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**Official Report
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Thursday 5 August 2004

**Journal
des débats
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Jeudi 5 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

Thursday 5 August 2004

Jeudi 5 août 2004

The committee met at 1001 in room 151.

EMERGENCY MANAGEMENT STATUTES REVIEW

The Acting Chair (Mr Mike Colle): Good morning. I'll bring to order the standing committee on justice policy dealing with the review of emergency management statutes in the province of Ontario. As you know, we're dealing with various government ministries, trying to review their mandates and statutes to see if they are adequate in terms of meeting emergency situations, whether it be SARS, a blackout, the Peterborough flood or other potential emergencies that may arise in this province.

We're bringing forth a series of expert witnesses from the various ministries. We've heard from Dr James Young. We've heard from the Ministry of Community Safety and the Ministry of the Environment. Today we have other ministries, and in the week following next week we'll be having a series of expert panel presentations from right across the province in terms of their emergency preparedness and their input.

Following along that line, today we have three presentations, the first one being from the Ministry of Natural Resources. Later on will be the Management Board of Cabinet and thirdly the Ministry of Labour. For today's first presentation, from the Ministry of Natural Resources, we have Mr Jack McFadden, who is director of the aviation and forest fire management branch, and Michael O'Brien, emergency management coordinator.

I should just let the committee know that we're always open to more suggestions of individuals or groups that would be helpful to the committee. I know our discussions yesterday prompted some potential contacts that might be helpful. Since we've heard about more of these 300-year storms in Peterborough, we're also going to ask a climatologist to come before us and talk about the long-range impacts of climate change.

The 9/11 commission in the United States cited one of the principal failures of American institutions, in terms of providing for and possibly helping to avert tragedies like 9/11, as a real lack of imagination in American institutions. So I suggested to the clerk that we also perhaps contact some futurists or some authors or academics who are into projecting future trends and events that perhaps

have not occurred in the past, that sometimes seem far-fetched but do occur.

Mr Peter Kormos (Niagara Centre): You're not talking about these late-night 1-800 services—JoJo or something?

The Acting Chair: What was her name?

Mr Kormos: I don't know; JoJo.

The Acting Chair: No, I think we want someone with a bit more substantial credentials.

We are open to more suggestions from committee members, and we've left some flexibility in the schedule for that reason. So if you've got suggestions for the committee and the clerk, we will try to do our best to contact them.

MINISTRY OF NATURAL RESOURCES

The Acting Chair: The first presenters are Jack McFadden and Michael O'Brien. Essentially, we're doing this for approximately a half-hour. If you want to leave some time for questions and answers, that would be preferable. That's what most deputants have done. You may proceed. Identify yourself for Hansard, please.

Mr Jack McFadden: My name is Jack McFadden, with the Ministry of Natural Resources. I want to thank the members for allowing me to speak to the standing committee this morning and talk a little bit about the Ministry of Natural Resources' role in emergency management. Hopefully, you have in front of you a copy of the brief, nine-slide presentation that we left with the clerk. I believe the actual presentation will take about 12 minutes and leave lots of time for questions afterwards.

You can see from your copy of the presentation that the focus of the presentation is really to provide members with an overview of the Ministry of Natural Resources' historical involvement in emergency management, as well as a bit of a summary as to what we see in the way of implications of the new Emergency Management Act.

I understand that the committee is particularly interested in the statutory powers that are in place now with regard to emergency management. You'll see in the presentation, as I get to that, that we have done an internal review of the emergency management situation in the Ministry of Natural Resources, particularly the implications of the new act. There is some reference in that internal review to legislative authority, but frankly we're still in the process of looking at that legislative

authority and the powers related to that. Our focus right now has been on meeting the requirements of the essential level by December 31 this year. So we're on an operational focus, and it may take us a little bit longer to complete a full analysis and evaluation of the legislative implications.

If you will, I'd like to briefly touch on some of the elements in the presentation. I don't expect to go through it detail by detail.

The first slide indicates some of the historical involvement our ministry had on this before the year 2003. We've had involvement across the Ministry of Natural Resources. We've been involved annually in emergencies, some of these being relatively small, where the ministry assists with local emergencies, but others being very significant, such as the two declared provincial emergencies where the ministry has had a role.

There's a little note there that we deal with evacuations in support of the federal government, as well as provincial institutions, and have dealt with numbers averaging about 1,200 residents a year related to evacuation, flood or fire.

We have over 200 Ministry of Natural Resources staff involved annually in emergency management activities, but I'm quick to note that a lot of these are several hours of one person's time or a couple of days of someone else's time on an ad hoc basis. We've added it up in our internal review and it only comes to about 19 FTEs across those 200 individuals.

We rely very heavily in the delivery of Ministry of Natural Resources emergency management services on our district staff located in the field, conservation authorities in Ontario with whom we have a partnership and the forest fire management program that's operated through my branch.

The ministry's staff have been actively involved. Due to our decentralized operation, we have offices scattered throughout Ontario. We have major responsibilities, as I mentioned, for annual emergencies related to floods, fires and on occasion draught, and we are a major supplier of expertise and equipment to other provincial lead agencies.

1010

If you'll turn to the next slide, there's a list. I won't go through this, but you can see on the left-side list a wide variety of staff skills that the ministry has to provide in our delivery of emergency service or in the delivery of emergency services to other ministries in Ontario. In fact, our fire staff have provided those technical skills out of province to other provinces in Canada, and more recently to the United States.

On the right-hand side of that slide, you can see some of the equipment, ranging from our fleet of 33 aircraft through various specific equipment and supplies that are available to assist in our delivery, again, or in the delivery of other ministries.

The Acting Chair: Excuse me, Mr McFadden. It might be helpful for the committee and people watching on television just to review some of the technical skills,

to give us some examples, and some of the equipment you might be using through the Ministry of Natural Resources so the public has a better awareness of some of the things you are doing.

Mr McFadden: Certainly. I can take a moment to do that.

The Acting Chair: Would you, please?

Mr McFadden: With regard to the skills, we have a number of skills associated with weather forecasting. We have meteorologists on staff to analyze weather patterns that are moving into the province and give specific analysis as to the types of hazards that may exist or the types of events that may occur as a result of weather moving into the province. This is useful primarily to the fire management and flood management responsibilities of my ministry, but certainly other ministries can access the weather interpretive services and gain from that.

From the weather forecasts, we do get into more detailed flood forecasting, and the ministry has a responsibility to work with conservation authorities in Ontario, our district offices and others to provide an actual interpretation of the potential for flooding conditions in various locations in Ontario.

We have had extensive experience and offer some expertise in the area of GIS—geographical information services—and the associated base mapping and interpretive mapping, where hazard-prone areas, for example, might be mapped and identified, or during an emergency we'd have the capability to assist with mapping of the particular geographic area that's affected by an emergency or, in fact, through some of the other data layers, be able to identify specific features etc.

Because we have, on the equipment side, a fleet of aircraft—the government's aircraft—we have skilled pilots and skilled staff dealing with the tracking of aircraft and identifying particular patterns and the whereabouts of government aircraft, so we would have the ability to analyze which aircraft might be able to move most quickly to a particular disaster site or emergency.

We have radio telecommunications equipment on the right-hand side of the list. We also have staff skilled in utilizing that equipment and setting up perhaps emergency uses of the telecommunications equipment.

We have, as a ministry, trained enforcement staff who have the skills as well as the authority to apply a variety of regulations and acts in the enforcement of emergency duties.

We have trained incident command teams that are typically set up and receive a good deal of work activity in the forest fire management program but are also available to use the incident command system for application to other types of emergencies other than forest fires.

I mentioned the pilots and their specific skills associated with resource management activities, and their flying skills, both fixed-wing and rotary aircraft. Those pilots are staff with the Ministry of Natural Resources.

Then we have staff who are skilled in a variety of small tools, if you will. Chainsaws quite often come in handy during emergencies, and a whole variety of other

small equipment, from hand tools to small types of heavy equipment like bulldozers.

We have program engineers available within the Ministry of Natural Resources who have normally years of experience in dealing with a variety of engineering issues, specifically civil matters associated with dams and other types of activities.

Generally, we've identified that the ministry has a response culture in the sense that we do deal with annual events in floods and fires and therefore have essentially an annual opportunity to exercise our skills and experience in emergency management.

On the equipment and supplies side, I mentioned aircraft several times. By "fixed-wing" I mean aircraft that have solid wings, as opposed to helicopters, of which we have seven in the Ministry of Natural Resources. We have a variety of field equipment, everything from weather gauging, weather recording stations to automated lightning strike indicators. Again, a lot of this equipment supplies information not just to the Ministry of Natural Resources but to other public agencies.

We have radio and satellite phone communications. These are not just office-based equipment but mobile equipment. For example, each of our fire crews has a mobile satellite telephone to provide them with emergency service and personal safety when they're out on the fire lines. We have pumps, hoses and sprinkler systems to deal with forest fires and protection of individual valuables. I mentioned chainsaws and hand tools previously. We have a fleet of ministry vehicles of all sizes as well as boats in a variety of sizes.

We generally order and secure large volumes of sandbags, which we make available to public agencies during flood conditions, and we have the GIS software and hardware, which I mentioned is available for mapping and geo-referencing purposes during emergencies and in preparation for emergencies.

We have forest fire management equipment inventory systems. We do have what I have to say is a very good system for monitoring our forest fire equipment. This is automated, and we have the software to manage that equipment and identify where it is, what it is and when it returns to its home location. As I mentioned previously, we do have a ministry with a variety of sites across Ontario, which comes in handy if you're trying to get to an event in an isolated location fairly quickly.

I hope, Mr Chair, that's an adequate review.

The Acting Chair: That helps, yes.

Mr McFadden: If you turn to the next slide, it deals with what I've been calling the internal review that the ministry undertook a year or so ago with regard to emergency management. We did look at the bill at that time, and now the Emergency Management Act, to determine its impact on the ministry. You'll see it was completed in January this year after about 12 months of looking at the assessment of the implications of that new act.

I won't read through, Mr Chairman, but perhaps I should just note some of the key components that the ministry examined in its review. We looked at the

organizational structure of the ministry with regard to emergency management. We looked at the policy framework in place. We looked at the emergency risk management process, with which I believe members are familiar; it's called hazard identification and risk assessment in the new act. Members might be particularly interested in the fact that our review did take a look at legislation and liability, not in a comprehensive way, but we have looked at that. The review looked at telecommunications, information and information management technology. It looked at communications in the sense of providing information flows back and forth, emergency response resources, training and education, critical infrastructure and assurance, as required by the new act, and we looked at our ability to do business continuity planning. There were a number of recommendations identified, which the ministry is now evaluating.

On the next slide, with regard to orders in council, the Ministry of Natural Resources has typically had three responsibilities identified by order in council. We've typically had responsibility for forest fires, for floods and for provincial responsibilities associated with drought. There are currently four new responsibilities that are proposed to be assigned to the Ministry of Natural Resources by order in council. This would add responsibilities for erosion, for dam failures, for petroleum well spills or gas well blowouts and also for soil and bedrock instabilities. We're not clear at this time about the workload or legal implications, but we do expect, for example, that the hazard identification and risk assessment for these four new orders in council may be extensive.

1020

If you turn to the sixth slide: a little bit on the legislative framework. MNR uses legislation to manage natural resources. The actual statutes that the ministry has probably number at least 45. That was the number identified in our internal review, so we use it under our own mandate.

Some of our control mechanisms are administered by other provincial ministries—for example, the Highway Traffic Act—or by the federal government—this would be the Fisheries Act and legislation such as that. We also rely on municipalities and partnerships with groups like conservation authorities to implement controls and the mandate of the Ministry of Natural Resources. As I said, our review looked at legislation but has really only scratched the surface, and we'll be returning to that.

Our next steps, as you can see: For each of the order in council responsibilities, we will identify by program area what the emergency potential is and evaluate that more fully. We'll look specifically at those statutes administered by MNR, we'll look at statutes and legislation implemented by other ministries and federal-provincial agencies, and we'll identify specific sections that relate to those four pillars of emergency management that are identified in the act. We're not there yet, but we will be looking at any gaps in legislation that need to be addressed in order to effectively administer the emergency management program of MNR, and we will

develop a strategy and an action plan to address any gaps that are identified.

The last couple of slides—I'm not going to dwell on this one, because I believe the members are already well aware of the requirements of each of the ministries and municipalities in meeting the essential-level requirements by December 31. There are several key areas there that we've identified. There are in fact 14 major responsibilities that have been identified for each of the ministries affected. There are 13 on the list there. The one that's also in place is the identification of hazards and the risk assessment for each of the orders in council. So we acknowledge that is another essential-level requirement. Unless members have not seen this list, I'll forgo reading through each of the 14 requirements.

The last slide in the package really speaks specifically to what I believe the members are most interested in; that is, the legislative and policy agenda. My ministry's focus right now is on meeting the 14 requirements on the previous slide. It's taking a lot of our time to address and make sure we have the ability to meet all those requirements by December 31 of this year, and that has been our focus to date. The Ministry of Natural Resources review, which I mentioned previously, did deal with a review of legislation, both current and proposed, and we have some initial recommendations on that. But as I mentioned on the last slide, we do want to look into that further and do the gap analysis.

Finally, as an example of emergency powers, the one reference I did bring forward is under the Forest Fires Prevention Act. I'm well aware of some powers associated with the ability under orders to restrict travel in rural areas—for example, in the area affected by a fire emergency—or to be able to put in orders that call for fire bans or things of this nature.

If that's sufficient, I believe I'm within my 15-minute window. I would be open for questions.

The Acting Chair: That's excellent.

Mr Kormos, we'll start with you.

Mr Kormos: You talked about December 31, 2004, as a deadline for the preparation you're doing. Will that include an assessment of the adequacy of existing legislation?

Mr McFadden: No. Specifically, the essential level requires us to look at the 14 components, none of which specifically require an evaluation of the existing legislation. But in fact, as part of the ongoing activities by the ministry to examine the impacts of the Emergency Management Act, we will be looking at that, not because it's an essential element by December 31, but because it's part of the ministry's ongoing evaluation.

Mr Kormos: Sure. I'm just reading the slide saying the MNR internal review identified the need to review legislation, current and proposed. So be it. That's not part of the December 31, 2004, deadline?

Mr McFadden: It's not a requirement under the act to do that review by December 31. That's correct.

Mr Kormos: OK, but it's being done nonetheless.

Mr McFadden: The ministry is looking at legislation as part of its ongoing reviews, yes.

Mr Kormos: And have you informally incorporated the December 31 deadline for that agenda item?

Mr McFadden: No, we have not. We will be looking at that. Without having established a deadline, I would expect that we would be looking at that in this fiscal year and hopefully have a full analysis of that aspect sometime after the December 31 deadline.

Mr Kormos: I raise that because—well, for instance, Judge Campbell is doing the SARS inquiry now, which presumably is going to have, once it's completed, comment on the adequacy of the current legislative regime around SARS. Similarly, your ministry, in undertaking this review, which is more than appropriate, will then reach some conclusions around the adequacy of legislation or the need for new legislation and some recommendations around that. That's why I'm asking what kind of deadline you've adopted, whether it's fixed or informal.

Just as my reference, Ms Broten, to the Campbell inquiry yesterday, here we are again: We have a ministry that seems to be doing a whole lot of work, and I take no quarrel with that, to arrive at some conclusions that are the same—or, rather, is the same exercise that this committee is purporting to do. So I'm wondering what the committee is doing, perhaps prematurely circumventing the work that MNR is doing, whether we should be looking at how we structure this committee's progress to receive the results of your review and analysis, to receive the results of the Campbell inquiry, and obviously other ministries, I presume, are going to be doing the same thing you're doing.

Mr McFadden: I would think so.

Mr Kormos: I would think so too. Do you have anything—perhaps you don't feel comfortable commenting on that. I mean, is it important for us to wait and see what you've got to say?

Mr McFadden: We have not established a firm date in looking at the legislative impacts, so it's difficult to assist you with indicating when the ministry would be able to deal with this specific item, but I expect it will take some time to do a thorough analysis. If we have at least 45 acts to examine, this is not something that will be done in a matter of weeks; it might take a while. I expect we would want to do a thorough analysis as a ministry to be able to come back and say, "Here's our gap analysis, and we have adequate provisions in place," or, "We need something special." I just can't put a time frame on when we'll be able to do that. As I mentioned, the focus right now is trying to prepare to make sure we can meet the potential regulations for December 31.

Mr Kormos: Sure. And between research and the Clerk's office, the photocopiers have been working triple duty preparing copies of all the possible legislation that could be considered. It's probably my failure to be able to read the index properly, but the one statute I can't find is the forest fire prevention act, which is the one you make reference to. I've asked Ms Broten whether she has

memorized that statute yet. She says no; she's working on it. She only has the first two pages in her memory.

1030

I took a look at British Columbia, and one of the things Dr Young referred to was that Ontario didn't have the capacity, the power, to press people into service. I call it the press gang statute. I remember working up in northern BC when I was a student and we assumed—

Interjection.

Mr Kormos: Working, I guess. I worked in the copper mines two summers in northern British Columbia. CAIMAW was the union, by the way.

We assumed—we didn't know; we assumed—that if there were a forest fire—we were young guys; it didn't particularly offend us—we would fight the forest fire. Probably some of us were looking forward to it, however naive that was.

What about the power in Ontario to press people into service around your area of MNR; for instance, forest fires? Does that power exist?

Mr McFadden: If I might, without sounding flippant, we have a problem keeping away people wanting to offer service. We have the luxury in the province of Ontario to have highly skilled individuals on staff on a seasonal contract coming in for the fire season to address the complex fire situations we have. We also have the ability as a ministry to bring on to temporary staff emergency firefighters, put them on as required. We also have contracts with a number of private sector suppliers of skilled services to do less critical work. I would call them type 2 firefighters. We have more than sufficient resources in most cases to handle events that come up, and we certainly have Ministry of Natural Resources staff who are not in the fire program who are also skilled and could be brought in to offer some of the higher skills or service skills.

Mr Kormos: You don't sound flippant, because that's exactly what I was referring to—our naive hope, however foolish that was, that there would be a fire so that we could do that. So I understand exactly what you're saying.

One of the things Dr Young notes is that Ontario doesn't have mandatory recruitment. I presume the capacity to press people into service is what he's talking about, mandatory recruitment. We don't have mandatory recruitment around firefighting.

Mr McFadden: No, we don't.

Mr Kormos: And I'm correct in reading the British Columbia statute, where it indicates that people can be called into service; that's the mandatory recruitment provision?

Mr McFadden: I haven't read that statute.

Mr Kormos: OK, fair enough. In your opinion, we don't need mandatory recruitment?

Mr McFadden: We currently don't have that requirement. We have sufficient skills available. Frankly, one of the difficulties we would have would be ensuring that the skills are adequate, and even the basic equipment and proper footwear and the ability to operate a hand tool—

sometimes it may be more of a challenge to have too many people available on a site without skills, without understand the command and control system that needs to be in place. So I would say that at this time we are adequate in terms of our ability to draw on resources.

Mr Kormos: And if anything, you're saying sometimes it could be problematic because it's not like in the movies. Watching a movie doesn't constitute training.

Mr McFadden: Yes, and there's certainly a set of skills. The other thing I should mention, and you're probably aware of it, is that there is a system available within Canada where we exchange skilled resources between provinces. This has worked out very nicely. This year, Ontario has had a less than average forest fire incidence and we've been able to share resources with other provinces. Last year in particular, we were able to dramatically help British Columbia. We had the largest contingent of non-BC firefighters in the province of BC. Ontario makes good use of its skilled resources. Where we can afford to loan or release these individuals to another province, we do that so they have adequate skilled resources to tackle a forest fire problem and do not have to rely on unskilled personnel.

Mr Kormos: Dr Young also notes that Ontario stands alone, at least in his analysis of the legislation, in not having the power to evacuate. Clearly that's something MNR has to address or concern itself with, especially, once again, around the area of forest fires. How does MNR currently deal with that issue?

Mr McFadden: We've had particularly good cooperation from municipalities and from First Nation communities, and as we assist those communities with their lead in evacuations, it's been working quite well. There's one aspect we do need to look at, and that's our ability to force individuals who choose to stay with their dwelling. At this time we do not have the capacity under our act to require an individual to leave their home for purposes of avoiding an emergency or potential emergency.

Mr Kormos: Is that problematic?

Mr McFadden: It hasn't been to date. As I say, municipalities have been quite helpful in assisting us, in a couple of cases, to remove individuals who wished to stay. In other cases, when we've worked with First Nations in the far north, tribal chiefs and senior First Nation representatives who are empowered in that area have been able to move the individuals to their satisfaction.

Mr Kormos: One of the other areas Dr Young notes is that Ontario stands in company with Nova Scotia as being the only two jurisdictions where there isn't the power to requisition property. I'm presuming that's again like in the movies, where the cop orders you out of your car so he could take my 10-year-old Chevy S10 to do some high-speed pursuit of bank robbers. Tell me how that works or doesn't work in the province of Ontario.

Mr McFadden: That one I'd have to look into in more detail. There are probably a number of statutes that might come close to giving that kind of power. But I

can't say I've looked into that, and our review didn't go into it in sufficient detail that—

Mr Kormos: Tim Hudak has a much newer and more expensive Chevy truck than mine. I urge people to requisition his before—

Mr Tim Hudak (Erie-Lincoln): It's getting pretty beat up, but—

Mr Kormos: It's the Wainfleet lifestyle; that's right.

Interjection.

Mr Kormos: Good for you. The feed mill, amongst other places.

Are you familiar with the letter Dr Young sent the Premier?

Mr McFadden: Only in the sense of having read some of the press coverage associated with it. I have not seen the letter.

Mr Kormos: OK, fair enough. Off the top of your head now, without having done the exhaustive work that the ministry is going to do: If you had to address maybe three areas of glaring legislative omission, what would come to mind?

Mr McFadden: I'd love to be able to answer that. I can't, not having done the review past the point of identifying a large number of statutes. Probably the closest I could come to answering the question would be to say, as a ministry, we probably need to take the opportunity to look at all the various statutes and do the further analysis. Probably the glaring need right now is for us to get on with looking at our legislative and regulatory ability to address emergency management. We've come partway. The answer I have is that the number one thing is, we need to continue with that evaluation, do the exhaustive evaluation, look at the gaps.

Mr Kormos: What you're telling me is, rather than me plaguing you with questions calling for knee-jerk answers, I should be leaving you alone so you can do the work you contemplate doing and have a final report from the ministry.

Mr McFadden: We'd love to have the opportunity to do that exhaustive evaluation and share it back. Right now, we don't have the ability as a ministry to answer the questions you're offering. We'd love to be there, but we just need a little bit more time to get there.

Mr Kormos: Thank you kindly. I appreciate your coming here this morning.

The Acting Chair: Ms Broten, then Mr Zimmer and Mrs Sandals.

Ms Laurel C. Broten (Etobicoke-Lakeshore): Just to follow up on the questions that Mr Kormos was asking you: If we asked you at this point to focus specifically on the list of powers, the enumerated powers Dr Young highlighted that other jurisdictions have, and to assist us in evaluating whether or not we have those powers through the provincial government through other statutes—the issue that we are struggling with on this committee is examining whether the powers need to be in the Emergency Management Act or whether they in fact exist elsewhere. As you would know, the current Emergency Management Act allows the Premier to uptake

powers that exist at other levels. You don't know what power exists until you examine the other question.

1040

If we were to leave with you the list of the things we're looking at, would that be something on which we would be able to get some assistance from someone in your ministry within the next short period of time, if we focus specifically on some of these powers—for example, evacuation, and closing public and private establishments—and again only examining within the context of the statutes that you're governed by? Would that be something that we could get back from you within the next period of time—I guess two weeks or so—by the time this committee is examining these issues?

Mr McFadden: We'd certainly appreciate the opportunity to look at that. I'm just now looking at the list of powers that Dr Young has identified, having seen it for the first time. I believe we could give you something back in the way of an analysis—full and comprehensive, I'm not sure, but we would certainly be pleased to look at it and feed back some information.

Ms Broten: Thank you. We've done this with other deputants in the last number of days. They're taking away some homework, one might say, and will be getting back to us in writing perhaps with a list of the statutes you're looking at and specifically these powers. So that would be helpful.

I just want to ask you about Firestorm 2003, which was the provincial review that took place in British Columbia. Some of the things they highlighted in that review—I see you nodding, so I suspect you're familiar with the examination that took place there. Some of the issues they raised were the lack of interagency communication, the need to co-operate on training, the need to share information with other jurisdictions. They also focused on the lack of powers with respect to prevention—not dealing with something that's occurring at the time but on the prevention front. I'm wondering if those are issues that also exist in our province from your perspective.

Mr McFadden: We did take the opportunity to look at the film and the Firestorm 2003 review in BC. I did have staff take a look at the recommendations with regard to issues and whether in fact we had the same issues in Ontario. In a few cases, such as communication—you can never have too much good communication between agencies. We can always improve that. But in most cases we found, with regard to forest fire management, that our practices in place were adequate to meet Ontario's needs and I'm pleased to say in a lot of cases were better than BC's current ability. But there were certainly a number of cases—and I don't have the review analysis in front of me—where Ontario could improve its ability to deal with the recommendations from Mr Filmon. We are learning from that, and we will be acting on that. I believe there are some things that need to be done, yes.

The Acting Chair: I would just remind you, Ms Broten, that there are two other Liberal questioners ready.

Ms Broten: I just have one more question. A specific issue in the Firestorm 2003 review was clarification of police powers on evacuation. I just raise that for you when you're looking at your statutes, to consider whether that's also a concern in our province.

Mr McFadden: We will certainly look at that.

Mr David Zimmer (Willowdale): How does your ministry resolve jurisdictional conflicts when you've got an emergency?

The Acting Chair: Mr Zimmer, you need a microphone.

Mr Zimmer: Sorry. How do you go about resolving jurisdictional conflicts that the ministry may have; for instance, when it's fighting a forest fire and what you want to do is in conflict with another ministry or another authority? Who's got the final decision? Who's got the hammer in a jurisdictional conflict?

Mr McFadden: Good question. In the case of forest fire response, managing forest fires, we have an incident command system in place, which is consistent across Canada, by the way. That allows a predetermined command structure, if you will, so that first on scene has a particular role with regard to the fire, in this case, and then the command structure has a very specific arrangement with regard to who does what and under what conditions someone else would have powers. It assigns particular responsibilities to others who come into that command structure. So if there is a jurisdictional issue—and these are very rare, I should say at the outset—normally the incident command system will deal with it or our very active communication and our very active advance work with other jurisdictions allows us to sort it out.

Mr Zimmer: Is that system, in your opinion, working well now?

Mr McFadden: It's working very well.

Mr Zimmer: My second question is, is there any inter-ministerial coordinated effort to review emergency legislation; that is, your ministry, various other ministries and at the federal and municipal levels?

Mr McFadden: Probably the most direct opportunity for inter-ministerial work is through the various committees Dr Young's ministry has set up. We do have representatives from my ministry sitting on a number of different committees at different levels and, yes, concepts of legislation have been discussed at those committee.

Mr Zimmer: Thank you.

The Acting Chair: One question, Ms Sandals.

Mrs Liz Sandals (Guelph-Wellington): I've got a whole bunch. Let me pursue the question of evacuation, then. You noted that you do not have the power to force evacuation and that when you find people who are resisting evacuation, you turn that over to the municipality, which rather surprised me because I wasn't aware that municipalities had the power to order evacuation.

Mr McFadden: Perhaps I should clarify that. No, we do not turn it over to the municipality. What I was mentioning was that, in at least one example that I'm aware of, a municipality assisted us in pursuing the removal of some individuals. I believe that was more a matter of negotiation, and the fire chief in that example was able to impress upon the individuals the need to evacuate, with some suggestions around his powers and his interest in having them leave.

We typically would not expect a municipality or a partner to have the powers. I believe the power to force an individual to leave their home is something we need to look into. We do not believe at this time that our ministry has that power and we're not sure, without looking at the legislation, who does.

Mrs Sandals: In fact I suspect that what we'll find out is that no one does, but I just wanted to clarify.

The Acting Chair: It's the power of persuasion that they have, I guess, or the police officer may have.

Mrs Sandals: Yes, the power of persuasion at the moment but not an actual statutory power.

Mr McFadden: Right.

Mrs Sandals: One more question?

The Acting Chair: If you have further questions, could you put them in writing and we'll follow up with that, because I'm being too generous with—

Mrs Sandals: I was going to ask one that is a writing one. You've enumerated two powers here that you do have—

The Acting Chair: Sorry, one question.

Mr Kormos: Just keep going, Liz. You're doing fine.

The Acting Chair: Mr Hudak.

Mr Hudak: Actually, in a similar line of thought to my colleague—

The Acting Chair: He'll ask the question for you.

Mr Hudak: I'll try. I might have missed it.

I want to pursue the evacuation stuff a bit more. You said it's something you might want to look into. Are you strong about that? Is it something that you think you do need or you don't? You probably do this a couple of times a year with fires and such. You've had a couple of declarations of emergency. You probably would know if you need this power or not.

Mr McFadden: We definitely would be looking into that. I can't say right now. We need to look into it in a great deal of detail.

Mr Hudak: How about your colleagues in other provinces who deal with similar situations? Do they have the ability to order an evacuation, do you know?

Mr McFadden: We haven't specifically talked about that, but I expect they, and particularly British Columbia, are looking into that. I expect they have a similar feeling that they need to decide who should have that power.

Mr Hudak: Can you give some examples of where that could have been helpful in previous experiences of MNR?

Mr McFadden: In the fire context, we do run into situations where individuals will stay with their structure, either believing that the fire will not move in their

direction or with the intent to apply some sort of personal protection, a garden hose or something like that. In those cases, we have worked with the individuals and encouraged them and used the power of persuasion where possible. But in other cases, where it has been blatant that there is a risk to personal safety, I believe someone should be in a position to ensure that the individual's life is not at risk.

Mr Hudak: The other potential emergency powers—I think Mr Kormos talked about a couple—you don't see a need for those in helping address floods or fire? I have a couple of other areas like fixing prices, entry without warrant, establishing emergency facilities—those types of additional emergency powers.

Mr McFadden: I can't comment on that, quite honestly, until we take a look at it and we look through some examples. As a ministry, we want to look at all our responsibilities, not just forest fires. In the event of floods or drought, there are going to be different legal requirements or powers that may be required. Really, as a ministry, we're not in a position now to say that under that legal responsibility we do need a power to do this or that. I apologize. We're just not quite there yet.

1050

Mr Hudak: No problem.

Help me understand: Under the FFPA, do you currently have some powers to compel people to leave travel? What's the extent of your abilities?

Mr McFadden: We can request orders to restrict travel in a particular area—an emergency area order—or we have the ability to establish a restricted fire zone under an order to that extent. So we have the power to stop open fires. We have the power to restrict travel in an area which is subject to fire.

Mr Hudak: Have you had any problems in the past with abuse of those powers—any challenges through the courts, suits, that sort of thing?

Mr McFadden: Very little, if any. I'm not aware of any specific actions or reactions to our enforcement. I believe it has been respected.

Mr Hudak: Again, I know that some of my colleagues were on the same line. You were mentioning that you are currently going through the existing legislation looking to identify gaps. Is there anything that's triggered your mind to where some of those gaps may be to help inform the committee?

Mr McFadden: Not as yet. Frankly, we want to look at the four new responsibilities we may get. These are areas that, as yet, we really don't have a good feel for, things like erosion responsibility or dam failure. What are the implications? What does the existing legislation allow us to do? These are new orders in council. We haven't had those responsibilities previously. This may be an area where there may be more significant gaps to identify, because we haven't had experience there. These are the ones that I would suggest we need to look into in detail before I'd be able to comment.

Mr Hudak: OK. Fair enough. Thank you, Chair.

The Acting Chair (Ms Laurel Broten): Ms Sandals, I understand you have one follow-up question?

Mrs Sandals: Yes. On slide 8, you mention a couple of powers that exist in legislation. Could you provide us with a list of other powers that exist, coming at it from the other angle, which is what powers currently exist in legislation for the MNR around emergency powers? We've asked you about what you might want, but it would be helpful if we at least had an enumeration of what powers you have. That could be in the report that Ms Broten asked you for.

Mr McFadden: I could certainly do that, Madam Chair. I happen to have a copy of the latest edition of the Forest Fires Prevention Act with me. If there's difficulty getting copies, I could leave my copy. That does set out the ability to establish orders and shows the powers which we have under that act, if that would be useful.

The Acting Chair: That would be fine. If you left it with legislative research, that would be helpful for all of us. Thank you very much.

Mr McFadden: I'm just wondering if we could get clarification from one of the Chairs on the time we have to respond to the matters identified.

The Acting Chair (Mr Mike Colle): Yes. In fact, I was going to comment on that. The Legislature has given this committee instructions to submit its final report and introduce its legislation on or before November 1, 2004. Since this happened on the last day of the session, many of the ministries are working on a different timetable. So what we would like is potentially to get some interim information from your ministry dealing with some of the items on the back of the letter from Dr Young. Certainly some time in the first two weeks of September would be quite adequate, unless the committee thinks otherwise. I would think getting it by September 15 would be sufficient. We hope to get other updates from various presenters or ministries, and we're going to have to give a bit of latitude there. If we could get something of an interim nature by September 15, that would help us in our deliberations.

Mr McFadden: Thank you for giving us that time.

The Acting Chair: Thank you very much. That was a very helpful presentation, Mr McFadden.

By the way, I just say again, I know that your ministry has been involved with helping to deal with the BC forest fires. I think there are a number of Ontario fixed-wing planes out there. Have they returned?

Mr McFadden: The aircraft have returned. We have almost all of our personnel back from British Columbia, Yukon, and, most recently, Alaska, where we had Ontario firefighters.

The Acting Chair: On behalf of the committee, I'd like to thank the men and the women who have been helping fellow Canadians in their time of need. I think it's the type of thing that hasn't been in the press to any great extent, but demonstrates the need to co-operate between provinces. I want to thank your ministry for undertaking that co-operation.

Mr McFadden: Thank you, Mr Chairman. They're proud to do so.

Mr Kormos: It's a good thing those planes are back. How else would ministers travel?

The Acting Chair: The next presentation is from the Management Board of Cabinet.

Just to mention to members of the committee, the schedule you see before you has 20-minute intervals. I tried to be as generous as I could with questions for the first presenter. You've had an hour with the first presenter. We're trying not to go along party lines as much as possible, but we're trying to give everybody some time. So that was essentially three times the normal time allocated that was given to members of the committee to participate in questions. I know it's never enough time, but we're trying to do—

Mr Zimmer: And it's very cold.

The Acting Chair: That's the problem here. Being one of the victims, four of us acquired frostbite here last month and two of us had pneumonia as a result of serving on a committee in this same room. So talking about emergency preparedness, you should have gloves and mitts and coats if you come to room 151. That's something we should have warned the committee members about.

MANAGEMENT BOARD SECRETARIAT

The Acting Chair: We will proceed now with Malcolm Smeaton, the director of emergency management. And with you, Mr Smeaton?

Mr Malcolm Smeaton: Patricia Powell.

The Acting Chair: What is your title, Patricia?

Ms Patricia Powell: I'm program coordinator with the emergency management, security and contingency branch of MBS.

The Acting Chair: Management Board of Cabinet.

Ms Powell: Management Board Secretariat.

The Acting Chair: OK, thank you. Mr Smeaton, if you could begin.

Mr Smeaton: Thank you, Mr Chairman and members of the committee, for giving us this opportunity to address you. We come to you in somewhat of a unique situation as a ministry relative to all the other ministries you are likely to hear from around emergency management. Almost all the ministries, just as my colleague Mr McFadden indicated, have an outward focus toward the community, municipalities, the province and, in some cases, as Mr McFadden indicated, across Canada. Management Board has an internal focus. We do not have emergency management responsibilities in the community per se; our responsibilities are restricted to the internal government situation and the impact that emergencies may have on the government from its perspective as an employer and a landlord.

I have a relatively brief slide presentation and then, of course, I would be absolutely available at your discretion for any questions.

The government of Ontario and Management Board, under the various pieces of legislation, the Public Service Act, is the employer of all Ontario public servants. We have about 63,000 staff.

We are also, under the government services act, the building owner or operator of government buildings. We have about 7,000 buildings throughout the province that are either directly owned by the government or are leased by the government from private sector situations. Of those sites, around 3,500 buildings have staff who work in the buildings each day on a regular basis. The rest of the buildings are utility buildings or operational buildings that are not necessarily staffed on an ongoing basis.

1100

The unique responsibility we have under the Emergency Management Act and the order in council—which is, I might point out, a recent assignment by Emergency Management Ontario to Management Board—is for the continuity of government services during an emergency.

Several speakers from ministries that have already appeared, and Dr Young, have mentioned the business continuity planning process. For the first year of the three-year program that Emergency Management Ontario has asked ministries to deal with, our main responsibility is the development of a business continuity planning program for the government of Ontario. This ensures there's going to be government leadership and that critical services to Ontarians are provided during an emergency. Also included in that responsibility is the protection of cyber assets, both information and information technology.

I'm going to slide 4. What in fact Management Board does is establish policy for how government services and government employees will be dealt with during an emergency situation. We establish what we refer to as a corporate response centre so that ministries affected by an emergency situation are able to access a single point of contact, and through that we then advise, direct and support the government at large and the affected ministry officials on employee and service continuity issues related to the event.

We also, depending on the size and the nature of the emergency, then are the link with the provincial operations centre in Dr Young's organization, and we link with and support that organization as an emergency situation develops and ensure that we are able to support the lead ministry that may be involved in a particular emergency situation and support the overall effort to respond to the emergency.

Our day-to-day activity in relationship to responding to emergencies on behalf of government internally is of course to create and apply existing policy and to provide direction to resolve arising issues and concerns. Three brief examples: During the power outage last August, we led an effort to reduce power consumption in government buildings throughout the province.

In the recent Peterborough flood, we would have been involved. We had several government buildings in Peterborough and we would have been involved in assessing

those buildings for workplace safety and then determining when the government services that are provided are able to resume or be restored.

Going to an infectious disease scenario, which we've had to deal with recently, we would determine and provide direction on how government services would react to that situation and monitor the impact of the illness on government employees who may have been affected. This entails ensuring that there is a consistency of treatment across the system. We provide Qs and As to managers and employees addressing health and safety and compensation concerns. In a situation where we're responding to something like an infectious disease, we would provide information to our employees and managers on symptoms and on activities they can take to deal with personal protection.

Another example of that would be the West Nile virus program that's in place now across the province. We have the same activities with respect to our own employees and how they can deal with or respond to West Nile virus.

We would also be involved in resolving any labour-management issues that arise out of an event. So if there are problems, again, using the example of an infectious disease, and we find ourselves in a situation where we have to deal with work refusals, we would assist in the resolution of those work refusals by public servants.

On an ongoing basis during any emergency our branch would provide colleague ministries and all ministries with information on the status, what in fact is happening with respect to the situation, and any broad issues that affect the entire Ontario public service. We'd be providing senior management in government with updates on issues and the resolution of problems and future action that may have to be undertaken.

During and after emergencies, we would then provide ongoing information and assurance messages to the Ontario public service. This is normally done through letters from the various deputy ministers or from the deputy minister for Management Board to employees with the intent of allaying concerns about whatever the situation might have been.

One of the things that we have contributed across Canada, related to our response to various emergency situations that have affected the province and consequently Ontario government employees, is the information we develop—the materials, policies, protocols. We have consistently shared those with municipalities, with other provinces, with the federal government and, in some instances, with large private sector organizations. We determine what the public service policy is going to be in an emergency; in other words, what we can continue to provide to the public in an emergency situation; again, just thinking of the blackout last August, what services would be available. We deal with the issue of compensation for employees involved in something like the quarantine situation we faced in the last year or two. Of course, we deal, as I indicated, with the infectious disease workplace screening protocols we put in place to make

sure that the interface between the public and the public service is not putting either of the two parties into jeopardy.

With respect to facilities, Management Board makes the determination, if in fact they are non-critical services, that they can be shut down for whatever benefit it may have. An example, again, is the reduced lighting and power usage during the electrical blackout. We do then coordinate the post-event inspections to ensure that workplaces are safe for employees to return to.

Business continuity is, as I mentioned at the beginning, the key program that we are attempting to put in place in accordance with the December 31 deadline. We have had some significant progress in ensuring that all ministries have a business continuity program. We monitor what's going on across Canada and with the federal government in this area. At least at this point in time we are significantly ahead of most other provinces and, in fact, the federal government around the issue of developing business continuity and contingency plans to protect critical public services.

That is my last slide. I'm available for any questions.

1110

Mrs Sandals: I'm assuming that, while you're responsible as Management Board for maintaining critical government services during an emergency, you don't currently have any emergency powers per se.

Mr Smeaton: No, not outside of the OPS. We don't have any legislated emergency powers.

Mrs Sandals: For example, I'm looking on page 6 where you're talking about a situation in which you might have an emerging infectious disease and resolution of work refusal. It occurs to me that, in the process of maintaining critical government services, it may well be that the workplace conditions may change and the work hours required to maintain critical government service and the whole normal ethic and situation in which OPS are working could well change by virtue of the emergency. Have you or could you potentially run into problems in terms of having sufficient members of the OPS actually arrive at work or stay at work or needing to be reassigned out of their normal work situation? Do you have the power at the moment to require people to work in unusual circumstances?

Mr Smeaton: Yes. Under both the Public Service Act and our various collective agreements, we feel we have sufficient authority to reassign employees across the OPS to meet any need that may arise. For example, if an infectious disease scenario reduced the number of employees in a particular service or area of the province, we have the authority now under our various regulations etc to move people around and to make sure that those services are provided.

Mrs Sandals: Under the current legislation or collective agreements, in an emergency situation can you designate people as essential workers who would not normally be essential workers? That may be a bad term to use because it has a very labour or collective agree-

ment meaning. If you want to rephrase that in the proper words—

Mr Smeaton: We do have the ability to require employees to report and perform critical services for the province. For example, during the blackout last August, the decision was made by the government that non-critical employees would remain off the job and that employees whose work was determined to be critical were instructed to report to work.

Mrs Sandals: So you currently have that. Again, as with the previous people, I think it would be helpful to the committee if we had some understanding, in a little bit more detail perhaps, of that designation or the power to designate people as critical services and what powers you have to actually make sure that people are reporting to work in a critical situation, because one of our focuses in terms of ensuring that public safety is maintained is ensuring that the public service is functioning under emergency circumstances.

Mr Shafiq Qadri (Etobicoke North): I'll just call your attention, Mr Smeaton, to slide 3. I was pleased to see the inclusion of "protection of cyber assets," because it's occurring to us that, in an information-intensive world, obviously all future disasters and emergencies are not necessarily flood-, fire- or mosquito-borne. First of all, I wanted to ask you, what is some of the thinking around cyber asset protection? For example, are you anticipating things like physical damage or hacking or identity theft or wireless upload? Is there duplication? If these types of information disappear, as happened, for example, recently in the banking sector, it seems to me everything would be at a standstill. So what is some of the thinking? Do you need more legislative power to execute?

Mr Smeaton: The process that's currently underway is an assessment process, using a threat-risk assessment or the HIRA process that EMO refers to, to initially identify systems across government that are high-priority systems that must be kept in place. There is then, for each of those systems, a threat-risk assessment done. That includes all aspects of threat, both physical—somebody walking into a server room and throwing a wrench into the servers—and cyber—somebody hacking from overseas or internally. All of those things are included in the threat-risk assessment, and then a designed response to those threats is put in place.

We have had a significant program in Ontario around the protection of cyber assets for some several years now. It's a fairly mature program. So we have had significant progress in that area.

The Acting Chair: Mr Zimmer?

Mr Zimmer: My questions have been answered, Mr Chair. Thank you.

Mr Hudak: Just one question I have on the emergency preparedness side: Do you still perceive from your contacts on the security side any threat to government buildings—the Legislature, anything that MBS has oversight for?

Mr Smeaton: We have regular reports provided to us, both through Dr Young and through the Ontario Provincial Police. I think it is fair to say there is a heightened awareness, both among government employees and government leaders, of the need for security in government buildings, but we do not have any information of specific threats, certainly organized specific threats, against government buildings in Ontario.

Mr Hudak: If I'd asked you that question a couple of years ago, would you have given me a different answer, or is it pretty much the same level of concern that you just stated?

Mr Smeaton: I think it's a fair thing to say that immediately following September 11 there were an awful lot of unknowns about how extensive threats were. Since September 11, I don't think we know all the answers on the security side, but there is more certainty. We have made some decisions and have adopted some approaches that have improved our security situation generally across government.

Mr Hudak: Dr Young talked about some assets where there would be higher risks than others. He talked about power supplies, for example, and international crossings. I don't recall if he mentioned any particular provincially owned infrastructure or sites.

Mr Smeaton: Certainly part of the program we're undertaking with respect to the business continuity planning process is an identification of critical infrastructure within government. Dr Young is asking ministries and participants in the private sector to look at critical infrastructure across the province, and he is asking us to look at critical infrastructure within government. We are including and have included that in our business continuity planning process.

An easy example is, of course, on the IT side, where we have large server rooms and large computer operations. Those have been identified and are undergoing, as I indicated to Mrs Sandals, threat-risk assessments and are in the process of being protected.

Mr Hudak: Are adequate resources set aside in a contingency fund, or what have you, for things like floods, a disaster relief assistance program?

Mr Smeaton: To be clear, that's outside. That's looking outward from government. My responsibilities are looking inside government. I do not deal with the issue of, "Are there resources available for the Peterborough flood?" or the ice storm or any of that. I'm simply not able to answer.

1120

Mr Hudak: But Management Board does play that role in allocating resources, right? We learned yesterday that if municipal affairs wants the funds for disaster relief, they come to Management Board and make the request. I think they only keep \$1,000 in the line item. For example, MNR, if they go over budget on fire-fighting, would come back to Management Board—

Mr Smeaton: Management Board does approve that, yes. But regrettably, I'm not privy to that process.

Mr Hudak: So the direct question would be: Do we have adequate resources set aside on a contingency basis in the current fiscal plan?

Mr Smeaton: I'm not able to answer that.

Mr Hudak: The last thing you brought up that I wanted to query you on is the power outage in 2003 and the success rate in reducing consumption in government buildings. I think there's now a general program to reduce power usage across the OPS.

Mr Smeaton: Yes.

Mr Hudak: How's that coming along?

Mr Smeaton: Again, it's not something I'm directly involved in, but I am aware that it is progressing and that there have been some significant gains.

Mr Hudak: Do you know by what level we've reduced our usage?

Mr Smeaton: No. I'm sorry.

Mr Hudak: OK. Thanks, Chair.

The Acting Chair: Mr Kormos?

Mr Kormos: No, thank you, sir. Thank you for coming.

The Acting Chair: Thank you very much, Mr Smeaton.

MINISTRY OF LABOUR

The Acting Chair: The next presentation is from the Ministry of Labour. We have John Vander Doelen, director, workplace insurance, health and safety policy branch; Marcelle Crouse, senior manager, employment and labour policy branch; Dr Ed McCloskey, director, occupational health and safety; and Ken Lung, solicitor, legal services branch.

Could you please identify yourself for Hansard.

Mr John Vander Doelen: Good morning. I'm John Vander Doelen from the Ministry of Labour, as indicated. I'm joined this morning by Marcelle Crouse, who will be jointly presenting, as well as my colleagues Dr McCloskey, who is the director of the occupational health and safety branch, and Mr Ken Lung, who is a solicitor.

The Acting Chair: If they could move to the bench there, it would be helpful, and you could begin.

Mr Vander Doelen: What we'd like to do for you this morning is give you an overview of both the Ministry of Labour's legislation that would impact or be impacted by an emergency, as we've evaluated it to date, as well as some of our operational response regarding our responsibilities to ensure worker health and safety during an emergency. In many instances, I'll paraphrase what's on the slide to get through it quickly, so that you have enough time for questions.

In terms of the review, as I mentioned, there are a number of statutes that we see being affected or affecting the ability to respond. They revolve around, in many instances, the conditions of employment, remuneration, and health and safety requirements for workers. In fact, we've identified four specific statutes that play a greater role in these: the Occupational Health and Safety Act, the

Workplace Safety and Insurance Act, the Employment Standards Act and the Labour Relations Act.

Specifically in terms of occupational health and safety, as an overview, it places responsibility on owners, employers, workers and supervisors around working safely and providing safe working conditions for workers. We see that as an imperative to be maintained during the course of workers responding to an emergency.

In terms of slide 4, there are specific responsibilities within the legislation placed upon owners, employers and workers. You can see that employers have some very specific duties, again, which in some instances we see as being not only an imperative but a challenge to maintain should workers be redeployed to respond to an emergency: training, competent supervision, proper and safe equipment, the workplace being free of hazards, and some of the administrative mechanisms that support health and safety in the workplace that are required by the legislation.

Moving on to workers, there's an obvious responsibility for them to work safely, but combined with that obligation, they have some rights. One of the issues that was referred to earlier by Mr Smeaton in his presentation is that workers, under the Occupational Health and Safety Act, have the right to refuse unsafe work. Slide 5 identifies some of the conditions under which that refusal can take place. As he alluded to, that sometimes presents operational issues under normal circumstances, or certainly potentially under emergencies.

Within the act there are limitations on the right to refuse for certain occupations where it's recognized that certain hazards are inherent in the work, and in particular where that is combined with the occurrence of a work refusal jeopardizing the health or safety of another individual. You can see on slide 6 some of the occupational groups where there is a limitation on the right to refuse, some of them being sort of obviously needed: police, firefighters, correctional workers and health care workers.

Moving on to the Workplace Safety and Insurance Act, many of you may be familiar with the act. Its purpose is to provide benefits for workers who incur injury or disease in the performance of work. While it does apply to the majority of workplaces, within the coverage provisions of the act certain workplaces are excluded from coverage. Some of the benefits for workers are wage replacement, medical treatment and rehabilitation. The system is funded by employers through a payroll premium that includes the risk related to the work. So higher-risk workplaces have higher premiums to pay. The premium is influenced as well by the health and safety record of the employer, so in poorly performing workplaces causing more injuries, employers pay higher premiums.

As to the specific area of the Workplace Safety and Insurance Act that has some provisions related to emergencies, those are highlighted on slide 8. You can see that where workers in some instances are redeployed as a result of either the Premier or municipalities declaring emergencies, those workers then start to be covered as

employees for workers' compensation purposes through either the province or municipalities. Similarly, in situations possibly linked to an emergency where an employer so-called "lends" employees to someone else to assist with an emergency—and we have seen that in some instances; for example, during the ice storm, where municipal hydro workers had to assist Ontario Hydro workers performing work—the Workplace Safety and Insurance Act addresses that as well.

At this point we'd like to move on to employment standards and labour relations. My colleague Marcelle Crouse will speak to those slides.

Ms Marcelle Crouse: As John said, I'll be discussing issues related to the Employment Standards Act and labour relations legislation.

As many of you will know, the Employment Standards Act establishes minimum standards of work for most employees in the province. Employers must meet these minimum standards or face penalties under the legislation. The standards that may be most relevant in an emergency situation are emergency leave, maximum hours of work and rest periods and, to a lesser extent, overtime pay.

Before I go into the relevant standards, you should know that limits on hours of work and rest period entitlements do not apply to some workers who would be important in emergency circumstances. These include crown employees; police officers; political, judicial and religious office holders; doctors; firefighters; and construction workers.

One issue that the government may want to address in an emergency situation is providing job-protected leave for workers. Currently, the ESA provides that employees whose employer regularly has 50 or more workers are entitled to 10 days of unpaid job-protected leave per year. This leave can be taken for personal illness, injury or medical emergency, or death, illness, injury, medical emergency or other urgent matter related to certain relatives.

In public emergency situations, employees may be unable to go to work because of circumstances arising from the emergency, such as if the public transit system were shut down, or they may in fact be instructed by government authorities to remain at home. Unless they meet the relevant criteria for emergency leave under the act or they have a relevant provision in their employment contract or collective agreement, they would not have job protection.

The Acting Chair: I think this is very important. Could you please explain that in a bit greater detail?

Ms Crouse: Sure.

1130

Mr Zimmer: What slide are you on?

Ms Crouse: I think I'll go back to slide 11.

Right now, the act has a section called "Emergency leave." That provides for 10 days of unpaid leave each year for employees, and they can only take it in certain situations. The first and probably biggest limitation is that it only applies in workplaces where they have 50 or

more employees. That means it doesn't apply to many workers. Also, it can only be taken in certain situations. So for personal illness or for the illness or an urgent matter affecting certain relatives, employees can take the leave to care for those relatives, for example. That is the only provision in the act that provides for job-protected leave for people who may need to leave work because of emergencies.

My point is that in some public emergencies that section would not apply to many employees who may not be able to get to work. So it's an issue that the committee may wish to consider in looking at the powers under emergency management legislation. It was an issue when we had the SARS outbreak last year, and the government at the time did decide to include it in a piece of legislation, because the concern was that people who were ordered to be under quarantine or asked to self-quarantine would break that out of concern that they would lose their jobs. Is that sufficient?

The Acting Chair: Yes.

Ms Crouse: OK. I'm on slide 13 now.

As I said, the Employment Standards Act establishes limits on hours of work, and these could potentially pose some issues in times of emergency. The act permits a maximum of eight hours in a day, or longer if the employer has a different regular workday; for example, a 12-hour shift. It also has a maximum of 48 hours in a week, and in order to exceed that the employer has to have written agreement from the employee. I should add, too, that recently the government introduced Bill 63, which, if passed, would add the requirement that employers obtain approval from the Ministry of Labour for excess weekly hours.

There is also the issue of overtime pay. Most employees are entitled to time and a half after 44 hours in a week, and this could become expensive for employers if they needed people to work long hours during an emergency.

The act also mandates daily and weekly rest periods, which you can see on the top of slide 14. However, I want to point out that there is a limited emergency exception that would cover some situations. It provides that employers may require employees to work longer hours or work during rest periods to deal with an emergency, but it's limited in that it only applies insofar as it is necessary to avoid serious interference with the ordinary working of the employer's establishment or operations.

On slide 15, just a brief word about time limits. Like other statutes, the ESA requires people to do certain things within specified time periods. A classic example is to file a claim for unpaid wages within six months. The committee may wish to consider how time limits and expiry periods would be affected in emergencies. That's not just an ESA issue; I expect there are those issues in many statutes across government.

On to the Labour Relations Act: The Labour Relations Act creates a framework for collective bargaining and dispute resolution in unionized workplaces. It requires

unions and employees to reach collective agreements that cover terms and conditions of employment. The agreements may have terms such as hours of work or things like no-contracting-out provisions. These terms and conditions could become an issue in an emergency if the parties could not agree to vary them temporarily. However, the key provision in the legislation, I think, that may raise issues in an emergency is the right to strike or lock out. The act provides that strikes and lockouts are legal at certain points in the bargaining process. However, you should know that not all unionized employees have the right to strike, and particularly if they are providing an important public service. For example, you'll see, starting on page 18, that the Ambulance Services Collective Bargaining Act and the Crown Employees Collective Bargaining Act provide that certain employees, such as ambulance workers and designated OPS employees, must continue to perform essential services in the event of a work stoppage; that would be a strike or lockout. Also, the Hospital Labour Disputes Arbitration Act prohibits strikes and lockouts in the hospital sector, and the Fire Protection and Prevention Act prohibits salaried firefighters from the right to strike.

Finally, for my section, I just wanted to point out that numerous labour and employment issues would arise if the government decided it needed the power to order workers to be redeployed, to be transferred from one employer to another. Some examples of issues that could arise in that situation are what terms and conditions of employment would apply; there could be conflicts between collective agreements; you may wish to consider job protection for employees who are redeployed; and the issue of whether the original employer might be owed compensation.

That's it for my part. I'll hand it back to John.

Mr Vander Doelen: In addition to describing the statutes and how they might be impacted, we wanted to give you a bit of an overview of some of our operational response during an emergency, and the next couple of slides describe that.

You heard of Emergency Measures Ontario from Dr Young. The Ministry of Labour participates in that by having people at the command centre, as well as providing technical experts, depending upon the specific emergency, whether it's medical expertise, hygiene, engineering etc. We provide that expertise to Emergency Measures Ontario.

In addition, to support those functions we have developed an operational response related to field activity, which is described on pages 22 and 23. You can see that depending upon the nature of the emergency and the response required, we have mechanisms for activating our own command centre and action group with the ability to staff it from a technical standpoint with experts, as well as linking it to our field activity. As well, the command centre includes communications and human resources expertise to assist us in the kinds of decisions needed to allocate our resources and redeploy people, as well as getting information out to the public and

workplaces that might need specific contact around some of the statutes and the kinds of the things we described earlier.

So you can see that fairly quickly this sort of centralized organization is intended to be in place, with the ability to then provide specific support at individual workplaces, if required, whether that's an inspector or other expertise, and, as well, as you can see at the bottom of page 23, the ability to start to develop material to be available for the public. One of the avenues for that is a Web site where we would have an emergency icon where we would be able to provide information on whether it's of a health and safety nature and what precautions they should be taking in terms of specific workplaces, or other appropriate materials.

In addition, there were questions earlier about linkages and relationships with other organizations that might have similar mandates. We have a close working relationship with Health Canada, the US Centres for Disease Control, and the federal department of labour, which in some instances would be responsible for worker health and safety where there are joint jurisdictional issues of a provincial-federal nature.

In summary, what we've tried to relate to you is that while we've identified in statutes a number of issues that we see impacted, the work on what would be the specific resolutions to those is, I think, by its nature, dependent upon a general emergency response approach from other ministries and other organizations.

The Acting Chair: Questions?

Mr Zimmer: I have one question. In an emergency, when you find you have to adjust the working conditions—

The Acting Chair: The microphone again.

Mr Zimmer: In an emergency, when you find you have to adjust the working conditions, particularly those conditions pursuant to a collective agreement, are you finding that generally you're having the full co-operation of the unions and the employees in the collective bargaining unit, or does that present negotiation problems that, in effect, hold up the immediacy of your response?

Ms Crouse: I'll speak to that. I'm not aware of any significant issues in recent emergencies, but I think that's largely because they've been dealt with by public servants. The public service has an essential services agreement in effect. It also has an agreement as to what staff can be used in the event of an emergency.

Were the emergency to be one that the government would want to ask for help from private sector workers, I think there may be larger issues there, particularly if it was necessary to redeploy workers so there would be a new employer. So I'm not sure to what extent there would be issues, but I would just say there's the potential.

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Mr Zimmer: A follow-up question: What would be your view or your thoughts on managing that issue particularly with the private sector unions if you had to engage them in a crisis?

Ms Crouse: I think in most situations you would be successful in terms of the power of persuasion, and in many cases I think issues could be solved on a voluntary basis. But there is no way to say that that would be successful in every situation, particularly if a union felt that people were being asked to do work they weren't suited for or potentially trained for or something like that.

Mr Zimmer: Just one comment, then: Really, what it boils down to with public sector and private sector unions is a balance between leadership, that is, getting the folks to do something extraordinary, and coercion or technical enforcement that, "You will do this, you will do that."

Ms Crouse: Yes, I think that's a fair assessment.

Mr Zimmer: What additional legislative tools would you think might help you to achieve that right balance of leadership and enforcement?

Ms Crouse: As I believe is set out in the summary here, we think perhaps there should at least be consideration of having the power to override collective agreements in emergency management legislation. I certainly think the government may wish to try persuasion as a first tactic.

Ms Broten: The list of summary of issues is certainly helpful. I'm wondering whether in debriefs after a number of emergencies we've had in this province over the last number of years you can think of any specific examples where we had problems that would have been resolved by these proposed suggestions? Or, in the alternative, are they issues that have arisen as you look at what more we could have and these are on the list? I'm trying to determine whether, practically, we've had failures in the province that would be solved by these amendments.

Mr Vander Doelen: I'll maybe start with that. Many of these are identified as potentials, and as Marcelle identified, many of these weren't issues in previous emergencies. The one in particular that we have some experience with is the need to consider job protective leave provisions that go beyond the narrow ones that are in place. Again, as I think we heard from Dr Young, to get people to comply with some of the public order requirements of quarantine and that, you need to have the means to get people to buy into that. If they're worried about their income or their job, they are not going to comply.

Most of the others are really potentials. What we've seen in other previous experiences is the need for us to support and assist workplaces with information of a technical nature and communications so that, as the act currently has and we would anticipate in future, the workplace would have primary responsibility for delivery of health and safety responsibilities to workers, but the ministry could certainly support that through a quick response in terms of communication.

Ms Broten: It is my recollection that during the SARS crisis in the province we did have individuals who raised that as a specific concern: "If I stay home and abide by this self-regulated quarantine, I may lose my job."

Ms Crouse: Yes, that's right. In fact, the government at the time decided—and my branch worked on legislation that provided that job protection for people. So I think in that instance, we can certainly see that it was a power that was lacking at that time.

Mrs Sandals: Just to make sure I'm understanding here, it occurs to me, for example, that gas company employees in an emergency—or in an infectious disease emergency a lot of work is done in private labs or medical labs, so there are a lot of people out there who almost become an extension of what you need to manage the crisis. In order to ensure that we can require those workers to work above and beyond the normal circumstances, you're suggesting that we need to—would that be around the redeployment of workers, and overriding collective agreements would be particularly what we would need to look at there?

Ms Crouse: If it's a unionized workplace, yes. If it's a non-unionized workplace, you don't have those issues so much but you may have other legal issues in terms of compensation to the original employer, maybe for contracts that would be breached and so on. I wouldn't be the real person to speak to that.

Mrs Sandals: I suppose if it's a non-unionized group, then you're looking at the power to suspend all or parts of the ESA, because that is what would control in that instance.

Ms Crouse: Yes, because if there were concerns that they need to work extremely long hours or they couldn't possibly afford to pay the overtime that would be required under the act, then those are things that might be a problem. The problem is that the ministry wouldn't have any discretion if a claim were filed later. We would have to find that the employer had violated the act.

Mrs Sandals: So in fact this would give some flexibility around managing a situation. Clearly Ontario Hydro, in ice storms and just your average thunderstorms in northern Ontario, somehow or other managed to get everybody out there working around the clock, but there are other extensions of that where I'm not sure that's the culture.

Ms Crouse: As I said, there are crown employees and basically public emergency workers. The restrictions on hours and so on do not apply to them. So it's not an issue there; it's more in the private sector.

Mr Hudak: Thanks for the presentation. Does that type of language ever exist in a collective agreement that would allow the suspension of the contract for emergency situations?

Ms Crouse: I'm not aware of it specifically. I think it would be pretty rare.

Mr Hudak: I apologize that I missed this. In cross-jurisdictional references in other provinces, other states, do these types of emergency powers typically exist, or how are they handled?

Ms Crouse: I'm not sure. I haven't done that research recently. I looked at the presentation from Dr Young and I think you'll see some of the issues I'm talking about there. He indicates which jurisdictions have those powers

and which do not, but I couldn't speak to that with great accuracy.

Mr Hudak: The powers are general in Dr Young's summary piece. His presentation and others haven't really spoken about the labour market context, like suspending collective agreements, limitations on time frames, strikes and lockouts etc. I apologize if I did miss that, but I don't remember those coming up in the conversations. But you yourself don't know if they're typical powers?

Ms Crouse: I'm not sure. I haven't had a chance to do that.

Mr Hudak: Are you aware of any particular examples, either in Ontario or other similar jurisdictions, where these powers have been used or could have been used to prevent a slow reaction to a crisis situation?

Ms Crouse: Sorry, do you mean the powers in collective agreements?

Mr Hudak: Any of the six or seven things you listed as things you've asked the committee to consider that relate to the labour environment. The question was asked of other ministries, "Are there particular situations in previous crises or emergencies where these powers would have come in handy to resolve a situation much more expeditiously?" Can you think of examples here in Ontario and other jurisdictions?

Ms Crouse: Yes. I would say two examples would jump out at me from the list. As I've already said, in the SARS crisis, the job-protected leave was an issue we had to deal with and did not have the power to do at that time.

The second, and it may seem kind of minor, is the time limitations issue. It became an issue for our ministry because, as a previous speaker noted, non-critical staff were asked to stay home. Our intake offices and people like that were not working, so we had a number of people very concerned about time limitation situations, which I expect would be the case across the government.

The ones that we could deal with administratively, we did, but there are some in which neither bureaucrats nor

tribunals like the Ontario Labour Relations Board have discretion in the legislation to extend them. That may be something the committee may wish to consider addressing.

Mr Hudak: Great. Thank you.

The Acting Chair: Thank you very much for the presentation.

Just for the members of the committee, there are a couple of items I'd like to bring forward for information.

First of all, Dr Young talked about situational reports being available from his office. I would like to ask the clerk to ask Dr Young for situational reports on the Friday, July 31, closure of the 401. I'd like to have a report on that, and also a situational report on the gas rupture in the middle of the city of Toronto where 5,000 homes are without gas right now. That's in the Oriole Parkway-Eglinton area. I'd like to have a situational report on that. It's still going on at the present time. It hasn't received much press coverage. There is a command office there and I visited there yesterday with Enbridge and various city works. It's quite an amazing operation going on underneath the radar.

As the third item, I would like a report—I think it's under the Speaker's office—on how we might be able to employ the parliamentary channel for communications and information during a provincial emergency. In other words, we've got this channel sitting here. Why not use it to convey information to the public when an emergency arises? If we could have a report from the appropriate office, whether the Speaker or whoever has authority over that.

Those are the three things that I think it would be helpful to the committee to get for information.

We are now adjourned until Monday the 16th. The agenda will be forwarded. Thank you very much. The committee stands adjourned.

The committee adjourned at 1152.

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