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## **Official Report of Debates (Hansard)**

Thursday 11 May 2006

## **Journal des débats (Hansard)**

Jeudi 11 mai 2006

**Standing committee on  
justice policy**

**Comité permanent  
de la justice**

Emergency Management  
Statute Law  
Amendment Act, 2006

Loi de 2006 modifiant des lois  
en ce qui a trait à la gestion  
des situations d'urgence

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## STANDING COMMITTEE ON JUSTICE POLICY

## COMITÉ PERMANENT DE LA JUSTICE

Thursday 11 May 2006

Jeudi 11 mai 2006

*The committee met at 1003 in room 228.*

### SUBCOMMITTEE REPORT

**The Chair (Mr. Vic Dhillon):** Good morning, and welcome to the meeting of the standing committee on justice policy. This morning we're meeting to consider Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997.

The first order of business this morning is the adoption of the subcommittee report. Can I have somebody read the subcommittee report.

**Mr. Lorenzo Berardinetti (Scarborough Southwest):** I will read the subcommittee report. It reads as follows:

Your subcommittee considered on Monday, May 1, and Monday, May 8, 2006, the method of proceeding on Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997, and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 56 in Toronto on Thursday, May 11, and Thursday, May 18, 2006.

(2) That the committee request the authority of the House to sit on Monday, May 15, 2006, after routine proceedings, until 7:30 p.m. for the purpose of public hearings on Bill 56.

(3) That the clerk invite the Ministry of Community Safety and Correctional Services to provide a technical briefing to the committee for 20 minutes on May 11, 2006.

(4) That the deadline for those who wish to make an oral presentation on Bill 56 be 12 noon on Wednesday, May 10, 2006.

(5) That witnesses requesting to appear before the committee be given 20 minutes each in which to make their presentation.

(6) That the clerk, prior to the deadline of May 10, start immediately to schedule witnesses to appear for 20 minutes each on May 11, 2006.

(7) That an advertisement be placed for one day in the Toronto Star, Globe and Mail, National Post, Toronto Sun, Toronto Metro and L'Express newspapers, and also be placed on the ONT.PARL channel, the Legislative Assembly website and in a press release.

(8) That the ad specify that opportunities for videoconferencing and teleconferencing may be provided to accommodate witnesses unable to appear in Toronto.

(9) That the subcommittee meet again to make decisions on dates for clause-by-clause consideration.

(10) That the deadline for written submissions be the end of public hearings on Bill 56.

(11) That the research officer provide the committee with a summary of civil liberties issues raised during the previous committee consideration of emergency management issues.

(12) That the research officer provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill.

(13) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable.

(14) That requests for reimbursement of travel expenses for witnesses to attend hearings be subject to approval by the Chair.

(15) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

I would move adoption of the subcommittee report.

**The Chair:** Any debate? All those in favour? All those opposed? The motion carries.

### EMERGENCY MANAGEMENT STATUTE LAW AMENDMENT ACT, 2006

### LOI DE 2006 MODIFIANT DES LOIS EN CE QUI A TRAIT À LA GESTION DES SITUATIONS D'URGENCE

Consideration of Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997 / Projet de loi 56, Loi modifiant la Loi sur la gestion des situations d'urgence, la Loi de 2000 sur les normes d'emploi et la Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail.

### MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES

**The Chair:** The first presentation is from the Ministry of Community Safety and Correctional Services. It's a technical briefing.

**Mr. Peter Kormos (Niagara Centre):** Why are we keeping audience members in the dark, Chair? Is this a result of Mr. McGuinty's electricity policy?

**Mr. Berardinetti:** On a point of order, Mr. Chair: Just for the record, it's raining today, so it's a bit darker than usual.

**The Chair:** Good morning. Could I have your names for Hansard?

**Mr. Glenn Murray:** Good morning. My name is Glenn Murray, and I'm the assistant deputy minister of the policy and public safety programs division of the Ministry of Community Safety and Correctional Services.

**Mr. Jay Lipman:** Jay Lipman, counsel for the Ministry of Community Safety and Correctional Services.

**Mr. Stephen Waldie:** Stephen Waldie, policy director at the Ministry of Community Safety and Correctional Services.

**The Chair:** You may start.

**Mr. Murray:** As the Chair indicated, we're here to provide a brief technical overview of Bill 56, the Emergency Management Statute Law Amendment Act. I believe you have a set of slides before you; if I could start on page 2. Just to remind you, the bill was introduced in December and carried on April 25.

The bill would provide the Premier or the cabinet, as the case may be, a broad range of powers that can be implemented during a state of emergency. The federal government and all provinces and territories except Ontario have comprehensive legislation that allows the centralization of power during emergency situations. The bill, like in other Canadian jurisdictions, would create extensive powers to cover a range of circumstances within the context of an emergency.

I'll take you to slide 3 and give you a bit of background on Bill 138, which, as you know, preceded Bill 56.

On June 29, 2004, the Legislative Assembly referred the development of emergency powers legislation to the standing committee on justice policy. The committee held public hearings in August and October of 2004, and the committee's work culminated in a draft statute, Bill 138, which was tabled in November of that year.

Following the introduction of Bill 138, the Ministry of Community Safety and Correctional Services was directed to coordinate possible amendments to the bill. Bill 56 followed, and includes a number of amendments to Bill 138. Some of the amendments to Bill 138 approved by cabinet include revising the purpose, criteria and tests for the making of emergency orders; adding a power to order the collection, transportation, storage, processing and disposal of waste during an animal health emergency; and expanding the job protection scheme to ensure the rules are sufficiently comprehensive.

Slide 4: I want to be clear that the bill respects civil rights. The central theme of Bill 56 is achieving a balance between extraordinary powers to make emergency orders and the safeguards or accountability framework governing the exercise of the powers. The bill does contain a

long list of powers with respect to evacuation, controlling travel, establishing facilities and requisitioning property, but it also contains extensive safeguards and accountability mechanisms. For example, all orders must be consistent with the charter. Another example of an accountability measure would be the requirement for the Premier to provide a report to the Legislative Assembly. We'll talk a little bit more about reporting requirements in the last slide of the presentation.

If I could turn your attention to slide 5, declarations of provincial emergencies would be made by cabinet. A declaration may be made by the Premier, but only in urgent circumstances, and it must be confirmed by cabinet. The bill contains criteria that must be met before a declaration can be made. The key criterion is that a declaration should not be made if the matter can be dealt with using the resources normally available to the government. Declarations cannot extend for more than 14 days, unless renewed.

#### 1010

Continuing on page 6: However, cabinet can renew a declaration, only once, for a further 14-day period. Thereafter, only the Legislative Assembly can continue the declaration. Renewals by the Assembly can be for a maximum of 28 days, but there's no limitation on how many renewals may be made. The Assembly can also disallow a declaration of an emergency at any time.

The bill also sets out a list of powers that can be exercised in a declared emergency. The powers set out in the bill are similar to the powers that are found in emergency legislation in Canadian and other jurisdictions. This includes powers relating to the regulation or prohibition of travel; evacuation; establishment of facilities for the care, welfare, safety and shelter of individuals; price-fixing; and authorizing persons to perform services.

I want to clarify that the bill does not require persons to perform services; it simply authorizes them where they are reasonably qualified to do so.

The powers are all contained in the list in the bill on pages 3 and 4.

Continuing on page 8: As with emergency declarations, the bill contains fairly strict tests relating to the exercise of emergency powers. The tests include a purpose for which the orders can be made, criteria that must be met and limitations on the making of each order.

There are additional criteria that must be met before any order is made. For example, the proposed emergency order must be a reasonable alternative to other measures that are available to address the emergency. The order-making power is conferred on cabinet; however, cabinet may delegate the power to a minister or the Commissioner of Emergency Management. If delegated to the commissioner, the commissioner's orders only last for two days, unless confirmed before then.

Page 9: Bill 56 provides that emergency orders prevail over any statute. The one exception is the Occupational Health and Safety Act, which sets out the rights and duties for all parties in the workplace. Its main purpose is to protect workers against health and safety hazards on

the job. The Occupational Health and Safety Act establishes procedures for dealing with workplace hazards, and it provides for enforcement of the law where compliance has not been achieved voluntarily. The employer would be required to meet his or her obligations under the Occupational Health and Safety Act, even if it meant not complying with an emergency order made under the act.

Job protection, on page 10: Bill 56 amends the Employment Standards Act to provide a certain degree of job protection in an emergency. The job protection scheme provided under Bill 56 is broader than that under the SARS Assistance and Recovery Strategy Act.

An employee is entitled to a leave of absence without pay if the employee will not be performing the duties of his or her position because of an emergency declared under the bill and because of an order that applies to him or her made under the Emergency Management Act, an order that applies to him or her made under the Health Protection and Promotion Act, or he or she is needed to provide care or assistance to certain family members as identified in the bill.

Bill 56 includes a regulation-making authority that could set out grounds for job protection by regulation. Under this approach, specific grounds for job protection could be established depending on the nature of the emergency.

Page 11 sets out the protection from liability. Bill 56 contains the usual provision that protects government and municipal officials from personal liability for acts carried out in good faith, while the right to sue the crown or a municipality is preserved. Section 11 sets out the general personal liability protection for persons acting under the act or emergency orders. Such protection is afforded to members of council, municipal employees, ministers of the crown, crown employees and any other individual acting pursuant to an emergency order made under the bill from liability for actions taken in good faith in the performance of their duties.

Page 12: Bill 56 contains significant penalties for failing to comply with an order or obstructing a person in carrying out an order. With respect to failure to comply with an order or interfering with a person acting under an emergency order, Bill 56 provides for offences of up to \$10 million for corporations, \$500,000 for corporate directors and officers, and \$100,000 for other persons. In the case of individuals, imprisonment may also be imposed for not more than one year. Bill 56 also contains an additional enforcement mechanism to enforce emergency orders through the civil courts. Similar provisions occur in other major provincial legislation such as the Health Protection and Promotion Act.

The last slide deals with reporting requirements. Bill 56 expressly requires the Premier or a delegated minister to report to the public during the emergency. In addition, the bill requires that the Premier table a report on the emergency in the Legislative Assembly within 120 days of the termination of the emergency. The report must specifically address any emergency orders made and

provide a justification for those orders. A similar report must be prepared by the Commissioner of Emergency Management with respect to any orders made by the commissioner. The commissioner's report must be integrated with the Premier's report.

That represents the highlights of Bill 56. I would be happy to entertain any questions.

**The Chair:** Thank you. We'll start with the official opposition, less than four minutes each.

**Mr. Garfield Dunlop (Simcoe North):** Thank you very much for being here today and for the briefing you just gave us. I want to go right to the portion that I think was on page 9 or 10. Let me use an example; let's say, nursing staff at a hospital. An emergency is declared. Would a nurse or nurses or doctor or doctors have the opportunity to refuse to report to work if they felt that they or their family were in danger as a result of the emergency, without any repercussions in the future?

**Mr. Murray:** They can ask for a leave without pay, but I'm going to ask legal counsel to answer that more fully.

**Mr. Lipman:** The job protection scheme is based on certain grounds. They would have to meet those grounds in order to be entitled to the leave of absence. As Glenn pointed out, the bill provides for additional grounds to be set out by regulation, but the first step would be to determine whether or not they actually meet the grounds set out in the bill; i.e., an order under the Health Protection and Promotion Act applies to them or they have to be at home to take care of specified family members.

**The Chair:** Can I get you to introduce yourself again? Our technical people missed your name.

**Mr. Lipman:** Jay Lipman, counsel with the Ministry of Community Safety and Correctional Services.

**The Chair:** Thank you very much. You may continue.

**Mr. Dunlop:** So we won't know the exact details of that until we actually see the regulation. For example, I'm worried about, say, a young mother, a nurse, who is afraid to go to work because she thinks she may come into contact with something that may affect her children back home later on that week, that month or even later in their lives. I think that's a question we're going to hear a number of times from different people. What I'm basically saying is, how will that impact their careers? If they refuse to come to work because they thought in their own conscience that they had a problem that could impact their family, could they lose their jobs?

**Mr. Lipman:** You're right. It will depend on regulations that may be made, and those regulations may not be made unless we have an emergency or depending on the nature of the emergency, but right now the grounds for the leave of absence are set out in the bill. The simple concern that you don't want to go to work may not be sufficient. You need to meet the legislative grounds.

**Mr. Dunlop:** Do I have any more time?

**The Chair:** No. Mr Kormos.

1020

**Mr. Kormos:** Thank you to ministry staff who prepared the briefing books for us. They're very valuable. Pass that on, parliamentary assistant.

The nub of the bill for me, of course, is the emergency powers and orders. I've got some questions. "The regulation or prohibition of travel to, from or within any specified area"—I don't know. I'm from Welland, but it seems to me that the OPP and other authorities shut down highways all the time, whether it's the Trans-Canada up where it gets washed out as you get toward Kenora, or northern roads or wintertime roads. What's new here? Don't police shut down highways all the time under the right conditions, currently?

**Mr. Murray:** Sure they do, and in a state of emergency we want to clear about that. Jay, did you want to add specifically to that?

**Mr. Lipman:** Yes, you're right. The police have the common-law authority to close roads where there are unsafe conditions.

**Mr. Kormos:** Airports get shut down all the time—not all the time, but from time to time.

**Mr. Lipman:** I think this adds maybe more central authority for that kind of order. It gives it—

**Mr. Kormos:** Okay. Fair enough. The evacuation of individuals: Is there a penalty provision here in the bill?

**Mr. Lipman:** There's an offence provision in the bill.

**Mr. Kormos:** Yes. So what's being suggested: that the evacuation power gives power to physically, forcibly remove people from their homes, should they not want to leave their homes, or that they're going to be subject to a penalty for not complying with an order?

**Mr. Lipman:** There may be a question about what it authorizes in terms of, say, the degree of force that can be used.

**Mr. Kormos:** Is it clear in the bill?

**Mr. Lipman:** No.

**Mr. Kormos:** That's unclear.

"The authorization of facilities, including electrical generating facilities, to operate as is necessary...." I found that very interesting. Why would we need some sort of emergency power from the Lieutenant Governor in Council, Premier, energy czar to authorize an electrical generating facility? Are you talking about ones that may not otherwise be legal because they wouldn't have passed environmental assessments or they wouldn't be using a fuel source that is appropriate?

**Mr. Lipman:** The primary purpose of that is in fact to authorize facilities to operate in a manner that they may not be permitted to operate in under existing—

**Mr. Kormos:** Give me an example.

**Mr. Lipman:** One of the issues that came up in the power blackout was that there were certain generating stations that were in a position to produce more electricity, but because their certificate of approval limits the amount that they can produce, they were legally unable to produce more than their certificate permitted them to do.

**Mr. Kormos:** Is "unconscionable," as used in "unconscionable prices"—again, there are lawyers who can probably help—a legal term? I use the phrase so often in reference to so many successive governments and their

policies, but is that a legal term? Is that something that courts have a handle on? They know what it means?

**Mr. Lipman:** It is a legal term, certainly. The term was derived, actually, from US legislation, because there is no Canadian price-fixing legislation really, or I should say no prohibition on price gouging in any of the Canadian jurisdictions. But there is in the States, and they use the term "unconscionable."

**Mr. Kormos:** Gouge, but just don't gouge unconscionably.

**Mr. Lipman:** I guess it's trying to get at what "gouge" means.

**The Chair:** Thank you, Mr. Lipman. Can I just get you to speak closer to the mike; they're having trouble picking up your voice.

The government side.

**Mr. Bas Balkissoon (Scarborough–Rouge River):** I just want to say thank you very much to the staff, as Mr. Kormos has, for your presentation and clarification of the bill. Thanks for giving us that input.

I just want to pursue one point with Mr. Lipman in terms of the leave of absence, the entitlement to the employee. I think the whole issue of this being put in the bill is because of the situations that arose around SARS, where some employees actually lost their jobs because of the emergency that occurred then. This particular clause is being put in to protect that from happening in the future.

Also, to clarify the question that came from the other side, if there is an emergency declared in a particular situation—let's say it's a health emergency—you wouldn't expect a person working for the hydro facilities to take a leave of absence. That's where the bill is clarifying the process, and that's where the regulations will come in. Am I correct?

**Mr. Lipman:** Yes, that's correct. This is designed to address those circumstances where the person is unable. Otherwise, for the most part, emergency workers and others who would have expectations to do their jobs in an emergency couldn't just say, "I don't feel like going in today." This is designed to deal with those situations where the person is unable to. They may be doing work elsewhere in the emergency or they may be subject to an order, like a quarantine order, that tells them they can't go to work. That was certainly the focus of the SARS legislation.

**Mr. Balkissoon:** Okay. Thank you very much.

**Mr. Kormos:** I thought you were talking about Dennis Mills when you were talking about people who lost their jobs.

**The Chair:** Thank you very much, gentlemen.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Chair:** The next presentation is from the Ontario Public Service Employees Union. Good morning. If I can get you to state your name, you may begin any time you like.

**Ms. Patty Rout:** First of all, I would like to apologize for the fact that Leah Casselman is not present. She was to make this presentation. I'm her stand-in for today. I'd like to say good morning. It's a blurry day, but it's a good day.

I'm appearing here on behalf of the Ontario Public Service Employees Union. On OPSEU's behalf, I wish to thank—

**The Chair:** Excuse me, if I can just interrupt. Can I have your names for the record?

**Ms. Rout:** My name is Patty Rout.

**Mr. Roman Stoykewych:** Roman Stoykewych, general counsel to OPSEU.

**The Chair:** Thank you very much. You may begin.

**Ms. Rout:** I am appearing here on behalf of OPSEU. I wish to thank the committee for giving us the opportunity to talk about something so extremely important. I am an executive board member of OPSEU and chair of the OPSEU health council. I'm also chair of the OPSEU hospital professional division. I am a laboratory technologist from Lakeridge Health, Oshawa, and I've been a laboratory technologist for 33 years. Roman will be assisting me with this presentation today.

We have prepared a written brief for the purposes of this presentation, in which we include OPSEU's analysis of the employment-related issues arising out of the proposed legislation. We have included our recommendations by which the interests of our members, as well as the public interest, might be better protected. In addition, we have attached to our presentation the submission that was prepared by our union and ONA for the Campbell commission. These latter submissions, we think, provide the committee with an extremely valuable chronicle of the experience of our hospital workers during the SARS crisis: the extraordinary chaos that arose out of the lack of preparedness and coordination and the completely unacceptable, even in the context of an emergency, health and safety risks that employees were required to undergo.

We believe there are critical lessons to be learned from this fiasco and strongly believe that they should not have to be learned twice. If there is a single message we wish to bring to you today, it is that preparedness and coordination during the course of an emergency are all-important to the public, but also to ensure the safety of emergency workers. We believe that enhanced reliance on existing structures of employment, such as collective agreements that are in a vast majority of hospitals and health facilities, is the direction in which the legislation should direct all of the participants in an emergency. Our recommendations, which we will detail in a moment, are in support of that general position.

But first, I think it is important that the committee appreciate who it is that OPSEU speaks for. We are over 30,000 health care professionals and workers in the province of Ontario, representing technicians, social workers and emergency service workers, who all place their lives at risk during a pandemic outbreak. Many of these employees worked in Toronto at the time of SARS.

In addition, OPSEU represents ambulance paramedics, environmental officers, fire safety officers and meat inspectors—in short, the entire range of service employees who serve as the wall between the Ontario public and the next pandemic or the next Walkerton, the next train derailment, truck explosion or even acts of bioterrorism. All of these employees, and not just the workers engaged in health care, may be directly in harm's way in the event of an emergency. They are employees who, by virtue of their occupation, risk their lives to ensure that the public interest is served. We believe, and we are sure that the committee will agree, that they should not be exposed to unnecessary risk.

#### 1030

The first two recommendations that we make with respect to the current legislation relate to our experience during SARS. As Justice Campbell repeatedly stated, it is really common sense: It is extremely important that there be a well-established set of rules setting out our tasks and defining the lines of authority during the course of an emergency. This was almost completely lacking during SARS. Various hospitals were improvising completely new methods of staffing and were, remarkably, taking the position that the existing rules governing work, including the terms and conditions of our employment set out in various collective agreements, simply didn't apply any more. There was chaos and there was more chaos.

We do not believe that experimenting with completely new ways of running a complex facility should take place during an emergency and, instead, think that the opposite direction should be taken. OPSEU believes that employers and their bargaining agents should utilize their existing collective agreements—which already set out the various provisions for staffing, scheduling, pay, emergency premiums, training, protection of occupational standards, accommodation of our employees and other matters that are essential to the running of a complex organization—as a basis for the employment of emergency workers. Provided that there is a clear consensus that these issues are to be dealt with jointly, collective bargaining is a remarkably flexible manner of addressing issues as they arise during the course of an emergency, and the parties to a collective agreement could and should be able to deal with the various needs presented in an emergency.

We believe that the existing agreements—that is, our collective agreements—provide for the best guarantee that there will be good communication, clear accountability, and fair and sustainable employment during the course of an emergency. Therefore we recommend, as is set out in pages 3 and 4 of our submission, that the government expressly provide that existing collective agreements serve as the basis of employment during the course of an emergency and, to the extent that there are no collective agreements in place, any orders that may have the effect of requiring employees to work during the course of an emergency should specifically state the terms upon which these employees would be required to work.

OPSEU is extremely pleased to see the proposed legislation providing for continued operation of the occupational health and safety legislation during an emergency. We welcome this as an important recognition that the health and safety of workers engaged in emergency services should be a central concern during an emergency. Nevertheless, we believe that the provisions protecting emergency workers should be strengthened during the course of an emergency in order to reflect the obvious fact that they are working in conditions of increased hazard.

As we set out in our brief, on pages 5 through 7, this kind of protection is particularly important for the bulk of employees who are likely to be utilized during the course of an emergency. These are, for the most part, employees who have extremely limited recourse to the basic protection that is afforded to the majority of workers in Ontario, and that's the right to refuse unsafe work. Consequently, the protections that emergency workers are afforded should be strengthened during an emergency. In particular, we believe that there should be legislative recognition that joint occupational health and safety committees are the forum in which issues relating to the health and safety of employees involved in the emergency ought to be addressed. The joint committees are established under the act as the forum in which the actual experience of workers can be brought to bear upon decisions relating to health and safety. Critical information can be shared with management, and the decision-making regarding health and safety is demonstrably improved by the operation of this process. The Legislature recognized this years ago.

Remarkably, during the SARS crisis, the joint committees were routinely ignored by hospitals. As is detailed in our joint submission that is attached to our brief, it is remarkable that more tragedies didn't occur, in light of the fact that the health and safety of workers was jeopardized without recourse to the basic mechanisms for ensuring safety. The joint committees can and must operate during an emergency, and we urge the committee to reflect on this.

We also believe that the second method of protecting the health and safety of workers is the intercession by the Ministry of Labour, which ought to be strengthened during the course of an emergency. Once again, most of these workers do not have the full ability to refuse unsafe work, and as a result, the role of the Ministry of Labour's occupational health and safety branch is of great importance. The ministry alone is able to put an end to practices that are hazardous and unsafe. During the SARS crisis, we actually saw the ministry decline to come into our workplaces to look at health and safety issues.

We believe that the Ministry of Labour should be directly involved at an early stage, including the prep stages for an emergency, in order that we may acquire the necessary technical expertise in matters related to the handling of emergencies. We further believe that the director of the health and safety branch, who is re-

sponsible for the operations, should be required to consult with the joint committees in affected establishments in order to ensure that the provisions of the act are complied with.

Without these steps, we respectfully submit, the language in the proposed legislation providing that the OHS Act is in full effect during the course of an emergency is just a symbolic gesture. As the bargaining agent for employees who must risk their lives during the course of an emergency, we would see this as a very hollow promise.

Justice Campbell has made it very plain that clear assurances to employees who are about to commence working during the course of an emergency, thereby exposing themselves to extraordinary hazards, should be made so that they know, in advance of an emergency, that their interests will not be adversely affected by doing so. This is not just required to meet a basic principle of fairness to the employees—a principle which, we say, should be enough to satisfy the committee—it is also a matter of exceptional significance to the general public, because it is only with such assurances that employees will willingly engage in such extraordinary activity. We believe that the proposed statute ought to be amended so as to provide additional assurances of this sort.

We believe that the act should provide for a broader indemnification of employees who are engaged in emergency work. The committee should be aware that employees, particularly those who are governed by professional bodies, are frequently required to perform acts during the course of an emergency in a manner that may bring their conduct into question in litigation. The current legislation does provide for indemnification in the event of a finding of liability; however, it doesn't provide indemnification for the costs of a defence to such allegations. The mere defence to such allegations can be crippling to an employee who is not found to be liable. It would operate as a serious disincentive to willing participation during the course of an emergency. We have set this out on pages 7 and 8 of our brief, where it refers to the Police Services Act.

As we set out on pages 8 and 9 of our brief, OPSEU believes that there are insufficient protections for employees who would suffer monetary losses as a result, for example, of an extended quarantine. Consistent with Mr. Justice Campbell's recognition that these matters be dealt with ahead of time, we propose that there be developed a compensation package, known to employees in advance, to take into account the predictable forms of pecuniary loss by employees.

OPSEU is also of the view that the protection against termination that the act provides is neither fair nor sufficient and that further, more extensive protections must be provided to employees who may be taken from their normal duties as a result of their participation. Currently, the proposed legislation provides only that there be protection against loss of employment. We do not think that is sufficient, as these employees are not guaranteed that their previous position will be available

to them or that their position will not be altered to their disadvantage as a result of their absence. Accordingly, on page 9 of our brief, we recommend that the legislation should be amended to include protection against adverse employment effects.

#### 1040

Finally, OPSEU is of the view that the proposed amendment to the Employment Standards Act setting out the duration of the leave of absence is insufficiently clear and may lead to some anomalies that we expect are unintended. Currently, the duration of the leave that an employee is provided depends on the duration of the emergency, and presumably that the employee's protection from adverse employment consequence would cease when the emergency is terminated. However, we can see circumstances in which an employee should be permitted to extend an absence from work for a period after the emergency has ended. For example, an employee may be quarantined or otherwise prevented from returning to work after the emergency has been declared over, and such an employee should have protection under the ESA and should not be liable to discipline or adverse employment consequence for overstaying a leave of absence.

We therefore recommend that the language of the proposed legislation be amended to include a reference to a reasonable period of time after which the employee will be required to return to work, and ask that this very complex provision be rethought.

In summary, then, OPSEU believes the existing mechanisms for regulating employment and health and safety in establishments that are subject to emergencies—namely, collective agreements and the health and safety legislation—ought to be strengthened.

I would like to thank the committee for this opportunity, and we'll answer any questions.

**The Chair:** Thank you. There are about two minutes for each side remaining. We'll start with the NDP.

**Mr. Kormos:** Thank you kindly, both of you. With only two minutes, I'm interested in your comments about the role of the Ministry of Labour during the course of the SARS crisis. I suspect that most of us had occasion, in one way or another, through visiting our local hospitals during that crisis, to see the incredible role that health professionals, health care workers, did at great risk to themselves, as is well known. Tell us about the Ministry of Labour and what they did or didn't do in terms of obviously addressing issues of workplace health and safety.

**Ms. Rout:** First of all, our joint occupational health and safety committees weren't used. The union said to our higher-ups that they should be using these committees. They refused to do that. So we said, "Okay, we're going to call the Ministry of Labour." They said, "No, you're not going to call the Ministry of Labour. We're going to let the health official at the Ministry of Health decide what's going to happen here." We said, "Yes, you are going to call the Ministry of Labour." So they called the Ministry of Labour in many hospitals, and they didn't come into the workplace; they just talked to

us on the phone. They did not want to come in. Now, whether—

**Mr. Kormos:** Was this the proverbial telephone inspection that we had criticized, or was it simply the refusal to attend at the workplace?

**Ms. Rout:** It was a telephone call, and they didn't come in to see what was happening.

**Mr. Kormos:** Was there any response by Ministry of Labour officials who conducted even these telephone investigations?

**Ms. Rout:** They gave us guidelines. They gave us procedures we should be following, but certainly they never talked to the workers; they talked to the management.

**The Chair:** Thank you very much. The government side.

**Mr. Balkissoon:** Thank you very much for taking the time to come and make your presentation to us, and thanks for your input.

Just one question: The fact that the act itself clearly states now that the Occupational Health and Safety Act will remain in place and is not affected by this act: You don't feel comfortable that if there's a second situation or another situation in the future—many of us hope there will never be one—that under different rules your concerns would happen, and SARS will not occur?

**Mr. Stoykewych:** If I could answer that, the fact that the Occupational Health and Safety Act is in place during the course of an emergency doesn't really change the legal situation that was in place during the SARS crisis, because of course during that time, the Occupational Health and Safety Act was in full effect, and in certain cases with disastrous consequences.

We believe that an emergency is a time at which heightened legislative action is necessary to ensure the health and safety of employees who are placing their lives at risk. The joint health and safety committees must be acknowledged during the course of an emergency to be the necessary method of resolving issues concerning the health and safety practices in establishments. We also believe that because of the history in which employers had routinely ignored those committees and routinely ignored the bargaining agents of the employees in the hospital, we simply can't have the status quo remain as a solution. The history speaks for itself, and we need some action on this.

**Mr. Balkissoon:** My last question, if I have time: The collective bargaining process and the collective agreement between each employer and employee group is certainly different from establishment to establishment. This piece of legislation is to deal with emergencies. Wouldn't a situation like that for the joint committee be better addressed in the collective bargaining process and be included in your bargaining agreement?

**Ms. Rout:** They are included in our collective agreements. It's the fact that the hospitals during SARS decided they didn't have to follow the collective agreements. They were thrown out the window.

**The Chair:** The official opposition.

**Mr. Dunlop:** A very quick question: I appreciate your being here. I think it's about three years ago right now that SARS was right in—

**Ms. Rout:** Yes, and it still gives me goose bumps.

**Mr. Dunlop:** I thought this bill would have been before the province before now.

I know you've made a number of recommendations here today, but in its current form, can you support the bill without any amendments?

**Ms. Rout:** No. It's very clear that workers need their collective agreements to be followed and we need to be ensured that the health and safety legislation will be followed by our employers. I don't think this does that.

**The Chair:** Thank you very much.

#### ONTARIO ASSOCIATION OF EMERGENCY MANAGERS

**The Chair:** The next people up are the Ontario Association of Emergency Managers. Good morning, sir. Perhaps I can get you to state your name for the record.

**Mr. Alain Normand:** My name is Alain Norman. I'm president of the Ontario Association of Emergency Managers.

**The Chair:** Thank you very much. You may begin.

**Mr. Normand:** The Ontario Association of Emergency Managers represents 450 professionals in the emergency management field working in the province of Ontario. Although some of our members work in provincial and federal ministries and agencies, private industry and non-profit organizations, the majority of our members actually work in municipalities.

The primary role of the emergency manager is to ensure that citizens, business and stakeholders are protected to the best of our ability during an emergency. With the increase in number, intensity and range of impact of emergencies we have experienced in Ontario over the last decade, the work of the emergency manager has become more and more complex. Our members are on the front lines of emergencies on a daily basis and understand very well what is at stake when an emergency strikes our communities.

We have reviewed the proposed Bill 56 thoroughly. In essence, we support the proposed bill. We recognize that the province of Ontario needs to provide powers to the Premier and his designates to take extraordinary actions during emergencies. We are generally glad to see some of the safeguards instituted, such as limits in the duration of emergency orders, ratification by cabinet for extension of duration and full disclosure to the public through a detailed reporting mechanism. We do have concerns, however, with some of the provisions of the bill, and even more with the absence of others.

A basic principle of efficient management is that wherever lies the authority must also lie the responsibility. Every management manual teaches this doctrine, according to which these two elements must be in balance to ensure proper management. In short, we

contend that this bill is heavy on authority but very light on responsibility.

In this bill, the provincial government gives powers to the Lieutenant Governor in Council, the Premier, any minister to whom the Premier delegates the authority and to the commissioner of public safety. The powers are so vast that they can turn our province into a government-run state for a period of time. The Premier can become the owner of absolutely everything and anything in the province as he sees fit if it can be justified for the purpose of managing the emergency.

**1050**

As I said earlier, emergency managers understand well why these provisions are instituted, and we agree with the need for such provisions. However, there is nowhere in this bill any provision for the Premier or his designates to take responsibility for the actions they propose to take during emergencies. As we have seen so many times before, the orders will come from the province but the enforcement will be left completely up to the municipalities.

While we applaud the provision that attaches a penalty for those who hinder our response, the issue for us is in determining who will police this. The municipality's resources will be geared toward the response and will not be sufficient to identify and charge those who are acting contrary to the law.

The amendments are a good start but need to be more comprehensive in detail and scope to ensure that we have the appropriate tools to respond. Time and time again, the municipalities are told that they bear the responsibility for managing an emergency but are not given the appropriate legislative tools to strengthen their response capacity.

During the SARS outbreak of 2003, many instructions came from the provincial government, such as quarantine orders, screening systems, closure of some institutions and reallocation of resources. In all of these orders, it was always left to municipal governments, and in particular to the health units and emergency responders, to determine—

**The Chair:** Mr. Normand, sorry to interrupt. If I can get you to just—

**Mr. Normand:** Back up a bit?

**The Chair:** Please. You're distorting your voice. It's not coming out clearly. Sorry for the interruption.

**Mr. Normand:** Not a problem.

**The Chair:** You may continue.

**Mr. Normand:** During the SARS outbreak of 2003, we received many instructions from the provincial government, such as quarantine orders, screening systems, closures of some institutions and reallocation of resources. In all of these orders, it was always left to the municipal governments, and in particular to the health units and emergency responders, to determine the best way to enforce such orders. No provisions were made to support these, and on a great number of occasions, emergency managers had to turn to volunteer organizations for help.

During the blackout of the same year, the province once again declared an emergency and gave orders for people to stay home, to refrain from using transit systems and to reduce electricity consumption. These orders were given very quickly, in a reactionary mode, without even discussing provisions with local authorities and municipal emergency managers. In particular, the order that all non-essential employees refrain from going to work caused a multitude of backlash and problems since there was no appropriate definition of who was an essential employee. Some people considered essential by their employers stayed home because they did not feel they were essential, while many assumed that they were just as important as anyone else and came to work notwithstanding the order. Municipalities were left with the mess and had to scramble on many occasions to reinstate a semblance of order in the chaos caused by the province.

I want to add that not only is this bill light on responsibility for enforcement, it is also light on financial responsibility. The wording of the bill is very unclear on this and, based on experience, we have very little confidence that municipalities will ever see any funding for any emergency initiatives taken through a provincial order. In particular, subsection 13.1(2) states:

“The Lieutenant Governor in Council may by order authorize the payment of the cost of providing any assistance that arises under this act or as the result of an emergency out of funds appropriated by the assembly.”

Since most of the expenses incurred during an emergency rest at the municipal level, we would expect that a provincial order would also include full reimbursement of all such expenses, but the act only suggests that the Lieutenant Governor in Council may—not shall—authorize payment and only when it is seen as assistance. The act nowhere speaks to losses caused by decisions of government, such as payment of employees’ salaries while they are under order to remain at home, loss of revenue of programs forced to close by provincial orders or loss of revenues caused by travel restrictions such as transit closures. It is even uncertain that the costs of evacuations, construction, destruction, removal or disposal of property, as detailed in the act, will ever be reimbursed to municipal governments.

If we base ourselves on the SARS experience again, the only costs reimbursed were those directly attributed to the health care of the people affected. All the costs related to prevention measures and the impact of closures, including loss of revenue, were disallowed. As for the blackout, we have given up hope of ever seeing a penny for any of the impacts of the decisions made by the provincial government.

When municipalities declare an emergency, they understand that they have to absorb the expenses that come with such a declaration. There are provisions for some support of municipalities through the Ontario disaster relief assistance program, but this comes with conditions that the municipality does fundraising locally in order to receive any kind of support. The same responsibility should apply when the province makes the

declaration. Whoever gives the order pays the bills: authority and responsibility.

We are also concerned that the bill provides the Premier with powers to unilaterally make decisions without consultation with the affected municipalities. We understand that in some instances decisions must be made quickly. However, in Ontario, every municipality is now mandated to have an emergency plan, to designate a community emergency management coordinator and to have the appropriate tools, training and exercises to respond to emergencies. I’m very glad to report to this committee that all municipalities in Ontario have now complied with this legislation. This implies that there is already a force of professionals ready to coordinate appropriate measures in every municipality. These professionals now run the risk of having the Premier come into their municipality to basically take over the emergency response, regardless of existing provisions and extenuating circumstances.

We contend that the people who understand the circumstances the best are those at the local level, not the Premier. These people now run the risk of seeing the province force them to take actions that are contrary to their best judgment, and of being fined or jailed if they refuse to comply. Emergency management in Thunder Bay or Moosonee is different from emergency management in Toronto or Ottawa. The people who understand this most are the people on the front line, not the provincial government.

One of the strengths of the Canadian system of emergency management is that the responsibility for emergency management starts with the individual and then moves to the municipality, to the province and finally to the federal government. No later than Monday of this week, the Ministry of Community Safety and Correctional Services reiterated this in a press release that was sent out to promote Emergency Preparedness Week, which by the way is this week, throughout the province. This system has proven to work time and time again. The Canadian approach to emergency management must be maintained. This bill ignores the possibility of making use of existing plans and programs at the local level and providing support to those in a provincially declared emergency.

With this bill, the Premier potentially obtains the right to order a municipality to send all its resources to the aid of another municipality without the possibility of refusal, thereby leaving it vulnerable. The bill needs to include provisions for justified refusal by municipalities to comply with parts of an order from the province when it is considered detrimental to that municipality.

Finally, we contend that this bill, although generally warranted, should go far beyond its reach in establishing a balanced approach to provincial emergency management, where municipalities are an equal partner in the planning and implementation of every emergency measure in their jurisdiction, regardless of who makes the declaration.

Responsibility for managing an emergency through all its phases lies inherently with the municipalities and, as

such, municipalities need the appropriate tools to fulfill that responsibility effectively, efficiently and rapidly. In order to ensure the safety and well-being of our citizens and the community, the province should confer the ability to issue orders to municipal authorities. In particular, the ability of municipalities to enact orders around restricting travel, evacuation, closure of facilities in the impacted area and procurement of goods, services and resources is integral to ensure a rapid, effective and efficient response. Municipalities will not have the luxury of time to wait for orders to be issued by the province when lives are at stake.

We see this bill as a reaction to a perceived threat of a pandemic and the consequences of gaps demonstrated in the SARS and blackout emergencies, but it was developed without the balance that is required for such grave decisions. We want to see changes made to this bill that will provide a better balance between authority and responsibility, and between provincial powers and municipal powers. We count on this committee to re-establish this missing balance.

As the representative of a force of over 450 emergency management professionals in the province, I offer my support and that of the Ontario Association of Emergency Managers to help in rewriting any part of this legislation and to consult with this government in any way possible to make Ontario safer and better prepared.

Thank you, Mr. Chairman, for providing us with an occasion to present our concerns. I'm ready to entertain questions if there are any.

**The Chair:** Thank you for your presentation. There are about three minutes for each side. Could I have the government side start?

**Mr. Balkissoon:** Mr. Normand, let me thank you for taking the opportunity to be here and present to us. You've stated, and I agree with you, that municipalities are best prepared to take care of emergencies within their municipalities.

**Mr. Normand:** Absolutely.

**Mr. Balkissoon:** But if you have a situation where an emergency starts in one municipality and spreads beyond the boundaries of that municipality, do you see it as appropriate that the Ontario government emergency management process take over?

**Mr. Normand:** Not necessarily. We think that each municipality can take care of its own jurisdiction. Where we see the need for the province is to come in and support the local emergency managers, providing additional resources beyond what the municipalities are already doing. We don't see the Premier coming into those municipalities and taking over, or EMO or whomever.

1100

**Mr. Balkissoon:** I'm not looking at it that way. Somebody has to coordinate between the two municipalities and have oversight.

**Mr. Normand:** During the ice storm, there was a lot of coordination that was done and we had a lot of help from the province, but never did we declare an emergency, although a very widespread area of the province

was affected. We don't see that there's a need for a declaration; we see a need for help and coordination at the provincial level. The declaration should come from the municipal level. If we're changing that system, then we're going to a completely different system than what Canadians have been used to, where municipalities have the main responsibility and the bulk of the authority, and if they need support, then they go to the province and the federal government in stages.

**Mr. Balkissoon:** In the future, it's pretty hard to predict the next emergency, isn't that so?

**Mr. Normand:** It is, although we have some ideas of what's coming now.

**Mr. Balkissoon:** So wouldn't you agree that previous legislation did not provide for cabinet to consider reimbursement to municipalities, and that this government is doing the right thing by putting into this piece of legislation that there is an opportunity for cabinet, where it says that it "may" consider authorizing payments to municipalities in terms of emergencies, which gives you a better opportunity today than existed in the past? Wouldn't you agree with that?

**Mr. Normand:** When I see "shall reimburse," then I'll be confident. As long as it's "may"—we've heard so many "mays" in the past, and we've never had anything come. We're still waiting for money from the blackout. We were told, "Oh, yes, we'll do our part." We haven't seen anything. SARS—we haven't seen anything. So no, I don't believe in "may." Sorry.

**The Chair:** Mr. Dunlop.

**Mr. Dunlop:** Thank you for being here and representing the 450 people who are part of your organization. I just want to put on the record that the ice storm did have a compensation package. There was money that flowed, just so you're aware of that.

**Mr. Normand:** True.

**Mr. Dunlop:** I think you make a good point on whether or not the Premier should come in and do a photo op when making this special announcement, when you probably already know what you're doing. You probably don't need him there.

The question I want to ask, and what I'm very concerned about, is how municipalities are compensated after. We've seen a huge discrepancy right here in this term of government; for example, the flood in Peterborough. Millions of dollars flowed to Peterborough, in two separate announcements, I think, yet we had tornadoes in other areas. A fairly substantial tornado hit Wellington county, and they got peanuts. It was at the discretion of cabinet.

Can you see a standard formula being put in place, so that when these emergencies are declared, whether the Premier declares them or whether an emergency manager or the mayor of a municipality declares them—can you see a standard formula being part of a process that would actually be a part of this bill, so if there was an emergency, such as a flood or a train derailment or whatever, those municipalities would actually see some assistance and be guaranteed that assistance?

**Mr. Normand:** Right now, the only system we have is the Ontario disaster relief assistance program. There are a lot of criteria that have to be met to be able to benefit from that. Not only that, but those are geared towards the people in communities that have been affected by the emergency: people who have lost their houses or lost goods in their houses, things like that. The municipal governments are not eligible under those provisions. We get possibly a few little things here and there if we can justify that the municipality itself has lost any resources, any facilities, but the money that we spend on overtime and on equipment and supplies to deal with the emergency is not covered anywhere. That's left to the whim of the government of the time.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you kindly, sir. I noticed that a journalist has just come into the committee room. That'll escalate the levels of rhetoric and hyperbole.

Taking a look at the act that's being amended, in particular section 4, which gives the head of council of a municipality the power to declare an emergency, which you're well familiar with, and similarly to "make such orders as he or she considers necessary and ... not contrary to law," is a pretty broad scope, isn't it?

**Mr. Normand:** It's fairly broad.

**Mr. Kormos:** And I'm not going to say it shouldn't be. It allows for creativity, because it doesn't delineate or specify.

**Mr. Normand:** Exactly.

**Mr. Kormos:** That's why I'm concerned about the new section 7.0.2 in the amendments, which talks about the orders that can be made. You understand where I'm coming from with this? Rather than relying upon the common-law powers—as you might have heard me say earlier, police shut down roadways in Ontario for any number of reasons. They shut one down because there was a film shoot last Sunday along the Lakeshore. The Lakeshore was shut down for a day. So police already have the power to shut down a highway, huh?

**Mr. Normand:** Yes, they do.

**Mr. Kormos:** Airport officials already have the power to shut down an airport. It happens from time to time for any number of reasons, to everybody's annoyance.

I am concerned about the amendments which provide specificity and may well then restrict the power of the province, and the impact they will have on the section 4 powers of heads of municipalities, who are in a far better position to respond more quickly than here at Queen's Park.

Let's face it: There are two Ontarios. There's the intersection of Yonge and Bloor and then there's the rest of Ontario. That's what you were referring to with your Moosonee-Toronto comparison. I come from small-town Ontario. So do some of these folks. Do you share some of my concerns about the failure to address section 4, when you have all these other amendments with the provincial powers seeming to override all others?

**Mr. Normand:** This is exactly our concern. We have the concern that the Premier or even the commissioner of

public safety will come in and take over and make orders that are beyond what the head of council can ever do and really jeopardize our emergency planning, our emergency response programs.

If you go back to the example of travel, we're not concerned that much with the closure of highways. We're concerned, for example, that the Premier is going to tell us that our buses aren't running anymore, because that's what it really is: The travel restriction is to say that people can't go anywhere out of certain boundaries. It's not just closing the highways. It's saying, "Your buses are staying put." Well, that's a loss of revenue for us to start with. It's also very problematic, because that means more traffic on the side roads, particularly if the highways are closed. So there is more risk of accidents, more lives at stake.

These are the kinds of decisions that we think the Premier can't just make as a reaction. It needs to be discussed. It needs to be balanced between what the municipalities can do to curtail particular emergencies and what the province can do to support us in those decisions. That's what we need.

Right now, we do have the possibility of declaring an evacuation, but if a person refuses to be evacuated, we have absolutely no power to take that person out. If something happens, then we have to send our firefighters to go and get that person out. We're putting our firefighters at risk because we have no power to be able to force these people to evacuate.

**Mr. Kormos:** Thank you for your interesting observations.

**The Chair:** Thank you, Mr. Normand, for your presentation.

## CANADIAN BLOOD SERVICES

**The Chair:** The next presenters are from Canadian Blood Services. Good morning. Can I get your names for Hansard, please?

**Mr. Ian Mumford:** Good morning to you and to members of the committee. My name is Ian Mumford, and I am the chief operating officer of Canadian Blood Services. I'm joined today by Dr. Peter Lesley, who's the medical director for our Ottawa site, and Ayanna Ferdinand, who is one of our in-house legal counsel.

**The Chair:** Thank you very much. You may begin.

**Mr. Mumford:** We're here this morning with respect to the application of Bill 56 on Canadian Blood Services as Canada's national blood operator. I would like to stress at the outset that Canadian Blood Services firmly believes in taking a proactive approach to emergency planning. We believe in the importance of protecting the health, safety and welfare of Ontarians and Canadians in the event of an emergency. In fact, Canadian Blood Services is in the midst of our own pandemic influenza planning, as we are mandated with delivering vital blood and blood products to hospitals across the country.

We're here today to express our concern that Bill 56, if enacted as presently drafted, has the potential to divert

our professional staff away from the operating of the national blood system. Our view is that in the event of an emergency situation such as contemplated in Bill 56, our staff, including nurses and physicians, will be expected to play a vital role in sustaining Ontario's and other provincial health systems.

**1110**

I'd like to tell you a little bit about Canadian Blood Services. Canadian Blood Services, or CBS, as we call ourselves, is Canada's national integrated blood operator. CBS is a unique provider of health care services in Canada. It is the only provincially funded provider of a vitally necessary health care service that operates on a national basis within 12 provincial and territorial jurisdictions, excluding Quebec. We are an integral part of the health system, which, in part, Bill 56 aims to protect. For instance, red blood cells are necessary to address acute blood loss during trauma or major surgery, and platelets are used in the treatment of cancer.

In the wake of the Krever commission, the mandate provided to CBS is to be responsible for the national blood supply system that ensures Canadians access to a safe, secure and affordable supply of blood, blood products and their alternatives. CBS is responsible for: recruiting and managing blood donors; whole blood, plasma and platelet collection, processing, testing, storage and distribution; and inventory management of these products.

The provincial and territorial Ministers of Health, including the Minister of Health here in Ontario, appoint our board of directors, approve our corporate plans and provide our annual budgets. CBS operations are, however, regulated by the federal government through Health Canada.

I would now like to explain a little of what we do as a blood operator, to give you an appreciation of the interaction of this proposed legislation on our processes and staff. We collect, on an annual basis, approximately 870,000 units of whole blood at 42 locations across the country, and as many of you know, we hold about 14,000 blood donor clinics each year across Canada. CBS ships blood products to nearly 750 hospitals across the country. Nearly 50% of blood collections in this country are obtained here in the province of Ontario.

CBS relies on our professional staff, our volunteers, our blood donors and our facilities to operate and manage the national blood supply. Currently across Canada, we employ some 60 physicians, almost 600 registered nurses and almost 500 medical laboratory technologists. Here in Ontario we have just over 300 registered nurses, about 20 physicians and 150 medical laboratory technologists, on whom we greatly depend.

Our medical and technical staff perform a range of critical functions essential to delivering on our mandate to ensure the safety and adequacy of the nation's blood supply. Given the highly regulated nature of our business, many of the critical functions must be performed by doctors, nurses or technologists. For example, a nurse can only perform eligibility assessment of donors, a phy-

sician can only perform review of donor health status and a technologist can only perform certain steps in the production process. For specific functions, only those people who have the required qualifications can perform the work. As I mentioned previously, we are highly regulated by Health Canada and are therefore not permitted to substitute other staff or volunteers to perform those duties.

CBS has made planning for a pandemic influenza a priority. We have determined that a pandemic would have a significant impact on the availability of blood and blood products, principally due to its impact on staff and donor availability. The breadth of authority given to cabinet with respect to emergency orders in Bill 56 greatly concerns us. Cabinet may have the authority to divert CBS's medical, nursing and technical professional staff and requisition facilities outside of CBS. Cabinet may also have the authority to prevent CBS from transporting vital blood and blood products to hospitals. We believe that Bill 56 directly impacts CBS's ability to ensure essential services and facilities to deliver on our mandate for a safe, secure and adequate blood supply. As noted previously, if CBS does not have adequate medical and professional staff to perform critical functions, we will not be able to maintain operations and deliver safe blood and blood products to Ontarians and Canadians.

In light of these concerns, we would respectfully request of the members of the committee an exemption from the orders in Bill 56 that affect our staff, facilities and ability to transport blood and blood products.

I would also like members of the committee to know that in addition to this presentation this morning, we have written directly to Minister Kwinter requesting the opportunity to work directly with ministry staff to ensure that application of Bill 56 meets the needs of Ontario in the event of a declared emergency while preserving CBS's ability to exercise its mandate as Canada's national blood operator.

We certainly support the purpose of this bill. The promotion of the public good can be achieved by protecting the health, safety and welfare of the people of Ontario in times of declared emergencies. Consistent with this purpose, CBS wants to find a solution where the functioning of the blood system is not unduly compromised, but also, where possible, it is supported by legislation so as to ensure the continuity of service that may be required by hospitals in Ontario and elsewhere across the country.

We appreciate the opportunity to meet with you this morning. The safety and supply of the blood system must be an integral part of emergency planning. We commend the government for proactively addressing emergency planning in legislation to ensure the protection and well-being of Ontarians. As a national blood operator, we would seek your consideration and support to ensure that Bill 56 will accommodate the unique aspects of Canadian Blood Services. Thank you very much.

**The Chair:** Thank you. There are about four minutes for each side. We'll start with the official opposition.

**Mr. Dunlop:** Thank you for being here this morning, but more importantly, thank you for the work you do across Canada. I can tell you, I see the blood donor clinics in all areas of my riding. They're very well received, and I know it's such a worthy cause.

I'm curious: You're asking for a straight exemption from the bill. Can you support the bill without that exemption?

**Mr. Mumford:** The short answer would be no, we cannot. Perhaps I could ask my colleague, Ms. Ferdinand, to elaborate a little on some of the very specific—

**Mr. Dunlop:** I'd really like to know that. Yes, thank you.

**Ms. Ayanna Ferdinand:** Certainly as drafted, we couldn't support the bill. Specifically, subsections 7.0.2(2), (5), (6) and sections 7.0.10 and 7.0.12 refer to orders that are very vast in their breadth and in their application to CBS. Those sections refer to the procurement of property, to the use of services, to the shutting down of facilities. As Ian mentioned earlier, that would certainly directly affect our ability to provide blood and blood products during an emergency.

**Mr. Dunlop:** That's the only question I had.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you for again another interesting perspective on the bill. Obviously, there would be concern from the point of view of, let's say, the proverbial floodgates. If there's a specific exemption for Canadian Blood Services, then who is going to be next to ask for the exemption?

The government says that there's no power in the bill to press people into service. I heard what was said earlier today by the bureaucrats who gave us a breakdown of the bill. But you seem to be suggesting that your people could be pressed into service.

**Mr. Mumford:** That is our concern—one of our principal concerns—and that is based on our current reading of the bill. As I indicated, we are also very willing to work with ministry staff, to work with the committee, to maybe work together to find a solution to this. Our sense is that one of the principles behind the legislation is to protect the integrity of the health care system in Ontario; that's one part of many aspects of this. Our sense is that when the bill was drafted, there perhaps had not been consideration given to the impact it would have on us as an integral part of the health care system in this province.

Yes, we are concerned about the impact on staff. In our scenarios that we have developed, like every other organizations, including, I'm sure, most of the government agencies, we have made estimates on how many of our staff will be sick or unable to come in to work because they're caring for a family member or whoever. When you factor that in, and then layer on top of that the possibility that our folks could be plucked away to go and work at a hospital where they certainly could be needed, it would basically shut down the system in Ontario, and therefore would have a huge impact on the system across the country.

1120

**Mr. Kormos:** Your colleague refers specifically to paragraphs 5, 6, 10 and 12 of subsection (4) of the new section 7.0.2. I call that the steroid section of the bill, because really that's the one that's got the panache to it, the "We'll make these orders, and these orders and these orders." You heard from health workers via OPSEU earlier today expressing concerns. You heard from management of emergency services. This isn't just about this steroid section. It's not as simple as simply saying, "Let's use extraordinary powers to make orders." That's what you're saying.

**Mr. Mumford:** That's right

**The Chair:** The government side: Mr. Balkissoon.

**Mr. Balkissoon:** Thank you for taking the time to be here. On behalf of the government, thank you for the work you do in our province and across the country.

I just want to get the actual clause numbers that were mentioned. You went through them very quickly.

**Ms. Ferdinand:** I'll repeat those. It's under the emergency powers and orders section, 7.0.2, paragraphs 2, 5, 6, 10 and 12.

**Mr. Balkissoon:** Just for clarification, you believe these sections would put your employees in a position where this bill will allow the Premier to actually conscript your employees. Is that what you're concerned about?

**Mr. Mumford:** That is our concern, sir; it's our people and our facilities.

**Mr. Balkissoon:** Okay. You mention that the only recommendation you would make—your organization is looking to be exempted from this bill. Is that the only thing you've seen possible?

**Mr. Mumford:** That was the proposal we wanted to lay before you. That was sort of our best thinking. If, however, there is another solution that we can work on with the committee or with ministry staff in terms of amendments to the legislation, we'd be very happy to consider that.

**Mr. Balkissoon:** I think you also stated that you've communicated all of this to Minister Kwinter.

**Mr. Mumford:** Yes, we have.

**Mr. Balkissoon:** Thank you very much, and thanks for being here.

**Ms. Ferdinand:** I would just like to add that an alternative to the exemption would be a clarification in the bill that specifically states that the authorization does not mean forcing or does not mean requiring that staff fulfill these purposes that are listed in the bill, and that it won't affect our facilities. We'd want a specific clarification on that.

**Mr. Balkissoon:** So it's strictly your staff?

**Ms. Ferdinand:** No. As Ian mentioned, it's not strictly our staff; it's our facilities and also our ability to transport blood and blood products.

**Mr. Balkissoon:** Okay, thank you very much.

**Mr. Kormos:** Chair, a request to legislative research, please: "Procurement of necessary goods, services and resources" and "services and resources" would be the

language of concern. I'm wondering if Mr. Fenson could help us with some Black's Law Dictionary type of interpretations of "goods and services" insofar as they might permit the pressing of people into service, and alternative language that would make it clear that it doesn't mean that.

**Mr. Avrum Fenson:** Thank you.

#### ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

**The Chair:** The next presentation is from the Ontario Society for the Prevention of Cruelty to Animals. Good morning, gentlemen.

**Mr. Michael Draper:** Good morning. My name is Michael Draper. I'm the chief inspector of the Ontario Society for the Prevention of Cruelty to Animals. Beside me is Hugh Coghill, a senior inspector with the Ontario SPCA.

First, I want to give you an introduction to the Ontario SPCA. We're a provincial charitable organization, formed in 1873. We have a legislative mandate here in Ontario to investigate animal cruelty. The Ontario SPCA is a non-profit charitable organization responsible for protecting all animals in Ontario. We operate through a series of 27 branches and 31 affiliated humane societies. Our shelters shelter tens of thousands of abused and neglected animals each year in Ontario. We're mandated under the Ontario Society for the Prevention of Cruelty to Animals Act to enforce animal cruelty laws. We have police powers to do so and were also named to enforce the Dog Owners' Liability Act recently. We are currently involved in the evacuation of animals in Kashechewan.

**The Chair:** Mr. Draper, can I get you to back away from the mike? We're having some problems with your voice.

**Mr. Draper:** My apologies.

**The Chair:** That's better. You may continue.

**Mr. Draper:** What I want to talk to you about today is emergency planning for animals. It's the right thing to do. We and municipalities in the province plan for all sorts of emergencies. Those emergency plans need to include planning for evacuation or contingencies for animals. It seems to have been an oversight for a number of years not to plan for this.

When animals were not considered in the plan, many unforeseen circumstances have shown themselves. For example, many people are unwilling to leave their homes, even if there is an evacuation order, because they don't want to leave their pets. There are also a number of animal welfare issues. When animals are left behind, lack of food and water creates great suffering. In Kashechewan, animals were left as an afterthought. The people were evacuated and they thought, "Oh, what are we going to do with the animals afterwards?" Lack of a plan meant a lot of bureaucratic problems around whose responsibility it was and how this evacuation was going to take place. There was no plan to house the animals

with the citizens and no plan to house the animals if they were evacuated.

Having a plan helps us and helps the government facilitate coordination between all levels of government and really makes a lot of sense. In Katrina, the largest disaster in the United States, there was no plan to evacuate animals. Because of that, a lot of people remained in their homes when they shouldn't have, and people perished. It was very unfortunate. A lot of senior citizens remained with their pets and died, quite honestly. Because of that, the American Association of Retired Persons wants animal evacuations included as part of plans, and the city of New Orleans has now instituted a new plan that includes animal evacuations.

What I'm recommending today and what I'm asking the committee to consider is having animals included in an emergency plan. There should be an emergency plan to facilitate the safe evacuation or care of animals. What we're proposing is a new recommendation to be added to the bill as an amendment, and I have included it on the third page of my presentation. It's simply a very small change in the wording of subsection 9(b) of the current Emergency Management Act to specify that there will be procedures taken not only for the safety or evacuation of persons in an emergency area, but also animals. This makes sense. This amendment is very simple and will ensure there's a coordinated approach at both the municipal and the provincial levels, and that animals are better protected here in Ontario.

We ask the committee to support this small recommendation by presenting and supporting this proposed amendment at clause-by-clause consideration. Thank you very much.

1130

**The Chair:** Thank you. That leaves about five minutes for each side. Mr. Kormos.

**Mr. Kormos:** Welcome back. Mr. Draper, you're spending a lot of time here. You've got a better attendance record than Gerard Kennedy.

You add an interesting insight to the whole issue, and one which of course doesn't deal necessarily with the amendments but deals with the root act. Before people take this lightly, it's not just Fluffy the cat. Down where I come from, it's cattle, horses—there's a big horse farming community up around Georgetown and so on because we're near racetracks, amongst other things—poultry. So you're talking about big operations; you're not just talking about people's pets in their home.

**Mr. Draper:** No, we're not. There's the consideration for people's livelihoods: livestock—you're right—race-horses, facilities that provide research, veterinary hospitals, the University of Guelph. All those issues need to be considered. That's right.

**Mr. Kormos:** Obviously, to abandon a big poultry farm or a stable operation with the potential for the deaths and then the subsequent decay of the bodies, you're aggravating a dangerous health situation in any event, huh?

**Mr. Draper:** That's right. There are a number of consequences to not having animals included in emergency planning: animal suffering, the huge loss of income to farmers. There's a lot of issues. Although there's some planning involved at the provincial level related to farm animals, requiring municipalities and the province to include all animals in an emergency plan would resolve a lot of current problems that it's no one's responsibility to plan for animals.

**Mr. Kormos:** It's unfortunate, because Mr. Normand, who was here earlier from the Ontario Association of Emergency Managers, might have been able to speak to this. Have some or any or all of the municipalities, especially those in rural areas like where I come from, talked about this issue in terms of their municipal plans?

**Mr. Draper:** My understanding is no. The only one we're currently aware of that is talking about it is the city of Toronto. Senior Inspector Coghill has been involved in that, and that's only at the preliminary phase.

**Mr. Kormos:** Maybe you can help us with that.

**Mr. Hugh Coghill:** Sure. We're not aware of other municipalities that are doing this across the province. As Mr. Draper said, we have been involved with the city of Toronto in their very early stages, at that planning level.

The Ontario SPCA was involved with the Mississauga train derailment to a great degree. A lot of people left their animals behind in their homes and were very, very concerned about that. There was no plan, no provincial plan, available to deal with that, so we sort of did it on an ad hoc basis.

More recently, for me, I worked for a few years in British Columbia. I was in BC during the time of the fires in the interior. A great many people refused to evacuate because of their animals. They didn't want to leave their animals behind. There were plenty of people who saw that their children and other family members were evacuated but refused to leave until their pet goat was going with them or their flock of chickens or their cattle or whatever other animals. We also, surprisingly, became very aware of some rather interesting exotic animals that people were keeping in their homes that nobody seemed to be aware of until then and then; we had to evacuate those and make special arrangements for that.

So we feel strongly that there needs to be some provincial ability to address this particular issue.

**Mr. Kormos:** Have Metro Zoo and other municipal zoos addressed this issue?

**Mr. Coghill:** I can speak to that. Most of those larger facilities do have an evacuation program and a protocol in place in the event that there is a disaster and they have to move their animals. Most of the larger facilities do, but a lot of the smaller ones simply don't have anything; there's nothing planned.

**Mr. Kormos:** Your amendment would simply add "and animals." How would you refine that so it didn't include, with all due respect to raccoons—oh, I hate those things.

*Interjection.*

**Mr. Kormos:** Well, I'm sorry. Raccoons are not my favourite. How do we word it so you don't include the raccoons that are burrowing into the attics of our 100-year-old homes in small-town Ontario?

**Mr. Draper:** We're looking at animals in captivity or animals that are domesticated, normally. We're not talking about collecting all the squirrels and evacuating them. They're smarter than we are. They know when to leave, of course.

**Mr. Kormos:** But give us the language. What's the language we would use?

**Mr. Draper:** "Animals in captivity," probably.

**Mr. Kormos:** Okay. Thank you.

**The Chair:** The government side.

**Mrs. Maria Van Bommel (Lambton–Kent–Middlesex):** Thank you for your presentation. You mentioned farm animals and farm organizations, the commodity groups that have already been working on these types of endeavours. Can you describe for us your involvement with farm organizations in terms of developing plans?

**Mr. Draper:** We do have some work going on with poultry groups related to issues of avian influenza and those issues. That relates more to disease and animal health issues: if we have a disease outbreak of avian influenza, or of foot-and-mouth disease, which we've been involved in. But a lot of discussion hasn't taken place related to if it's just an emergency, if it's an evacuation versus a foreign animal disease entering the province. There's been a lot of work at OMAFRA; we've been involved, and the commodity organizations. They've done a tremendous job, and there have been resources to that. But issues outside foreign animal disease haven't been considered as much. If it's simply an evacuation because of a forest fire or things like that, those items haven't been considered.

**Mrs. Van Bommel:** Have you, as an organization, given consideration to how that would work?

**Mr. Draper:** How evacuations would work?

**Mrs. Van Bommel:** Of large numbers of large animals, like on a farm.

**Mr. Draper:** Farm animals are a very difficult issue to deal with. Some animals on a farm can be evacuated very quickly, such as cattle, versus poultry. It may not be practical, and there has to be consideration for a farmer, for example, to determine if humane euthanasia is a better course than evacuation, and those protocols. Some of those are being developed because of concerns related to disease control.

**Mrs. Van Bommel:** But you would consider, as you say, because of the difficulty of transporting some of these animals, that euthanasia may be the more humane alternative?

**Mr. Draper:** That's right. We're simply saying there needs to be a plan. There are different options in that plan for what to do—evacuation, humane euthanasia of large flocks of birds—but there needs to be a plan, not just a made-up plan three days after the emergency takes place.

**The Chair:** Mr. Dunlop.

**Mr. Dunlop:** Thank you very much for being here. I've got a series of short questions, more than anything. It's my understanding that your organization has been called on a lot more in recent years to provide your services. Is that not correct?

**Mr. Draper:** Yes, it has. We've been involved in Kashechewan a number of times, due to the evacuation of people there, and in a number of different crises similar to that.

**Mr. Dunlop:** Can you tell me how much money you are funded by the province of Ontario?

**Mr. Draper:** We receive \$119,000 annually from the Ministry of Community Safety and Correctional Services.

**Mr. Dunlop:** So you didn't get any of that windfall money at the end of March, when municipalities without roads and bridges got money for roads and bridges? You didn't get any of that windfall?

**Mr. Draper:** No, we didn't.

**Mr. Dunlop:** Okay. But in the Grant Thornton report, I'm quite sure I read that there were recommendations to actually supply more funding to the OSPCA.

**Mr. Draper:** That's correct.

**Mr. Dunlop:** And you have received none of it so far?

**Mr. Draper:** That's correct.

**Mr. Kormos:** You're partisan.

**Mr. Dunlop:** Well, I'm sorry.

**Mr. Kormos:** Don't apologize.

**Mr. Dunlop:** I happen to think, Mr. Chair, that the OSPCA brings some very valid points here. We've seen the outcry with the pit bull legislation across this province, and I think that if the average person in Ontario, particularly pet owners, realized that pets or animals in captivity weren't included in this plan, I think they would actually like to see that input or see a separate bill or whatever it may be. But my understanding is that they would like to see pets included in an emergency disaster plan.

**Mr. Draper:** Absolutely. I think there would be a tremendous outcry if you tried to evacuate a city and left all the animals behind or did something similar to that. There would be a tremendous outcry of citizens of Ontario. Seventy per cent of the people of Ontario own a pet, and most of those people love their animals dearly.

**Mr. Dunlop:** I'm not sure how much time we're allowing for clause-by-clause, but as we go through this meeting this morning, I can tell you that I'm hearing a lot of recommendations being made on this piece of legislation, so I hope the government members are planning quite a bit of extra time for clause-by-clause and for third reading debate as well, because these are the types of things that I think are important to a good emergency plan. I would never have thought about the OSPCA until I saw your proposal. On top of that, I have been watching these Katrina disaster problems on CNN, and there is no question that that was a huge issue down there.

I compliment you for coming forward with this. I wish we could do more for you. I don't think the OSPCA should be surviving on bake sales and fundraising galas. I

think there should be a responsibility for the provincial government to be part of this as well. Thank you very much.

**1140**

**The Chair:** Any comments?

**Mr. Draper:** Just related to Katrina, it was such a problem down there because there was no plan. We need to have a plan. Everybody flooded in to that system to try to help the animals, and there was no organization. People were injured and almost killed because a lot of good Samaritans tried to intervene, because there was no state plan and we had everybody from across North America going there.

If there was a plan, it would be orderly and very beneficial to the community in reducing injuries and saving a lot of lives as well. Seniors lost their lives not leaving their pets behind.

**The Chair:** Thank you.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 444

**The Chair:** The next presentation is from the Ontario Public Service Employees Union, Local 444, Kingston General Hospital. Good morning.

**Mr. Brendan Kilcline:** Good morning, if it still is; I'm not sure.

I'm Brendan Kilcline. I'm from Kingston General Hospital, where I'm a lab assistant. I'm also with the Ontario Public Service Employees Union hospital professionals division. Our division of OPSEU represents a broad range of diagnostic, therapeutic and technical professionals who are a vital part of the multidisciplinary health care team. We have a number of concerns regarding emergency management and Bill 56.

Firstly, the definitions and powers in the act regarding the medical services our members provide are very broad, and the powers to procure, distribute and fix the price of such services may be interpreted to give powers that essentially amount to the conscription of civilian health care workers. Such conscription could be under duress of the grave penalties of the bill. We believe that such power is extreme in a democracy and is also unnecessary. In all true emergencies, health care workers have a proud history of rising to the occasion to protect their communities, even at great personal risk. There is no basis to believe they would not voluntarily do so again. If it is not the intent of the bill to envision the conscription of health care workers, we urge you to make it clear within the bill.

During the SARS crisis, it was the uncertainty of the obligations of the parties that contributed in large part to the chaotic nature of the response. Since then, many of our collective agreements have negotiated provisions for emergency situations. The central agreement reached with many Ontario hospitals has just such a provision. That's article 30 of the central agreement, and it's in our presentation.

Agreement on issues such as training, deployment, scheduling, pay rates and accommodation of health care workers with particular needs is vital to the operation of a facility in an emergency. These issues and the framework for dealing with them are best resolved by the workplace parties in advance of an emergency and with the full consultation and participation of the workplace parties throughout an emergency. The legislation should support this process. A provision that emergency orders take full account of these agreements between the workplace parties to the fullest extent possible should be included in the bill. We are the local parties, and locally negotiated agreements are the most effective.

**Occupational health and safety:** While the Occupational Health and Safety Act is not eroded by the bill, we are concerned that the act itself will not give sufficient protection to health care workers during an emergency. Indeed, this was our experience during SARS. Health care workers have only a limited right to refuse, and it is in an emergency that these workers will most likely be encountering those limits. It is precisely because of this that the role of both the internal responsibility system and the activity of the Ministry of Labour in enforcing the Occupational Health and Safety Act must be enhanced during an emergency. The recent outbreak of legionnaires' disease at a Toronto facility is a case in point. Workers there were given conflicting directions as to the type of respiratory protection required. It must be made clear that the Ministry of Labour determines what constitutes compliance with the requirement to take all reasonable precautions for the protection of workers under the act, and not other ministries or agencies.

To facilitate the protection of workers with limited rights of refusal, the involvement of the workplace joint health and safety committees and the Ministry of Labour needs to be expanded in an emergency. These committees provide critical forums for addressing worker concerns and the measures taken in preparation for emergencies. The involvement of the joint committees is also crucial for monitoring the application of such safety measures and in monitoring the effectiveness of the facilities' health and safety program. However, these committees are only required to meet as little as once every three months.

When an emergency is declared, there should be a requirement to cause the joint health and safety committees to meet immediately to consider the emergency and to meet regularly throughout the emergency. In particular, if emergency orders are issued that may impact on the health and safety of workers, the committee should be required to consider such orders immediately. Such orders should be immediately sent to the director of occupational health and safety at the Ministry of Labour for immediate and urgent review. The Ministry of Labour should also be sent, and promptly review, any recommendation made by a joint committee with respect to the order.

The indemnity for employees acting under the order within the bill: As well as common law requirements for duties of care, many of our members are regulated under

the Regulated Health Professions Act by colleges which have standards and scopes of practice. The bill offers some protection against liability for our members' good-faith actions undertaken in an emergency, but those protections need to be expanded. The cost of defending those good-faith actions in litigation can be ruinous. We note that police officers have protection from the costs of these actions under the Police Services Act, and our members deserve no less consideration, particularly when operating in an emergency.

While some protection is offered in the bill for workers temporarily reassigned during an emergency, the protections are not fully adequate. The bill should contain a provision guaranteeing that the worker returns to their pre-emergency position. After an emergency, it's highly likely that many health care workers will be exhausted and many will have to attend to family matters that are put on hold during an emergency. The employment protections provided to such workers should not end with the emergency but be extended to some reasonable time thereafter.

These powers are particularly important, especially in light of the ability to deem health care workers qualified in areas other than those in which they have been traditionally working.

**The Chair:** Thank you. We have about four minutes for each side. Mr. Balkissoon.

**Mr. Balkissoon:** Mr. Kilcline, thank you very much for taking the time to be here with us and giving us your input.

I just want to pursue your comment that if the bill does not say "conscripted," it should be clear. Nowhere in the bill is there conscription. If you're concerned about clause 12, would you agree that the government needs the authority, the power, in case of a provincial emergency declaration, to allow professionals or volunteers from outside the province to volunteer their services if they're qualified to do so? That's what clause 12 is doing. If I was to say that to you, would you be much more comfortable?

**Mr. Kilcline:** That would make us more comfortable.

**Mr. Balkissoon:** That's the intent of 12.

**Mr. Kilcline:** We would like the intent to be clear and unambiguous.

**1150**

**The Chair:** Mrs. Elliott.

**Mrs. Christine Elliott (Whitby-Ajax):** Thank you for your presentation today. The question I have for you is with respect to the joint health and safety committees and their actual role in the course of an emergency. You indicated that if an emergency order were issued, they would need to be consulted and their recommendations would be sent to the Ministry of Labour. Do you see that as an advisory role more than anything else, just to be able to consult with the people who are going to be dealing with the emergency orders and just to have sort of a pipeline, I guess, to the Ministry of Labour to make sure the ministry knows what the concerns are?

**Mr. Kilcline:** Yes. We feel it, particularly vital in an area where our workers have limited rights of refusal that

consideration of the joint committees does get essentially a direct pipeline to the Ministry of Labour, especially where orders are written that may impact on occupational health and safety. We need that. We need the ability of the ministry to come and enforce in the environment that we have, where workers have limited protections and, just by the nature of their work, are inclined and willing to undertake these potentially dangerous assignments.

**Mrs. Elliott:** I gather from your presentation and one of the previous presentations that during the SARS crisis there was really a feeling that the front-line workers' concerns were not being addressed and that the people higher up in the chain really had not much of an idea of what they were actually dealing with on the front line. Is that fair to say?

**Mr. Kilcline:** That is correct. Already the joint health and safety committees do have those powers to recommend and advise. It's just that in an emergency, during the SARS crisis, they weren't in most cases given due consideration. They weren't used, and they could have been used very effectively to assist in the protection of workers. Again, that is vital in an area where workers have limited protections.

**Mrs. Elliott:** Thank you very much. Those are all my questions.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you, Brother Kilcline, for joining us today. You make some interesting observations and express some serious concerns. I appreciate the parliamentary assistant drawing your attention to paragraph 12 of what is becoming increasingly notoriously known as what will be section 7.0.2 of the act should this bill pass. Paragraph 12, "the authorization of any person," has some issues around it as well, but let's take a look at paragraph 10, because your concern is conscription or pressing people into service.

What does paragraph 10 provide for? It provides for the procurement of goods. We all know what those are. Those are tangible things like gasoline and automobiles. It provides for the procurement of resources, which is pretty broad. Resources, once again, mean, in my view, physical things but can also mean staff, the resources of an institution, of a private or public company or organization. But it also talks about the procurement of services.

**Mr. Kilcline:** Particularly medical services.

**Mr. Kormos:** Yes. Services clearly aren't goods. This coffee cup isn't a service, it's a good, it's a thing. It could be a resource. But services are clearly things that people do, and you can't procure the service unless you procure the person, huh?

**Mr. Kilcline:** That is correct.

**Mr. Kormos:** This is where people are—and you're not the first person today, although I credit OPSEU with having peeled back enough here. You may not have been here first thing this morning, but there were bureaucrats from the ministry who insisted there were no powers of conscription or, as I used the phrase, powers to press people into service. But it looks like paragraph 10, the procurement of services, is very problematic for you and your colleagues.

**Mr. Kilcline:** We feel it could be interpreted thus. Again, if it is the clear intent not to do that by the government, we would like that clear intent in the bill.

**Mr. Kormos:** Just say so. Because when you then look at paragraph 12, which is authorizing people to do things that they wouldn't otherwise be authorized to do, there doesn't appear to be any power by the person being authorized to say, "No, I do not ethically believe I should be performing that particular procedure because I'm not adequately trained and it would put the recipient of the service or procedure at risk, or because I'm not adequately trained in protecting myself," from a health and safety perspective. Do you share my concern about paragraph 12 in that regard?

**Mr. Kilcline:** Absolutely. They are our concerns.

**Mr. Kormos:** Then you look at paragraph 14, which the government has conveniently not referred to because that's the omnibus paragraph. It's wide open: "such other actions or implementing such other measures as the Lieutenant Governor in Council considers necessary." It's the kitchen sink. It's anything and everything. So if there isn't conscription or pressing into service in paragraph 10, which I'm insistent that there is, there sure as heck is down in paragraph 14. This is a real dog's breakfast. It seems to me that the government should be sitting down with the front-line emergency responders like health care workers and health professionals rather than giving the provincial emergency czar, who is collecting two very attractive pensions already, more arbitrary powers.

Thank you very much for coming all the way from Kingston. Of course, you can make application to the Chair for travel expenses, and I invite you to do that because you've accommodated us by coming here.

**Mr. Kilcline:** Thank you very much.

**The Chair:** Thank you very much.

That concludes all of our presentations for today. This committee stands adjourned until Monday at 3:30. Could I have the subcommittee members remain behind for about five minutes. Thank you.

*The committee adjourned at 1156.*







## CONTENTS

Thursday 11 May 2006

<b>Subcommittee report</b> .....	JP-217
<b>Emergency Management Statute Law Amendment Act, 2006, Bill 56, Mr. Kwinter / Loi de 2006 modifiant des lois en ce qui a trait à la gestion des situations d'urgence, projet de loi 56, M. Kwinter</b> .....	JP-217
Ministry of Community Safety and Correctional Services.....	JP-217
Mr. Glenn Murray, assistant deputy minister, policy and public safety programs division Mr. Jay Lipman, legal counsel	
Ontario Public Service Employees Union .....	JP-220
Ms. Patty Rout Mr. Roman Stoykewych	
Ontario Association of Emergency Managers.....	JP-224
Mr. Alain Normand	
Canadian Blood Services .....	JP-227
Mr. Ian Mumford Ms. Ayanna Ferdinand	
Ontario Society for the Prevention of Cruelty to Animals .....	JP-230
Mr. Michael Draper Mr. Hugh Coghill	
Ontario Public Service Employees Union, Local 444.....	JP-232
Mr. Brendan Kilcline	

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