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**Official Report
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Thursday 19 August 2004

**Journal
des débats
(Hansard)**

Jeudi 19 août 2004

**Standing committee on
justice policy**

Emergency Management
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Examen des lois ontariennes
sur les mesures d'urgence

Chair: David Orazietti
Clerk: Katch Koch

Président : David Orazietti
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Thursday 19 August 2004

Jeudi 19 août 2004

The committee met at 1003 in room 228.

ELECTION OF ACTING CHAIR

The Clerk of the Committee (Mr Katch Koch): Good morning, honourable members. It is my duty to call upon you to elect an Acting Chair. Are there any nominations?

Ms Laurel C. Broten (Etobicoke-Lakeshore): I'd like to nominate Mr Arthurs.

The Clerk of the Committee: Are there further nominations?

Mr Peter Kormos (Niagara Centre): Perhaps we could suspend this for five minutes and we could find Mr Orazietti, who is paid to be the Chair of this committee, and who, gosh, has been a no-show for the weeks and weeks that the committee has been sitting. Is Mr Orazietti around, and if not Mr Orazietti, perhaps the Vice-Chair, Mr Delaney? Then we wouldn't have to elect Acting Chairs. He hasn't been around either. Having said that, I want to nominate Liz Sandals.

Mrs Liz Sandals (Guelph-Wellington): I would decline, but I would actually like to nominate Mr Arthurs to chair the committee.

Mr Kormos: He has already been nominated.

Mrs Sandals: Sorry, I wasn't paying attention.

Mr Kormos: I want to nominate Tim Hudak. He's a member of the committee.

The Clerk of the Committee: He's a member of the committee, but Mr Hudak is not here to accept the nomination.

Mr Kormos: I understand that. I nominate Laurel Broten.

Ms Broten: I very much appreciate your nomination, Mr Kormos, but I've made my selection in Mr Arthurs.

Mr Kormos: I trust Ms Broten was declining by saying that.

I want this to have the appearance of fairness. Acclamations are never good for democracy. Look what happened with the Speaker selection, right? I want to nominate Jim Brownell, who shouldn't have smiled at my Speaker comment.

Mr Jim Brownell (Stormont-Dundas-Charlottenburgh): Mr Clerk, I decline. I certainly support Mr Arthurs.

The Clerk of the Committee: Further nominations?

Mr Kormos: I want to nominate Shafiq Qaadri, a very capable person.

Mr Shafiq Qaadri (Etobicoke North): I thank you for your esteem and your confidence, Mr Kormos. I respectfully decline.

Mr Kormos: In the interests of democracy and simply to encourage people to vote, I want to nominate David Zimmer. There has to be choice. Yesterday the Minister of Labour was talking about choices for old folks. He was basically saying senior citizens should get off their lazy butts and get back to work at the age of 75. That was the kind of choice the Minister of Labour wanted to give senior citizens. So I want people here to have choices, Liberal choices. David Zimmer, nominated.

Mr David Zimmer (Willowdale): Thank you for your vote of confidence, but I respectfully decline.

The Clerk of the Committee: There being no further nominations, I declare the nominations closed and Mr Arthurs elected as Acting Chair of the committee.

Mr Kormos: Chair, I want to congratulate you on your acclamation to the position of Chair. You clearly have the confidence and trust of your colleagues, and I say this committee will be well served by your skills, your patience and your skilful, talented demeanour. If anything, I'm confident you'll be an even better Chair than the Chair we've enjoyed over the course of the last few weeks, and I'm sure you agree.

The Acting Chair (Mr Wayne Arthurs): It's one of the easiest elections I've ever had to run, and I thank you for that.

EMERGENCY MANAGEMENT
STATUTES REVIEW

The Acting Chair: We'll call to order the standing committee on justice policy. Just a reminder that our function is the review of emergency management statutes, with an eye either to introducing new or amended legislation if it's so deemed required by the committee at the end of their work.

MINISTRY OF THE ATTORNEY GENERAL

The Acting Chair: Our schedule this morning has the Ministry of the Attorney General, John Twohig, senior counsel, I believe, and Graham Boswell is here as well. I understand the presentation for the committee this

morning will be 15 to 20 minutes or thereabouts, as the case may be. We have time available. We know it's fairly detailed. Then we will move to each of the caucuses in rotation for questions. This is a little different than we were yesterday. Since our panel discussions are over, we're back to the more formal structure of the standing committee.

Again, if you would introduce yourself for the purposes of Hansard. As you know, this is all being recorded verbatim for that purpose.

Mr John Twohig: My name is John Twohig from the policy branch of the Ministry of the Attorney General.

Mr Graham Boswell: I'm Graham Boswell from policy branch, Ministry of the Attorney General.

The Acting Chair: Good. Start at your leisure.

Mr Twohig: Thank you, Mr Chair. I will try to keep my comments brief, and they will come in essentially two parts. I want to give you an overview of some of the work that has been done at the Ministry of the Attorney General, that I'm aware of, in the past six or seven months. In the second part of the presentation, I want to distribute material to you. The central piece of material I want to give to you is a piece of draft legislation that we worked on, the so-called contingent legislation should an emergency occur—fortunately it did not occur—during the winter of 2004.

As you probably know from your deliberations thus far, the Ministry of the Attorney General has no primary responsibility for emergency management or planning for operational issues in the event of an emergency. However, Attorney General lawyers did provide some assistance and advice—I'm not aware of the exact nature of the advice—to those working on the front lines during the SARS crisis of 2003 and during the blackout in August of 2003.

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I became involved in this file on approximately November 18, when a colleague of mine left our office to take another position. At that point, certainly among government officials—government employees of the two primary ministries, the Ministry of Community Safety and Correctional Services, which I'll refer to as simply CSCS, and health—our consensus seems to have been formed that our emergency management statute was lacking. Primarily, the lack surrounded the issue of powers that were available to government in times of emergency. This conclusion had been reached by ministry people, and they sought clarity for the legal basis for the actions that could be taken for government in an emergency.

I say to you that you probably have in your possession—we've distributed—legislation that comes from other provinces and from the federal government, and it would appear that, on a cursory glance at that legislation, our legislation looks remarkably different. Whether that means our legislation is lacking is not a question for me. The question of whether or not, as I say, there is a lack or whether the legislation should be amended was not a question we were asked to look at.

The other bit of context that I think is really important and that came home to me as I met with people from the ministries of CSCS and health was that there was a very real concern that there would be another health crisis in the winter of 2004. People had worked long and hard through the SARS crisis, and I can see the concern expressed in their comments. Nobody ever knew why SARS decided to strike as it did in Toronto and not Vancouver or Colorado.

There was talk of the avian flu. There was talk of other pandemics that could strike. These people charged with the responsibility of emergency management were concerned that a similar crisis could occur in the winter of 2004. I can't tell you about the science of that. I can simply tell you that that was the concern that was being expressed, along with this consensus that the powers available to government in the time of an emergency were lacking.

So, in early December, our ministry, and specifically myself, assisted by Graham here, were asked to prepare what has been given many names—standby legislation, contingency legislation—to prepare legislation that could be introduced possibly by government in case of an urgent situation. In order to accomplish that work, we were asked to sit down with ministry officials—and this, again, primarily was the ministries of community safety and health—to hear about their concerns and to think about the principles that may need to be employed and what might need to be done to the Emergency Management Act.

The second thing we were asked to do was to think of a long-term strategy on how to consult about this issue. That was a point that we actually never got to. We did think in terms of consultation. It's a very—as I'm sure you appreciate—sensitive and explosive issue. We never got around to that, and I'm assuming that this is what your committee is doing now. But we did accomplish the first piece, and in order to accomplish that, we did research, we looked at other jurisdictions, and I'm hoping we provided to the clerk four binders of material that we gathered, which includes articles and legislation. A great deal of work has been done very recently in New Zealand and in the United Kingdom where the very topic is being discussed, not without some controversy. I want to supplement that material with the material I've mentioned very briefly.

Could I say at the outset—and I may have alluded to this already—that this task I personally found very challenging and sometimes difficult. On the one hand, you're forced to contemplate emergencies, things that people don't want to think about: floods, nuclear meltdowns. I think probably the scariest one of all for people was the health crisis: with an unknown disease moving through the community, how does one stop it?

On the other hand, you are forced to look at the steps which possibly need to be taken in order to combat that emergency. As a lawyer I might say those steps challenged me, in the sense that they pitted you against some of our basic fundamental civil liberties. These are not easy things to contemplate.

As we considered and listened to the submissions and points made by the two ministries, the things we were asked to consider were, first, who would call an emergency. Who is the appropriate person to call an emergency? Is it always the Legislature? If not the Legislature, is it cabinet? If not cabinet, is it the Premier? Is it a minister? Should a declaration be reviewed by the Attorney General? Should it be reviewed by a court? What, exactly, is triggered by the declaration of emergency? Is it a full panoply of powers or is it a tiered response that responds to a particular emergency?

I should also say that one of the early questions to arise is, should any of these powers be located in one statute or should they be located in specific statutes. So you'd find information about fighting forest fires in legislation for natural resources, information about health in the health statutes and so forth. Or should there be one broad piece of legislation?

What are the time limitations? How long should a declaration of emergency last? Should those declarations be renewed and, if so, by whom?

What is the reporting mechanism? After an emergency, should there be an obligation to report to the public, to the Legislature and so forth?

Overall, moving through all these considerations, what is the appropriate role of civil servants, ministers, cabinet and the Legislature?

Last, I should say, and you'll see this, our task was to consider a potential amendment. Of necessity, the amendment was something that would be introduced on an urgent basis. It would appear that if that urgency was present, there'd be no time for public consultation.

Fundamental to the draft we developed is that it was sunsetted. In other words, it was something that would come in and then die of its own accord, hopefully when an emergency was finished. So it was never intended to be a long-term response to the very issue that you're considering.

Again I want to emphasize the need—whether or not there needs to be any amendment is not something we were asked to do.

With those caveats, the draft I'm going to show you was never reviewed by the other ministries. When we discussed the principles with them, we discussed scenarios, we listed powers, we debated, we talked about scenarios, we talked about checks and balances, but we never shared the actual drafting or draft with them. In one exception, probably halfway through the process, we provided one copy to the legal director at CSCS for her review to assure her that in fact we were working and did have a draft. Certainly it was never presented to or reviewed by cabinet, and obviously there was never any public consultation. So that's the context.

Without any further comments, I want to distribute the material we've prepared for you today. While that's being provided to the clerk, I can just outline what it is.

We are giving you a copy of the current act so you'll have it in front of you. We're also giving you our chart. It's a summary of the provincial legislation. It should not

reveal anything new to you. It's just our summary of what we think are the critical points found in other provincial legislation.

Also, you'll find that the second piece of information is a summary chart of the Canadian federal legislation and legislation from New York state, the United Kingdom and New South Wales in Australia.

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A third piece of information, which is a little novel and which I'm hoping will be helpful to you, is our survey. We contacted the other nine provinces and the federal government and asked officials there, how many times are you aware that there was a declaration of emergency, either at a provincial level or a municipal level? The third chart is a summary of those responses.

The fourth thing in the package that you're going to receive is the 1963 legislation. I'm told there was some talk about the predecessors to our current act. There was an Emergency Measures Act introduced in 1963. You'll see in the materials that it was repealed in 1976. You are all aware, then, of the Mississauga train derailment in 1979. In 1981, I believe it was, the then Solicitor General, Mr McMurtry, released a white paper which led to the introduction of our current act in 1983, which remained unchanged until, I believe, 2002-03, when we had the so-called SARS amendments.

The last thing in that package is the draft legislation, which I've been referring to. If I could take you to that, it's critical that you look at it with the current act in front of you. There's an explanatory note. We worked with legislative counsel to prepare this. I won't take you through the note.

If I could take you to the act itself, the act has six sections. The meat of what we discussed is in section 2. It's a very lengthy section. In section 1 we've made a small amendment to the definition of "emergency" to refer to health diseases. It was intended, if this act ever got introduced, that section 1 would remain in place. It's not to be sunsetted. It was our opinion that the definition of "emergency" needed to reference health. The second amendment you see here, the local services board, is simply a housekeeping matter.

If I could take you, then, to section 2, we provide some definitions for "Commissioner of Emergency Management." I believe you know that that currently is Dr Young.

Then we get to 7.4(1), which is the declaration of emergency. In this draft, the consensus was that it should be the cabinet that would make a declaration of emergency.

Subsection 7.4(2) is the list of powers that would be triggered. Unless you want to go to some of the specific powers, I don't intend to go through them. I think you've seen references to lists prepared before. I would add that none of these powers is unique to the Ontario draft. All of them appear in one form or another in some other piece of legislation. Some of them are a little bit more novel than others. For instance, paragraph 14, the entitlement to leaves of absence, I think is an Ontario innovation.

I'm now looking at page 3 of the draft. Subsection 7.4(3) provides that in an urgent situation—again, when people begin discussing this, there's always a what-if. This is to respond to, "Well, what if you can't assemble the cabinet?" It says that the Premier can do it if it's urgent. You might ask, what is urgent? Is that defined? No, it isn't. Did we consider a definition? Yes, we did. But it's there. Would a Premier, on his or her own, consider a situation so urgent that they would declare an emergency and trigger all of these powers? That's a question I can't answer.

Delegation: The cabinet can delegate the responsibility to make orders under 7.4(2) to a minister, or, if the Premier has declared the emergency, the Premier may do it.

The other delegation possibility here is to the commissioner. This is something where, in trying to achieve the balance here, the question always was, if we're in an emergency and somebody has to act quickly, can you assemble the cabinet?

I'm sure you've heard reference to the so-called directives that were issued during SARS, that were coming out, I'm told, almost on a daily basis to the hospitals. Were they enforceable? If those types of directives had to be issued in a health emergency, could you wait for cabinet; would it be more appropriate for a minister?

You'll see later on, with the delegation to the commissioner, that we tried to provide a check around this. You'll see that any orders issued by the commissioner are only in force for two days. They have to be reviewed or confirmed by the minister, if the minister is in charge, or by cabinet or the Premier.

You'll see in subsection 7.4(6), the powers of the Premier: basically a restatement of what's already in the act.

I'm very sorry I didn't point this out, but the scheme of all this is to take what are currently sections 7 and 7.1, pull them out and hold them in abeyance, trigger all the things we're reading about now, and when the sunset period is reached, simply go back to the status quo. The intention was never to introduce long-term legislation.

If anyone is asked to perform services, the power to provide for terms and compensation is in subsection 7.4(7).

In subsection 7.4(8), employment is protected if you're asked to render services.

An explicit exemption over freedom of information: That may have been addressed in part by some of the health legislation that was recently introduced.

Subsection 7.4(10): The legislation overcomes all agreements, collective or otherwise, if an order is issued.

Calculation of time periods: again, a restatement of what's in the current act. If you lose a limitation period during the course of a declared emergency, you won't be affected; an order could be made.

Termination: How are emergencies terminated? You'll see that the stated time period for a declaration, if made, is 45 days. I need to comment on that, because as you

look across the country, you'll see that in the ordinary course, emergencies are seven, sometimes 14, days. You won't find any reference to a time period of 45 days. This was something that was part of a very lively debate. My sense is that as you look at the emergencies referred to or contemplated in the other legislation, they also tend to refer to natural emergencies: fires and floods. I'm not sure that anyone, in their contemplation, had in mind something like SARS. The principle we were asked to keep in mind was to think of legislation that could be broad enough and flexible enough to respond to any type of emergency. Forty-five days was the agreed-upon amount, but whether that would be acceptable to a cabinet or to this committee is something I leave to you.

Declared emergencies and orders made under those emergencies could only be extended by the Legislative Assembly.

In subsection 7.6(1), the Premier needs to table a report on the emergency to the Legislative Assembly in 180 days. If any orders are made by a commissioner, those need to be part of the report.

Section 7.7, on page 6, talks about when orders take effect.

In section 7.8, orders can be general or specific.

Subsection 7.9(1) is a critical section. This is the part where you sit back and take a deep breath. It's two short lines, but it says that any order made under this act during the declared emergency takes precedence over any other law. But subsection 7.9(2) goes on to say you can't use the act to amend the act itself. The act is as it is.

There are provisions for retroactive orders, in terms of destruction of property, and one other portion to deal with price-fixing.

Section 7.11 is the offences section.

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In section 7.12, we say that 7.2, which is the order-making authority, and 7.4, which is the extension, are repealed within 18 months, and 7.3 and 7.5 to 7.11, the more operational features, are repealed in two years to allow for the possibility that there was a declaration of another emergency or there were orders that needed to run their course for an additional six months.

Section 3 is essentially a rewriting of the liability provision. It's suggested that the language could be modernized. Essentially anyone acting under this act is not liable for actions they take unless they are grossly negligent. That includes people who are asked to do things under subsection 7.4(2).

The act binds the crown, in section 4, and then sections 5 and 6 talk about commencement and the name of the act.

That is what we had prepared. We were asked to start this in December. We were asked to be ready. Fortunately, we never had to refer to this. The bulk of this work was done in January. There was still more work and discussion going on into April of this year. Aside from the distribution of an early draft to the assistant deputy minister and the secretary of cabinet's office in January, and one copy that went to the legal director, the draft was

not shared outside our ministry. We present it to you today, and I hope it assists you with your work.

The Acting Chair: Thank you, Mr Twohig. We'll move to the two parties we have. The first will be Mr Kormos.

We've allocated ourselves an hour, until 11 o'clock. We'll use about 15 minutes per caucus, but I will leave it to the committee to determine if any additional time is required, given the nature of our next deputation.

Mr Kormos: I'm sure Mr Hudak would want me to have the Conservatives' time.

The Acting Chair: I think we'll work within the context of those who are here with us this morning. Mr Kormos?

Mr Kormos: It seems it was a year and change ago that Bob Runciman was the Minister of Community Safety and we had first, second and third readings of the most recent amendments to the Emergency Management Act. Am I correct in my time? It was the spring of 2003.

Mr Twohig: The so-called SARS amendments.

Mr Kormos: Yes, that's right. I remember the New Democratic Party expressing concern about some of the arbitrary powers given to the government. You may not recall that part of the debate.

Mr Twohig: No, but I've read the provisions, and as I read them, they are mostly what I call helping provisions: leaves of absence and assistance.

Mr Kormos: I recall the debate around particularly section 7.1, which is the thrust of it. In any event, early in when were you asked to prepare standby legislation?

Mr Twohig: In December.

Mr Kormos: In December of?

Mr Twohig: Of 2003.

Mr Kormos: After the election of the new government. Are you guys legislative counsel?

Mr Twohig: No.

Mr Kormos: You're not legislative counsel?

Mr Twohig: We're policy branch.

Mr Kormos: OK. You're policy people. Who asked that this be done?

Mr Twohig: I think the impetus came from ministry officials, who, out of a sense—

Mr Kormos: Which ministry?

Mr Twohig: I think the commissioner at the Ministry of Community Safety and the officials at the Ministry of Health.

Mr Kormos: OK, so health and Sol Gen/corrections. How did that happen? Did they call your supervisor? Did they call a deputy minister over at the Attorney General's? I don't know how this stuff works.

Mr Twohig: As I understand it, during the crisis, AG lawyers were asked to assist from time to time on advice. We were on-site or we were consulted from time to time. I think that as part of the general turnover in government, any ministry official or any responsible civil servant brings issues to the attention of a new government. As I say, foremost on the minds of emergency managers was what they thought to be a deficiency in the act, having gone through the SARS crisis and the blackout.

Mr Kormos: But see, policy people, as compared to legislative counsel people, spin these webs, right? I'm sorry; they come up with the policy, they generate policy, as compared to merely writing down what you request to do. So I suppose what's confusing to me is why Sol Gen/corrections is going to AG and AG's policy people. Sol Gen/corrections has policy people.

Mr Twohig: They didn't come to us specifically and ask that we do it. We were asked by government to assist them. We were asked as the sort of neutral, I guess at arm's length—we aren't the front-line managers—to consider, if powers were needed, what those powers would look like. That's our role, and that's why I wanted to say to you at the outset that we are primarily the emergency managers.

Mr Kormos: So you in fact then didn't get any direction or guidance from policy sources within Sol Gen/corrections.

Mr Twohig: They made a lot of suggestions, but not all of them were necessarily followed.

Mr Kormos: Then let's back up to the Runciman amendments in 2003. I trust that they were being prepared perhaps during the course of 2002 into 2003, when they were finally presented. Were you folks involved in that?

Mr Twohig: I don't want to sound absolute about this. I don't think we played the same role there that we played here. I think we may have played the same role that you play in any government bill. You have an opportunity to comment. But I don't believe we were the lead.

Mr Kormos: I suppose part of what concerns me is that Runciman, whom I like and have known for a long, long time, is a tough nut. I mean, he really is. He's a hard-liner when it comes to law and order and that sort of stuff. I suppose what surprises me is that here we are, we had the Runciman amendments, and he's a pretty right-wing—well, he is—kind of guy, not afraid of being accused of assuming too many arbitrary powers. Yet, based on what you and Dr Young would say, so much was not included in his amendments. I'm trying to figure out why Runciman, a hard-line right winger and law-and-order kind of guy, would not have contemplated—maybe he did—would not have included, any of these provisions at least in his first reading of the bill. That's what I'm trying to get my head around.

Mr Twohig: There are a number of things I can say about it. Firstly, I wasn't part of the team that looked at it. Secondly, if I were, I think I'd have problems talking to you without waiver from the previous government about what they decided to do or not do. So, leaving that aside, I go back to my initial comment: Are these needed? That was never a question I looked at.

Certainly, if you go back to the white paper of 1981, we had the Mississauga train derailment, we have Mr McMurtry—and it's right in the paper. They say, "We consider the need for special powers," and we say no. We say—

Mr Kormos: And McMurtry is a pretty smart guy.

Mr Twohig: Well, and he says, “We’ll leave it to the common law.” That was 1983 or 1981. When you look at the other provincial statutes—and we were discussing it this morning—of the other nine provinces and the federal government, seven of those jurisdictions, post-charter, have passed legislation with these wide, sweeping powers. They thought it was necessary. Presumably they read the McMurtry paper and disagreed. But that question, whether there’s a need or not, I can’t carry that. I was asked to assume that there was a need, and if we asked you to construct the powers with appropriate checks, what would it look like—

Mr Kormos: Fair enough. But now, because we talked about that just a little bit here in the committee, because we’ve got that McMurtry white paper, the 1981 paper, and all of us—I think it’s pages 26, 27, 28, and boom, right to that special powers, you’ll see it. It’s not the same politics as mine, but I knew him as a smart guy when he was justice minister and I consider him a pretty smart guy now. Maybe he’s changed his mind, but do you dispute the conclusion he reached as a lawyer?

Having said that, because we also tried to reflect on what changed from 1981, the only thing we could think of was the charter, right? So I suppose I’d ask you to tell us what about the charter would change or impact on the conclusions that Minister McMurtry, as he was then, reached in his report of 1981.

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Mr Twohig: I absolutely take no issue with the fact that there is an argument. That’s the threshold question: Is there a need for change? Did the charter in fact make McMurtry’s argument even stronger? I appreciate that that’s an argument, but to address that argument, I never got to that. I was asked to assume that there was a need, and if there was a need, the direction was, “Have something ready. We don’t want to be caught. If it turns out that people aren’t following directives, if it turns out that the evacuation of people needs to take place and someone says, ‘Well, wait a minute; you don’t have the authority to do it,’ what would those powers look like?” That’s what I did. But your question is certainly the critical threshold question.

Mr Kormos: As a lawyer, then, and you’re a senior lawyer in the Ministry of the Attorney General, what is your advice around—we’ve got to go somewhere; we’ve got to know.

Mr Twohig: I don’t want to appear as if I’m not answering your question, but I think it goes to the issue of, what’s the role of ministry lawyers? Are they to give advice to the executive or are they to give advice to legislative committees? I’ve always understood that it was to give advice to the executive. I don’t know if the clerk can help me here, but I’m not sure exactly what my role is—whether it’s to provide advice, constitutional or otherwise, to a legislative committee.

Mr Kormos: Please, if I ask you to do something that you understand—because the other day the Chair asked legislative counsel to do some legal research, and legislative counsel let him know—very politely and properly,

of course—that he was barking up the wrong tree. He has been sent here to do a specific job and he’s going to do it, but he’s going to do it well. It wasn’t you, Chair; it was the former Acting Chair. You would know better than to ask legislative counsel to do something that wasn’t in his billing.

Having said that, what do we do then? We have a dilemma. I don’t want you to do something that you don’t understand to be part of your job, because I understand that part of it. So what are we to do? If we want other—I mean, heck, you’ve got a couple of lawyers on the committee: Ms Broten and Mr Zimmer. We could, I suppose, ask them for their opinion. Maybe it would be worth about as much as we’re going to pay for it. But what are we to do if we want an opinion on the McMurtry paper and his conclusions about the adequacy of the common law? What are we to do? Help me.

Mr Twohig: I would truly like to help you. My response to you is, yes, it is an issue. How you resolve the issue is not something—is it purely legal? It’s more than that. If people’s lives are at stake, if unrest in the community is at stake, does the government have the authority it needs to respond? If you’re content with the common law and if you’re content that we in Ontario have got it right and we’ve always had it right, then I would say to you that you don’t need to do anything. You’ve heard a lot more than I’ve ever heard from emergency workers, people who are working out there in the field, as to whether there is a need or not. If they’re not convinced there’s a need, and aware of the past actions of this province, then why go forward? But if you think that something needs to be done, this is a potential solution.

The solution, I say to you candidly, is not perfect. There are other options as to how it could be—

Mr Kormos: This is draft, not submitted to cabinet, so it hasn’t been vetted by cabinet. Was this the subject matter of discussion with your own minister?

Mr Twohig: I think the actual copy of the legislation didn’t go to our minister until June. He certainly was aware that we were asked to do it. He was aware of the principles we were considering, that there were powers, that there were checks and balances on the powers, who would issue the powers. There were general discussions. The minister was aware of that, because he obviously knew we were asked to do it. But as I said at the outset, both personally and professionally, it’s not a pleasant thing to contemplate. It was government trying to be responsible, trying to be ready should something happen.

Mr Kormos: I don’t quarrel with you doing your job. Lawyers are, after all, the world’s second-oldest profession. I understand.

The Minister of Community Safety: it was his ministry amongst others, or his ministry that sought the input?

Mr Twohig: I would say that the Ministry of Community Safety and the Ministry of Health, given their experiences—health in the SARS crisis and CSCS both in SARS and in blackout—were the prime, and I would look to them for leadership, who said, “We don’t think

we've got the right mix yet. We don't think we have the authority."

Mr Kormos: See, now I'm sort of wondering, because all the stuff around this committee—first the government wanted this to be a select committee so it could have its own Chair and Vice-Chair and travel all over North America. But now at least two ministries, Mr Smitherman's and Mr Kwinter's—and again, you don't know what they know; you can't go inside their heads—it seems that they should have known that this work was being done by you—

Mr Twohig: Well, they did know. They certainly should have known, because that's who we met with.

Mr Kormos: I'll be darned.

Mr Twohig: That's who we met with, but they did not have the actual legislation.

Mr Kormos: Sure. No, no, because—why's that?

Mr Twohig: First of all, it's the nature of the legislation and, second, I believe our assistant deputy minister, my direct superior, believed that it's very difficult to draft a document, particularly a sensitive document like this, when there are 18 or 20 drafters. It was more appropriate to talk about the policy, talk about some of the principles, and leave the drafting to us. We never got to the stage where someone said, "We might need to use this. Show us the document."

Mr Kormos: When you say "sensitive"—you talked about this document being as sensitive as it is—you're talking about its potency?

Mr Twohig: Goodness, yes. The subject matter itself, emergencies—dare I use another word—is alarming, and the steps that you need to deal with an emergency are also potentially alarming.

Mr Kormos: As I look at, in particular, the sections dealing with the usurpation of municipal powers, which may require a municipality to provide such assistance—

Mr Twohig: Is that in the current legislation?

Mr Kormos: I'm sorry, it's in your proposed—there is municipal stuff, but in your new section 7.4, declaration of emergency, subsection (6): "If an order is made under subsection (1), ... the Premier may," but then you've got "direct and control the administration, facilities and equipment of the municipality in the"—basically, it sends city councils and mayors home.

Mr Twohig: That is a restatement of what's currently in 7 and 7.1.

Mr Kormos: Yes, but show me where in 7.1 in the current bill, because I took a quick look at that.

The Acting Chair: As Mr Twohig's looking for that information, Mr Kormos, if you can conclude with this question at this point, then we'll let the government—

Mr Kormos: Thank you, Chair.

Mr Twohig: Subsection 7(3) of the current legislation.

Mr Kormos: The order in council may, if it provides—I'm sorry, 7(3)?

Mr Twohig: Yes.

Mr Kormos: "Emergency powers."

Mr Twohig: Yes: The "Premier of Ontario may, where he or she considers it necessary, direct and control the administration, facilities and equipment of the municipality to ensure the provision of necessary services," etc.

Mr Kormos: OK. That wasn't one of the extraordinary—

Mr Twohig: No. Subsection (4) again refers to—we tried to pull 7 and 7.1 out, keep the things that were necessary during the course of the running of this legislation and then have it—

Mr Kormos: Are we supposed to give this sensitive document back to you?

Mr Twohig: No.

Mr Kormos: So it's no longer sensitive?

Mr Twohig: You're the committee dealing with it and I've come here to try and assist you.

Mr Kormos: So I don't have to ask one of our staff people to rush and photocopy it so I can secret away my own copy. OK.

The Acting Chair: Probably not in this very public forum.

Mr Kormos: Thank you kindly.

The Acting Chair: Ms Broten.

Ms Broten: One of the things our committee has been struggling with—and certainly your analysis of what you struggled with as well is not dissimilar. But I guess one of the additional hurdles that we're struggling with is, if change is needed, do we need to do this? Do we need additional powers?

One of the things we asked the council for community safety, who was here, was whether an examination had been done of all the variety of statutes that exist out there that do have powers, because the issue remains whether or not it's a clarification and a centralization of powers or new powers all in all.

We've had conflicting evidence before the committee about whether we can do a certain thing—go on to someone's private land and build a dike, for example. Dr Young indicated that perhaps we could not do that; the Ministry of the Environment indicated that, in certain circumstances, we can absolutely do that. One of the things I think we were hoping you would provide us with today is an analysis of the powers that exist in the other 100 pieces of legislation out there. Was that something that was undertaken?

1050

Mr Twohig: No, it was not, unfortunately. As I said, we were asked to start from the assumption that there was a deficiency. Certainly, we're aware—I'm not aware of the details—that under health legislation, community health officers have certain powers. The sense that we were given was that you will find powers to deal with extraordinary circumstances in various specific pieces of legislation, but they're all finite, and none of them are broad enough or flexible enough. That was the assumption.

The current legislation talks about all of the existing powers in various statutes being centralized in the

Premier at the time of an emergency, but the assumption was that none of those powers were broad enough to deal with the types of emergencies that were encountered with SARS and the blackout.

Ms Broten: I'm sure you'd agree with me, though, and I raised this with Dr Young as well, that the bringing together of powers to the Premier—and we don't even know what the list is—is a bit problematic for this committee. We don't even have a list to know what powers we would be giving to the Premier. If you didn't undertake it, is it something that could be undertaken now to assist this committee, in terms of that analysis of what powers exist in all other pieces of legislation, so that we can put together a list of those powers?

Mr Twohig: For instance, our ministry has been asked to review our 130-odd statutes to answer that very question. I understand the Chair has written; I'm not sure what other ministries you've written to, but certainly for our ministry, we're undertaking that.

Ms Broten: So that's underway to help us.

Mr Twohig: Yes, in our ministry for our 130-odd statutes.

Ms Broten: OK. The other issue that we've been struggling with is the issue that Mr Kormos raised. First of all, we want to know what powers exist out there to see maybe if the issue is that no one really knows what powers exist, because there's no centralized list. So we'll get the list together.

Then, obviously, in terms of the types of suggested issues that Dr Young has raised in his testimony, there are the gaps; for example, the ability to enter private property. What we haven't had before the committee was anyone to provide us with insight into what type of case law exists as to infringement on rights, an examination of the Charter issues that we may or may not face. That is certainly something that members of the committee have expressed to a number of witnesses: that we're struggling with that issue. I wonder, again, was that type of legal analysis undertaken when you put together this potential stop-gap legislation?

Mr Twohig: The two pieces of information I can give you are to refer to our cross-country survey of when emergencies have been declared. You'll see that there haven't been very many times when full-out provincial emergencies have been declared across the country, but there have been many municipal emergencies. The second thing is to say that when we looked at these statutes, and we did a statutes judicially considered review, there were no cases. So it appears that—and maybe the argument is, do you need this?—the other provinces apparently have it, that they have fortunately not resorted to it too often, and it appears not to have been considered by the courts.

Ms Broten: So we have no judicial consideration of other statutes.

I just want to go back over what Mr Kormos asked you as to the type of advice that you can give this committee. For example, if we wanted to have an opportunity to talk in depth about some of the constitutional chal-

lenges that we could or may face as a result of this legislation, is that a dialogue that, with some preparation time, we could have with you?

Mr Twohig: Firstly, I'm not with the constitutional law branch of the ministry, so I wouldn't even be qualified to give it to you. Secondly, I think the answer from the constitutional law branch probably would be that they see their role primarily to serve the executive and not the legislative. But I could be wrong on that.

The Acting Chair: With permission of the clerk, at this point, as I understand it, the question of legal advice to the committee is one that the subcommittee had some deliberation on. So we set that aside, at least for the time being—whether it was needed. My understanding from the MAG is that for questions that are asked at committee, there is an obligation to respond, but for them to provide advice to the committee as a body is not something necessary in their mandate. So I guess as they come—the deliberation between seeking specific responses to specific questions as opposed to more generalized advice. I guess if we needed further advice, the subcommittee would have to give further consideration to that. That's as I understand it.

Mr Kormos: Chair, if I may, on this very important and very specific issue: Look, the standing orders were changed to permit committees, as this committee is right now, to prepare draft legislation and have the Chair present it. That changes the price of poker substantially, because then the committee has in many respects, in that legislative drafting role, the role of a member of the executive council, a minister.

We're being told that the Ministry of the AG is mandated to provide legal advice to ministers/ministries in the course of their preparation of legislation. Once the committee has a similar role, it seems to me then we've got to address—and we've got the PA to the Premier, we have a woman who sits at Mr McGuinty's right-hand side and we have the PA to the Attorney General here, Mr Zimmer, who sits at Mr Bryant's left-hand side. It seems to me we should be able to get clarified the issue about where we go to for the sort of legal advice that a minister/ministry would be entitled to in the course of preparing legislation.

Ms Broten: Can I ask you by when you think you would have that list of powers completed? Certainly, for us, it's a fairly urgent need that we have an understanding of what powers exist in the FPPA or the various pieces of legislation. Do you have a sense of what the time frame will be on that?

Mr Twohig: Again, we were asked to do it for our ministry and for the 130-odd statutes our minister is responsible for. I think the deadline was September 15. I can tell you that, based on my own experience, I don't believe you're going to find buried in the Innkeepers Act or the Time Act or the Courts of Justice Act the kinds of powers we're talking about here. I'd be very surprised.

Ms Broten: So you're not looking at, for example, any of the acts that would fall within the Ministry of the Environment's responsibility.

Mr Twohig: I think your Chair has written to those various ministries and I think they'd be in the best position. I know that the critical ones—for instance, the Ministry of Health, the Ministry of Natural Resources, the Ministry of the Environment—would have some capability to respond in unusual circumstances, but I very much doubt that the Ministry of the Attorney General would, but we will conduct a review.

Ms Broten: Thank you. I'll pass it on to a colleague if they have—

Mrs Sandals: Thank you very much. This is very helpful. If I could just go back and get some clarification on some issues that have already been raised. Not having been here at the time of the SARS amendments, could you just help me a little bit with the timing? Those were amendments that were tabled during the SARS crisis?

Mr Twohig: I believe there were two of them and I believe they were introduced in the spring, about the same time the SARS crisis was underway in 2003.

Mrs Sandals: So these would have been two short and sweet, if I could put it that way, amendments during the midst of a crisis, that these are things we need to fix immediately in the midst of a crisis as opposed to a more thoughtful analysis of the overall picture? Is that a judgment you're prepared to make?

Mr Twohig: I don't know about that. But I do know that I remember being struck, and I think you see reference to this with other jurisdictions as they struggle with this. The time to do this is when there is no crisis. The time to consider emergencies is when you're not dealing with one.

Mrs Sandals: So it would be safe to say the SARS amendments were a mid-crisis reaction, whereas what you've got here is a proactive piece of thinking when there is no crisis.

Mr Twohig: It would appear, but I have no—

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Mrs Sandals: If I can then just clarify the timing of this: If I understand you correctly, the Commissioner of Emergency Management and, I presume, the chief medical officer of health have shared concerns and made suggestions. Is that correct?

Mr Twohig: Unquestionably.

Mrs Sandals: But they have not seen the legislation and they have not been informed of the content of the draft legislation.

Mr Twohig: Other than being shown a list of potential powers—for instance, I know that Dr Young has shown you a chart.

Mrs Sandals: Yes.

Mr Twohig: That chart was generated in our office to demonstrate a summary of our review, and he has taken it and used it. We've certainly shown charts to people: "These are what powers might look like. These are discussions about how long a declaration might last, about when a report might be made, about the role of the commissioner." Certainly all the principles have been discussed, but in terms of the actual draft, there was no need to share it, because we never—

Mrs Sandals: Fortunately, there was no emergency, so there was not that detailed discussion or follow-up with the other ministries.

This is actually a question for the committee clerk, perhaps, or the committee Chair. We've been discussing the issue of who can give us advice. Legislative counsel seems to be here for drafting and legal branches of various other ministries are here to advise their own ministers, which raises the legitimate issue of where the committee gets advice. Is the committee authorized to hire its own constitutional legal counsel?

Mr Kormos: In the Yellow Pages, the law society has a number you call for 30 minutes of free advice.

The Acting Chair: Mr Kormos, thank you.

My understanding, Ms Sandals, as best I can—and quite frankly the subcommittee may be in a better position to respond to this than I would be—is that the committee was given a certain degree of latitude and powers to do certain things and require such resources as may be necessary. I would think, from that standpoint, it would have the authority to do that if it determined that was the most appropriate thing to do.

Mr Kormos: On a point of order, Mr Chair: I know you're trying to be helpful, but I don't think it's helpful for the Chair to delineate in such an expansive way what it perceives the powers of the committee to be. The issue is more fundamental than that; that is, if this committee is tasked with drafting legislation, then why isn't it having access to the same governmental resources as a ministry and a minister who is tasked with drafting legislation? That's number one.

Number two, I'm very concerned about the whole business of the SARS amendments. SARS was in the summer of 2003; I remember it well.

The Acting Chair: Mr Kormos, in the context of a point of order—

Mr Kormos: You've got to hear the point of order first, and then you can rule it out of order.

The Runciman legislation was in the spring of 2003. I'm hard-pressed to understand any reference to the Runciman amendments as SARS amendments. Maybe we could get a little bit of clarification on that. That may not be in order.

The Acting Chair: Thank you. I'm going to rule those out of order. From the context, I was responding as the Chair to a question from a member of the committee to the extent that I could, with reference to the subcommittee and its understanding and discussions around matters related to acquiring additional expertise. Thus I was referring to the government member on that subcommittee as one of those who might be able to respond to that, since the government currently has their allocated time available to them.

Ms Broten, do you have anything you want to—

Ms Broten: I think we can certainly take a look at this issue at the subcommittee level, perhaps seek some advice from the House leaders who gave the committee the directions and have some further discussions. I think we've got some clarity today to the extent of what the

Minister of the Attorney General thinks they can provide to us right now under—

Interjection.

The Acting Chair: Mr Kormos, respectfully, it's not a dialogue across the floor.

Ms Broten: I think it's an issue we do have to deal with, and I suspect that Mr Kormos and I and the other members of the subcommittee can have a lively debate and report back.

The Acting Chair: Which would be excellent.

Mr Kormos: I think we should have a debate on the record.

Mrs Sandals: May I carry on with my questions, please?

The Acting Chair: You have about another two or three minutes, and then we'll have to determine whether or not we want to extend the hour allocated to the MAG.

Mrs Sandals: Thank you very much. Not having had an opportunity to look at the legislation extensively—something we're obviously all going to want to do is go home and read it—one of the things I notice is that in the case of a declaration of an emergency, whereas my recollection is that under the current legislation it is the Premier who is authorized to call a provincial emergency, in fact you have, for the most part, vested the power to call a provincial emergency in the Lieutenant Governor in Council, ie cabinet. I would be interested in the thinking around drafting the change in who is responsible for actually triggering the calling of an emergency.

Mr Twohig: I think that comes in part from a look at other pieces of legislation. Again, it's always this question of checks and balances. If this were accepted, a declaration would trigger extraordinary powers. Who do you want making that decision? Is it the collective wisdom of a cabinet, or is it simply one individual? In this case, the argument we would put forward is that it ought to be the cabinet.

Mrs Sandals: So, as you have been drafting what you've described, I think, as contingency legislation, you've actually—although there are clearly a whole lot of powers that have been added in provincial emergencies which didn't previously exist—been looking at the other side of the balance sheet and, in fact, inserting more checks and balances into the act than may currently exist. As I've said, obviously I've not read this over, but is it a fair reaction that you've tried, while laying out additional powers, to also insert additional checks and balances?

Mr Twohig: Without question. There are more powers, so we tried to put as many checks in as we could. Critical to all of our thinking was to try to achieve that balance.

Mrs Sandals: As we've noted here, part of the struggle of the committee is to find a balance. While you have been thinking about this, you have actually been thinking about the balance issue as well.

Mr Twohig: Certainly, and there's a range on the declaration: You could leave it to the Legislature to declare an emergency; you could leave it to the cabinet

upon review of the Attorney General; you could leave it to the cabinet upon the review of a court, although that might be a bit extreme, and I don't know why you'd want to. There are all kinds of scenarios you could think of.

Mrs Sandals: Presumably what one is trying to do is find a balance between expeditious timing and reasonably broadening beyond one person the base of people who need to at least be involved.

Mr Twohig: Exactly. Time and time again we heard from operational people about efficiency and being able to act in a way that we could save lives and prevent further danger.

Mrs Sandals: Just a brief comment: While you have not been asked to address the issue of need, perhaps the need for the legislation is a political question, and that is why the committee is here, not just to look at the technical but also at the political need and are we adequately prepared to handle emergencies, which is more of a public and political question.

The Acting Chair: Thank you, Ms Sandals. The government's time has elapsed. I need to understand whether we actually want to extend the time.

Ms Broten: I'd ask for unanimous consent.

The Acting Chair: We do have the legal counsel, who is here, and presumably could present in the afternoon since we have time available to us at that point, should this go on until our recess.

We'll do 15 minutes if we can, and that would allow each of the caucuses present to have a couple of shots at this process. Mr Kormos.

Mr Kormos: Thank you kindly. I should also congratulate and thank Hansard because, as you may have noticed, they've been publishing the Hansards of this committee extremely promptly. They are grossly understaffed—they are, and people should know that. I appreciate they have the luxury of not having a whole lot of committees, but I'm still grateful to them for having produced with such speed the Hansards from the early part of this week already.

1110

Chair, I'm really concerned about this exercise. As the PA, Ms Broten has very skilfully commenced this committee with enthusiasm. She appears not to have been told of the work being done by the Ministry of the Attorney General in terms of drafting legislation, when in fact at least two ministries in addition to Attorney General would know about it.

It seems to me as well that if Dr Young was—as he was—the first participant in this committee hearing, these gentlemen should have been the second, in view of the work that has already been done canvassing the sort of powers that the province might, were the Legislature to permit it, assume. That's number one.

I'm really disappointed that we have this “Golly gee, let's examine emergency management legislation and where this province ought to be going,” when in fact—we have legislative counsel sitting here shaking his head. He's not shaking his head literally, but he may well be shaking his head figuratively, saying, “What the heck am

I doing here? These guys have already drafted a bill.” I suppose at the end of the day it could make his life easier. So that’s number one.

Number two, around this whole business—and I’m not in any way critical of either of these gentlemen for making it clear that they understand that their advisory role is to the minister and not to a legislative committee. We’ve got a whole lot of very competent, skilled, experienced lawyers down there on Bay Street—our Bay Street, the Ministry of the Attorney General, not further south. There are some skilled ones further south, but those are the expensive private sector lawyers. I have every confidence in the lawyers in the civil service.

We have to, rather than saying, “Oh well, gosh, golly gee”—look, if at the end of the day this committee has to spend public dollars to retain private counsel because it can’t get those resources from within government, then I suppose I’ll have to sit and at least be prepared to be persuaded that that’s what has to be done, because, as you know, I’m not gung-ho or overly enthusiastic about that.

It’s incredible that the government says to the committee—it was somebody’s bright idea to have this committee embark on this exercise, notwithstanding the work that had been done by the Ministry of the Attorney General under the direction of the new post-election Minister of Health and Minister of Community Safety, who appear to have had in their minds some idea about the need for amendments or at least the need to consider potential amendments or else they wouldn’t have asked the Attorney General’s ministry to have these people, along with others, work so hard preparing this draft bill.

I repeat that Ms Broten has the ear of the Premier. She knows where he is 24 hours a day because she’s his parliamentary assistant; Mr Zimmer similarly with the Attorney General because he’s his parliamentary assistant.

You could try to do it off the record in subcommittee, but I can guarantee you that any report from that subcommittee will be fully debated and discussed on the record, on Hansard. Before we start embarking on requisitioning public monies to hire private lawyers, we should be leaning on the Premier to free up skilled, competent, capable, experienced, talented lawyers in the civil service to give the sort of advice to this committee—we may not like the advice, quite frankly; you takes your chances—that we’re talking about having to pay private sector lawyers to give. We have every bit as much talent in that Ministry of the Attorney General building on Bay Street as the private sector does further south on Bay Street. I want to make that very clear.

Having said that, we’ve seen what these gentlemen have produced. They’ve been very candid with us. They were candid also in telling us what they can’t tell us. What I’m more interested in asking them are the things they say they’re not in a position to respond to at this point in time. I really question how much more value there is in subjecting these gentlemen to further questioning. I’m not going to ask them any further questions.

I want to be able to ask the questions that I want to ask them that they can give me answers to, like, “Why would this committee”—maybe we should be asking Judge McMurtry to come here. The other person who—

Interjection.

Mr Kormos: Well, maybe he has changed his mind since 1981; and maybe Bob Runciman—because, as I say, I don’t think I’ve unfairly described him—could explain to us why this work is being done after his major amendments.

I suppose the other thing I would like is some clarification on this reference to SARS amendments. Runciman was waving the flag still. He was still beating the 9/11 drum when he introduced this stuff. It was part of the reason why we were very critical of him playing that card, the 9/11 card, the terrorism card. The Emergency Management Act amendments were introduced and then debated in the spring of 2003, and unless my age has begun to impact on my memory, SARS was last summer. SARS was the summer of 2003, the summer before the election, when the House wasn’t sitting.

I don’t recall any of the Runciman amendments being referred to as SARS amendments or being perceived as SARS amendments. Runciman, as I say, was banging the patriotic drum about protecting us from Reds, anarchists, Sacco and Vanzetti replayed etc.

Mr Twohig: If I could help you, Mr Kormos, I’m not an expert on the rest of the statute, but if you look at the references to some of the sections, you’ll see that some of the sections appear in 2002. There appears to be two sets of amendments to this statute: one in 2002, the other in 2003.

Mr Kormos: OK. SARS are the 2003 ones?

Mr Twohig: SARS was, in my recollection, in March, April and May of 2003.

Mr Kormos: Yes. The spring of 2003.

Mr Twohig: So some of these amendments predate SARS.

Mr Kormos: The bulk of it, though, as I recall—we’ll have to take a look at this. The answer is clear, once somebody gets it. I remember Runciman’s press conferences; I remember all the spin the government was trying to do. They were in the same position this government is in: trying to generate some positive spin out of a relatively disastrous few years, a pre-election spin. Even though this government isn’t close to a pre-election period, their credibility gap is phenomenal. Thank you.

Mr Zimmer: I just want to be clear about this, for the record: Is it a constitutional convention that counsel to the executive branch not offer advice to the legislative branch?

Mr Twohig: That’s my understanding.

Mr Zimmer: Is it a constitutional convention that legislative counsel, that is, counsel to this committee—or perhaps it’s a question I’ll direct to the legislative counsel. Thank you.

Mr Qadri: One of the things I’ve just noticed with regard to the addition or update from the Emergency Management Act of 1990 and to your current draft bill is

the idea of offences for individuals who fail to comply or who interfere and obstruct. I wanted to just ask—for example, the numbers cited: individuals, \$100,000; up to corporate directors, \$500,000; up to corporations, \$10 million. I just wanted to know some of the thinking and potential application of those. I realize that some of the legislation from other jurisdictions—for example, good old New Brunswick is charging, I think, \$120, and in Newfoundland it's even less. Even in the corporate sector, the maximum designated fine is up to \$10,000. So I was just wondering, what was some of the thinking behind it, and do you see a potential application for that? What was the necessity of basically creating these penalties?

1120

Mr Twohig: As I mentioned before, the issue of enforceability of orders was critical. There has to be an understanding that when an order is made and there's a clear legal authority to it, there is a consequence. The amount of the suggested penalty should bring that home. At the same time, the province has to be careful not to stray into the area of criminal law, which is a federal jurisdiction. So it's an issue of, are these sufficient? Have they gone too far? I can't add to that. It's really just to bring home the enforceability of the order.

Mr Qaadri: Is it correct that those types of penalties are absent from the 1990 legislation?

Mr Twohig: I don't see any reference to them in the current legislation.

Ms Broten: I just wanted to go back, somewhat in response to Mr Kormos's—I guess they weren't really questions, perhaps just a statement that he made on the record—and ask if I could get your understanding. Having listened to your earlier submissions and wanting to get your confirmation on what you were asked to do, in contrast to what this committee is being asked to do, I think that you'd agree with me that what you were asked to do and what this committee's being asked to do are pretty different, in terms of the examination and the analysis in a greater breadth. We're being asked to look at something that you weren't, which is whether there is a need.

Mr Twohig: I would agree with that, without question.

Ms Broten: In looking at your issue, you didn't look at the powers that existed in the other statutes to determine whether we did in fact already have those powers, which is something that we are going to be undertaking.

Mr Twohig: We didn't do that but, as I said, I would be really surprised if you find them stated so broadly in any other statutes.

Ms Broten: I think the most significant difference I see is that we are being asked, if we do come forward with a piece of legislation, that it be a permanent amendment to the Emergency Management Act, which is very different than what you were being asked to put together, which was a temporary, sunsetted piece of legislation that would come in in an emergency and be taken out, and we would then go back to the long-standing Emergency

Management Act that the province has had for many years.

Mr Twohig: Yes, exactly.

Ms Broten: We are also trying to conduct a more broad examination, bringing in lots of deputants and seeking advice from whoever we can seek advice from. That, again, is something very different from the process that you undertook.

Mr Twohig: Critically different, yes.

Ms Broten: If I could just suggest to you, would you agree with me that the information that you've given to us today we should really look at as a piece of evidence, just like everybody else has given us their thoughts on what things we may want to consider as we undertake the task that we've been given, which, again, was very different than yours?

Mr Twohig: To me, it's just another piece. It was a potential response that was ready if consideration needed to be given to it. Again, the context was some very real concern that people had about pandemic flus and SARS and so forth.

Ms Broten: And, I guess, legitimate concerns that professional bureaucracy, professional civil servants would want to look at these issues and be prepared in the eventuality that it was needed?

Mr Twohig: Yes, I would hope so.

Ms Broten: Not very different than much of the work that's undertaken by the individuals in the civil service to help us, to do lots of things that we don't necessarily ever see or know about but they're there just in case?

Mr Twohig: Yes, I would think so.

The Acting Chair: I have no further speakers on the government side. Mr Kormos, anything from the opposition side?

Mr Kormos: Yes. How did you end up at this committee?

Mr Twohig: Sorry?

Mr Kormos: How did you end up here? How did you get here? I'm not talking about whether you took a cab or a bus; how did you get on the list of people participating?

Mr Twohig: I'm not quite sure, but I think my assistant deputy minister asked me to be here today.

Ms Broten: How did you end up here?

Mr Kormos: Sixteen years and running.

Mr Twohig: And I can add that I'm hoping some of the material we've provided about what's happened and what we've seen would be of assistance to the committee. I think it was to amplify that material. I hope that's one of the reasons why.

Mr Kormos: I'm curious, because I don't for the life of me know why Ms Broten wouldn't have been told about the work you've been doing back before we had our first subcommittee meeting. Somebody was keeping her in the dark—the old mushroom treatment. I just find that peculiar, that a PA to the Premier would be kept in the dark like that about the work you're doing. So it was an ADM who set up the attendance here today?

Mr Twohig: Well, that's who asked me to be here, yes.

Mr Kormos: And indicated that your role here was to do what?

Mr Twohig: To explain our work, to present the draft bill as a potential model of something to look at to compare with other considerations.

Mr Kormos: OK. Thank you kindly.

The Acting Chair: If there's nothing further from the committee at this point, as I say, we do have time for leg counsel to make a presentation, and if we determine we need any additional time, we can do that.

Mr Twohig and Mr Boswell, thank you for your time this morning. It was much appreciated and helpful.

Mr Albert Nigro: Good morning. Maybe I'll just get started while the clerk hands out some materials. I want to thank the committee for giving me the opportunity to brief you on legislative drafting and the role of legislative counsel. Judging from the discussion I heard already this morning, I think there's a great deal of appreciation in the room already.

I'm handing out four documents: A Guide to Preparing Drafting Instructions; Private Members' Public Bills; An Introduction to Bills; and Legislative Drafting: Summary. Mostly, I'm going to be referring to that last paper, Legislative Drafting: Summary. I'm going to take you through that slowly, but I am going to refer to the other papers from time to time.

The short paper, the summary paper, is divided into two parts. It provides a summary of the nature of public bills, as we understand them, and describes very briefly the process involved in drafting bills. You've heard a good deal more about that already this morning. The second part explains the role of legislative counsel in the drafting process. I think the committee is probably more interested in the second part of the paper, but in order to appreciate what's in that part of the paper you have to understand some of the basics that are in the first part of the paper.

You'll notice that bills are classified into two broad categories: public bills and private bills. For the difference between the two categories of bills, look at the first page of the short paper called An Introduction to Bills. This paper was prepared by my office as part of the orientation for new MPPs this past fall, so many of you have probably seen this. The main categories are public bills, which in turn are subdivided into government bills, introduced by ministers, and private members' public bills, which we usually call private members' bills. In addition, the other broad category is private bills, which are introduced on the application of a member of the public and relate to private interests as opposed to public interests.

There is a practical difference, I would suggest, between the two classes of public bills. One of the practical differences has been subject to a great deal of discussion this morning, so this is somewhat redundant. I will emphasize that in greater detail, but one of the differences between a public bill introduced by government and a public bill introduced by a private member is the rule on money bills. You can see that's referred to in the

paper called Private Members' Public Bills. Approximately halfway down the paper, under the title, "The money bill rule," there's the reference to standing order 56. That standing order provides that "Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown." I'm only referencing that as one of the formal differences. It may make some difference to the work of this committee; I'm not sure.

I'm not aware of any unique rules around committee bills, although, judging from what Mr Kormos said earlier this morning, there may have been a change that my office is not aware of to the standing orders. In any event, private bills are subject to unique rules which I don't think are of any interest to this committee.

Government bills are introduced by a minister and are the product of a great deal of policy and operational scrutiny and approvals, and various legal reviews. The office of legislative counsel doesn't typically get a bill until the policy issues have essentially been worked out, or mostly worked out, and the operational implications have been worked out. You heard that this morning from John Twohig.

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That package will be brought to the office of legislative counsel by one or more legal counsel—in this case there probably would have been two—employed by the sponsoring ministry, the Ministry of the Attorney General, who will usually have policy approval documents from the cabinet approval process as well as other detailed documents, which is exactly the kind of research that John Twohig referenced this morning.

Sometimes in the process, especially early on in the process, we may be joined in that by a technical person, an expert of some kind. That person is often a lawyer. He or she may be from the sponsoring ministry. They may be an operational person, they may be a policy person or they may be somebody from a specialized office, often in the constitutional law branch, which was referred to today, or perhaps the policy law branch that the two witnesses earlier today were from.

That's usually what we do and how we go about getting it done from the government's side. I emphasize that it's an iterative process—that is, it goes back and forth—and it can be very resource-intensive when a bill is being drafted.

A private member's public bill, or private member's bill, is technically similar to a government bill except that there are some real, practical differences. One of the obvious practical differences that was talked about already today is that a private member doesn't have the same amount of resources as the government; there's a real disparity in resources. The result of that is that private members' bills tend to be short and usually focus on a particular issue. They don't usually have the same scope as a government bill.

Notwithstanding all of that—and I know I’ve done this—where a private member has come to our office with an idea for a private member’s bill, in order to appropriately address the policy issue that’s being raised in the bill, some research is needed. We will sometimes ask the private member to go and get some research done, using the resources of the legislative library—the office of legislative research services, a member of which we have here—or they can go to caucus research or in some cases they may have contacts with either stakeholders with whom they have been dealing or with some of their constituents. In any event, the drafting will not usually begin on a private member’s bill until that research is done, so we can clarify what the policy is. Having said that, the process is similar—it’s iterative—and we do want policy decisions before the drafting.

A committee bill is something with which I’m not familiar. To my knowledge, there is no unique category. I emphasize that I say, “to my knowledge,” because the clerk may have something to correct me on that, as I thought I heard this morning that the standing orders have been changed. If they have been changed, I’m not aware of it, and I spoke to several people in my office before doing this and they weren’t aware of it either, so we’ll have to look into that.

In any event, I will point out that the motion that referred this topic to the committee is of some assistance. It provides that if the committee adopts the text of a draft bill, the Chair is instructed to introduce the bill as the primary sponsor, in his or her name, with other members of the committee who wish to do so having their names printed on the face of the bill as secondary sponsors. Subject to any comments from the Clerk’s office, if the bill is introduced by the Chair of this committee, by analogy it strikes me that it’s closest to a private member’s bill with multiple sponsors. Again, I’m not sure.

In the result, though, I’d like to emphasize that in the drafting process the features that are common to all public bills are that drafting follows policy decisions, meaningful drafting cannot take place until the details of the goals of the bill are known, and drafting is iterative—it is a process that requires review and refinement as the bill develops.

All of this comes to: What is the role of legislative counsel in this process that I’ve just described? In a nutshell, legislative counsel converts instructions into legislative language, clarifies ambiguities in language or in policy and identifies gaps in policy development or operations in the proposed legislation.

The term “instructions” may require clarification and amplification, at least as it applies to a government bill. Instructions are the materials that are brought to the office of legislative counsel by ministry counsel and include the policy development materials referred to above and any additional materials, such as legal research or the results of consultation with specialist offices that has been undertaken.

On the matter of instructions, my office has prepared a fairly extensive guide to preparing drafting instructions,

which I have distributed to you, and I’d like you to take a look at that, if you could. It’s called “A Guide to Preparing Drafting Instructions.” If you look at the introduction, there is a nice two-paragraph summary.

Giving drafting instructions to legislative counsel about a proposed bill is not just an exercise in preparing an instruction document. It involves a continuing process of collaboration between a ministry’s instructing lawyer and legislative counsel. Many others play a role in this process as well, such as ministry and central agency officials and the French-language professional staff and the editors in the Office of the Legislative Counsel.

It usually begins with written instructions prepared by a ministry’s instructing lawyer. Often, the instructing lawyer meets with legislative counsel to discuss those instructions. As work on preparing a draft progresses, there will almost inevitably be issues to be resolved. This is an integral part of the drafting process.

As noted in the guide, the process is iterative because of its going back and forth between legislative counsel and his or her client. It is in that process that gaps in policy or operations are identified and ambiguities are resolved. By negative implication to what has already been said, legislative counsel is not responsible for policy development, nor is the office resourced to undertake legal research. The area of legal expertise of legislative counsel is limited to legislative drafting. We do not have expertise to offer legal advice in other areas, such as constitutional law or information and privacy matters. However, during the drafting process, legislative counsel will identify legal or policy concerns that may be addressed in order for the bill to be effective and, where appropriate, may suggest needed changes or the need for consultation.

Those are my written comments. Are there any questions?

Mr Zimmer: Just following up on the comment in the document *Legislative Drafting: Summary*, the three-pager. On page 2 under “Committee Bills,” the last sentence in the paragraph reads, “... if a bill is introduced by the Chair of this committee, by analogy it is closest to a private member’s bill but with (potentially) multiple sponsors.” In a private member’s bill scenario, who would the private member look to for legal advice? Obviously not the legislative counsel.

Mr Nigro: As I said earlier, private members’ bills tend to be more limited in scope. They will usually come to my office with an idea, which may or may not be well-developed—it depends—and we may need to ask some questions about it. I’m not sure who they get their ideas from; I think there’s a wide variety. Judging from the discussions I’ve had with private members and their staff over the years, they might get them from constituents; because they have contacts with various stakeholders, they might get the idea from there; or they may have an interest of their own through either professional or other concerns.

Mr Zimmer: Where would they look for legal advice?

Mr Nigro: Insofar as they need legal advice, they'd have to look to their own resources.

Mr Zimmer: In effect, if the closest analogy for this committee is to a private member's bill, this committee should be looking to private advice, much the way a private member would, to carry the analogy to its—

Mr Nigro: If you were to carry the analogy, I would say that would be the logical outcome. I would also point out, if I could anticipate what might be a question, that the office of legislative counsel is uniquely placed within government lawyers in that although, as Mr Twohig indicated, ministry lawyers are to provide advice to the executive of government, the office of legislative counsel has a role under the standing orders to provide advice to the Legislature in respect of matters of drafting.

In many parliamentary jurisdictions—I'm not sure how many offices in Canada—that role is split; it's divided between two offices. But in Ontario I know that we differ from the federal Parliament. We do provide advice to committees and to the Legislature in terms of drafting. In Ottawa, for example, if you were to be drafting motions to amend a bill at a committee, the counsel who would be drafting those motions would be from a different office than the office that drafted the bill in the first place. Here, it's the same office.

Mr Zimmer: You've drawn the analogy between this committee and a private member's bill. A private member would look to the legislative counsel's office for advice regarding the drafting of the legislation. At the broader policy level, the constitutional level and that sort of thing, it would be up to the private member to seek his or her own independent advice.

Mr Nigro: Yes, and sometimes they'll do—

Mr Zimmer: Sorry, but is the answer to that "yes"?

Mr Nigro: Yes, but I would point out that sometimes when those issues come up, I say, "You might want to get some research done," and I will refer them to the resources that are readily available to them. I first knew of Margaret Drent, not through meeting her, but through papers she had prepared for private members in respect of private members' bills that I used in guiding my drafting.

Mr Zimmer: But, essentially, they seek that advice out on their own; they don't get it from you and they don't go to ministry lawyers.

Mr Nigro: To my knowledge, they don't go to ministry lawyers. Sometimes I will suggest that they get advice or get research done.

Mr Zimmer: I just want to be clear about that: It's not from your office, and they're not directed to go to ministry counsel?

Mr Nigro: I would never direct a private member to a ministry office for legal advice.

Mr Zimmer: And, just for the record, again you've drawn the analogy between a private member's bill and a bill that would emanate from this committee.

Mr Nigro: That's correct.

Ms Broten: I understood, quite differently, that when private members put in proposed ideas for legislation and

were working with legislative counsel, it was that office that told them, "You need to be cautious here, because you're seeking powers that don't exist, and there's potentially a charter violation here or there." Am I mistaken in that?

Mr Nigro: I would say that we're talking about things that come up during drafting versus what we would call pure legal advice. For example, if a private member came to me and a charter issue was raised in what they were suggesting to include in legislation, I would, as I would with a government lawyer, suggest there might be a charter problem. What I wouldn't provide advice on is what the result is, what the charter analogy is. That I won't do. To the extent that that might affect the drafting, I will raise it with them. I will raise division of powers issues. We do that all the time. We will raise the issue. Raising the issue isn't providing the advice with the answer.

Ms Broten: OK. Thank you.

The Acting Chair: Anything further from the government? Mr Kormos? Legislative counsel? No? Good. In that case, I guess we stand recessed until 1 pm.

The committee recessed from 1143 to 1305.

RADIATION SAFETY INSTITUTE OF CANADA

The Acting Chair: Sorry, I didn't realize we had a full quorum. I'll call our session back to order.

The first of our deputants this afternoon is Dr Fergal Nolan, from the Radiation Safety Institute of Canada.

For Dr Nolan's and other delegates' information, our committee on justice policy has the responsibility to review emergency management statutes with an eye to whether or not new or amended legislation might be brought forward. This is early on in our process. This is all recorded in verbatim fashion by Hansard for public consumption. If you would take the opportunity to identify yourself to us formally, I'll turn it over to you. We've provided for about half an hour, so if your presentation is 10, 15 or 20 minutes, that will allow a little bit of time for questions from the caucuses that are here.

Dr Fergal Nolan: Thank you very much, Mr Chair. On my left is the chair of the board of governors of the institute, Margaret Rodrigues, and on my right is the vice-president and chief scientist of the institute, Dr Reza Moridi. My name is Fergal Nolan. I'm the president and chief executive officer.

The Radiation Safety Institute of Canada will be 25 years old next year. It was founded as the result of a disaster in Elliot Lake as an independent national organization dealing exclusively with issues of radiation safety. The UN tells me that it is the world's only independent organization dealing with radiation safety issues.

What I have to say to you today is that I don't want to alarm people or be alarmist in any way. That is not our philosophy. Our philosophy is, "Good science in plain language." We like to get things done with our feet on the ground, and we believe that problems can be resolved

in that way. Let me get to the unpleasant parts first: the news.

Two days ago in the United Kingdom, eight people were charged with conspiracy to commit terrorist acts using radioactive materials, chemical agents and biological agents. They had in their possession maps of Manhattan designating the office of the IMF, the World Bank and, in New Jersey, Citicorp.

The second news item was a large article from the New York Times last Sunday on US government concerns about nuclear reactors—small nuclear reactors about the size of a bar fridge—on university campuses, many of which are using weapons-grade uranium. The operators of those are students paid \$10.50 an hour, and that was a recent wage increase.

The third item I want to mention is a general understanding among the scientific community dealing with radiation safety in the United States that one radioactive source is lost in the United States every day. These are not from nuclear power plants but from industrial operations, hospitals, oil operations, mines, laboratories and all sorts of things like that. The term for such sources is “orphan sources.” That means radioactive material without a parent; the technical community calls them radiation sources.

Let me also remind you of three scenarios that, as a committee concerned with emergency preparedness, you may already have heard of, but let me remind you anyway. The first is a traditional scenario. This has grown since the fall of the Berlin Wall and the fall of the Soviet Union at the end of the 1980s and was of much concern during the early 1990s. This is the concern about a suitcase nuclear weapon being brought into, for example, New York harbour on a container ship and exploded. This is a real concern and still is a concern. You may have seen Baltimore blown up by one of these things in a recent movie produced in the United States.

One or more weapons—nuclear warheads—is said to be unaccounted for from the Soviet arsenal. That’s disquieting. We also have concerns at the International Atomic Energy Agency about weapons-grade material that is being smuggled across borders—every so often you hear of smugglers being caught—and the potential sale to terrorists. That’s one scenario: bombs or material for nuclear bombs.

The second scenario is a more recent development, and that concerns what is now called a dirty bomb. Two scenarios have been worked out. You have seen on PBS and other stations—TV Ontario may have run it; I’m not sure—a scenario run by Cambridge university, theoretically of course, in London’s Piccadilly Circus where plastic explosive is put together with radioactive material—cesium powder, in this case—and then exploded. The van blows up—the plastic explosive blows up. You do not have a nuclear explosion, but what you do have is a cloud of very fine dust of radioactive material that moves at a steady rate across the city, dropping fine radioactive material onto buildings, sidewalks, into the crevices of windowsills, everywhere—on people too, of

course—contaminating a large area. So it’s environmental contamination.

What happens? Well, the first thing that is of greatest concern is public panic, and the second thing is that parts of the city, because of this public concern, may simply be abandoned.

A similar scenario was done for Washington on the Washington subway system. Here again it was plastic explosive and cesium—an explosion in one of the tunnels. The people doing it—this is a theoretical thing—would rely on the suction power of trains passing through the tunnel to spread this fine radioactive dust throughout the tunnel, to come out and go all over the city as much as possible.

What would that do? Again, you have environmental contamination. Again, you have the possibility of public panic and the abandonment of some parts of the city—not a very pleasant thing.

There’s a third scenario that has not yet been considered, which is what I call the Radiation Safety Institute scenario. The other two involve bombs or explosions of some kind; this does not. Let me put it to you this way: Suppose a graduate student working in one of our labs in one of the universities is not feeling well in some way or is angry with somebody or has political intentions and takes some radioactive material from the lab he’s working in. He goes down to the Eaton Centre, drops a little bit here, a little bit there, a little bit somewhere else; goes on to the TTC and drops a little on the subways here, there and elsewhere; and on to the TTC buses. He then calls 911 and says, “I am organization such-and-such. Here’s what we have done”—it’s always “we.” “We have put radioactive material all over the city and all over the transportation system and all over the Eaton Centre. Here are three places where you can go to see that we are telling the truth.”

What do you think would happen in this city? I think it’s easy to conceive that people, who are worried anyway about radiation, radioactive materials and all of these things, would quickly jam up the city and the city would come to a standstill. We saw what happened on 9/11. The towers in this city, which were untouched, emptied and the city evacuated, basically went home.

Not to be alarmist, these are scenarios. They are scenarios that concern us. The second one concerns us quite a lot, and let me put it this way: Emergency measures and preparations for emergencies, specifically nuclear emergencies, are traditionally focused on nuclear power stations. We have one of the largest nuclear industries in the world in Ontario. Now, nuclear power stations do not figure in any of the scenarios I have just outlined for you. They have nothing to do with any of these scenarios.

Then let me put to you this question: Why is the federal regulator, the Canadian Nuclear Safety Commission, at present planning to conduct nuclear safety audits at 40 universities across this country this year? I don’t know how they can do it. It’s almost at the rate of one a week. But there is a lot of concern.

I'm not going to leave you there with these awful kinds of scenarios. Let's talk about a context. The question would arise: Where would people get these radioactive materials? How would they get their hands on this stuff? We're not a nuclear weapons country. Nuclear weapons development is outlawed in this country.

There's another reality in this country which almost nobody is aware of, and that is the reality of the workplace in Ontario and every other workplace across this country. The law in Canada for the last 50 or 60 years has said that everybody exposed to radiation in the workplace must be monitored. You see these little badges. Most of them wear what are called gamma badges or dosimeters. They must be monitored. Why is that? Because the law has established an annual limit for radiation exposure of a worker and also a lifetime limit. In other words, if you're a nurse in a hospital and you reach the lifetime limit, that's it for working in any sort of radiation specialty area that could involve exposure to radiation, including X-rays.

So to set the limits, monitoring is required, and all that reading is recorded in a big book held by Health Canada in Ottawa called the National Dose Registry.

How many people are on that National Dose Registry as having been monitored to date? About 600,000 individuals known by name and number since the beginning. However, that doesn't tell you the number each year. The number each year is growing steadily. Last year, in round numbers, it was about 135,000 people monitored daily for exposure to radiation.

Where do all these people work? When people wrinkle their nose and frown and worry about cancer when they think of radiation, and not without reason, and you ask them, "Where would you get exposure to radiation?" they'll tell you nuclear power plants, uranium mines and mills and your dental X-ray. People usually tell you your dental X-ray.

That's not bad, but they don't tell you about all the other things because they don't know about them. In fact, only 10% of all the workers monitored in Canada have anything whatsoever to do with the nuclear energy industry. That includes nuclear power stations in Ontario, Quebec and New Brunswick; nuclear research facilities, for example, Chalk River; all the uranium mines operating in Saskatchewan. Only 10% of that 135,000 comes from that whole nuclear energy source; 90% work in general industry and services. Of that 90%, some 50% work in general industry and service sectors, in industries of every possible scope, everything you can think of, and 40% work in health care. That accounts for the 90%.

Where do they work? They work in almost every area of heavy industry including manufacturing, mining and processing; they work in education, including universities and colleges, even in high schools and museums; in health care, in hospitals, clinics and research centres; in agriculture, in animal care and food processing; in the airline and trucking industries; in the construction industry; in the conventional electricity sector, in coal-fired plants, oil-fired plants, gas-fired plants, with big radiation

warning signs in those; in the petroleum industry, including production, transportation, refining and storage; and of course, in Ontario's nuclear energy industry, but, as you know, this is only 10%.

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Let me give some examples. An Ontario winery bottling plant uses powerful radiation sources to measure liquid levels in its wine bottles. They don't want to give more wine to some and less wine to others. They're very accurate. Police bomb squads, portable X-ray machines, corporate mailrooms, and X-ray machines are now used to check the security of incoming mail. Ontario universities use radioactive materials extensively in liquid, solid and gaseous form in hundreds—and I mean hundreds—of student teaching and research laboratories and in research centres right across the province. Ontario airports are all using X-ray machines and increasing their use.

Hospitals use radioactive materials—not the machines—extensively for diagnostic and therapeutic purposes; in diagnostic purposes for thyroid, for example. People will do that and then they go into nuclear power plants, and on the way out, they're radiating from this diagnostic procedure and they set off the alarms. It happens quite frequently at Ontario's nuclear power plants and also in New Brunswick. For therapeutic purposes, they use very powerful sources for radiation treatments, and they're also large users of X-ray machines.

They've been introducing new kinds of X-ray and laser technologies into operating rooms. These kinds of technologies caused a big fight two years ago at a UN conference in Geneva over the use of new technologies in operating rooms and the radiation exposure that staff was getting from the use of these new technologies. That's a matter of considerable concern.

Computer chip manufacturers use laser technologies, and so do manufacturers and suppliers of novelties, to etch novelty items. Soft drink bottling plants and beer plants use, again, multiple X-ray machines in their plants—two or more per line—for controlling liquid levels.

Steel plants, oil refineries, glass and rubber manufacturers use powerful radiation sources to measure flows and levels in their industrial operations. Dr Harry Aitken, formerly of the Ministry of Labour, once told me that if you stood in front of one of these sources—they are shields in, say, a steel plant, which they use to make sure you have the same thickness of rolling steel; you don't want bumps in the steel, so this is a very good tool—you could be dead of radiation sickness in a week if you got exposed to that.

Ontario's sewage treatment plants, of all places, use powerful radiation sources to measure and control the density of sewage sludge. Ontario road builders and construction companies use powerful radiation sources to check the density of poured concrete and other material. Those are just some of the uses. It goes on and on.

There are health and safety implications for that. Our concern primarily, as an institute, is workplace health and

safety, but this workplace reality has a bearing on public health and safety, public security and on preparations for emergencies.

Let me skip to a point here about jurisdiction. Jurisdiction in the field of radiation safety is divided between the federal government and provincial governments and territories. Now it's sort of a common assumption to say, "Oh, if it's radiation, it must be federal. That's the federal guys. They can handle it." That ain't true and it's increasingly less true, because the newer technologies coming in are all under provincial regulation. X-ray technologies, laser technologies and these other kinds are all under provincial regulation in Ontario and other provinces.

In Ontario we have an odd duck situation about jurisdiction, which is the area you're examining. The Ministry of Labour looks after health and safety in the workplace, including radiation safety in the workplace. The Ministry of Health, under another act of the Legislature called the HARP Act, looks after patient safety. Patient safety means to prevent overexposure to patients who are being subject to X-rays and that sort of thing in medical care. It does not attend to the workplace safety of nurses or other workers. That's the Ministry of Labour's job.

Let me give you some numbers. It's often good to try and just get a real handle, away from the abstractions, by looking at what's actually out there. We've looked. The Ministry of Labour regulates the use of X-ray machines, but radioactive materials are federal. X-ray machines and lasers are provincial. The X-ray machines in industry and the X-ray machines used in animal care, veterinary operations, all come under the direct jurisdiction of the Ministry of Labour.

There are 1,400 X-ray machines out there in Ontario industries all across the province; 1,400 X-ray machines are out there in industry alone. There are 1,200 X-ray machines and about the same number of vets all across Ontario. That makes a total of 2,600 X-ray machines under the regulation of the Ministry of Labour. How many inspectors keep an eye on all of that? Four inspectors.

In the health sector, the Ministry of Health also looks after X-ray machines. How many machines? Well, here it's a bit of a strange story. I have to say, the civil servants in both cases, the Ministry of Labour and the Ministry of Health, were very good. They've been very co-operative. But they're working with very difficult circumstances that, in our view, they should not have to work with, particularly in the Ministry of Health.

When we first asked the question in 2001, the Ministry of Health said, "Well, we're not sure, but we figure we have about 4,000 X-ray machines." The X-ray inspection service of the Ministry of Health is in charge of about 4,000 X-ray machines. We thought that was very strange. We asked BC, and they said, "we have 6,248 and a half." It was almost that precise.

So we went back to Ontario two years later, and we asked them again. They said, "Yes, it's a good question. But it's very difficult, so let's try it again." So they said,

"About 20,000." That's a lot different from 4,000. The X-ray inspection service estimated about 20,000 machines.

It still didn't seem right to us. We've been across the country. So this year we had a good, long discussion. They really did the best they could, and we found out what the problem was. The first thing is, the people who have these X-ray machines in the health care sector are required to register them with the Ministry of Health. The Ministry of Health's computer system for registering these is so out of date it should go on the Antiques Roadshow. It is a DOS machine that simply won't answer the questions you ask it because it wasn't designed to do so, so most of the registrations are in paper files. We went through it all very carefully, and they were very helpful.

Now, you have two components: dental—the dentists—and the medical and the hospitals and all of that. We came up with these numbers. For the dentists, there are about 20,800 X-ray machines across Ontario in dental operations. Then we looked at the medical places. In the medical hospitals, clinics and all of that, there are about 22,500 machines. We now have, in 2004, under the regulation of the Ministry of Health, 43,300 X-ray machines. That's quite a difference from three years ago, when we had 4,000. It's 10 times the number. That's their best guess.

Do you know how many inspectors have the job of making sure that these machines are working properly and patients are not overexposed to radiation from these machines? Because the doctors don't know anything about radiation; they just look at the images. Four inspectors.

Now let's go back to the Ministry of Labour. Under occupational health and safety regulations, their four inspectors are supposed to look at the situation in all the hospitals where all these machines are going as well, because that's an occupational health and safety issue. It's not a patient issue, so the Ministry of Health inspectors don't do that. So now we have four Ministry of Labour inspectors dealing with their 2,600 machines and also with 43,300 other machines in the health care sector. It's an impossible situation.

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I should mention, by the way, that Ontario is the world's largest producer of medical radioactive material, at 60% of the world's supply.

Now, what are our concerns? There are three major concerns, and then I'll suggest what should be done.

First is the radiation exposure of workers. This institute was founded because of the terrible disaster in the uranium industry in Ontario and the deaths of over 200, and counting, uranium miners from lung cancer due to that exposure. The Ontario occupational health and safety regulations dealing with radiation safety, I have to tell you, are 14 years out of date; they are antiquated. They are not up to par with the international guidelines, and they are not up to par with the national guidelines for this country.

What does that mean? That means that if your husband is working at the nuclear power plant at

Pickering, for example, he is allowed to get 20 units—we just call it “units”—of radiation exposure per year. But if his wife is working in an Ontario hospital that is not federally regulated, under Ontario’s regulations she is permitted to get 50 units of radiation exposure per year. These regulations have been out of whack with international standards for over 14 years. This means that she would be allowed to get, by the Ontario legislation, two and a half times as much radiation exposure as her husband under a federally regulated nuclear power plant. I don’t think that’s really acceptable, but that’s the way it is.

The Acting Chair: Dr Nolan, you have about five more minutes, so you’ll have to focus on your key issues.

Dr Nolan: I will.

The second point is the security of radioactive materials at universities, medical and research centres. That’s of great concern to us, as the scenario outlined suggests.

The third point is dealing with public panic, the lack of a systematic approach to responding to the information needs of the public, what are called the “worried well,” in the case of a nuclear emergency resulting from one of those scenarios; not just from a nuclear power plant, but from one of these other scenarios: What’s to be done?

Security, emergency measures, emergency services—there has to be a refocus. People have got to stop thinking about only nuclear power plants and look at what the reality is out there in the workplace and the accessibility of radioactive materials to the general population.

The adequacy of regulations: The Ministry of Labour needs to update the occupational health and safety regulations as an urgent matter. The Ministry of Health needs to review the administration of the HARP Act, because at present we hardly think it’s effective.

The other point in dealing with those two ministries is that both of them are registering X-ray machines, both of their databases are out of date—in the Ministry of Labour it’s about 10 years out of date—and there should be a joint registration of machines in the whole province. It should be centralized. It’s a machine; you register it so that everybody knows where it is and everybody knows where to go.

The final point is, again, to review the whole approach to public education in emergencies, to make sure that the information being given comes from a credible, trustworthy source, from people who know what they’re talking about. I’m sorry to take—there was a lot to get through.

The Acting Chair: That’s great. Thank you. Although we’re getting close to our half hour, our schedule this afternoon has a bit of flexibility. Can I suggest to the committee that we provide 10 minutes to each of the caucuses, and should there be more time, by unanimous consent, beyond that? Mr Kormos.

Mr Kormos: Agreed. Thank you, Chair, because this is a shocking revelation.

Having listened to you, you’re speaking of thousands of workers in medical settings for whom the acceptable

level is two and a half times a counterpart in a nuclear power plant. I’m reading the material you provided in your package about radioactive exposure as a carcinogen, among other things. So you’re talking about, in the province of Ontario, the prospect of slowly maiming and poisoning thousands of workers in our medical workplaces because of the grossly outdated exposure standard.

Dr Nolan: I wouldn’t use the colourful language you’ve used, but the concern is certainly as great as your own. We saw what happened before in Ontario by inattention and neglect, and that was insufferable and need not have happened. This was in the uranium industry.

There is a risk. Not everybody who is exposed to radiation will contract cancer of one kind or another, but there is no doubt about it that a certain percentage of those will do so. If the international community and the scientific world—the ICRP and all the best advice that the UN and countries were given, including Canada—says the exposure level should be reduced to what I tell you is now in play—in other provinces, in the uranium industry in Saskatchewan, for example; in federal institutions; at nuclear power plants—absolutely, there is no rational basis for maintaining the present position. It’s putting people needlessly at risk.

Mr Kormos: And how does the nuclear power plant standard, the federal standard, synchronize or fit with the best-informed standard?

Dr Nolan: It is my understanding that the nuclear power plants in Ontario, under the new Nuclear Safety and Control Act, which was passed by Parliament and went into operation in 2000, are conforming to the best standards in the world. There’s no question about that.

Mr Kormos: I appreciate you wanting to avoid alarmist language and cautioning me that not everybody who is overexposed to radioactivity is going to get cancer, but then again, not everybody who smokes is going to get cancer. But you are telling me that exposure to radioactive output is a carcinogen?

Dr Nolan: Yes.

Mr Kormos: Undisputed?

Dr Nolan: Yes.

Mr Kormos: And the standard that’s applied with the federal nuclear power plant standard—you spoke of 20 units, to avoid drowning us in hypertechnical language. Is that 20-unit standard considered a 99% safe standard or a 100% safe standard? I hope you understand what I’m asking when I say that.

Dr Nolan: Oh, yes, I think so.

Dr Reza Moridi: My name is Dr Reza Moridi. I am the chief scientist and vice-president for the Radiation Safety Institute.

Exposure to radiation carries a risk. That’s the scientifically known fact. Most scientists believe that exposure to radiation carries risk. The more exposure, the more risk.

The international standards are 20 units of radiation exposure per year, on average, which is the Canadian federal government’s regulation for people who work, for example, in nuclear power reactors or the nuclear in-

dustry. It carries a certain risk. If you are exposed to that amount of radiation, your risk wouldn't be higher than any other accepted risk in industry because in every industry, everybody carries a risk. The idea behind this number is that if you are a radiation worker, your risk shouldn't be more than the risk of any other worker. So in every industry, acceptable risk is set at a limit. Based on that, the radiation exposure limits are set.

Mr Kormos: You're one of the course instructors with the Radiation Safety Institute, in the school that they operate?

Dr Moridi: Yes, I am.

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Mr Kormos: I want to talk about these four Ministry of Labour inspectors inspecting 43,000-plus medical-setting machines, not from the perspective of health but from the perspective of the health and safety of the worker, and an additional 2,600 in non-medical settings—

Mr Zimmer: Point of order, Mr Chair: Isn't the issue that Mr Kormos is exploring and indeed the issue, for the most part, that the witness raised, not a matter of the emergency measures that we're looking into but really matters of occupational health and safety in the ongoing workplace and not at—

Mr Kormos: I understand what you're trying to do, Mr Zimmer, but please.

The Acting Chair: I think individuals may look at it differently. In the context of the time available and the broad nature of emergency planning, I think it's appropriate for Mr Kormos to continue with his question and get a response in the few minutes he has available.

Mr Kormos: Thank you kindly, Chair. I find this shocking news that our sisters and brothers in workplaces are being exposed to carcinogenic levels of radiation approved, endorsed, condoned, with the seal of approval of the government.

I want to talk about these four inspectors in the Ministry of Labour. When they inspect machinery, what are they doing? Are they testing? For instance, I'm concerned that a worker may self-monitor in terms of recording the number of occasions they are present at a particular X-ray process and use that to calculate the level of exposure. But if the machine is not being properly tested, it could be like the faulty microwave, right? So in fact even their own self-reporting and budgeting of their time with the machine could be making them exposed to even more than the two and a half times the federal level, because the machine, for instance, is not working properly and is emitting more radioactivity than it should. Is that a fair observation?

Dr Moridi: On the first point, the exposure limit, which we said in Ontario is two and a half times more than the exposure limit of the federal government, this doesn't mean that every worker is getting that much radiation. That's just the exposure limit by regulation.

Mr Kormos: I understand.

Dr Moridi: Then there is another rule in radiation protection which is followed in federal regulations and

also in provincial regulations, which states, "as low as reasonably achievable." So we have to distinguish between these two points, that these are the limits; it doesn't mean you will be getting that much.

Mr Kormos: What is the failure to inspect doing to our workers?

Dr Moridi: When the inspectors inspect the workplace, they are supposed to be basically looking into the regulations and seeing whether the owner and operator of an X-ray machine, for example, is following regulations. One of those would be emissions from the machines, another point would be the level of education and training of workers, and there are various other points in the regulations. I assume that when the inspectors enter a premises, they would be interested to see whether the owner and operator of the machine follows the regulations.

Mr Kormos: So the failure to inspect is not only exposing workers to serious health risk that isn't necessary, but also has a potentially lethal impact—lethal, deadly.

Dr Moridi: It could be, yes. If a machine is not operating properly, it may expose people to high levels of radiation.

Mr Kormos: I think one of the recommendations of this committee to the House is obvious. This is, again, shocking news. I'm so pleased that you folks came today. This is alarming, and the most drastic response is required, in my view. I trust that the parliamentary assistants present will report back to their ministries and call upon their ministers to initiate remedial action promptly.

I suppose, then, there is a prospect of litigation. The province is exposing itself to litigation, it having been advised, it knowing that its standard of exposure is out of sync with the rest of the world with best practices. I suppose there could well be, from the government's perspective, a high risk of being held liable or culpable for knowingly exposing workers to deadly levels of radiation.

Dr Nolan: We're not expert on the litigation side of things.

Mr Kormos: I just threw that in as an observation.

Dr Nolan: It would be. If I may just come to the other point, there are two components, and Mr Zimmer—

The Acting Chair: Sorry, before you do that, I'm going to bring closure to that question, in essence, and move, then, to the government side. Mr Zimmer did have a question on my list.

Mr Kormos: Thank you, Chair. Very skilful.

Mr Zimmer: I don't have any questions. I just point out that we are into an examination of occupational health and safety issues, not emergency measures issues.

The Acting Chair: Mrs Sandals?

Mrs Sandals: If Ms Broten wants to lead, I'll follow up, if I may.

Ms Broten: Thank you very much for being here today. You've certainly raised some very important issues with us, likely, in some measure, beyond the scope of what we are examining in this committee. We're very much looking at the powers of the state and whether the

statutes are appropriate in terms of emergency management in the province during a declared emergency. But I can certainly tell you that we take very seriously what you've indicated to us today and will ensure that the material you've provided and the transcript of your evidence today will make it to the appropriate minister, so that we can take a look at these issues and ensure the safety of our workers in the province, ensure the safety of our patients as well as those elsewhere.

Certainly, we depend on and have heard a lot from front-line medical folks over the last number of weeks, and making sure they are safe and healthy when we need them is very important. So thank you very much for raising that issue.

I want, if I could, to direct you perhaps to a query that prompted us to want you to come and testify today, which was that we had some indication, perhaps not as knowledgeable as you have been, about the number of sites that this type of material could be obtained from, in terms of a provincially declared emergency. I wonder if you have any thoughts or suggestions you'd like to make to this committee as to the powers a province might need to anticipate, manage and prevent some of the scenarios you've described.

Dr Nolan: Yes, it's a good point. There are two points to consider, I think. One is for information purposes. You can't use an X-ray machine as a bomb or a terrorist thing. You switch it on, and you switch it off—you need electricity. So we're talking now about radioactive materials licensed by the Canadian Nuclear Safety Commission. The Canadian Nuclear Safety Commission, I think, can provide the committee with a list of all the licensed companies, and they are supposed to know where these things are. They've also become much more stringent and quite tough about renewing licences. It's really quite impressive what the Canadian Nuclear Safety Commission has done in the last two years.

I think it would be very important for emergency preparedness people—fire people, police—to know where these things are if they've got to go in somewhere. They should be able to have those lists and that information available. It is there. It is stored in Ottawa at the Canadian Nuclear Safety Commission.

The second thing is that training is so important. I believe the OPP emergency task force came us to and we trained them for a week in very comprehensive training, with two radiation scientists, Dr Moridi being one of them, leading the group. We've also been called in to train—we've just done it—the federal board of security people on radiation, because of the heightened awareness of radiation exposure to them in their jobs and also because they're looking for the stuff. They think they may have to deal with some of these emergency measures.

I am not sure that very many emergency measures people have even the fundamentals of radiation safety training, and I think that should be attended to. There are basic, fundamental things so that they don't get worried or overly concerned themselves, that they don't panic in

front of something. Our position is, and we have demonstrated repeatedly, that if you know what you're doing, you can do it well. You can get the job done and keep everybody else safe as well. That's very important.

The third is crucial in emergency measures: We've got to think about public worry. The worry about anything related to radiation is far in excess of almost any other thing you can imagine. Just try saying to people, "Have you looked in your smoke detector? There's a radiation source in there. The kind of radiation it's giving off is the same stuff that killed uranium miners in Elliot Lake." They get panicked and want to rip the thing right out of the ceiling.

1350

Well, it isn't true. If they knew a little bit about it, they'd know that a piece of paper could shield them from that radiation. That's why it's so easy to have in smoke detectors, because it doesn't travel more than that distance in air. It loses its energy. It's harmless.

Little things like that give people confidence, so that they know what they're doing. That's what we've found. That's why we call it "good science in plain language," so that people can understand and be able to make up their own minds and then act in an informed way.

Ms Broten: Are there other jurisdictions that are doing a better job with education, the last aspect you raised?

Dr Nolan: This is probably the weakest in any country. We educated the community of Bancroft, for example—over five million tonnes of radioactive waste. The waste is still there, and now they know what they're dealing with. The president of the old AECB at that time, Dr Lévesque, said there's no question that the Radiation Safety Institute has credibility on these issues with the public. We've been able to go into power plants—Pickering and Darlington—and we've been able to do radioactive waste sites, school boards, various places, also at Camp Borden in Barrie, where the families were very worried about something. Educate them. Give them the power and knowledge of education, and then they're able to deal with it, as they would any other hazard.

Mrs Sandals: I'd like to briefly talk about the whole issue around collection of information and who has access to that information. I think you indicated that the Canadian Nuclear Safety Commission is doing a reasonable job of collecting information about the sources of radioactive materials, so they have that information. You expressed a particular concern around research labs in universities. For example, we happen to have sitting here the chief of the Peterborough fire department, who has a university in his jurisdiction. Does he have any authority to have automatic right of access to the information about what nuclear materials are present on the campus within his jurisdiction?

Dr Nolan: The plain answer to that is, I don't know. I can tell you something, and Dr Moridi can help me out as well. We're quite familiar with universities. We've been called in to two major Ontario universities to deal with situations. One was the University of Toronto, in relation

to exposure of the public from the dismantling of their old Slowpoke reactor, and the other was the University of Guelph, which is delighted with what we did. We sent a team in there and redid all of it.

The way it works is: At a university the size of Guelph, which is a very impressive place, about 15,000 students—

Mrs Sandals: Thank you for that. I happen to be the MPP for Guelph-Wellington.

Dr Nolan: Actually, I had forgotten. While we were going up and down there, I remember seeing your signs were all over the place trying to get elected. So congratulations on your election.

In any case, the University of Guelph, which has no medical faculty, no big prestigious faculties, has the veterinary faculty, and John Kenneth Galbraith as a graduate. It has \$100 million a year in research grants—a university of 15,000 people. That's extraordinary and a great compliment to them. They also have 100 laboratories using radioactive materials—a medium-sized university—100 of them.

At the University of Toronto, I think it's estimated at about 600 laboratories. A few years ago, just when the Canadian Nuclear Safety Commission got going, the University Health Network had their licence yanked, suspended, for 600 or 700 laboratories—all the medical teaching places. I was astonished that the Canadian Nuclear Safety Commission had the guts to do it. They took it away, yanked the materials away from people and said, "You can't do it; you can't use the materials." It caused a lot of difficulty at the University Health Network. About 1,000 researchers were delayed in their work.

I was impressed, so I called them up. They said, "Well, we had no choice. We'd been warning them for years, and then they lost their radiation safety officer." I said, "One radiation safety officer? For that huge medical research place and all those laboratories, they had one radiation safety officer?" They said, "Yes, and they lost it, so we had to yank the licence." Now, things have gotten a lot sharper at the University Health Network since, but that shows you what can happen.

Generally, to use radioactive materials in any process, whether it's in industry or anything in research, you have to get a licence from the Canadian Nuclear Safety Commission. Under the new laws, you have to send a whole ream of documentation. It's very time-consuming. We've helped some people do it.

The Acting Chair: Dr Nolan, could you bring this to a close very quickly?

Dr Nolan: Right. Universities are given one licence. They become a sort of on-site mini-Canadian Nuclear Safety Commission. They, in turn, issue permits to all the labs, and they have to follow all the rules. The problem is, universities are very untidy places, by definition and by nature, and it's been quite difficult for them to figure out how to stop people from wandering around from lab to lab with bits and pieces of radioactive material. But that's much the situation. I'm not sure if I've addressed the question or got off track.

Mrs Sandals: We'll find out from our Net witness whether he gets the information.

The Acting Chair: Thank you, Dr Nolan, and to your associate and the chair of your board of governors, for accepting our invitation to come as a witness to these hearings. I think it's particularly informative and helpful to hear your comments, particularly in regard to public reaction to radiation-related activity as opposed to something like the power going out, where people can kind of see what's happening, or not happening, as the case might be. The unknown is often quite scary.

CITY OF PETERBOROUGH

The Acting Chair: From the city of Peterborough, we have Lee Grant, the fire chief. I'm not sure if he's being joined by anyone this afternoon. Thank you for your patience. We're having some broad-ranging discussion on emergency management and emergency planning. We have set aside some time for a presentation by you and then questions by the members to help us in our preliminary deliberations in preparation for either amendments or new legislation.

This is all being recorded verbatim in Hansard, so if you would formally identify yourself, I'll turn the floor over to you.

Mr Lee Grant: I'm Lee Grant, fire chief of the city of Peterborough. I didn't mind waiting at all. I can actually use the rest, thank you.

The Acting Chair: You've had a very full few weeks in the city of Peterborough.

Mr Grant: Yes, we have.

I did bring a PowerPoint presentation, but due to limitations, I've had it printed so you can refer to it. The smaller document is actually the text of my presentation, which may be more convenient for you to refer to at a later date. I have also provided a CD-ROM to the clerk. If there is an interest in actually viewing the colour presentation, by all means, you're welcome to use it. It does have some interesting flood pictures that don't show up too badly in black and white.

Before I start my presentation on changes needed to the Emergency Management Act as identified during our recent flood disaster, I need to thank the province of Ontario on behalf of Mayor Sutherland, city council and the citizens of Peterborough for the extraordinary support provided to our community at our time of need. The timely and expert response to our community by many provincial agency staff and the expedient way in which financial assistance was provided to our citizens clearly demonstrate that the new Emergency Management Act and processes have already had a very positive effect on the way emergencies are dealt with in Ontario.

The city of Peterborough is a community of roughly 74,000, encompassing an area of 54 square kilometres along the banks of the Otonabee River. We have a full-time staff of approximately 710. Our emergency response capability is made up of 152 police—that is not all police officers; it includes the civilian contingent—and 95 fire-

fighting personnel, 84 of whom are directly on the vehicles.

On July 15 this year, the city of Peterborough experienced a record average 175 millimetres of rain over the city. It was noted that during the hour between 3:30 am and 4:30 am, rainfall of 78.8 millimetres was registered. At 4:50 am, a report of a roof collapse was received from the Extencicare nursing home. Upon arrival, it was evident that residents would have to be evacuated. The evacuation took almost five hours, through water up to four feet deep, and relocated 171 long-term-care residents to the Evinrude Centre—one of our major hockey arenas—without incident. The success of this evacuation was the result of a sound, practised plan and all parties working together in a time of crisis to make it happen. The team comprised social services, the Peterborough fire department, transit, our Evinrude Centre staff and, of course, the Extencicare staff, who were crucial in making it happen.

1400

A couple of pictures: That's looking down one of our main streets. The next one is beside one of the locks in Peterborough. With the home that's right up against the river, you can tell there is no difference between the person's front yard and the river at this point.

As part of the cleanup effort, we moved 12,500 metric tonnes of people's belongings and components of their homes to our landfill site between July 16 and 27. Our normal intake at that facility, which includes the county of Peterborough as well, would be in the neighbourhood of 3,000. Some 503 volunteers over 12 days put in about 8,400 person-hours, helping us pump basements, strip and clean the houses and clear the city streets. We had to remove hydro meters from more than 500 homes because of flooded basements, and 56 of our staff were re-deployed in the city to a public information group that provided 1,453 man-hours to deal with almost 13,000 public inquiry calls during that two-week period.

The emergency response to the flood event, which started at 2:30 on July 15, is continuing today as I speak to you. While the water has receded, the community is just now coming to grips with the reality of the magnitude of the personal impact this flood has had on members of the community. Basements and first floors that were flooded are now covered with mould, most belongings have been loaded into dump trucks and taken to landfill, the exteriors of homes are washed out, landscaping destroyed, streets and sidewalks damaged and many vehicles written off.

The visits of Premier McGuinty, Ministers Kwinter and Gerretsen, and the ongoing efforts of MPP Jeff Leal and MP Peter Adams have been a great morale boost to our citizens and we thank you, one and all, for your kind thoughts.

People in our community are literally terrified when the rain starts, as it has almost every day since the flood. Our response to this event has brought to light a number of issues that would have made our job easier.

Before I get to those recommendations, I must also recognize the efforts of Dr Jim Young, who visited

Peterborough on day two of the flood and helped the emergency operations teams deal with several issues that were key in speeding the recovery effort.

In the interest of time, the remainder of my presentation will be in point form detailing specific issues which the emergency operations team believes need to be addressed to help communities deal with future emergencies. I am hoping this will allow ample time for questions, which I am sure many of you will have. These recommendations are in no particular order with respect to their priority; however, the emergency operations teams view all as important.

First of all, WSIB coverage should be extended to all volunteers involved in community response throughout both the emergency and the recovery operation. This would allow ongoing use of volunteers throughout the recovery phase with minimal risk to the community.

The act should provide some form of automatic funding for resources provided directly as a result of the declaration of emergency. This would allow communities to call in resources immediately when required, without going through a long process to determine if the province will pay for the expenses.

The act requires a provision that would make overtime for municipal employees mandatory during a declared emergency. While 90% of employees rose to the occasion, a few refused, which became a very demoralizing situation, and in some cases resulted in key people not being available at critical times.

The act requires a provision to cover immediate recovery costs such as electrical inspections, electrical meter replacements, depreciation costs of rental equipment and the service work required to restore basic necessities like electricity, heat and hot water to allow safe and secure occupancy of a residence. This type of immediate funding would have substantially decreased the size of the evacuation centre operation required during this event and would allow people to go home, which is where they want to be.

The protection from personal liability section of the act should be amended to say, "No action or other proceeding lies or shall be instituted against a member of council, an employee of a municipality or any employee from another municipality assisting with the disaster, a minister of the crown or a crown employee for doing any act or neglecting to do any act in good faith in the implementation or intended implementation of an emergency management program or an emergency plan or in connection with an emergency."

The key issue here is coverage for other municipal employees that come to help you, because we had literally hundreds of them. They were very much afraid they were standing on their own, in many cases.

We need a provision which allows for the municipality to take action on private property to protect the safety and security of citizens and assign costs not covered under relief programs to taxes. This is particularly important when dealing with large private housing developments where interior roads and infrastructure have been

damaged, making it impossible for residents to occupy their units for extended periods of time while the developer waits for disaster funding approval to make repairs. In these cases, there are significant private sewer systems in private residential developments, townhouse developments. If you don't clean the sewer lines, then the basements continue to flood with sewage, and you can't move the people back in. We have no way to take action at this point, other than waiting for the developer to do something.

In an emergency situation, there are two main priorities: the operational response and management of the impact of the emergency on victims and citizens. I had the unique opportunity to manage the operational response to the flood event and be one of the public faces for the fabulous team that brought Peterborough through this flood event. Unfortunately, Ms Patricia Knapp, who managed the evacuations and citizen impact during this event, could not join me today. She continues to support the most vulnerable in our community as we attempt to close our evacuation centre on August 31.

Patricia Knapp makes the following recommendations: It is essential that excess capacity be built into the province's long- and short-term-care system to allow for placement of patients displaced by an emergency event. It was only by pure luck that our flood occurred at a time when a nursing home had been replaced by a new facility and was available to accept evacuees. Had this not been available, we would have had to relocate elderly patients all over eastern Ontario, a process that would have overwhelmed both city of Peterborough staff and Peterborough county EMS resources. In addition, proper administration and delivery of services to these 175 people would have been all but impossible.

The Emergency Management Act must recognize that almost all actions and programs required to ensure the safety and security of citizens are driven by the impact the emergency is having on the health of the victims. This is too serious an issue to be left to the resources of individual municipalities or medical officers of health. There needs to be clear provincial policy on the role of health authorities during emergency operations. The normal practices of evaluation, consultation and counselling prior to action are far too onerous to be useful during an emergency. Almost all social service legislation allowing for immediate action for the protection of citizens turns on the decision of health officials who have no clear policy to guide their decisions. The middle of an emergency is not the time to be researching health policy.

Local social service providers need the authority during declared emergencies to take the necessary action to protect the safety and security of their clients and the greater community in an expedient manner, without long discussions on health policy issues. They know what is the right thing to do for these people.

An excellent example of this is the urgent situation we are dealing with related to mould growth in homes. There are families with children living in homes with significant mould growth, but because there is no policy on

the extent of mould growth that is detrimental to human health, no orders have been issued and therefore no social service resources can be mobilized to help these people. A worker entering this same home would have to be wearing full protection, including a negative pressure air supply, but we are allowing children to play in the mould in the basement until the point where they start showing symptoms of disease related to mould exposure.

1410

The act should require written contracts with local disaster relief agencies such as the Red Cross and the Salvation Army. The province should take the lead in developing the template for these contracts to ensure that similar levels of service and timeliness of response are available across the province.

On a separate issue, the ODRAP program requires a clarified policy manual that specifically spells out what services—and at what levels—will be eligible for funding. Three weeks into the flood, we are still trying to confirm who is paying for what and how much. This makes quick decisions about how to proceed difficult at best. In addition, the policy changes that Premier McGuinty was able to put in place to provide early funding to individuals under ODRAP must become permanent policy.

It is a statistical impossibility to go through an event like this, with the double evacuation of more than 175 nursing home residents, without a fatality, but to go through it without a single injury is truly a miracle. It is unfortunate you could not meet Patricia Knapp and the rest of our team. It is not often one has the opportunity to meet a team of miracle workers.

In closing, I thank the committee for inviting the city of Peterborough to make this presentation on behalf of our citizens who have experienced so much in the last two weeks. If the lessons learned from our hard work and suffering can assist in amending the Emergency Management Act to help another community in dealing with their emergency in the future, we're honoured to do so. Thank you.

The Acting Chair: Chief Grant, thank you for the presentation. Momentarily, we'll go to questions. I might say that it would have been wonderful to have a few more of your staff folks who worked with you to provide us with a deeper insight. I think I can say on behalf of the committee and others that, similarly, we want to express our appreciation for the work that was done by you, by others and the volunteers for the people in your community.

The government side, 15 minutes: is that sufficient, at least on the initial round?

Ms Broten: Thank you very much for joining us today. We really appreciate an opportunity to learn from what I can tell is still a very recent difficult experience that all of us have watched carefully. In your presentation, I can certainly hear in your voice what a taxing period of time it has been for your community. So we very much appreciate you taking the time to come and see us and to share with us what was learned from that difficult circumstance in Peterborough.

Mr Grant: I'll do my best.

Ms Broten: One of the issues that we've been hearing from some of the other deputants that have come before us is not dissimilar from your suggestion with respect to the Red Cross and the Salvation Army and the need for more formalized agreements. I was wondering if you could just expand a little bit to tell us what those agencies did in your community and what types of things would have to be covered by that formal agreement that you're making reference to in your notes.

Mr Grant: I guess we'll go back to about 3:30 in the morning, when the rain started, and we realized we were evacuating a nursing home. Among a number of calls, one of my first ones was to the Salvation Army to get their mobile kitchen on the road, because we knew we were going to have to feed these elderly individuals some time early that morning. There is a kitchen at the Evinrude Centre but nobody to staff it. Fortunately, we had already had contracts in place with the Salvation Army to provide us food service, so there was no delay. We didn't have to get any particular individual on the phone and get approval to get this unit moved out of Toronto. So that's key.

The Salvation Army provided our food service needs for about the first five days of this incident, divided across two locations: one for our reception centre and one for our evacuee centre. We provided meals throughout the whole event, during the day right through until 10 o'clock at night, for anybody who came in who wasn't able to cook at home while they were cleaning up or whatever. As well, all the people who were actually permanently housed in our evacuation centre were provided three meals a day through that entire period of time with the resources of the Salvation Army.

On the other side of the picture, the Red Cross provided all of our reception capability to track who was where, where they went and all the details of their family histories and so on, so that when we got calls from out of town, we could tell people who we had, who we didn't have and where they'd been placed. They provided the services and distribution for our cleanup kits that were handed out to residents starting by noon on that day. They moved forward to provide our home assessment program. When people phoned in, we actually had a Red Cross worker go to the home to see what was wrong, to see whether these people needed counselling or social services actions and to see if the fire department was required to do a further cleanup in their basement.

Both of those agencies are still ongoing in their operations with us and will both probably be done on August 31, if we can get some of our internal systems in place.

The contracts need to speak to: What do they do? How much do they do? How much staff do they provide? What are their terms of reference exactly, because they very jealously guard their public reputation and their image, and don't like one or the other stepping in the primary territory they tend to operate in. I think there would be a real role for some template agreements. It would allow them to plan more effectively for the kind of

resources they can provide in the province, and would allow communities to have a stable base to build their plan around when they need help.

Ms Broten: Another issue you raised that we have also heard is with respect to entering on to private property. We've heard, for example, Dr Young indicating that he was concerned that you couldn't enter on to private property to perhaps build a dike, in some kind of prevention or mitigation effort in respect of a flood. The representatives from the Ministry of the Environment indicated that they did think they had some authority to do that.

You gave us one example with respect to the sewage. Are there other examples of the need, in this circumstance—the flood—or others that you've experienced, where you have not had the authority to go on to private property and that has hampered the safety and security of others?

Mr Grant: Maybe I am a more voyeuristic fire chief than some. I don't even consider the possibility of not being able to go on private property during an emergency. We did whatever had to be done. If we had to board something up, if we had to dike something, we didn't ask anybody. We went and did it in the public interest, and so far I haven't had any complaints.

Where the problem comes is when you're trying to get private property owners to do things that cost money for the benefit of their tenants or the greater community. At that point, you have some problems. Even these sites where I've got ongoing issues with the way they're remediating the site, I have never had a problem getting access to them or had anybody suggest we shouldn't be there. They just don't want to do the work until they find out who's paying for it, and I can't get people back into their homes because they're not doing the work. I want to be able to phone a contractor and say, "Go in there and clean those sewers out, and we'll worry about who pays for it later." Right now, I don't have the authority to do that.

That even applies to mould. When you've got a landlord who's got eight or nine apartments, and as far as he's concerned, the carpet will dry out eventually—don't worry about it; the people can live with it—and nobody is in a position to order him to clean that place up until the kids are sick, we've got a problem.

Ms Broten: Understood. Thank you.

Mrs Sandals: Just carrying on from that, in our look at emergency powers which are available in other jurisdictions that perhaps we should consider here, a couple of the powers that have been suggested are the construction of works to prevent, respond to or alleviate the effects of the emergency and also the restoration of necessary facilities. I'm not sure if that's exactly the wording that would cover the situations you're talking about, but it seems to me that what is being contemplated there are emergency powers that continue after the immediate crisis. From what I'm hearing you say, you're finding that during the actual crisis, your authority was not questioned; it's now that you're dealing with the

cleanup where you start to get the roadblocks. Could you comment on those—you've talked about the sewers. Would those sorts of powers help in that instance? Are there other things that are going on where you're having a challenge with the cleanup?

1420

Mr Grant: There are numerous challenges related to the cleanup. Your point is well made: During the actual emergency event, as a matter of public policy, people don't seem to interfere much with your ability to deal with the emergency. If you want to do something, they don't stand in your way. As you start to walk back from that and you're actually making or constructing things on somebody's private property, they start to get a little more reticent about what you're doing.

Certainly I can see that the restitution component would be very helpful. I think it would have to speak specifically to the idea of public safety and security. I wouldn't want to get into a fight about what's necessary, right in the middle of doing one of these restorations. We'd want to be able to say, "Here's what we're doing and it's covered because it's to improve the safety or security of the individuals in this situation."

A discussion we had—and they didn't include it at this time because we weren't sure exactly what to say—is that we definitely have too abrupt an act. You're either in an emergency or out of an emergency. We don't have that intermediate step for the recovery phase where you can provide some public confidence, both in your city and from the standpoint of people who might want to visit your city; you can drop out of the state of emergency but still maintain a lot of your ability to employ volunteers and take actions to help remediate the situation.

We really need some sections in the Emergency Management Act that give us recovery powers which are separate from those you need to actually deal with the bang-on emergency when it hits you.

Mrs Sandals: We were speaking before the hearing began formally about some of the other challenges you are having around the issue of basement apartments and restoring basement apartments. Would you like to talk about that?

Mr Grant: Absolutely. It seems that everything about this emergency is a challenge.

When people had their properties damaged, of course one of the first things they did was come in and apply for ODRAP assistance. Part of applying for ODRAP assistance is to provide your address. When we started to take the applications for ODRAP and compare them against the address database for the city of Peterborough, which is primarily derived by the fire department on our GIS dispatching system, we came up with in excess of 300 addresses that have applied for ODRAP funding that don't exist in our system, which are primarily illegal basement apartments.

These apartments were occupied. They're part of our primary housing supply. They're used significantly by our university and college students as affordable housing.

We're now in a position where we have a person with an ODRAP application that will likely be approved because it meets all the criteria, who has come in wanting to restore their basement apartment, but because the zoning is incorrect we can't issue them a building permit to do the work. In effect, we can't restore that housing at this point because it is an "illegal" basement apartment. In other words, it's an R2 occupancy in an R1 zone and you can't issue a building permit, notwithstanding that we've waived all building permit fees to encourage people to come in and get permits so they fix their houses properly. We're now saying to these people, "You can't do it."

I'm not an expert on planning and building issues, but our director of planning is currently working with MMAH on some Peterborough-specific action that can be taken that will allow us to issue these permits to restore these illegal basement apartments.

Mrs Sandals: We're trying to figure out how to override the Planning Act, which I suspect is the issue here: Where's the legal authority to override the Planning Act? Assuming you have people other than students—some of these are families living in basement apartments—where are the families who were living in these basement apartments?

Mr Grant: They're currently in our evacuation centre, and we are currently trying to find alternate housing for them.

Mrs Sandals: So this is a case where when we think about overriding provincial statutes, we often think of that in terms of an alarmist, "Oh, we're overriding people's civil rights." In this case, it's a simple case of some authority to override the Planning Act to allow restoration of living accommodation and let people get out of evacuation. There are some authorities here that we would not necessarily think of as the crisis authorities, but the follow-up authorities can be equally important in dealing with the emergency.

Mr Grant: You're actually talking about overriding statute just to allow what was there to be replaced.

Mrs Sandals: Thank you very much. That's very helpful. It's a different point of view from what we've heard before. Because you're on the ground, it's very helpful. Thank you for taking the time to come and talk to us.

Mr Grant: You're very welcome.

The Acting Chair: We have time allocation to the opposition. Mr Kormos, 15 minutes.

Mr Kormos: My apologies for not being present during your comments. I was called out to another matter. But I have read your submission, and I just want to say this: I thank you, and I think others on the committee share this opinion of mine, for once. But I want to thank you, because you've actually made specific recommendations rather than speaking in the vague and the general. That's valuable.

I'll talk with Ms Sandals later, I'm sure. Illegal apartments—apartments are illegal for reasons, aren't they?

Mr Grant: How long do we have? I'll do the five-minute issue—

Mr Kormos: Go ahead. Let's talk about that.

Mr Grant: OK. Let's talk about it for a couple of minutes. Residents in communities who construct their homes in neighbourhoods do so because they expect the neighbourhood to have a certain characteristic, and that characteristic hence maintains the property values of their homes. They jealously guard their zoning. They don't like to see group homes move into their neighbourhoods. We've had to create provincial overriding legislation in the Planning Act to force group homes into neighbourhoods so that those people wouldn't be stereotyped in a section of the city.

Basement apartments fall into the same category. To have one legal, you have to have R2 zoning; in other words, the potential of two dwellings in a building. But if you put R2 zoning, then you can have duplexes. As soon as you have a duplex, you put two basement apartments in, so now you've got a sixplex, right?—side by side. So it's difficult to get communities to relax their zoning requirements. However, at the same time, the people who buy these houses are trying to pay the mortgage. So they quietly, on their own, on the weekend and during the week, start finishing their basement. And it starts out usually with a bedroom and a bathroom, and they get a college student in. They get some income from the college student, but they get a little fed up with that student always being in the kitchen cooking. So the next year, they put in a little counter and a sink and maybe a microwave. Then the year after that, the wall goes up so they don't share a common stair. Three or four years down the road, we've got a full-fledged one- or two-bedroom apartment in a basement, and nobody really complains about it.

Recognizing that, in the Fire Protection and Prevention Act, we created 9.8, which is a basement apartment section of the act. So now we go out and do a home inspection as part of our routine education program and encounter a basement apartment which is illegal. We enter the basement apartment and say, "This doesn't comply with the fire code because it doesn't have this or that, so you've got to fix it." So the owner goes to city hall to get a permit to fix the apartment. They won't give him one, and they also won't order him to deoccupy it. So now I have an unsafe, illegal basement apartment that I can't do anything about. That's sort of the character of—

Mr Kormos: That's interesting, and I appreciate that. Look, I'm the guy who goes and lends support to OCAP squatters, OK? So don't get me wrong—amongst other OCAP activities.

One of the other phenomena you mentioned is being a university town. So is St Catharines, for instance. The problem isn't so much with basement apartments there; it's with absentee landlords and subdivided houses. Can you speak to that?

Mr Grant: Well, the volume of the problem I have in Peterborough is that I have one full-time fire prevention officer who does nothing but deal with student accommodation, whether it's basement apartments—an equally

large risk, since somebody in their wisdom changed the definition of family under the Planning Act. As long as the landlord is getting one rent cheque he can have 15 students in a House and it's a single-family dwelling as far as the Planning Act is concerned. And I can't get in there even though I've got lodging house legislation under the FPPA that would require fire separation doors on everybody's room, a fire alarm system, emergency lighting, exit signs—everything—if there's more than 10 students.

1430

You can take an old, three-storey home in Peterborough and put 15 students in it. If they all throw their money on the table every 31st of the month and hand the landlord a cheque, when I go to court the judge laughs at me, aside from the fact I never get to court until July, the students are all gone home and I can't find any witnesses.

Mr Kormos: Because of the huge backlogs in the court system.

Mr Grant: Yes.

Mr Zimmer: We might as well examine that issue too.

Mr Kormos: Well, now that we're here, yes.

Interesting stuff and a good perspective, I think. Valuable stuff.

Mr Grant: And our choice right now is extensive public education in the universities and colleges and a home inspection program in trying to keep these kids safe.

The Acting Chair: Anything further from the government side? Seeing none, thank you very much, Chief Grant, for being here today. We very much appreciate it and our general comments from both parties of the Legislature, and the work that you and the volunteers have been doing. Please pass that on to your mayor and your administrative officers so it might be communicated to your community through the political body as well.

Mr Grant: Thank you very much.

The Acting Chair: Seeing nothing else before us, I believe we stand adjourned until Monday at—

Mr Kormos: Chair, one moment, please. I'm wondering if this is an appropriate time to resurrect the issue, concern, around legal opinions for and to this committee in the course of the committee analyzing or digesting the material that's been put before it.

There's been some interesting dialogue, both in committee and on the record, including by our legislative counsel where he explained the respective roles of people, among other things, in his submission. Legislative research has already been asked for—again, I'm not suggesting that she hasn't been timely, because it's a lot of work—among other things, the references made by the OPP commissioner around case law during the course of his submission at the beginning of this week. I know she's following up on that and we'll get that in due course.

Reference was made to the McMurtry 1981 paper and the preference expressed in that paper to the common law

approach. I don't know whether research was specifically asked to flesh that out for us.

Ms Margaret Drent: I think we're also waiting to hear from, I believe, the deputy OPP commissioner, who had obtained legal advice prior to coming to the committee and was going to be forwarding some of that material to Katch.

Mr Kormos: So there we are.

Now, the unique position of the committee as a recipient of advice was canvassed from a number of perspectives. I know Mr Zimmer wanted to invoke constitutional convention—and he did. I appreciate that in terms of the role of policy lawyers from the Ministry of the Attorney General, who clearly can give advice to a cabinet minister, to a ministry, to the executive.

Mr Zimmer: Hold on a second. I'm having trouble following you.

Mr Kormos: Bear with me.

Mr Zimmer: I'll wait till the cellphone has—

Mr Kormos: There was a cellphone ringing. That's why Mr Zimmer had problems, because he, like I, doesn't understand why people bring cellphones in.

I don't dispute the position taken by the Attorney General policy lawyer for the moment here. We've got this unique position now of committees being able to draft and present legislation. My view was that that put it more akin to a governmental role than to the private member, to wit, any one of us, one at a time, especially since the committee derives its power to do that, I appreciate, from the standing orders, but in this instance, especially, more so than just the standing orders: by a resolution, by an order of the House.

Since then, we've had the benefit of some albeit cursory advice from a spokesperson for the Clerk's office, who expanded the dialogue to say that there are basically four types of bills: Pr bills—let's put those aside, because they're dealt with in a special process. So in the broader domain, there are government bills—government public bills—fair enough; there are private members' public bills, which are dealt with during private members' public business, unless of course the government calls them, at which point they may become government bills. That's something that happened in the last government when they were playing around in the Legislature. But now there are committee bills. The spokesperson for the Clerk's office explains that these even have a new prefix, I believe a "D," in front of the bill number.

Mrs Sandals: On a point of order, Mr Chair: Mr Kormos seems to be privy to some information that the rest of us are not in terms of advice from the Clerk's office.

Ms Broten: This was your conversation with Lisa?

Mr Kormos: This was a conversation that—

Interjection.

Mr Kormos: That's a good idea.

Mrs Sandals: Because we have no idea what you're talking about.

Mr Kormos: That was true this morning as well.

Ms Broten: Always. Every day.

Mr Kormos: But I understand.

The Acting Chair: The clerk's going to make a quick call to see whether or not Ms Freedman, I guess it is, might be available to come over—

Mr Kormos: I didn't mention any names because it's the Clerk's office that will do this.

The Acting Chair: That seems to be who it was, so at least someone understands. If they're available—

Mr Kormos: Yes, she's a person who could be contacted.

So anyway, what we've got now is we're at least being presented with, in my understanding of the Clerk's office analysis, some avenues that might be travelled to get the results we're seeking, to get the legal opinions. One, as I understand it, subject to correction, is via legislative research in both her personal role and in her own right as well as her ability to access legal advisers. The other interesting observation made, as I recall the conversation with the spokesperson for the Clerk's office, was our ability, of course, to summons people to the committee. In other words, the committee can ask anybody it wants to attend before it.

Of course, the question is, does that mean people like Mr Twohig, who was here this morning? That's the question that's then begged. But I've got to tell you, Ms Broten, that I'm interested increasingly in the prospect of having Mr Runciman talk about what happened when he was minister and was presenting that major, most significant, set of amendments to the act.

You know that my bent tends to be the non-statutory, non-codification approach. I think that's pretty clear. I've invoked the comments from the McMurtry report of 1981 many times. Quite frankly, if Mr Justice McMurtry were to have changed his opinion, in view of the praise that I've heaped upon him, that would be pretty persuasive stuff for me. Maybe Mr Justice McMurtry might be a valuable person to ask to come before the committee.

Ms Broten: I wonder, Chair, is there a resolution with respect to someone coming in from the Clerk's office?

The Acting Chair: I understand there is, in the next couple of minutes.

Ms Broten: OK. Certainly I can speak to the issues that you've raised. We'll wait for the Clerk's office to attend. But it was new information to me that, through their capacity to conduct research and seek advice, legislative research would have an ability to essentially engage outside counsel to give them that advice. If I'm understanding right, Mr Kormos, that's what it sounds like to you.

Mr Kormos: I didn't go that far. Maybe we should ask our legislative researcher, or maybe we should ask somebody from that office. I'm not sure whether it's proper or fair to ask her as compared to asking somebody from that office.

Ms Broten: Sure. I'll put the question on. I was saying that it was new information to me that through the legislative research office there was an avenue to engage—it sounded like, from Mr Kormos—outside counsel to provide more extensive legal advice on a

particular issue. I was wondering if you could speak to that point, or perhaps we just need to look into it and you want to seek further advice or clarification.

Ms Drent: I don't think I have personal knowledge of previous instances where our office has worked with outside counsel. I've asked the manager of the research service, who has a longer history in the office than I do and might be able to assist the committee, to come over.

Ms Broten: And he's on his way?

Ms Drent: Yes, she is.

Ms Broten: Thank you.

Mr Kormos: I want to make it very clear that you understand that my preference is that civil service lawyers do the advising. I am hell-bent, obviously, against contracting out or privatizing that role. My interest around legislative research's access to lawyers was that they may well have access to civil service lawyers and experts in a way that the committee doesn't, because they are performing this legislative function and they are separate. Again, the response to legislative research, were they to pose some of the same questions we put to policy lawyers from the Ministry of the Attorney General this morning, could well be different in that they wouldn't be inclined to say, "We cannot advise the committee with legal opinions," but maybe they can provide legal opinions to legislative research. I don't know.

Ms Broten: I understand your preference, Mr Kormos. Preference or not, my goal is to seek advice for this committee so that we do a good job. I think the committee should be informed of whatever avenues are available to this committee. We should undertake an examination of from whom we could get that assistance and make that decision. I think it is prudent for us to garner the information on a collective basis so we all know what we're talking about and it's not a singular person who has insight when the rest of us don't. At the

end of the day, I think we all have the same goal in mind, which is getting that advice, and now we're examining the avenues by which we can get it.

Mr Kormos: But surely we'd rather engage our own civil servants in the public sector than contract out their work.

The Acting Chair: Is it the committee's desire to continue this discussion in this context or, from the standpoint at least in the interim, taking it offline to the subcommittee subsequently, so that whatever process we're going to use can come back for either fuller debate or with some consensus having been built among the caucuses?

Mrs Sandals: Are people on the way?

The Acting Chair: I understand there's a staff person on the way. Is that correct?

Ms Broten: Mr Chair, if I might suggest, could we have a recess, an opportunity to discuss this amongst ourselves, and then come back? I know Mr Kormos wants part of it to be on the record. I'm more than happy to have an offline discussion and put the conclusion or the agreements that we reach back on the record, which I think is what he wants to happen.

The Acting Chair: The question is, is the preference to do that, to recess to caucus or bring it back on-line, subsequent to an opportunity for the subcommittee to meet?

Mr Kormos: I agree to a brief recess.

The Acting Chair: Let's then agree to a 10-minute recess.

The committee recessed from 1444 to 1503.

The Acting Chair: We're back in order at this point in time.

I believe we are adjourned until 10 am on Monday morning, the 23rd. Thank you.

The committee adjourned at 1503.

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