have staff from the Ministry of Transportation come in—they're very familiar with the costs for repair of roads, culverts, bridges. So they will be the ones who will help give us an assessment of what the costs are that the municipality is facing. It's not going to be accurate by any stretch, because sometimes until the waters recede you don't know what the damage truly is.

We also have a contract with an insurance adjuster who has both municipal claims experience as well as residential and small business experience. So they will go in and do an eyeball assessment and they'll talk to some of the key municipal people to get an understanding of what the private damages are.

Although it's not a science, we have tried to refine our ability to put forward reasonable cost estimates on what the damages are. Then, being municipal affairs, we do have staff in our regional offices who can assess the municipal financial wherewithal.

Mr Zimmer: If it's not particularly scientific—and I understand the problem there—it seems to me that there must be a lot of room for lobbying by local politicians, community leaders. How do you deal with the pressure of that lobbying exercise to have an area declared a disaster area? Clearly, there are real benefits that flow if it is a disaster area.

Ms Jardine: I wouldn't say we've had that as an experience, by and large. I think where we sometimes have difficulties in the declaration areas is where the damage is relatively small or where the damage might be caused by sewer backup, for example, and where the municipality may want to come forward to see if there are provincial dollars to help them out. I think the point that we've made in all of that is that we're here as a last resort. So it's family, then the community that should be responding, and then the province will come in, but only after it's demonstrated that you need that additional help.

Mr Zimmer: My last question—

The Acting Chair: Sorry, Mr Zimmer. We've got a couple of quick questions.

Mr Wilkinson: I'm just following up on Mr Hudak's question about the fact that traditionally we do not budget a line item for disasters. You have the \$1,000 line. I'm interested in knowing about other Canadian jurisdictions, other provinces, and whether the feds are doing that, just on the question of good fiscal management.

Dr Young has eloquently told us that we can expect more and more of this to happen. So the question we do have is that it's an unknown but it's a liability that we're going to have to face as a province, an increasing liability. Should we be setting aside money, whether it's through MAH or somewhere, to take into account that we know that this is going to happen; we just don't know where, when and how much? I'd be interested to know whether or not other provinces and the feds, in their budgetary planning, are actually setting money aside.

The Acting Chair: We can ask research to do that for us.

Mr Arthurs: Just procedurally, does the municipality or municipalities, each or all, have to declare a disaster area?

Ms Jardine: They request the Minister of Municipal Affairs—

Mr Arthurs: Plus the minister, a request.

Ms Jardine: Yes.

Mr Arthurs: Let's say there are four or five involved. Would it be necessary for all of them to do that for the minister to be able to declare the entire area?

Ms Jardine: No. We're fairly flexible. In the ice storm I think there were 66 municipalities involved, and we probably received requests from 45 or 50.

Mr Arthurs: But the minister effectively declared the entire area, for all practical purposes.

Ms Jardine: Yes, the entire area.

Mr Arthurs: There's not a necessity, though, for the head of council to declare an emergency situation for the ability of the municipality, as a council, subsequently to declare a disaster area.

Ms Jardine: No, there's isn't a link.

Mr Arthurs: That's not necessary. Thank you.

The Acting Chair: I have just one last question myself, and that is that you mentioned that one of the failings you found is that the federal government doesn't have a one-window approach, that it's difficult in deciding whom to go to and who makes the decisions. If

the municipalities in Ontario were to ask what our window is at the provincial level in Ontario, what is our window?

Ms Jardine: On disaster assistance, it's municipal affairs. We've certainly been out—

The Acting Chair: That's their first point of entry—contact with municipal affairs—not Emergency Management Ontario?

Ms Jardine: It might be, but we've been out and spread the word as much as possible. We've been on the road.

The Acting Chair: But the first point of contact in Peterborough was municipal affairs?

Ms Jardine: Yes. I can't say that that's a universal situation. In some cases, if there are financial inquiries, they may come to EMO first, who would then refer them to us.

The Acting Chair: Do you see what I'm getting at?

Ms Jardine: Yes, I do see what you're getting at.

The Acting Chair: As much as we can criticize the feds, I think maybe one of the duties of this committee would be to help your ministry and other ministries put forward the protocol, that one-window approach, and to define it a little bit better.

1350

Ms Jardine: Yes, I can see that. I think it works reasonably well. I think the information is out there. Emergency Management Ontario and our staff were on the road last year and visited virtually all municipalities across the province so that staff at the municipal level would know who has the financial side of the equation and who has the emergency response—

The Acting Chair: Certainly on the financial side they would know to go to municipal affairs, as they do for everything. They would know where to go to ask for money. They know that at the local level, I'm sure.

Ms Jardine: They wouldn't come to us.

The Acting Chair: On behalf of the committee, I want to also thank all the men and women who work at municipal affairs for the quick and comprehensive response they've undertaken in the Peterborough situation. I think they ought to be commended for that work.

Ms Jardine: Thank you very much. I'll report that back.

The Acting Chair: Please pass that on.

Ms Jardine: I will.

MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES

The Acting Chair: The next deputation is the Ministry of Community Safety and Correctional Services: Jay Lipman, counsel, legal services branch; and Monique Guibert, senior adviser to the Commissioner of Emergency Management.

Mr Lipman, you may begin. Just identify yourself for Hansard, please.

Mr Jay Lipman: My name is Jay Lipman. I'm counsel with the Ministry of Community Safety and Correctional Services.

In attendance as well is Monique Guibert.

The Acting Chair: I wonder if you could have her sit at the table, please.

If you'd speak directly into the mike, it would help.

Mr Lipman: I thought the presentation today could follow up on some of Dr Young's remarks yesterday and focus in particular on the current emergency legislation in Ontario. The primary statute that I'll be talking about today is the Emergency Management Act.

There are two things I'd like to accomplish. The first is to take the committee through the legislative basis for all the work that Dr Young was talking about yesterday in terms of preparedness, in terms of a proactive approach to emergency management.

The second is to take the committee through the specific provisions around emergency powers. You've heard from Dr Young, and you may well have heard from others at this point, that the emergency powers in the existing legislation are very weak. I thought it would be useful if we could take a close look at those provisions and see what they say and what they don't say.

You should all have a copy of the Emergency Management Act. I'll be referring to it.

First of all, in terms of preparedness, I'd like to refer you to section 2.1 of the act, which is at the top of page 2. You may recall Dr Young discussing how we amended the emergency legislation last year. The amendments came into force last year. One of the big changes was a big shift away from planning to the broader concept of emergency management programs.

Section 2.1 establishes the requirement for municipalities to have emergency management programs. I can tell from the previous presentation that you've heard something about programs and so on, so I don't know if I'll get into a great deal of detail about them.

The requirements of a program are set out in this section. You can see that it includes a plan. It includes training and exercises with respect to the plan. What our program people have said and emphasized is that the plan is of limited value if there are not training on the plan, regular exercises on the plan and revisions of the plan. It includes public education—a public awareness component of emergency programs.

I think (d) is interesting in terms of the legislative mandate of the committee: "any other element required by" regulations. What we did in the legislation was provide a regulation-making power to deal with specific aspects or elements of both emergency management programs and emergency management plans. You'll recall Mr Neil McKerrell's comments yesterday when he was talking about moving from a basic plan or a central-level program to a more advanced program and then to a comprehensive program over a series of years. Legally we can do that by setting out those elements of the programs in the regulation. We don't have to change the legislation.

Mr Zimmer: Just for clarification, is this the act that followed the so-called McMurtry white paper?

The Acting Chair: This is the 2002 act, is it not?

Mr Lipman: There are elements of this act, originally known as the Emergency Plans Act, but it was amended substantially last year. You're correct: A number of the provisions have not been changed, so they are the same provisions that existed when the Emergency Plans Act was first introduced.

Mr Zimmer: I think that's what followed the so-called McMurtry white paper. I wonder, Mr Chair, if we might get a copy of that white paper.

The Acting Chair: Certainly. It's available through the Clerk's office. We'll make that available.

Go ahead, Mr Lipman.

Mr Lipman: These provisions I'm talking about now are as a result of the amendments, but you will see, particularly when we get to review the powers provisions later, that those have the more archaic flavour of the older legislation.

Subsection (3), in the middle of that page, sets out what is commonly known as HIRA, the acronym for hazard identification and risk assessment. When you're reviewing other legislation and policies on preparedness, you'll probably see that term or similar terms.

From a legislative point of view—and this is really the basis for what Dr Young was referring to in terms of that risk-based approach to emergency management: You're no longer making plans in a vacuum but you're specifically focused on certain risks.

Other legislation you'll be looking at—the recent Quebec legislation, the Civil Protection Act—is also a very risk-based approach, and there are comprehensive, quite prescriptive provisions there about emergency planning based on risk assessments and so on. Another jurisdiction you may want to refer to, in terms of a risk-based approach, is British Columbia. Their legislation, the Emergency Program Act—actually the risk-based program provisions are contained in regulation under the act, the emergency program regulation.

I just want to bring your attention quickly to the subsequent subsections there. What's interesting about them is that in reviewing other legislation, you won't find anything like this. There is no real precedent for these provisions. We realized, when we were requiring municipalities and ministries to do risk assessments, that part of that would involve identifying vulnerabilities; for example, vulnerabilities in their infrastructure. We realized that's sensitive information. It's not necessarily the kind of information you want everybody to know about. It's potentially relevant to things like sabotage and terrorism. So we tried to build in a certain degree of protection for that type of information. Just by way of background, at the time we did consult extensively with the office of the Information and Privacy Commissioner and they fully agreed to and supported the need for these types of provisions. Like I say, in reviewing legislation, you won't find something similar to this, and other juris-

dictions may well want to consider provisions such as this.

1400

In terms of emergency plans, as distinct from programs, section 3 of the act, which is in the middle of the next page—

The Acting Chair: What page is that?

Mr Lipman: Page 3. Prior to the amendments under the old Emergency Plans Act, municipalities were not required to have emergency plans. The act authorized municipalities to make emergency plans but it did not require them to make emergency plans. So it was discretionary in the amendments that we made to this section. It's now clear that all municipalities have to have municipal emergency plans.

Just to back up for a moment, the act essentially applies to municipalities and the provincial crown. In terms of programs and plans that I'm referring to with respect to municipalities, there are parallel provisions further on in the legislation with respect to the province. In terms of plans with the province, it's slightly different under the legislation. Rather than requiring ministries to have emergency plans, the act sets out a process whereby cabinet can assign emergency planning responsibilities to individual ministries. Again, based on the previous presentation, it sounds like you've heard about this OIC that assigns planning responsibilities to the listed ministries. In slide 19 of his presentation, Dr Young set out the list of ministries that are assigned emergency planning responsibilities by order in council under the authority of this section.

As part of the development of broader provincial emergency management programs—and Dr Young made reference to this—and a proactive approach, the intention is that, in addition to the 12 ministries which are responsible for emergency planning, all ministries will be responsible for business continuity planning. That may well be dealt with by the OIC under the authority of this section. So in addition to the 12 ministries, all ministries will be required to do business continuity planning. In addition, the so-called designated ministries will still maintain their requirement to do emergency response plans. Of course, the distinction is that an emergency response plan is more operational in nature. It deals with men actually dealing with the emergency on the ground, whereas a continuity plan or a continuity of operations and services plan addresses the continuity of the delivery of services.

In terms of emergency powers, if you turn to page 6 of the act, right at the bottom of the page, section 7 basically contains the entirety of both the framework for a declaration of a provincial emergency and the exercise of so-called special or emergency powers. The first thing you notice about section 7 is that it doesn't look like the usual framework for emergency powers legislation. As Dr Young mentioned, normally the statutes are all quite similar and what you have is a list or a range of powers, and those powers can be triggered or may be exercised only in a case of a declared emergency. In the case of

section 7 of the EMA, there really is no list of powers. There are a couple of powers that I'll get to, but certainly there is nothing like what you'd usually see in emergency powers legislation.

There are a couple of other odd things about this section. Under the act, it's the Premier who makes the declaration of an emergency. That's unique in Canada. In all other jurisdictions, it's either the cabinet or a minister. It's usually the minister who is responsible for the administration of the legislation.

One of the matters that Dr Young raised yesterday was this issue of a fallback provision in the event that whoever is primarily responsible for declaring emergencies is unable to do so. The idea is that there should be a fallback position. That is not unprecedented. There are a number of legislative models for that. In particular, the recent UK legislation, the Civil Contingencies Bill, provides that in the first instance it's the Queen who makes a proclamation, rather than a declaration, of an emergency, but if the Queen is not available, then the Secretary of State may make the proclamation.

You should pay attention, if you're considering that type of model, to the kind of tests that would apply that would allow this delegation to be triggered. In the case of the UK legislation, the test is that it would not be possible without a serious delay for the Queen, in that case, to make the proclamation.

Another interesting element about the declaration process under the EMA—and we talked about this a bit yesterday—is that the EMA does provide for a declaration that only applies or extends to part of Ontario. What's a little unusual, again, about this provision is that normally—and it's not unusual to have a statute that provides for a partial type of declaration. Normally you have further provisions that specify that any powers that are exercised with respect to the declaration only apply in that part of the emergency area. So while the EMA does provide for a partial declaration, it doesn't take that further step of saying that in that case powers would only apply with respect to the part of the emergency area, the part of the province.

In terms of the nature of the powers, subsection 7(1) contains some quite substantial language, some rather sweeping-sounding language. The Premier may take such action and make such orders as he or she considers necessary. I think the view that this is a centralization of powers is reinforced by the white paper that was read into the record yesterday, which talked about relying on existing powers. In fact, there was no intention to confer additional or special powers by these sections.

The idea that the sections or the provisions merely centralize is reinforced by subsection 7(2), where it says the Premier "may exercise any power or perform any duty conferred upon a minister of the crown or a crown employee...."

This is the point that Dr Young is making, that for the most part section 7 of the Emergency Management Act centralizes existing powers but doesn't confer special

powers, the types of powers that you normally see in emergency powers legislation.

Subsections 7(3) and (4) are, in a sense, certainly unusual. They are broad powers to direct a municipality in the event of a provincial emergency. As far as I can tell, there is really very little precedent in any other legislation for these types of powers, directed as they are solely at municipalities. Again, these types of powers wouldn't be necessary if there was the usual approach of general powers, not specifically designed toward municipalities or any particular entity, but rather, again, the usual list of powers.

1410

I do want to refer briefly to section 7.1 of the legislation, starting right at the bottom of page 7. When we did the amendments, we did actually consider special powers, and this provision was included as part of the amendments that came into force last year. While the section has all the hallmarks of typical extraordinary powers provisions—it creates an order-making power by cabinet; orders under the section can override existing laws; the power is only triggered in the event or in the case of a declaration of an emergency—the scope and focus of the power is very narrow. If you look through it, you'll see that the power may only be exercised to assist victims of an emergency—which is good, but on the other hand there are a number of conditions that must be met and the power is specifically designed to eliminate existing obstacles, legal instruments and to overcome those to allow compensation or benefits to flow to victims of the emergency. So while it is, in a sense, a sort of extraordinary power, it's very narrow. Similarly, if there were an appropriate or proper framework for emergency powers in this legislation comparable to other jurisdictions, section 7.1, as with section 7 in its entirety, would be rendered redundant and would be captured by the usual approach.

I just want to touch on one more matter because we talked about it yesterday. It has to do with nuclear emergencies. I'd like to refer the committee to section 8 of the legislation, which is the middle of page 10. There was some discussion yesterday about jurisdictional issues with respect to nuclear facilities, and certainly the federal government is responsible for nuclear safety and security at the facility and there is a regulatory body that makes rules and orders with respect to nuclear safety and security. The province, however, is responsible for the so-called off-site effects of a nuclear emergency. In order to address that, the legislation provides that cabinet must develop a nuclear emergency plan. Cabinet has in fact developed and approved such a plan. That plan is administered by the Ministry of Community Safety and Correctional Services, which works with federal agencies, facilities and the municipalities.

Section 8 does contain quite extensive powers with respect to municipal emergency plans and the requirement that municipal emergency plans must conform with the provincial nuclear emergency plan. That section is the

legislative basis for nuclear emergency planning in Ontario.

The Acting Chair: Is there reference to nuclear specifically?

Mr Lipman: Yes.

The Acting Chair: OK, I see, in section 8.

Mr Lipman: Section 8, yes.

The Acting Chair: Thank you.

Mr Lipman: Those are all my remarks.

The Acting Chair: Thank you very much. Questions or comments?

Ms Broten: I want to ask a couple of questions with respect to the enumerated emergency powers in contrast to powers that may be available under the current drafting of the legislation.

Looking at the power given to the Premier in section 7, certainly the language of the document seems expansive. We heard earlier today, for example, that the Ministry of the Environment could enter on to a private property and build a dike in the event of a flood, and that's one of the issues Dr Young raised with us yesterday.

One of the issues I would like some clarity on is how it is that there's a desire to have these more specifically enumerated, because in your legal opinion or analysis of this statute there would be a challenge made if there were an attempt to claim that more expansive powers were available under section 7.

For example, it would seem to me that there must be statutory provisions that allow for firefighters to enter into homes without a warrant. We see that happen all the time. Why could we not, under the current provisions of this legislation, bring that power up to a higher level under subsection 7(2)?

Mr Lipman: That's a good point. Just to back up, there are a number of reasons why relying on existing powers may not be appropriate. One of them is that there may not be an existing power. That was the experience in the SARS emergency, as Dr Young discussed yesterday.

There are also advantages to centralizing powers. To the extent that there may be existing statutory powers that are relevant to managing an emergency, they may be exercised by different bodies, different institutions, different ministries, and there may be conflicting exercise of those powers. So there are a number of reasons why centralized broad-based power is important.

Ms Broten: At the time section 7 was added into the legislation, was there a comprehensive analysis done of existing powers in other statutes that were essentially being allowed to be exercised by the Premier by way of subsection 7(2)?

Mr Lipman: Section 7 was enacted back in 1983, and I'm not familiar with some of the legislative history to section 7. But certainly there were legislative models based on the list approach at the time in 1983. I don't know exactly why, but for whatever reason, at the time they decided not to follow those models.

Ms Broten: Has anyone in your ministry, for example, as you undertake the analysis of what legislative

changes you might like to see, recently undertaken an analysis of what powers already exist in other pieces of legislation?

Mr Lipman: Yes, and I think part of that is set out in Dr Young's presentation. You will recall there was a chart that showed which powers exist in which jurisdictions.

Ms Broten: That's not what I'm talking about. What I think this committee needs to do, if it hasn't been done, is look at the various pieces of legislation that exist that give powers to various actors of the state, at whatever level, and by way of section 7 could be conferred upon the Premier; what employees of the crown under the many various pieces of legislation out there have the power to do what. That's the only way you can analyze what power is being conferred by subsection 7(2). My question is, has that been done?

Mr Lipman: It has not been done in our ministry, to my knowledge. I think what you're saying is that what you would want to see—and I understand why you would want to see this—is a sort of survey of existing powers of various statutory officials, for example, under the Forest Fires Prevention Act and under various acts. We haven't done that in our ministry, to my knowledge. The Ministry of the Attorney General is more actively involved in reviewing emergency powers and so on. I understand their presentation will deal with other jurisdictions and some more specific questions about emergency powers.

1420

Ms Broten: Perhaps if they don't answer our questions, we may come back to you for that analysis to be undertaken.

Mr Lipman: Yes, absolutely.

Mr Zimmer: I have two questions. You made the comment in your submission that generally section 7 centralizes the existing powers. There were no new powers created, and you added the thought that there were no new or usual types of powers that you'd expect to find in emergency legislation. Can you give me an idea of some of those usual powers that you say you'd expect to find in a piece of emergency powers legislation?

Mr Lipman: I'm going to refer to Dr Young's presentation. The last page of that presentation has a chart entitled "Emergency Powers Across Canada." What this chart shows is that there are a number of special powers that occur over and over again in the different jurisdictions. For example, the power to implement emergency plans occurs in nine of the 10 Canadian jurisdictions. The power to regulate or prohibit travel again occurs in nine of the 10 Canadian jurisdictions. So if you refer to the chart, you'll see that there are these recurring themes or powers that you see time and time again. I guess we should add that this is the same in terms of the UK legislation, the same sort of framework; a similar range of powers again in the Australian legislation. It's simply a recurring theme.

Mr Zimmer: That leads me to my second question. Your comment is that you find powers are needed. Other jurisdictions seem to have them. I'm just interested in

your comment now on the white paper that Solicitor General McMurtry prepared. In the white paper he argued that there was no need for new or defined powers, that there was enough power in the common law out there and in the existing statute base that if it was intelligently planned and used, you didn't need further defined powers. What would you say about that argument? I'm not saying I'm a proponent of that argument, but I'm interested in your view of that argument.

Mr Lipman: To follow up what Dr Young indicated yesterday, based on our actual experience in emergencies, we have identified these gaps. I think Dr Young yesterday mentioned directives that were issued during SARS and some ambiguity about whether those directives were authorized by any piece of existing legislation. I believe he made the same comment with respect to the blackout. It was not clear, if it became necessary to impose energy rationing or conservation measures, whether there would be existing authority for that type of order.

Mr Zimmer: What do you have to say about the McMurtry argument that those powers are already there in the common law and sprinkled throughout the existing statute base?

Mr Lipman: Like I said, based on our experience, it appears they're not necessarily there. Also, even if they are there, they may be exercised, as I said before, by different persons: by local officials, common-law powers exercised by the police and so on. What you could end up with is a real hodgepodge of powers that may be available rather than a central authority with broad order-making powers.

Mr Hudak: Thanks for the presentation. I was looking at some of the legislation you talked about—Manitoba, British Columbia and Alberta are the three I've glanced at—and it's quite stark. As you said, they enumerate the emergency powers.

The legislation is very clear. I have Manitoba's open. If a disaster is declared, they could:

“(b) utilize any real or personal property considered necessary to prevent, combat or alleviate the effects of any emergency or disaster....

“(d) control, permit or prohibit travel to or from....

“(e) cause the evacuation of persons and the removal of livestock....

“(f) control or prevent the movement of people and the removal of livestock....”

So they are sweeping powers.

Mr Lipman: Very typical.

Mr Hudak: From a practical point of view, if we were to take the existing powers that are in various pieces of Ontario legislation and you were to consolidate a list like that under an emergency powers or measures act, would it make any practical difference, in terms of responding to an emergency, whether they're resident in 20 associated pieces of legislation or if the exact same provisions were collected under one?

Mr Lipman: I think there are advantages to consolidating these things: ease of access, clarity about the

breadth of the powers and who can exercise them—those types of issues. On the other hand, if really what we're talking about is repeating existing powers, then, yes, there may not be that much of a difference. But what we're really going at is filling in those gaps that may exist.

Mr Hudak: As I said yesterday with Dr Young, there are really two paths the committee could choose to go down. One is better management of existing resources and the existing acts and clarifications, versus new or extraordinary powers under an emergency measures act. Your advice, like Dr Young's, is to expand the enumerated powers right in the act.

What are some of the lessons learned from SARS and the power blackout that would tell us that these gaps exist, that we do need to bring these powers forward?

Mr Lipman: Again, I'll just refer to what Dr Young said yesterday. The directives that were issued at SARS—what Dr Young indicated was that there was some ambiguity about whether those directives were authorized under existing legislation, particularly under health legislation. Because of that lack of clarity, there's an issue about authority for them, whether the provincial government really had the authority to make those directives which were, I think, agreed by all to be necessary and vital during the SARS emergency. The question remains about the authority for them.

Mr Hudak: Are there any particular examples that you could share with the committee of where these ambiguities occurred?

Mr Lipman: I think it might be best to raise those issues with the Ministry of Health when they do their presentation, in terms of the SARS directives.

Mr Hudak: OK.

Mr Lipman: There are certainly issues about to what extent public health legislation did in fact authorize directives that were made. But they could probably take you through some of the gaps that they have identified in terms of existing powers.

Mr Hudak: Were there areas outside of health—for example, on prices, functioning of businesses during the power blackout—or other areas you'd like to concentrate on, in addition to health?

Mr Lipman: The one I had heard of, in terms of the blackout, was mandatory rationing of energy, conservation measures and so on. My understanding was that there was also ambiguity about whether there was any existing authority under the energy statutes for those types of mandatory rationing.

Mr Hudak: Again, with respect to the other provinces, to refresh my memory, I guess the powers are quite—and it's a good thing—rarely used. Have there been any charter challenges or other court restrictions on the uses of those emergency powers?

Mr Lipman: Not that I'm aware of. Again, that might be something you could confirm with the Ministry of the Attorney General in their presentation, but not that I'm aware of.

1430

Mr Hudak: Here's another angle. Is the threshold any higher in these other provinces where the minister, I guess—it's usually a minister—has greater authority than the Premier would in Ontario under existing legislation? Is the threshold higher as to when a disaster is declared? Is the threshold higher in terms of the limits on how long a disaster could be declared for? I'll leave it at those two for now.

Mr Lipman: Those types of—

The Acting Chair: Excuse me, could you just speak into the microphone a little closer, please. Thank you.

Mr Lipman: Those types of things—the duration of it, when a declaration of an emergency can be made—are important in terms of accountability mechanisms. We've always said, as Dr Young said yesterday, that it's important, along with powers, to have built into emergency powers legislation the appropriate accountability mechanisms.

Section 7 of the EMA that I've just taken you through doesn't have anything in terms of duration of the emergency declaration, which is something you see in all jurisdictions. It doesn't have anything about renewals of declarations, and that's partly because there's no duration. But it doesn't have anything about a report to the Legislature, following the emergency, about the declaration and whether any special powers are exercised in the emergency.

Those vary between jurisdictions, certainly. And what you'll see, I think, in the more recent legislation is that there's probably a higher threshold—in other words, greater accountability mechanisms—built into the legislation as opposed to some of the older ones like Manitoba and Saskatchewan and so on. But that's not necessarily the case.

Mr Hudak: Maybe you can help me out. If there were a trade-off, if there were additional powers that were conferred upon the Premier or a minister in Ontario in exchange for greater accountability, is there a model piece of legislation, whether it's a vote of the Legislature, whether it's working with other parties? What kind of accountability mechanisms would be available, what kind of trade-off?

Mr Lipman: I'd prefer if the Ministry of the Attorney General, which has done more work in this area than I have, addresses these questions, but I can say that the key is to strike the right balance between powers and accountability mechanisms. I don't think there is a perfect balance. Certainly, you have to be concerned on the one hand about the operational issues. You don't want an accountability framework that slows down your ability to act. On the other hand, you want to make sure there are proper safeguards in place.

Mr Hudak: But your view, much like Dr Young's, is that that balance exists toward the side of more extraordinary powers as opposed to where it rests today.

Mr Lipman: From the ministry's point of view, we want to make sure that in an emergency our people—emergency management people, municipal first respond-

ers—are given every opportunity to do what they can to deal with the emergency. But at the same time, we certainly acknowledge and understand the need for an appropriate accountability mechanism.

Mr Hudak: I think the lesson of Dr Young's presentation was that another disaster, whether it's natural or man-made, while it may not be imminent, the likelihood is increasing. In order to best deal with the upcoming anticipated disaster of some nature, we need to provide more powers centrally, right?

Mr Lipman: That's true.

Mr Hudak: And you'd agree with the doctor's conclusion?

Mr Lipman: I agree certainly that when you compare it to other jurisdictions, the framework for powers in our legislation is just abysmal. So, I'd leave it at that.

Mr Hudak: OK. Thank you.

The Acting Chair: That's pretty clear advice.

Mr Kormos?

Mr Peter Kormos (Niagara Centre): Thank you to both of you.

Mr Lipman, you're legal counsel with the legal services branch at the ministry? For how long, by the way?

Mr Lipman: On and off for about 11 years.

Mr Kormos: Because I'm sort of interested in Dr Young's letter to Premier McGuinty. Have you seen the letter I'm talking about, the June 21, 2004, letter?

Mr Lipman: Yes.

Mr Kormos: I suppose it's natural he would write to the Premier, because although he's working within the Ministry of Community Safety and Correctional Services, he would perceive himself as answerable to the Premier. Am I correct in that?

Mr Lipman: I don't know.

Mr Kormos: You don't know. He did copy the minister, but he makes reference in that letter to three incidents that demonstrated limits in our current legislation. He makes reference to the 1998 ice storm, but of course that predated the current legislation by a few years.

Mr Lipman: The current legislation on emergency powers?

Mr Kormos: The Emergency Management Act.

Mr Lipman: As I explained earlier, the Emergency Management Act is really an amended statute of the previous Emergency Plans Act. At the time the amendments were made, no amendments were made to the powers section.

Mr Kormos: I understand, but I was here when that amendment was introduced. It was 2003. Mr Runciman was the minister then, or was it someone else?

Mr Lipman: Yes, I believe that was when the amendment was introduced.

Mr Kormos: I remember the press conference with the blue backdrop and the lights and the soundboard. I remember the press conference and the fanfare. Mr Runciman talked about having to respond to this new world—I'm paraphrasing him now. You may not have been there, but this is as I recall it. If you were there and

you recall it differently, say so. Mr Runciman was talking about the need for a comprehensive reform of our emergency planning ability, and he was announcing this new legislation. Do you remember that event?

Mr Lipman: No, I don't.

Mr Kormos: What I find curious is that the experience of the 1998 ice storm predates Mr Runciman's amendments of 2003. I appreciate that SARS and the power blackout postdate it, because there wasn't any reference to those. There was a lot of reference to September 11, in an oblique way, as you'll recall, because that was the bent of Mr Runciman.

What about the ministry's interest in the Campbell report? Is there interest in waiting until the final Campbell report is produced on SARS before the ministry draws any conclusions about necessary legislative amendments in terms of the SARS experience?

Mr Lipman: I can tell you that Dr Young, in his meetings with the SARS commission, has indicated, and I believe he indicated yesterday, that the commission is in fact looking at emergency management. Dr Young has indicated to the commission that he has concerns about emergency powers and this gap in emergency powers legislation.

Mr Kormos: So Dr Young—and again this is quite appropriate—specifically raised issues around the adequacy of the legislation with Judge Campbell?

Mr Lipman: That's my understanding, yes.

Mr Kormos: And Judge Campbell, as I understand it, is going to release his final report after a consideration of all the evidence at the end of this year?

The Acting Chair: At the end of August.

Mr Kormos: What's your understanding?

Mr Lipman: I'm not sure about the final report. Again, this is not my area.

Mr Kormos: Fair enough.

Mr Lipman: My understanding is that there may be an interim report in August or September of this year.

Mr Kormos: OK, an interim report. And you have no information about the timing of the final and conclusive report?

Mr Lipman: I don't, but probably representatives from the Ministry of Health might. Representatives from the Ministry of the Attorney General might as well.

Mr Kormos: The other interesting thing is that Dr Young became the Commissioner of Emergency Management, I suppose, after October 2. Is that your understanding? When did he become commissioner?

Mr Lipman: I'm told, April.

Mr Kormos: April of this year. In his June letter he writes to Mr McGuinty and says, "I believe that our research and analysis has evolved to a point where we can offer constructive and comprehensive advice to you concerning necessary legislative amendments to the Emergency Management Act." That's what he has in the letter. As counsel in legal services branch, have you been involved in the discussion around the advice that Dr Young would give to the Premier regarding necessary legislative amendments?

1440

Mr Lipman: Yes, and I think Dr Young indicated that we have had extensive discussions about emergency powers and emergency legislation.

Mr Kormos: Did you monitor Dr Young's attendance here yesterday?

Mr Lipman: Yes.

Mr Kormos: OK, good. So you heard what he had to say as well as everybody else. He made it very clear that the appendix to his letter, "Enumerated Emergency Powers Across Canada," was there for information only.

Mr Lipman: Yes.

Mr Kormos: As I understood, it wasn't to be construed as his wish list.

Mr Lipman: That's my understanding as well, yes.

Mr Kormos: But from the letter and from what you tell me, I'm understanding now that there are legislative amendments under development that do constitute Dr Young's—"wish list" isn't fair, but his recommendations to the government.

Mr Lipman: There have been discussions about emergency powers, including the appropriate emergency powers. I'm not sure that Dr Young is recommending any particular powers. What he's saying is that there is a gap in emergency powers legislation, and this gap should be addressed.

Mr Kormos: But he speaks very specifically about "comprehensive advice to you"—the Premier—"concerning necessary legislative amendments to the Emergency Management Act." I take "comprehensive" to mean comprehensive rather than vague. "Comprehensive" isn't the same as "vague," is it?

Mr Lipman: I don't know.

Mr Kormos: Come on. Let's work together.

Mr Lipman: I understand from Dr Young's attendance yesterday that the committee is fully intending to invite him back, and my suggestion would be that these types of questions would best be put to him. I don't have personal knowledge about what Dr Young was intending or thinking when he wrote that letter.

Mr Kormos: Ms Guibert, feel free to jump in any time, because you're the senior adviser to Dr Young. You can't get inside his mind, but what would he have meant by "our research and analysis have evolved to a point where we can offer constructive and comprehensive advice concerning necessary legislative amendments to the Emergency Management Act"? Do you know what he meant by that?

Ms Monique Guibert: I'm sorry, I think you'll have to ask Dr Young that question.

Mr Kormos: I just want to know whether you know what he meant by that.

Ms Guibert: I'm sorry, I don't.

Mr Kormos: Mr Lipman, were you counsel when the amendment that Mr Runciman put to the assembly last year was moved for first reading?

Mr Lipman: Yes, I was.

Mr Kormos: Were you involved in the drafting of that?

Mr Lipman: Yes.

Mr Kormos: Were you involved in the discussions prior to the drafting of it?

Mr Lipman: Yes, I was.

Mr Kormos: I'm curious, then. This is your legislation.

Mr Lipman: I don't take a proprietary interest in it.

Mr Kormos: You've got fingerprints on it. You received instructions that resulted in your drafting this, right? I'm not saying you're responsible for it, but you were involved directly in the drafting of it.

Mr Lipman: Yes.

Mr Kormos: As I recall, Mr Runciman, for whom I have—I trust you have the same affection for him that I do. I perhaps have known him longer than you, but I have a great deal of affection and regard for him, and I hope you share that affection and regard. Back in the spring of last year, Mr Runciman spoke of this amendment as the cat's meow. This was it. This was the answer to our shortcomings around emergency management, emergency planning. And now, my goodness, a year and change later—granted, you've got a different boss now: Mr Kwinter, somebody as likeable as Mr Runciman ever could be—you're part of the team that has come in here saying the legislation is sorely lacking. You are telling us it's sorely lacking, aren't you?

Mr Lipman: What we're saying is that there is a serious problem with it when you compare it to other jurisdictions on the emergency powers side of it.

Mr Kormos: But the ministry reviewed other jurisdictions and their legislation before moving first reading of Mr Runciman's bill, didn't they?

Mr Lipman: One of the things Dr Young mentioned yesterday was that at the time, emergency powers really weren't the focus of the amendments. People were more concerned with the preparedness side of things. It also appears there wasn't much attention given—I guess Dr Young explained quite well yesterday that we had become complacent in a number of areas. Certainly one of the areas was the nature and extent of our emergency powers legislation.

Mr Kormos: It's fair to speak of Dr Young now, in his capacity as Commissioner of Emergency Management, as a primary adviser to the government around legislative amendments in this area, isn't it?

Mr Lipman: I don't know.

Mr Kormos: We do know he wasn't in that role back when Bob Runciman was minister, was he?

Mr Lipman: No.

Mr Kormos: Who was the most parallel personality to Dr Young before Dr Young?

The Acting Chair: It was the crime commissioner, Jim Brown.

Mr Kormos: Oh geez, when he wasn't busy finding Santa Claus hookers out in alleyways off University Avenue. A sad, pathetic little person he was.

Mr Zimmer: On a point of order, Mr Chair: Don't take this the wrong way, but are we on five-minute cycles here?

The Acting Chair: No, we're not. The Chair has been trying to accommodate as many members' questions as possible.

Mr Kormos: I'll tell you about Jim Brown and the hookers later if you're interested at all.

The Acting Chair: Let's get back on emergency preparedness, Mr Kormos.

Mr Kormos: I'm just wondering what changed in terms of perspective, attitude, philosophy. You've helped a little bit by making reference to what Dr Young had to say between the preparation for Mr Runciman's much-heralded amendments and today. That's why I'm asking. I appreciate that Dr Young wasn't there; other people were. Maybe I'm naive, but I see Dr Young as being very critical in terms of being a source of advice to this government about necessary legislative changes. I hope I'm not being unfair in proposing that. Am I being unfair in suggesting that?

Mr Lipman: No, I don't think so.

Mr Kormos: So I'm wondering, because you've been there in the ministry, who was an adviser of equal stature to Dr Young helping Mr Runciman and his staff prepare the amendments that Mr Runciman presented for first reading back in 2003. Who played the Young role then?

Mr Lipman: I think the amendments that were developed in 2003 were primarily based on preparedness. The experts on that part of emergency management remain as they are today, in the office of Emergency Management Ontario.

Mr Kormos: How much time do I have, Chair? Do you want me to surrender and then wait for my turn in 20 minutes?

The Acting Chair: You have two more minutes.

Mr Kormos: I'll surrender for the moment and wait for my next round.

Mr Zimmer: Well, there's a first.

Mr Kormos: There you go. Put that in your householder, Mr Zimmer.

1450

The Acting Chair: Mr Lipman, I want to ask you one question. I think you've played an interesting role in that you've been there before and after the changes in legislation. Dr Young mentioned yesterday that he thought there was a need to make some legislative changes in terms of emergency powers, as those link with preparedness.

The one example we received from Dr Young was the need to have these powers in terms of a flood, for instance, where right now a government official could not access private property, perhaps in order to stop a flood from spreading by putting up a dike, because they would be charged with trespassing. Therefore, they couldn't do anything to protect the public interest, because they would need a warrant to trespass or even to enter a home to deal with an emergency matter. Yet this morning, the Ministry of the Environment official was very clear and unequivocal in saying that the Minister of the Environment has statutory powers to trespass, to enter private property—for instance, a plant that's spewing out

toxic chemicals—and possibly they were going to give us more definition in terms of a personal residence.

I guess what I'm asking you is, if certain ministries already have these powers and maybe others don't, is that really what we should be looking at, rather than, let's say, just doing something right across the board or just coordinating these powers more centrally? It seems, in the Ministry of the Environment's example, that these powers of entry without warrant already exist through a ministerial directive or order. She can do that right now. What do we have to give the provincial government more than that? Why is more required?

Mr Lipman: Again, I think it's important to be aware of the existing statutory powers, but based on recent experience, they're not always there when you need them. That's why you may need special powers that go above and beyond what's usually available. Somehow the definition of an emergency is "the status quo is overwhelmed." We're no longer able to deal with a situation with the regular powers that are available to us. It's almost the nature of an emergency. I think what Dr Young had in his slide package yesterday was that it's an extraordinary situation and sometimes you need the corresponding extraordinary powers to deal with it.

The Acting Chair: The other question is, as a couple of committee members have referred to, under subsection 7(1) of the existing legislation, which has been in existence since 1983, "The Premier...may take such action and make such orders as he or she considers necessary and are not contrary to law to implement the emergency plans formulated under sections 6 and 8 and to protect property and the health, safety and welfare of the inhabitants of the emergency area." How is that limiting? In other words, here the Premier can take such action basically to protect the public interest in an emergency. How is that limited in what the Premier can do? How is the Premier limited?

Mr Lipman: It's a very good question, because at first appearance it does seem to be a broad, sweeping grant of power, but when you look at the section as a whole and at subsection (2), for example, which specifically talks about, "For the purposes of subsection (1), the Premier...may exercise any" basically existing power—if you look at the provision as a whole, I think it's quite clear that it's a provision about process, about centralizing existing powers rather than granting any additional ones.

The Acting Chair: I guess we'll have to have further explanation of that. At first blush I think I understand maybe the limits there. Anyway, we'll have time to discuss that further.

Mr Kormos: I'm wondering if research might—because it's well within my time. As I understand, the War Measures Act addressed as much the suspension of certain rights and civil liberties. Granted, that was pre-charter, not that that would necessarily make a difference, depending upon the government of the day.

Part of what's frightening about this is the talk about these broad-ranging, unfettered powers, which necessar-

ily presume a suspension or an abrogation, possibly, of fundamental rights and freedoms. To talk about the charter is naive because right now, for instance, in the criminal context—Ms Broten might understand this—there are certain things that can't be grieved that are conceivably charter issues because they're done and over with so quickly that you don't have time to get the issue before—it's done and over with. The issue is *functus*, so to speak. The abuse of, let's say, three-day adjournments by justices of the peace: Some of them, in my view, have potential for being grieved by way of litigation under the charter, but practically they can't be because the three days are over before you're going to get before a court.

The charter has a role, but it may not be very much of a practical role. So what I'm interested in is some broader understanding of giving new rights to a personality within the government—to wit, the Premier—versus suspending fundamental rights of citizenry, and whether there is a difference between the two, because I suspect there is. So I'd appreciate—obviously, that's not something they're going to come up with tomorrow.

The Acting Chair: Mr Kormos, if I might add, I think that's one of the reasons why—as the subcommittee met, one of the recommendations we made to committee is that we engage the services of an independent constitutional expert. You voted for it, I think. Oh, we never talked about it. Yes, but that was—

Mr Kormos: I think you've let the cat out of the bag, Chair.

The Acting Chair: We did talk about it, though.

Mr Kormos: I'm going to say to you, if you're talking about hiring independent counsel, are you out of your freaking mind? We've got the Ministry of the Attorney General, we've got competent lawyers coming out of our ying-yang, and you're going to talk about hiring constitutional experts? The government sends its Ministry of the Attorney General lawyers to court to argue complex constitutional cases, and you're talking about hiring one?

The Acting Chair: We have discussed this. I don't know in what context we discussed it, but the fact is that we thought—

Mr Kormos: I think it was a caucus meeting, not a subcommittee meeting.

The Acting Chair: No, it wasn't a caucus meeting. It was an attempt to deal with this very issue, where we wanted to get the best advice possible if these issues did arise, because in some cases perhaps legal counsel representing a certain ministry might be the ministry that would be granted these extraordinary powers. So it would be a lot more, let's say, independent and removed from the ministry if we had someone who didn't have a vested interest in being part of that ministry giving us advice on whether that ministry should have the extraordinary powers or not. That was the discussion.

Mr Kormos: In caucus.

The Acting Chair: No, not in caucus.

Mr Kormos: Was it held at a subcommittee meeting yet?

The Acting Chair: I thought it was a subcommittee. Ms Broten could maybe explain it. I told Ms Broten about it.

Mr Kormos: It's the one you plan on holding at the subcommittee meeting after this session's over this afternoon.

The Acting Chair: No, it wasn't. It was—

Ms Broten: No, Mr Kormos. It was with respect to the expert panels that we'll be calling before this committee. We put a number of constitutional lawyers on the list, you will recall.

The Acting Chair: It was the day you left early. That's when it was, and Mr Dunlop—

Mr Kormos: But at the subcommittee, though, you want to talk this afternoon about retaining independent counsel for the inquiry, right, for this committee hearing?

The Acting Chair: Yes, and it was a subcommittee where Garfield was here, and myself. You had left early and we went on to discuss this informally. That's what it was.

Mr Kormos: Oh, OK.

The Acting Chair: But I thought it was in this room.

Mr Kormos: But there is going to be a subcommittee meeting this afternoon.

The Acting Chair: Yes, there will be.

Mr Kormos: And we are going to talk about the committee hiring independent counsel.

The Acting Chair: We're going to talk about that, yes.

Mr Kormos: I'd repeat my earlier comment, but I'll—

The Acting Chair: Thank you very much, Mr Lipman and Ms Guibert, for your presentation. It was very informative.

Any other matters before we adjourn?

Mr Kormos: You weren't going to rotate?

The Acting Chair: No, because we went around once. We took extra time for each person.

Interjection.

The Acting Chair: We'll be talking about that later. OK? Move adjournment.

The committee adjourned at 1458.

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